Civil Resolution Tribunal

Date Issued: November 28, 2018

File: ST-2018-002101

Type: Strata

Civil Resolution Tribunal

Indexed as: *Chot v. The Owners, Strata Plan LMS 4355*, 2018 BCCRT 767

B E T W E E N :

Amandip Chot

APPLICANT

A N D :

The Owners, Strata Plan LMS 4355

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Michael F. Welsh, Q.C.

INTRODUCTION

1. The applicant, Amandip Chot, claims back the sum of $6,550.00 for fines he asserts were improperly imposed by the respondent, the Owners, Strata Plan LMS 4355 (strata.) They were levied for his allegedly renting a strata lot (Strata Lot 56) in contravention of a strata bylaw (Bylaw 36) restricting rentals. The parties part

company on whether a registered agreement for sale of Strata Lot 56 under which the alleged purchaser occupied it was genuine, or whether it was a ruse to rent Strata Lot 56 to that alleged purchaser.

2. The applicant acts for himself and the strata is represented by a strata council member. Both parties have had their submissions prepared by legal counsel, however, whom I thank for their detailed and helpful analysis of the facts and law applicable to this dispute.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 3.6 of the *Civil Resolution Tribunal Act* (Act). One issue in this case, although not raised by the parties, is if that jurisdiction applies in this case where the applicant is former owner. I address this later in the decision.

4. 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.

5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I have decided this dispute based on written submissions, as I find that there are no significant issues of credibility or other reasons that might require an oral hearing, and as it is largely a matter of analysis of applicable legislation and caselaw.

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

7. 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

8. The issues in this dispute are:

    a. Do I have jurisdiction to decide this dispute?

    b. If I have jurisdiction, did the applicant contravene the strata's Bylaw 36 by renting Strata Lot 56 and is he subject to the $6,550 in fines?

BACKGROUND AND EVIDENCE

9. The applicant is the former owner of Strata Lot 56, located in Surrey. He sold that property with a closing date of March 26, 2018. That was 4 days after he submitted his application in this matter to the tribunal.

10. In 2013 the applicant had attempted to rent Strata Lot 56 but was advised by the strata that doing so contravened Bylaw 36. In 2014, the applicant made a request under Bylaw 36 to rent Strata Lot 56 based on hardship, but this request was denied by the strata.

11. In December 2016 the applicant entered into a written "rent to purchase" agreement with a friend. He had his lawyer prepare the agreement and it was provided to the strata for review and approval. The strata advised the applicant that this agreement still placed the applicant in contravention of Bylaw 36 but said it would give him the opportunity to enter into a registered agreement for sale with his friend. The friend would then meet the definition of an "owner" under the *Strata Property Act* (SPA.) It set a deadline of 20 days (to March 15, 2017) to have that agreement for sale registered on title.

12. The SPA defines an "owner" at section 1 to include "the registered holder of the last registered agreement for sale" of a strata lot.

13. The applicant's lawyer at first prepared and registered an option to purchase, and the strata took the position that this did not comply with the SPA or Bylaw 36.

14. The applicant's lawyer then prepared an agreement for sale with a price of $290,000.00 and a down payment of $1,300.00, which was signed by the applicant and his friend and registered on March 22, 2017 on the title to Strata Lot 56. The friend, who had already been occupying Strata Lot 56, continued to do so. The assessed value of Strata Lot 56 in 2017 was $317,000.00.

15. The "rent to purchase" agreement and the option to purchase each called for payments of $1,300.00 per month until title transferred. The agreement for sale did not, but the applicant admits his friend continued those monthly payments during his occupation of Lot 56.

16. Under Bylaw 36, the strata can levy a $500 fine for every 7-day period a strata property is rented contrary to the bylaw. As it took an extra week beyond its March 15, 2017 deadline for the applicant's lawyer to register the agreement for sale, the strata levied a $500 fine. The applicant sought a reversal of that fine in the summer of 2017, but the strata refused his request. The $500 is part of the sum for which the applicant now claims.

17. The agreement for sale contained a subject condition that the friend, as purchaser, was to secure purchase financing by November 15, 2017 (the Financing Date.) It set a completion date for the purchase of December 8, 2017 (the Completion Date.)

18. The friend did not obtain the necessary financing by the Financing Date, and in December 2017 the applicant and his friend verbally agreed to extend both the Financing Date and the Completion Date indefinitely.

19. The lawyer for the strata sent a letter to the applicant dated January 16, 2018 advising that, as the Completion Date had passed, it took the position that the agreement for sale had expired and that the friend no longer met the definition of an owner under the SPA. It gave the applicant 14 days to reply with his position on

whether he was in breach, and it stated that after the 14-day deadline it would decide whether to levy fines of $500 for each 7-day period until the friend vacated.

20. The applicant's friend contacted a mortgage broker for assistance with financing and that broker wrote the strata confirming his professional involvement and stating that, if the friend was not able to obtain financing, he would vacate.

21. The friend decided not to complete the purchase. The applicant listed Strata Lot 56 for sale on February 2, 2018, for $450,000.00 and it sold on February 8, 2018 for $465,000.00 with a completion on March 26, 2018. The agreement for sale was removed from the title on February 15, 2018, and the friend vacated Strata Lot 56 on February 28, 2018.

22. The strata levied a further $6,050.00 in fines for each of the 7-day periods between December 8, 2017 and February 26, 2018. The applicant had to pay all fines (totalling $6,550.00) on sale of Strata Lot 56, and, as noted, now claims back this money.

23. The application to the tribunal was made by the applicant on March 22, 2018, four days before the completion date of his sale of Lot 56.

POSITION OF THE PARTIES

24. The applicant submits that he had every intention to sell Strata Lot 56 to his friend, whether under the "rent to own" agreement or the registered agreement for sale. He submits that he tried to accommodate the friend by indefinitely extending the dates for financing and completion and that he was legally entitled to do this verbally. When his friend decided not to proceed, he promptly listed and sold Strata Lot 54 to another party. This series of actions shows his genuine intentions to sell all along.

25. The respondent strata submits that the agreement for sale was a "sham" behind which the applicant hid his true intent to rent Strata Lot 56. It points to his earlier efforts to obtain consent to rent, including his hardship request. It also relies on the

significant disparity in the price in the agreement for sale and the listing price and selling price ($175,000.00 less than the selling price.)

26. The applicant responds that the strata is essentially asserting fraud on his part and, relying on the case of *Hirschler v. Dominion of Canada General Insurance Company*, (1984) 56 BCLR 1, paragraph 15, argues that the onus is on the strata to establish fraud and that it requires clear and distinct proof. That proof, he says, is lacking.

ANALYSIS

DO I HAVE JURISDICTION TO DECIDE THIS DISPUTE?

27. This issue was not raised by the parties, but needs to be addressed, as the applicant is no longer an "owner" under the SPA and the strata property claim jurisdiction of the tribunal is limited to disputes between current strata lot owners and strata corporations. (See *Somers v. The Owners, Strata Plan VIS 1601*, 2017 BCCRT 28)

28. In this case, however, the applicant was still owner of Strata Lot 56 at the time he submitted his application to the tribunal. In *Kervin v. The Owners, Strata Plan LMS 3011*, 2017 BCCRT 146, the tribunal found at paragraph 20, that, "… given the legislation is silent on the issue of a change in ownership during the tribunal process, I find the tribunal has discretion to resolve the dispute under section 61 of the Act and tribunal rule 119(c)." At paragraph 24, the decision sets out a series of factors to consider when deciding whether to resolve a dispute.

29. I agree with the analysis in *Kervin* and based on that decision find that it is appropriate for me to exercise my discretion to determine this dispute. Applying the *Kervin* factors, I note that both parties have made their submissions on the merits and have not raised any jurisdictional objections. They have retained legal counsel to prepare those submissions and that is an expense that will be wasted if I refuse to decide it. Given the amount involved exceeds the tribunal's small claims jurisdiction, a refusal means the applicant will have to proceed to the Provincial

Court Small Claims Division at additional cost to both parties. This dispute is also not an academic one by reason of the sale. The applicant and respondent strata are entitled to a determination of whether the fines were validly levied or should be repaid.

DID THE APPLICANT CONTRAVENE THE STRATA'S BYLAW 36 BY RENTING STRATA LOT 56?

30. The applicant and his friend entered into and registered an agreement for sale for Strata Lot 56 in March 2017. This was proposed to the applicant by the strata. As noted earlier, the purchaser under a registered agreement for sale is included within the SPA definition of an "owner."

31. The strata submits, based on *Pan Pacific Specialties Ltd. v. Deloitte & Touche Inc*., (1996) 50 R.P.R. (2d) 56 at paragraph 18, that the registered agreement for sale was not in law an agreement for sale, as it does not call for payments over time, but "…rather, it provides for payment of the full purchase price upon completion."

32. That decision looks at the definition of an agreement for sale in the context of section 6 of the *Property Law Act*, which speaks of the need to register "… an agreement for sale of land by which the purchase price is payable by installments or at a future time …" before a party can sue to enforce that agreement. The court in *Pan-Pacific* found that the agreement before it was not one that fell within the definition in that section of the *Property Law Act*.

33. The issue for decision here is quite different and I find the quote relied on from the *Pan Pacific* case is not useful in resolving it.

34. The strata took no issue with the terms of the agreement for sale at the time it was prepared and registered. The parties agreed on a method by which the appellant's friend could occupy Strata Lot 56. I find that the strata, having acquiesced to the agreement for sale and its terms, cannot now attack them. The strata did not take issue with the occupation status of the friend until the Completion Date passed. As it submits, it gave the applicant and his friend the benefit of any doubt.

35. What is at issue is the status of the friend's occupation before the agreement for sale was registered and after the Completion date passed.

36. For the period before it was registered, I find the friend, who was occupying Strata Lot 56 and paying rent, was not an owner and that the applicant was in breach of Bylaw 36. The strata gave him a 21-day period to remedy that breach and when it passed, I find it was entitled to impose the $500 fine under Bylaw 36.

37. The friend's status after the Completion Date requires deeper analysis.

38. The applicant relies on section 59(3) of the *Law and Equity Act* (LEA) and *Hanif v. TJM Management Consultants Ltd*., 2012 BCCA 485. He submits, based on *Hanif*, that no completion date is necessary in an agreement for sale and that, under section 59(3) of the LEA, the applicant and his friend could verbally extend the Financing Date and Completion Date indefinitely.

39. The LEA defines "agreement for sale" at section 16(1) as "a contract for the sale of an interest in land under which the purchaser agrees to pay the purchase price over a period of time, in the manner stated in the contract, and on payment of which the vendor is obliged to convey the interest in land to the purchaser ..."

40. As the Court of Appeal states in *Haniz* at paragraph 35:

> One of the consequences of this characterization is that, unlike a contract of purchase and sale, it is not usual for there to be a completion date under an agreement for sale. Rather, the sale is "completed" when the parties enter into the agreement for sale and the purchaser takes over all incidences of ownership except that legal title is not yet transferred …

41. It goes on to say at paragraph 36:

> …there need not be a specific date on which the transfer is to take place and there does not need to be any further description of the "triggering events" leading to the transfer of title.

42. The SPA definition of “owner” also does not specify any necessary terms for an agreement for sale beyond registration.

43. Based on the terms of the rent to purchase agreement and option to purchase agreements made by the applicant and his friend, the strata urges me to conclude the friend likely continued making monthly payments to the applicant after registration of the agreement for sale. The applicant in response admits that this occurred and that he used those funds to cover strata fees and other expenses related to Lot 56.

44. The strata submits that these continued monthly payments also undermine the validity of the agreement for sale, and instead point to the real arrangement between the applicant and his friend being a rental. It relies on *Carney v. Strata Plan VR634*, (1981) 30 B.C.L.R. 324 (BC Supreme Court) where the court found that an error in registration of a strata plan could not be relied on by parties who knew it was in error.

45. Again, however, I note that the strata proposed and agreed to the registration of the agreement for sale without issue. I find the suspicions it now raises do not amount to clear and distinct proof of a fraud or duplicitous conduct by the applicant to avoid the rental restrictions or reliance by the applicant on an error in registration of the agreement for sale. What was registered was what was agreed by the parties to be registered.

46. Further, additional payments by the friend to the applicant are not in themselves in contravention of rental restriction during a time when the agreement for sale was registered on title to Strata Lot 56.

47. I conclude, based on review of *Haniz* and the LEA, that no completion date is necessary in an agreement for sale for it to qualify under the SPA for the purchaser to meet the definition of an “owner,” and that the only SPA requirement is registration.

48. As a result, I also find that the applicant and his friend could indefinitely extend the term of the agreement for sale past the Completion Date, so long as there was an actual intention that the friend pay out the amount owing and take title in a reasonable time frame. If there was no such intent, then I agree the agreement for sale could potentially be argued a sham. But I do not have to decide that point in this case.

49. The applicant states, and the email from the mortgage broker confirms, that efforts to obtain financing and complete the sale to the friend continued after the Completion Date. When soon after this, the friend determined it not feasible to continue, the agreement for sale was promptly removed from title and the friend vacated. I accept all this evidence and find it accords with an actual intention to sell within a reasonably extended time-frame after the Completion Date.

50. As a result, I find that there was a valid registered agreement for sale under which the applicant's friend was an "owner" between March 22, 2017 and February 15, 2018 and that any fines levied by the strata during those dates were not authorized by the SPA or Bylaw 36. As a result, they must be repaid to the applicant.

51. I do find that the $500 fine levied for the 7-day period between March 15, 2017 and March 22, 2017 was authorized and exclude it from the amount payable by the strata to the claimant. Similarly, under the SPA, the applicant's friend was no longer an "owner" after February 15, 2018. As a result, the strata was entitled to levy fines for one 7-day period between February 15, 2018 and February 28, 2018 when he vacated Strata Lot 56.

52. The total owing to the applicant by the strata, after deduction of the $1,000.00 validly-levied fines, is $5,550.00.

TRIBUNAL FEES, EXPENSES AND INTEREST

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 and reasonable dispute-related expenses. I see no reason in this case to deviate from

the general rule. As the applicant was substantially successful, I order the respondent strata to reimburse the applicant for tribunal fees of $225.00. He has not claimed any other dispute-related expenses.

54. The strata must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owner, unless the tribunal orders otherwise. I do not order otherwise in this case.

55. I have calculated pre-judgment interest on the $5,500.00 from the date of completion of the transfer of Strata Lot 56 to the present owner. That is the date it was paid to the strata.

DECISION AND ORDERS

56. I order the respondent strata to pay to the applicant the sum of $5,800.00, being:

    a. $5,550.00 in fines not lawfully levied against the applicant,

    b. the sum of $50.63 in pre-judgement interest from the sale date, March 26, 2018, under the *Court Order Interest Act*, R.S.B.C. 1996, c. 79, as amended,

    c. tribunal fees of $225.00.

57. The applicant is also entitled to post-judgment interest under the *Court Order Interest Act* R.S.B.C. 1996, c. 79, as amended, as applicable.

58. 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.

59. 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.

Michael F. Welsh, Q.C., Tribunal Member