



Civil Resolution Tribunal

Date Issued: September 4, 2018

File: ST-2017-006167

Type: Strata

Civil Resolution Tribunal

Indexed as: *Deng v. The Owners, Strata Plan LMS 3904*, 2018 BCCRT 495

B E T W E E N :

Qiu Lian Deng

APPLICANT

A N D :

The Owners, Strata Plan LMS 3904

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Fred Wynne

INTRODUCTION

1. This is the second dispute the applicant, Qiu Lian Deng (owner), has filed with the Civil Resolution Tribunal (tribunal) against the respondent strata corporation, The Owners, Strata Plan LMS 3904 (strata). The tribunal's decision in the first dispute is indexed as *Deng v. The Owners, Strata Plan LMS 3904*, 2017 BCCRT 8, and was issued on February 20, 2017 (the first dispute).

2. In the first dispute, the tribunal ordered the strata to provide the owner with copies of the strata's bank statements from June 1, 2016 through November 30, 2016, subject to the owner's payment of any copying fees up to the maximum set out in the *Strata Property Regulation* (regulation). The owner says that the strata has not complied with the tribunal's order and has not disclosed those bank statements to her. The owner requests the documents be provided to her.
3. In the current dispute the owner makes a new request in that she asks for the strata to provide her with copies of the strata's bank statements from December 1, 2016 through June 30, 2017.
4. The current dispute also involves signage installed by the strata, which the owner says misrepresents the ownership of certain strata lots including hers. The owner asks for the strata's signage to be changed.
5. The strata says that it is prepared to disclose the requested documents to the owner but the owner has not paid the strata's fees for preparing, copying and mailing the documents.
6. On the matter of the signs, the strata says the issue was raised at a council meeting on November 24, 2016 and the council decided no change should be made. The strata further asks for the owner to write to the strata council with a formal proposal on what change she would like made and says the council will consider that proposal.
7. The owner is represented by a non-legal representative, Angela Leong. The strata is represented by the strata council president.
8. These are the formal written reasons of the tribunal. For the reasons that follow, I make 3 findings. First, I find that the tribunal to enforce its previous order, and therefore I refuse to resolve that portion of the dispute over records from the period of June 1 - November 30, 2016. Second, I find that the owner is entitled to receive copies of records, subject to payment of the appropriate fees, for the period of

December 1, 2016 to June 30, 2017. Third, I find that the strata's signs are misleading and must be changed.

JURISDICTION AND PROCEDURE

9. The tribunal has jurisdiction over strata property claims brought under section 3.6 of the *Civil Resolution Tribunal Act (Act)*.
10. 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 recognise any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
11. 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).
12. 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.
13. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I find that I can decide this matter on the documents provided to me, without an oral hearing.
14. Under section 10 of the Act, the tribunal must refuse to resolve a claim that it considers is not within its jurisdiction. Under sections 57 and 58 of the Act, enforcement of a tribunal order is done by filing the order with either the Provincial Court or the Supreme Court and pursuing enforcement through those courts. I do not consider that tribunal has jurisdiction to enforce the tribunal's order from the first decision because sections 57 and 58 give that jurisdiction to the courts.

15. Given I do not have jurisdiction to enforce the first dispute's order I must refuse to resolve that claim under this dispute pursuant to section 10 of the Act.
16. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute the tribunal may make order a party to do or stop doing something, order a party to pay money, order any other terms or conditions the tribunal considers appropriate.

ISSUES

17. Having found I do not have jurisdiction to resolve the dispute over records ordered by the tribunal in the first dispute, the issues I must decide are
 - a. whether the strata must provide copies of bank statements for the period December 1, 2016 to June 30, 2017 to the owner; and,
 - b. whether any change should be made to the strata's signage and, if so, what that change ought to be.

EVIDENCE AND ANALYSIS

17. I have read and considered all of the evidence and materials filed by the parties, but I do not recite or refer to all of them in my decision. I only refer to the evidence I found was necessary for me to make my decision.
18. The strata was created May 25, 1999 and is a 76 unit residential townhouse complex.
19. The owner says that she and her husband owned strata lot 10 since 1999, that her husband was originally named on title, and that when he died the title was put in her name. Current title documents show the owner has been named since 2012.
20. At some point, there was no strata council and the strata apparently became non-operational. It appears to be common ground that in or around July 2015 an entity which is now identified as "Parc McLean Townhomes" purchased all of the lots in the strata except for lot 8 and the owner's lot, lot 10.

21. The strata agrees that lots 8 and 10 are independently owned from the remainder of the lots in the complex.

Document Disclosure - December 2016 to June 2017

22. Access to strata records is governed by section 36 of the *Strata Property Act* (SPA). Whenever a strata receives a request by an owner for copies of certain records, which are listed in section 35 of the SPA, the strata must provide copies of those records to the owner requesting them.
23. The strata correctly references section 36(4) of the SPA, which sets out that a strata corporation may charge a fee to do so and may withhold the records until the fee is paid.
24. The amount of the fees the strata may charge are governed by the *Strata Property Regulation* (regulations) to the SPA. Unfortunately, the strata in this case incorrectly interprets the regulations and has demanded a higher fee from the owner for copies of documents than it is allowed to.
25. In its submissions, the strata says that it has prepared documents and an invoice for 2 sets of documents. The first set is 13 pages of copies, equalling \$3.25 at \$0.25 per page, and \$1.00 in postage for bank statements dated June 2016 to January 2017. The second set is 24 pages of copies, equalling \$6.00 at \$0.25 per page, and \$2.00 in postage for bank statements and a letter from the bank for the period of February to June, 2017. The strata therefore seeks payment of \$12.25 from the owner before it will provide copies of the requested records.
26. The strata also suggests in its submissions that it could charge a \$35 fee for producing an Information Certificate. It cannot do so in this case.
27. An Information Certificate is a specific document described in section 59 of the SPA, containing specific information set out in section 59 and done in a prescribed form appended to the SPA as Form B.

28. In this case, the owner has requested access to records under section 36 of the SPA and has not requested an Information Certificate under section 59 of the Act. Therefore the strata is not permitted to charge fees for an Information Certificate and is limited to the amounts that can be charged for a section 36 records request.
29. The fees that can be charged for a section 36 records request is set out in section 4.2 of the regulations, which says that a maximum of \$0.25 per page can be charged for copies. The regulations are silent on postage charges, so I find that the owner has no obligation to pay postage to the strata.
30. I note that the bank records prepared by the strata cover a greater timeframe than the order in the first dispute, which was for disclosure of the period of June 1 to November 30, 2016. I do not have any information before me that would allow me to parse out how many pages of records relate only to which time period.
31. In any event, the owner's submissions seek ongoing disclosure of bank statements and the strata is apparently willing to provide disclosure upon payment of the appropriate fees.
32. I therefore order that the strata must provide the owner with bank records for the period of December 1, 2016 to June 30, 2017, immediately upon receipt of payment from the owner of \$0.25 per page for the number of pages relating to that period.
33. I further find that the parties will need to make their own arrangements for delivery of the documents. Given that all parties are resident in the same strata complex, I expect that postage is unnecessary and delivery or pick up can be easily facilitated.

Signage

34. At some point following Parc McLean Townhomes' purchase of all but 2 of the strata lots in the strata, the strata erected 2 wooden signs on the strata's common property reading "Parc McLean Townhomes 5900 Muir Drive Units 1 - 76".

35. There are only 3 owners in the entire strata, and Parc McLean Townhomes represents only 1 of the 3
36. The owner argues that the wording of this sign is misleading and indicates that Parc McLean Townhomes owns all of the lots in the complex, when in fact it does not.
37. I agree the signage could be interpreted in this way, which is not an accurate representation of the ownership of the strata lots.
38. It is important to note that in the strata's submissions it agrees with the owner's interpretation of the signage and argues that the issue was raised at the November 24, 2016 strata council meeting to discuss the inaccuracies in the signage. The council ultimately voted not to change the signs despite the issue being raised.
39. To remedy possible misinterpretation of the signage, I order that the strata remove the name "Parc McLean Townhomes" from both signs, leaving only the complex address and unit numbers, within 30 days of this order.

DECISION AND ORDERS

40. I order that the strata:
 - a. Provide the owner with copies of the strata's bank statements from December 1, 2016 through to June 30, 2017 immediately upon receipt of payment from the owner of \$0.25 per page for copying fees; and,
 - b. The strata will remove "Parc McLean Townhomes" from its 2 wooden signs located on the strata's property within 30 days of this order.
40. 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 and reasonable dispute-related expenses. I see no reason in this case to deviate from the general rule. I therefore order that within 30 days of the date of this order, the strata will reimburse the owner for tribunal fees of \$225.

41. Under section 189.4 of the SPA, an owner who brings a tribunal claim against a strata corporation is not required to contribute to any monetary order issued against the strata corporation or to any expenses the strata corporation incurs in defending the claim. I order the strata to ensure that no expenses incurred by it in defending this claim are allocated to the applicant owner.
42. Under section 57 of the Act, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia, a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.
43. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia. However, the principal amount or the value of the personal property must be within the Provincial Court of British Columbia's monetary limit for claims under the *Small Claims Act* (currently \$35,000). Under section 58 of the Act, the Applicant can enforce this final decision by filing in the Provincial Court of British Columbia a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Fred Wynne, Tribunal Member