



# Civil Resolution Tribunal

Date Issued: December 3, 2018

File: ST-2017-004659

Type: Strata

Civil Resolution Tribunal

Indexed as: *Schuler v. The Owners, Strata Plan BCS 4064*, 2018 BCCRT 794

**B E T W E E N :**

Joseph Schuler

**APPLICANT**

**A N D :**

The Owners, Strata Plan BCS 4064

**RESPONDENT**

---

## **REASONS FOR DECISION**

---

Tribunal Member:

Maureen E. Baird, QC

### **INTRODUCTION**

1. The applicant, Joseph Schuler, co-owns a strata lot in the respondent strata corporation, The Owners Strata Plan BCS 4064 (strata).
2. This dispute involves Mr. Schuler's allegations that the strata and council members are not complying with the *Strata Property Act* (SPA) and bylaws and that council

members are engaging in improper conduct. The applicant also alleges that the property management company has harassed him.

3. Mr. Schuler asks the Civil Resolution Tribunal (tribunal) for several orders including that the strata comply with the SPA and bylaws, that fines levied against his strata lot be quashed, that council members be reprimanded or removed, that the property management company cease its harassing behaviour and apology for its past conduct, and that the strata be ordered to service and maintain air conditioning units servicing his strata lot.
4. The strata requests that the claims of the applicant all be dismissed.
5. Mr. Schuler is self-represented. The strata is represented by a strata council member.

## **JURISDICTION AND PROCEDURE**

6. 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). 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.
7. 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.
8. 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.

9. 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.
10. I have discussed below, Mr. Schuler's requests for orders affecting non-parties, including individual strata council members and the strata's property manager.

## **ISSUES**

11. The issues in this dispute are:
  - a. Did the strata fail to comply with the SPA and bylaws in levying fines against the applicant's strata lot?
  - b. Did the strata fail to comply with the SPA and bylaws in issuing the Notice of Annual General Meeting (AGM) for August 24, 2017?
  - c. Do the Minutes of the AGM contain falsifications?
  - d. Did the strata refuse or neglect to service and repair certain common or limited common property or common assets?
  - e. Did the strata's property management firm harass Mr. Schuler and if so should I make any order against it?
  - f. Should any members of the strata council be removed?
  - g. Has the applicant paid legal fees arising from his claim(s) against the strata?

## **POSITION OF THE PARTIES**

12. Mr. Schuler says that the strata has:
  - a. Levied fines against his strata lot in contravention of the notice requirements of the SPA and bylaws,

- b. Issued a Notice of AGM that was false,
- c. Approved minutes the AGM that were false,
- d. Refused or neglected service to maintain an air conditioning unit that services his strata lot, and
- e. Attributed some of the costs of this and other litigation to him contrary to the SPA.

13. Mr. Schuler also complains of the following:

- a. Certain members of council have wrongfully excluded him from fulfilling his duties as a strata council member,
- b. Certain council members have behaved improperly toward him and toward another owner, and
- c. The strata property management firm retained by the strata council has harassed him.

14. Mr. Schuler asks the tribunal for orders that the strata:

- a. Reverse the fines levied against his strata lot,
- b. Notify owners that the Notice of AGM was false and was intended to deceive,
- c. Notify owners that the minutes of the AGM were false,
- d. Service and maintain the air conditioning unit servicing his unit,
- e. Advise the property management firm to refrain from harassing him,
- f. Reimburse Mr. Schuler for any legal fees he has paid toward its defence of this dispute and any other dispute, and
- g. Reimburse Mr. Schuler for tribunal fees paid in the amount of \$225.00.

15. Mr. Schuler also asks that I reprimand certain council members for their conduct toward him and toward another owner.
16. The strata asks that all claims against it be dismissed as unfounded, already decided against Mr. Schuler by the tribunal in an earlier dispute, or beyond the jurisdiction of the tribunal.

## **BACKGROUND, EVIDENCE AND ANALYSIS**

17. In a civil claim such as this, the applicant bears the burden of proof and the evidence must be established on the balance of probabilities. That is, Mr. Schuler bears the burden in this dispute.
18. Although I have read all of the evidence provided, I refer only to the evidence I find relevant to provide context for this decision.
19. The strata is a 105-unit, 10 storey, residential strata corporation located in Vancouver, British Columbia.
20. The strata's relevant bylaws are those filed on March 22, 2011, as amended most recently on October 3, 2017.

### ***Did the strata comply with the SPA and bylaws in levying fines against the applicant's strata lot?***

21. On July 27, 2017, the strata council sent 2 letters to Joseph & Ronda Schuler at their residential address in the strata complex advising of complaints it had received about the conduct of Mr. Schuler. The first complaint alleged that he had called another resident a rude name. The letter stated that the alleged bylaw infraction had occurred in a P1 elevator on a date and time set out in the letter. The second letter alleges that on a specific date and time Mr. Schuler had disrupted the quiet enjoyment of other residents of the complex by playing the saxophone in the

storage locker area. Both letters state that Mr. Schuler is entitled to respond in writing or to request a person hearing before the strata council. Mr. Schuler did not respond to either letter or request a hearing.

22. Mr. Schuler says that the infraction notice letters were addressed to him and his wife at their strata lot address when they ought to have been addressed to strata lot 102 which he says is the legal entity. Mr. Schuler did not say that he did not receive the letters. He included them in the evidence that he submitted to the tribunal. He did not respond to either letter or request a hearing on either complaint.
23. On August 22, 2017 the strata the council sent 2 letters to Joseph and Rhonda Schuler setting out its determination in each of the two complaints. In each case, the strata council determined to levy a fine of \$200 against the strata lot. Mr. Schuler does not say that he did not receive these decision letters. He includes them with the evidence he submitted to the tribunal.
24. He says that the particulars of the complaint about calling a resident a rude name are incorrect because it refers to a P1 elevator and there is no elevator so designated. His position is that this incorrect identification and the absence of evidence makes the notification letter invalid. He does not say that he did not understand the allegation against him or that he was unable to present a defence to the allegation.
25. Mr. Schuler says the allegation about playing the saxophone is deficient because it does not identify the complainant or the common area(s) where the saxophone was alleged to have been played. He does not say that he was unable to present a defence to this allegation. He does admit playing the saxophone in a locker room at various dates and times but only after checking with the concierge that the sound would not be heard beyond the locker room. No evidence of the concierge on this point was presented.
26. The strata says that both letters were properly addressed to the applicant and his wife as owners of the strata lot. It says that the infraction notice letters fulfill the requirements set out in SPA section 135. It disputes the applicant's position that the

strata lot is the legal entity entitled to notice saying that a strata lot is not a legal entity. It notes that the notice letter of July 27, 2017 identifies the storage locker as the location of the alleged bylaw infraction. It says that there is no requirement that the complainant be named.

27. The methods for delivery of notices by the strata corporation are set out in section 61 of the SPA. One of the methods listed is by mailing the notice to the person at the address of the strata lot, unless the person has provided an alternate address. Mr. Schuler does not say that he provided an alternate address for delivery to him. He does not say what, if anything, is incorrect about the address on the notices mailed to him.
28. The title search for the strata lot owned by Joseph Schuler and Ronda Schuler was in evidence. On its face, the names and addresses on the property search match the address on both of the July 27, 2017 infraction notification. I am unable to find any error in the address used by the strata.
29. I am also satisfied that the delivery of the notice given to Mr. and Mrs. Schuler meets the requirements of SPA section 135 which requires that the owner be given written notice of the complaint and the particulars of the complaint.
30. I am also unable to find the particulars of either of the infraction notices to be deficient. It is true that the elevator was not properly identified but Mr. Schuler does not say that this prevented him from understanding the complaint or preparing a defence. With respect to the complaint about the sound transference from the saxophone playing, the notice identifies the storage locker area as the location of the saxophone playing and a specific time and date.
31. The SPA does not require the strata to provide the name of the complainant to the owner. It must provide particulars of the complaint and a reasonable opportunity to answer the complaint, including at a hearing if requested. It is not necessary for particulars to set out every detail, *British Columbia (Securities' Commission) v. Pacific International Securities*, 2002 BCCA 421.

32. I find that the Notices of Infraction were properly addressed and sufficiently particularized to permit the applicant to respond either in writing or at a hearing if he so wished. He chose not to attend or to respond.

33. I dismiss these claims of the applicant.

***Is the Notice of AGM False?***

34. The Notice of AGM stated that the meeting would start at 6:30 pm. The applicant says that the notice is false because at 6:30 pm the attendees were advised that there would be an information meeting to discuss a law suit brought against the strata by Mr. Schuler. Although the evidence is unclear, it appears that at 6:30 pm a lawyer for the strata addressed those in attendance and said that there would be an information meeting about Mr. Schuler's law suit. The applicant objected. Mr. Schuler and his wife were asked to leave during the discussion about their law suit against the strata. A discussion between Mr. and Mrs. Schuler and the strata lawyer occurred about their continued attendance at the information meeting. Mr. Schuler says that the lawyer from the strata threatened to call the police to have them removed. They left under protest and the meeting continued. The approved minutes of the AGM record that the AGM was called to order at 7:35 pm.

35. The relief sought by the applicant is that the strata notify owners in writing that the Notice of AGM was false and intended to deceive them to attend an information meeting and that the current council members who were on council on August 24, 2017 be reprimanded.

36. The strata says that the relief sought by the applicant on this part of his claim is beyond the jurisdiction of the tribunal.

37. In an earlier dispute brought by Mr. Schuler against the strata, *Shuler v. The Owners, Strata Plan BCS 4064*, 2018 BCCRT 175 (Schuler #1) this tribunal considered whether the notice of the August 24, 2017 AGM contravened the bylaws and concluded that it did not. The question before me is whether the delay in the



commencement of the AGM from 6:30 pm to 7:35 pm to accommodate an information meeting can be characterized as false and intended to deceive.

38. The applicant does not say that the delay was contrary to the SPA or the bylaws. There is no evidence that the delay resulted in any person, including the applicant, being able to attend the AGM at 7:35pm or to exercise their vote at that meeting. I agree that the decision to have the information meeting in advance of the AGM meant that the time set out in the notice was not the time that the meeting started. I also agree that the manner in which this change took place could have been handled better. I understand that the purpose of the change was to minimize legal costs by having the matter for which the strata legal counsel was in attendance proceed first so that the lawyer could leave the meeting.
39. I appreciate that Mr. Schuler was taken aback by this turn of events. He believed that the AGM would commence at 6:30pm and instead learned, for the first time, that there was a meeting from which he would be excluded, to discuss his litigation against the strata. This was understandably upsetting, and possibly embarrassing, to Mr. and Mrs. Schuler. However, there is no provision in the SPA or the bylaws that requires the AGM to commence at the precise time set out in the notice.
40. Mr. Schuler, correctly, does not say that the strata is not entitled to have a meeting to discuss his litigation or that he should be able to attend that meeting. There is no suggestion that the information meeting could not have been an item of business at the AGM.
41. In my view, the change in the commencement time of the meeting does not make the notice false as alleged. The time of the commencement of the AGM is accurately set out in the minutes of that meeting. I find no evidence of any intention by the strata council to deceive anyone, including Mr. Schuler, by positing the time of the AGM as 6:30 pm. While the change in time might not have been well managed there is evidence that it was a late change to minimize legal costs and for no improper purpose. Having found this, there is no basis for me to reprimand any council members as requested.

42. Having found that there was no evidence of a breach of the SPA or the bylaws or of any intent to deceive Mr. Schuler or the owners by the change in starting time of the AGM, I dismiss this claim of Mr. Schuler in its entirety.

***Are there fabricated items in the minutes of the AGM?***

43. The applicant says that there are three fabrications in the Minutes of the AGM. The first is the description in the Financial Report of the basis for the operating deficit of \$21,470.00 which is attributed, in part, to actions of Mr. Schuler and described as being incurred without the strata's consent. The second is that the minutes record that he had advised the membership that he "would be suing the strata" when in fact he had already sued the strata at the time of the AGM. The third is the statement that a motion was moved to replace the strata agent which was defeated. He disputes the accuracy of all 3 of these statements. In addition to his submission, Mr. Schuler has provided an email from a council member who recalled that there was a discussion about the continued employment of the property manager but did not recall a vote having taken place. He asks that I order the strata council to notify all owners of the alleged errors and to apologize in writing for them.

44. The strata relies on the Minutes of the AGM that were accepted at a special general meeting on May 10, 2018. Although these minutes have a notation on the first page that they are revised, the strata says that they were not revised. The strata also says that this issue of the contents of strata minutes was considered in Shuler #1.

45. In Shuler #1 this tribunal confirmed that the strata council must keep minutes of its meetings under sections 26 and 35(1)(a) of the SPA. Although there is nothing in the SPA or strata's bylaws that stipulates what the content of the minutes must be, it is reasonable to expect that the strata would make every effort to ensure that its minutes were accurate. This is consistent with the standard of care required of all strata council members under section 31 of the SPA.

46. There is no recording or transcripts of the AGM. I note that the council member did not say that no motion occurred with respect to the property agent, only that he could not recall.

47. It is significant that the AGM minutes were approved at a special general meeting held on May 10, 2018. The minutes of the special general meeting show that there were 35 owners in attendance (in person or by proxy). There was a discussion about the minutes of the August 24, 2017 AGM and there was a motion to have a sentence in Item 5 struck. This motion was defeated with 31 owners voting to defeat the motion, 2 owners in favour and 2 abstentions. This suggests to me that the membership considered the accuracy of the minutes prior to approving them. Therefore, in the absence of clear evidence that the minutes are incorrect, I prefer the minutes as voted on and approved by the membership as being accurate.

48. I dismiss this aspect of Mr. Schuler's claim.

***Has the strata refused to service or maintain the air conditioning unit servicing the applicant's strata lot?***

49. The applicant says that air conditioning unit that services his unit should be serviced and/or maintained by the strata.

50. It is not disputed that the air conditioning unit has two components, a condenser which is located on the rooftop which is on common property and an air handler located in the ceiling above the applicant's strata lot. It is also not disputed that the air conditioning units service and benefit only owners on the top floor or penthouse units.

51. The applicant says that the strata has already assumed responsibility for the condenser because it paid for damage caused by leakage into his suite caused directly or indirectly by the failure of a plumbing insulation component of the condenser. In addition, he says that in 2013 the strata paid for leakage caused by the air handler located in his strata lot.

52. The applicant says that he and his wife purchased their strata lot from the developer and the disclosure statement stipulated that the strata corporation is responsible for maintaining all common property including limited common property. No copy of the

disclosure statement was provided. The applicant does not provide evidence of any particular existing maintenance or repair deficiency.

53. The strata says that the air conditioning unit in question is entirely for the applicant's benefit and that it would be inequitable for other owners to bear the cost of repair. It says that all other penthouse owners pay for their own repair and maintenance of the units cooling their individual units. This is disputed by the applicant. The strata refers me to the decision in *Legault v. Torcan*, 1993 BCPC 5 for the principle that a common-sense approach to considering the actual use and benefit of items such as air conditioners should be applied. It says that the bylaws do not provide a clear delineation of the responsibility for the air conditioning unit components.
54. No authority was provided by the applicant to support his suggestion that the current bylaws relating to maintenance and repair do not apply to his strata lot because he purchased from the developer. I am unaware of any legal support for this position.
55. Section 72 of the SPA makes the strata responsible to repair and maintain common property and common assets. It provides that the strata may, by bylaw, make an owner responsible for limited common property that the owner has a right to use.
56. The responsibility of the strata to repair and maintain property is set out in bylaw 2.1. The strata is required to repair and maintain common assets of the strata corporation and common property that has not been designated as limited common property. It is also required to repair and maintain some specific types of limited common property including the structure and exterior of the building, and chimneys, stairs, balconies and things attached to the exterior of a building, and doors and windows on the exterior of a building or that front on the common property.
57. The relevant bylaws of the strata provide that "An owner who has the use of limited common property must repair and maintain it, except for repair and maintenance that is the responsibility of the strata corporation these bylaws" (bylaw 1.2(2)).

58. It is not contested that the condenser units are located either in a mechanical room or on the roof of the complex. Both of these are designated on the strata plan as common property.
59. The location of the air handling component is described by the applicant is being “above my ceiling below the roof top”.
60. The location of air handling component is not identified on the strata plan.
61. I have found the decision in *Newman v. The Owners, Strata Plan EPS 680*, 2017 BCCRT 122 to be of assistance in this analysis.
62. I find on the evidence that the air conditioning units are part of the mechanical heating system of the building. The air handling units are not identified on the strata plan as being within the boundaries of the strata lot. Therefore, I find them to be common property the repair and maintenance of which is responsibility of the strata pursuant to section of 72 of the SPA.
63. I have considered the decision in *Legault v. Torcan*, submitted by the strata and have determined that it is not applicable to this case because it turns on the specific wording of the statute in place in 1993 when that case was decided.
64. I therefore allow this aspect of the applicant’s claim.

***Did the property management firm behave improperly to the applicant?***

65. The applicant complains about the conduct of the property management firm for the strata. He says that a cheque he sent in late August 2017 for certain strata fees owing was not processed in a timely way by the property management firm. Although he says that he confirmed receipt of the cheques by the property management firm that he received reminders to pay in October and November 2017. His position is that this constitutes “badgering” by the property management firm. He does not say that the employees of the property management firm were impolite or rude or abusive in any way. He admits that the matter was resolved by delivery by him of a bank draft in the amount of the outstanding fee.

66. The property management firm is not a party to this dispute and there is no evidence from it.

67. I dismiss Mr. Schuler's request for an order that the strata council direct the property management firm to stop badgering him. First, in my view, the delivery of two late payment notices over a period of two months does not amount to badgering. It may be that there was an error made by the property management firm and it may be that the reminders were sent in error. However, in my view this does not constitute badgering. The fact is that errors occur. It would take some other conduct on the part of the management company, in my view to raise this situation to "badgering" or harassment. In any event, I would not make such a finding where the management company is not a party and has had no opportunity to respond.

***Should various members of the strata council be removed?***

68. The applicant asks that 3 members of the strata council be removed for various alleged transgressions which I will not describe, given the conclusion that I have reached.

69. In Schuler #1, this tribunal declined to remove council members at the request of the applicant for 2 reasons. The first was that the council members were not parties to the proceeding and had not had an opportunity to respond to Mr. Schuler's allegations. The second was that bylaw 2.4 provides the proper process to follow to remove a council member. For those same reasons I dismiss his 3 requests for removal of council members. I note that in the present case, one of the council members whose removal was requested by Mr. Schuler is no longer on council in any event making his request moot.

***Has the applicant paid a proportionate share of the strata's legal expenses incurred in response to these claims?***

70. The applicant says that he has paid a portion of the legal fees attributable to the strata's defence of his law suit(s) against it. The strata denies that Mr. Schuler has paid any amount relating to its defence of his legal proceedings.

71. The applicant submitted one page from a financial statement of the strata for the period ending April 30, 2018 which lists \$3,902.00 for “7830 Legal Fees”. The applicant has divided this amount by the unit entitlement of his strata lot and says that he has improperly paid \$62.73 as part of his strata fees.
72. The applicant points to the decision in Schuler #1 which orders the strata to ensure that no expenses it incurred in defending Mr. Schuler’s dispute are allocated to Mr. Schuler.
73. On the evidence, I am unable to make the finding sought by Mr. Schuler and therefore I dismiss this aspect of his claim. The item in the financial report shows that for the period ending April 30, 2018 the strata had incurred \$3,902.00 in legal fees. Strata’s can incur legal fees for many reasons unrelated to litigation, for example for bylaw drafting and filing or for advice relating to suppliers or contractors. Similarly, the amount might relate to other litigation unrelated to Mr. Schuler. There is no evidence to tie the item in the one-page financial document to any payment made by Mr. Schuler.
74. The onus is on Mr. Schuler to prove his claim and he has failed to do so. I therefore dismiss this aspect of Mr. Schuler’s claim and his request for reimbursement.
75. Mr. Shuler also asks for an order requiring the strata to produce invoicing for legal expenses charged to the strata in relation to his claims. I understand this as a request for legal accounts for advice relating to this dispute.
76. Section 36 of the SPA establishes an owner’s rights to records of the strata. This section requires that a request be made by the owner for those documents listed. There is no evidence in this case of any request having been made. Therefore, the order requested is premature. However, in all of the circumstances, I believe that it is important to bring finality to this issue.
77. The strata is entitled to seek legal advice with respect to legal proceedings brought against it by owner. There is evidence that it has done so in respect of Mr. Shuler by virtue of the attendance of a lawyer on August 24, 2017. There is no evidence

before me as to whether the discussion at that time was related to the issues in Schuler #1 or to this dispute, or both. The communications between the strata and its legal counsel are privileged. I am not prepared to order that any legal accounts of legal counsel for the strata be provided to the applicant, because those accounts describe privileged communications. I am also mindful that the strata has said that Mr. Schuler has not paid any amount attributable to legal fees for defending legal proceedings brought by him. In the circumstances, I am not prepared to make the order sought by Mr. Schuler for invoicing documents.

## **TRIBUNAL FEES AND EXPENSES**

78. 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. In this case there has been divided success. Accordingly, I make no order regarding reimbursement of tribunal fees.

## **DECISION AND ORDERS**

79. I order the strata to maintain and repair the air conditioning unit that services the applicant's strata lot.

80. I order all remaining claims of the applicant to be dismissed.

81. Under section 189.4(b) of the SPA an owner who brings a tribunal claim against a strata corporation is not required to contribute to the expenses the strata corporation incurs in defending that claim. I order the strata to ensure that no expenses it incurred in defending Mr. Schuler's dispute are allocated to Mr. Schuler or his strata lot.

82. 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. He 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.

---

Maureen E. Baird QC,  
Tribunal Member