Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Gartley v. Bolkan et al*, 2018 BCCRT 461

B E T W E E N :

Heather Gartley

APPLICANT

A N D :

Yasemin Bolkan and The Owners, Strata Plan VIS 7077

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: J. Garth Cambrey, Vice Chair

INTRODUCTION

1. The applicant, Heather Gartley, owns a strata lot (SL1) in the respondent 2-unit strata corporation, The Owners, Strata Plan VIS 7077 (strata). The respondent, Yasemin Bolkan owns the other strata lot (SL2) in the strata.

2. This dispute involves Ms. Gartley's claim that Ms. Bolkan be ordered to reactivate a sump pump connected to the perimeter drain of SL2.

3. It is undisputed that that the sump, originally intended for and capable of housing a pump, is located on limited common property (LCP) designated to SL2. It is also undisputed that a pump was not installed in the sump at the time Ms. Bolkan purchased SL2 and that the sump drains by gravity through a pipe that goes below ground under the common property driveway on to, and likely through, the neighbouring property immediately to the south of the strata.

4. Ms. Gartley says the sump pump must be reactivated to remove the strata's liability relating to an unregistered right of way or easement on the neighbouring property and that the pump's removal has reduced the collective property values of SL1 and SL2 by $5,000.

5. Alternatively, as set out in her submissions, Ms. Gartley effectively asks the tribunal to order that she is not responsible for any repairs known to the strata prior to her purchase of SL1 that were not disclosed to her, including damages caused by the sump drain running through a neighbouring property.

6. Ms. Bolkan says Ms. Gartley's claim is without merit, that her submissions differ from her requested remedy, and that her alternate requested remedy argued in her submissions is outside the jurisdiction of the Civil Resolution Tribunal (tribunal). She asks that the claim be dismissed.

7. Ms. Gartley and Ms. Bolkan are self-represented. The strata is unrepresented and was added as a respondent at my direction, as described below.

8. For the reasons that follow, I dismiss Ms. Gartley's claim.

JURISDICTION AND PROCEDURE

9. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over strata property claims brought under section 3.6 of the *Civil Resolution*

Tribunal Act (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.

10. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

11. The tribunal may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

12. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

13. Under section 61 of the Act, the tribunal may make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the tribunal in accordance with its mandate. In particular, the tribunal may make such an order on its own initiative, on request by a party, or on recommendation by a case manager (also known as a tribunal facilitator).

14. The strata was not named as party in these proceedings but I have exercised my discretion under section 61 of the Act to add it as a respondent to this dispute as I find my decision may have a future impact on the strata and should remain in the strata's records for future disclosure. I have not requested submissions from the parties on this addition as to do so would not be an effective use of the tribunal's resources, given the individual strata lot owners, who together represent the strata, are likely to have opposing views and it is reasonable to expect one or both would not agree to the addition. Accordingly, I have amended the style of cause above.

ISSUES

15. As discussed below, several issues were set out in the Dispute Notice issued September 1, 2017, but I find all but the sump pump related issues were resolved or withdrawn prior to this dispute being referred to me.

16. The issues in this dispute are:

    a. Has this dispute previously been decided?

    b. Does the reactivation of the sump pump change the strata's potential liability relating to the sump drain line?

    c. Has the lack of a sump pump collectively reduced the property values of SL1 and SL2 by $5,000?

    d. Should I order Ms. Gartley's alternate remedy as requested in her submissions?

    e. Should I address Ms. Bolkan's allegation that Ms. Gartley provided false and misleading information to the tribunal?

BACKGROUND, EVIDENCE AND ANALYSIS

17. I have read all of the submissions and evidence provided, but refer only to information I find relevant to provide context for my decision.

18. In a civil proceeding such as this, the owner must prove their claim on a balance of probabilities.

19. The strata was created by converting an existing residential home owned by Mr. and Mrs. Chow (Chows) into a strata corporation.

20. The strata plan was filed in the Land Title Office on May 30, 2011 by the Chows. It created SL1 with 53% of the total unit entitlement and SL2 with 47% of the total unit entitlement. Each strata lot has 1 vote.

21. The strata's relevant bylaws are the Schedule of Standard bylaws under the *Strata Property Act* (SPA).

22. Land title documents show Ms. Bolkan purchased SL2 on March 4, 2016 and that Ms. Gartley purchased SL1 on June 30, 2016. Ms. Gartley and Ms. Bolkan each purchased their respective strata lots from the Chows. The Chows are not parties to this dispute and nothing in this decision affects the rights any of the parties to this dispute may have with respect to the Chows.

Has this dispute previously been decided?

23. This dispute follows an earlier tribunal dispute involving the same owners and strata lots. In that earlier dispute, Ms. Bolkan claimed Ms. Gartley was unreasonably refusing to approve an addition to SL2, and that the strata was responsible for certain common property repairs, for which Ms. Gartley should pay her proportionate share. (See *Bolkan v. The Owners, Strata Plan VIS 7077 et al*, 2018 BCCRT 64.)

24. Some of the claimed repair expenses in that dispute related to drainage repairs of SL2 but during the course of an oral hearing, the parties agreed the drainage work to redirect water away from SL2 had been completed but that they could not agree to the cost of the work or who should pay. (See *Bolkan* at paragraph 62.)

25. The tribunal member deciding the *Bolkan* dispute did not make a decision about the drainage repairs but did set out a process for the parties to follow when faced with disputed common property repairs. Although the decision is not binding on me, I find the process ordered does not apply to the circumstances here. I interpret that the process ordered by the tribunal member in *Bolkan* relates to common property for which the strata has a duty to repair and maintain, and which the 2 owners cannot agree on the method or cost of repair. Here, the dispute is about reactivating the sump pump. There is no established duty to repair, given that the evidence shows the sump is functioning properly without the pump.

26. The decision in *Bolkan* expressly excluded the drainages issues relating to the foundation crack at SL2 from the ordered process. This effectively made Ms. Bolkan responsible for the foundation crack at SL2 and related drainage repairs because they were not previously disclosed to Ms. Gartley in a Form B – Information Certificate under section 59 of the SPA (Form B).

27. In her submissions, Ms. Bolkan says the drainage issues relating to the foundation crack at SL2 addressed in the earlier tribunal decision are unrelated to the sump pump. Ms. Gartley does not dispute this but says she has received conflicting statements from Ms. Bolkan, and refers to a September 2016 letter where Ms. Bolkan identifies one of the strata repairs items as "Repair sump pump to effectively relieve foundation leakage". The September 2016 letter was provided as evidence in the earlier tribunal decision and pre-dates this dispute. It also pre-dates a plumbing report of November 8, 2016 that indicates the perimeter drain lines of SL2 were functioning properly without the sump pump. I accept the more current statement made by Ms. Bolkan that the sump pump issue is a separate issue to the SL2 foundation drainage issue that has already been decided.

28. For these reasons, I find this dispute has not previously been decided.

29. I note that if I were to reject Ms. Bolkan's position, as Ms. Gartley might suggest, I would refuse to resolve this dispute given the earlier *Bolkan* decision would have decided the sump pump issue.

30. I find it is also important to note that this dispute was started on September 1, 2017, before the *Bolkan* decision was issued on March 6, 2018. The Dispute Notice for this dispute contained many issues related to those raised in *Bolkan* and as a result included much of the same evidence as pointed out by Ms. Bolkan. I agree with Ms. Bolkan that the 2 tribunal disputes "overlap" but as earlier noted, the only issue before me is that of the sump pump reactivation.

Does the reactivation of the sump pump change the strata's potential liability relating to the sump drain line?

31. A large amount of the submissions involved the workings of the current sump drain and there is no dispute that the gravity drain is working properly. This is supported by perimeter drain camera inspection reports provided by Ms. Bolkan, the latest of which is dated April 18, 2018.

32. Ms. Gartley refers to the location of sump's drain pipe on the neighbouring property as creating an "unregistered right of way or easement." In her reply, she also says the current owners of the neighbouring property refuse to register an easement or right of way relating to the sump's drain line in favour of the strata.

33. Ms. Gartley says the location of the sump's drain pipe creates a potential liability to the strata should the pipe ever fail and cause damage to the neighbouring property. While I agree potential liability to the strata may exist, I fail to see how the installation of a pump in the sump will have any effect.

34. As for Ms. Gartley's claim that she must disclose any material latent defects should she choose to sell SL1, the installation of the sump pump would also have no effect on any required disclosure.

35. For these reasons, I find Ms. Gartley has not proved the installation of a sump pump would have any effect on the strata's potential liability relating to the sump's drain line.

Has the lack of a sump pump collectively reduced the property values of SL1 and SL2 by $5,000?

36. Ms. Gartley's claim for reduced property value stems from the contract of purchase and sale agreement between Ms. Bolkan and the Chows, which reflects a reduction $3,500 in purchase price of SL2 in exchange for releasing the Chows from registering an easement for the sump's drain line. She also says an additional $1,500 was given to Ms. Bolkan by the real estate agent involved in the sale as further compensation to relieve her from the obligation to install the sump pump. These 2 amounts total $5,000.

37. As for the claim Ms. Bolkan received $1,500 from her real estate agent, which Ms. Bolkan denies, I find Ms. Gartley has failed to prove that this occurred. She has provided no evidence to substantiate this part her claim and I dismiss it.

38. I also disagree with Ms. Gartley's claim the purchase price was reduced to relieve Ms. Bolkan from installing a sump pump. The evidence provided shows there were 2 amendments to the contract of purchase of sale of SL2 involving the Chows and Ms. Bolkan. The first amendment was that the Chows would have an "auxiliary storm drain registered as an easement" over the neighbour's property. The second and subsequent amendment was that the "parties agree to reduce the purchase price [by $3,500]" in exchange for Ms. Bolkan releasing the Chows "from their obligation to have an auxiliary storm drain easement registered over the neighbours' property."

39. A plain reading of the 2 amendments show there are no statements relating to the sump or the fact there was no sump pump. A storm drain is different from a sump pump. I accept Ms. Bolkan's submission that the price adjustment did not relate to any outstanding repair issue, including reactivating the sump pump.

40. For these reasons, I find the missing sump pump has not reduced the market value of SL1 or SL2.

Alternate remedy about Ms. Gartley's relief from undisclosed repairs.

41. Ms. Gartley asks for an order that the strata's registered owners on June 29, 2016, the date the strata issued her a Form B, be solely responsible for all common property repairs known at that time that were not disclosed to her. As earlier noted, such an order would effectively relieve Ms. Gartley from any responsibility for common property repairs that were not disclosed to her at the time she purchased SL1.

42. This is an order I cannot make, primarily because no prior owners are parties to this dispute and have not had the opportunity to provide their arguments. I cannot make an order against non-parties to this dispute. In addition, former owners

cannot be parties to a strata property dispute. (See *Somers v. The Owners, Strata Plan VIS 1601*, 2017 BCCRT 28.)

43. Additionally, if such an order was made, it would leave Ms. Bolkan responsible for 100% of any "undisclosed" repairs which could arguably be any repair for which the strata is responsible that was not disclosed to Ms. Gartley. I find such an order goes against the intent of the SPA and the strata's bylaws, which are designed to assist the strata to govern its affairs in a fair manner.

44. Finally, the strata has not considered altering how certain repair costs may be allocated differently than by unit entitlement, which can be done by a unanimous vote of the owners. Making one owner responsible for a strata corporation expense without the matter properly being considered by its owners goes against the democratic rights of the owners to make their own decisions on cost allocations between strata lots.

45. I recognize that the owner's alternate remedy results from the earlier *Bolkan* decision. In that decision, the tribunal member found Ms. Gartley relied on a Form B issued to her by the strata in June 2016. The member stated a Form B is certification by the strata of the facts it contains and that it is designed to ensure a purchaser has "full notice of the of the status of the strata, including notice of outstanding major repair work known to the strata."

46. The tribunal member in *Bolkan* also found the Form B determinative of the issue of responsibility for repairs to the foundation and I will not disturb that decision as that dispute has been decided and is not before me. (See *Bolkan* at paragraphs 84 and 85).

47. Under section 59(5) of the SPA, the information contained in a Form B is binding on the strata corporation in its dealings with a person who relied on it and acted reasonably in doing so.

48. I believe Ms. Gartley has misinterpreted the comments made by the tribunal member in the earlier dispute in which she was a party. A Form B does not

address unknown repair expenses. It does address such things as disputed amounts paid into court, expenses an owner has agreed to because of an approved alteration, future special levy payments, operating budget deficits and the amount of unrestricted money in the strata's contingency reserve fund.

49. Therefore, I find a Form B does not generally identify known or outstanding common property repair items and therefore cannot be used to determine how future common property expenses should be allocated or relieve or bind any owner to sharing in those costs.

50. For these reasons, I decline to order Ms. Gartley's alternative request for relief from undisclosed common property repairs.

Allegation that Ms. Gartley provided false and misleading information.

51. I decline to address Ms. Bolkan's allegation that Ms. Gartley provided false and misleading information in her submissions to this dispute noting she has not made a counterclaim and seeks no remedy.

DECISION AND ORDERS

52. I order that Ms. Gartley's dispute is dismissed.

53. Under section 49 of the Act and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees. I see no reason to deviate from this general rule. Ms. Bolkan is the successful party but she did not pay tribunal fees and did not claim any dispute-related expenses. Accordingly, I make no order about reimbursement of tribunal fees or expenses.

J. Garth Cambrey, Vice Chair