



Civil Resolution Tribunal

Date Issued: December 7, 2018

File: ST-2017-002133

Type: Strata

Civil Resolution Tribunal

Indexed as: *East Barriere Resort Limited and Waterfront Development Corporation v. The Owners, Strata Plan KAS 1819*, 2018 BCCRT 824

B E T W E E N :

East Barriere Resort Limited and Waterfront Development Corporation

APPLICANTS

A N D :

The Owners, Strata Plan KAS 1819

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Rose Keith

INTRODUCTION

1. The applicants are owners of 7 lots in strata KAS 1819. This is a dispute between the applicants and The Owners, Strata Plan KAS 1819 (strata) with respect to access to one of the lots owned by the applicant's and the strata's assignment of boat slips. The applicants are represented by a principal of East Barriere Resort

Limited and the strata is represented by a council member. The applicants seek an order providing access to a strata lot and an equal opportunity to acquire a boat slip.

JURISDICTION AND PROCEDURE

2. 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.
3. 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.
4. 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.
5. 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

6. The issues in this dispute are:
 - a. Is the strata required to provide the applicants with access to strata lot 9.1 over common property until a permanent solution to the lift station operation is found?

- b. Is the strata required to put in place a process to give each owner or tenant of a strata lot an equal opportunity to acquire a licence to use a boat slip?
- c. Is the owner entitled to reimbursement of tribunal fees?

BACKGROUND AND EVIDENCE

- 7. The strata is lakeside at the west end of the East Barriere Lake north of Kamloops, British Columbia. The strata was developed in 4 phases, the first of which was developed beginning in 1996 and the final phase registered on December 2, 2014.
- 8. The applicants were one of the later purchasers into the strata, purchasing after it was developed and the sewage infrastructure was already in place. The applicants hold 7 lots, including lot 9.1. There is a lift station which is a part of the sewage infrastructure, located on lot 9.1. The lift station is approximately 10 feet wide. The lift station protrudes above ground and somewhat impedes vehicular traffic accessing strata lot 9.1. This lift station was in place when the applicants purchased lot 9.1.
- 9. In October 2017 the strata proposed capital spending to address a number of issues, including the trafficability issue related to the lift station on lot 9.1. The applicants voted against this motion with their 7 votes. The motion was defeated.
- 10. After the motion to revise the lift was defeated, the strata granted access to lot 9.1 through common property for a one-year period with an option of renewal. The applicants want access through the common property to be granted, unlimited in time, until a permanent solution is found. The strata has committed to work towards a permanent repair or replacement of the lift station.
- 11. The strata has a 156 foot dock into the bay from common property. The dock was constructed in around 2007 or 2008. It is removed from the lake in the winter. It is designed to provide 22 boat slips. There are 52 strata lots in the strata.
- 12. When the dock was originally constructed the strata provided owners with an opportunity to request a license for a slip. The license fee was \$1,500 and the

revenue generated from these licenses was used to partially fund the construction of the dock. The strata issued nineteen licenses, each of which provided for a 20-year period of occupancy to the slip. The specific slip assigned to each licenced owner was random and changed from year to year. The remaining 3 slips were not licensed and were available for use by other owners.

13. This 20-year allocation of dock slips was the subject of a Petition to the BC Supreme Court which was filed on September 18, 2015. In that Petition, the owner sought in part the following:
 - a. A declaration that the strata does not have the legal authority to issue licenses for exclusive occupation of boat slips for periods exceeding one year; and
 - b. An order that the strata give each owner or tenant of a strata lot an equal opportunity to acquire a license to use a boat slip.
14. In submissions in support of the Petition, the applicants said that the manner of assigning licenses for slips offended s. 76 of the *Strata Property Act* (SPA) which limits the strata's ability to provide exclusive use of common property for periods not exceeding 1 year.
15. On August 30, 2016 Reasons for Judgment were given by Mr. Justice Betton in response to the Petition. Justice Betton found that the dock and the slips are common property and accordingly the strata is limited by s. 76 of the SPA to only issue licenses for a period of one year or less. Justice Betton made the declaration that the strata corporation does not have the legal authority to issue licenses for exclusive occupation of boat slips for periods exceeding one year. He also made the order that the strata give each owner or tenant of a strata lot an equal opportunity to acquire a license to use a boat slip. Justice Betton did not comment on what was meant by an "equal opportunity" or whether the strata was entitled to put conditions or restrictions on applications for licenses. From review of the petition and the decision it does not appear that detailed submissions were made by the parties as to the manner in which the boat slips should be allocated.

16. The applicants appealed the dismissal of various portions of the Petition unrelated to the dock. The Court of Appeal in its decision rendered May 16, 2017 did not interfere with Justice Betton's orders with respect to the dock. Again, from review of the Court of Appeal's decision it does not appear that further submissions regarding dock allocations were made.
17. Following the decision of Justice Betton the strata's dock committee prepared an allocation plan for the 2017 season. Due to the limited available dock space, the dock committee proposed conditions and qualifications to obtain a boat slip in July 2017. Those conditions included:
- a. The owner has a boat or other watercraft
 - b. The owner has no other dock or mooring space for their boat
 - c. The owner has a permanent habitable dwelling or a current building permit
 - d. One slip per owner (or group of owners per cottage)
 - e. The owner must be in good standing financially with the strata
 - f. If a new owner, their purchase agreement needs to close before May 1 of each year in order to be included in the annual boat slip assignment for that year.
18. The strata identified that these conditions and qualifications resulted in 8 owners who had their own dock being disqualified from allocation for dock space. It also eliminated owners with mooring buoys, 4 second lots owned by people qualifying for a boat slip and 8 lots that were unlikely to be built upon in the near future.
19. In August 2017 three owners of the strata obtained an opinion from a dock consultant about the likelihood of obtaining approval for a 52-slip dock. A preliminary opinion that a 52-slip dock was possible was given. A 52-slip dock would provide guaranteed dock space for each owner. After obtaining this opinion the strata surveyed the owners to determine interest in proceeding with building a new dock. The strata determined that there was adequate interest in the proposal to move

forward with preparing a detailed plan for a future special general meeting (SGM). It is intended that an SGM will be conducted to vote on whether the strata will proceed with the project.

20. On March 26, 2018 the strata held an SGM. At the meeting a motion directing the strata council to engage a consultant to proceed with permitting of a dock facility with up to 52 slips was passed. Also passed was a motion directing council to work with a dock supplier towards the development of design and implementation of a dock facility of up to 52 slips.
21. With respect to allocation of dock slips for the 2018 season, council asked that in consideration of the limited dock space, owners that currently have direct water access or existing alternate dock space not request a community slip. A Dock Allocation Rule was passed for the 2018 season which provided the following:
 - a. One slip per owner to be for the owner's personal use.
 - b. Owner has a boat or other watercraft requiring moorage in a dock slip.
 - c. Owner must be in good standing financially with the strata.
 - d. Maintenance and rental costs to be determined annually by the strata council. Proposed cost for 2018 season to be \$300.00;
 - e. Cut-off date for allocation of season access to one slip is May 1 of same year.
 - f. Unused/unallocated slips will be made available for weekly casual/guest usage at \$75 per week.
22. The strata is currently in the process of developing a plan to build a dock that will have 52 slips. There are in the preliminary stages of obtaining approval. The strata says a detailed plan will be presented at a future special general meeting. It is anticipated that approval for the larger dock will be in place for the 2019 season.

POSITION OF THE PARTIES

23. The applicants argue that they should be provided with access to lot 9.1 through common property until a solution is found. The applicants also argue that the decision of Justice Betton requires the strata to provide each owner or tenant an equal opportunity to acquire a license to use a boat slip, without condition or restrictions.
24. The applicants request that I make the following orders:
- a. That the respondent provide the applicants with common property access to strata lot 9.1.
 - b. That the respondent put in place a process to give each owner or tenant of a strata lot an equal opportunity to acquire a license to use a boat slip;
 - c. That the respondent reimburse tribunal fees in the amount of \$225.
25. The respondent argues that they have complied with the SPA in providing the applicants with a one-year license to use the common property to access strata lot 9.1. They argue that they are working towards finding a permanent solution and until that has been found a renewal of permission to access lot 9.1 over common property will not be unreasonably withheld. With respect to the dock, the respondent argues that they do not currently have enough boat slips to provide a license to all owners and that in the interests of fairness to all members of the strata they have put limitations on the right to acquire a license. They argue that they are in the process of obtaining approvals to build a dock that will be sufficient to provide all members of the strata with a license to use a dock slip.
26. The respondent requests that I dismiss the applicant's claims.

ANALYSIS

Is the strata required to provide the owner with access to strata lot 9.1 over common property until a permanent solution to the lift station operation is found?

27. I find that the strata has taken a variety of steps to address the issue with the sewage system and lift station that existed prior to the applicants purchasing strata lot 9.1. Those steps have included engaging professionals, attempting to identify ways in which access could be fixed and putting forward motions for the strata members to vote on. They have also put in place an agreement to allow the applicants to access lot 9.1 through common property.
28. Pursuant to s. 76 of the SPA the strata is limited in its ability to provide access over common property for a period of not more than one year. The order being sought by the applicants is contrary to the SPA. I conclude that it would be improper to make the order sought by the applicants and I dismiss this claim.

Is the strata required to put in place a process to give each owner or tenant of a strata lot an equal opportunity to acquire a license to use a boat slip?

29. The strata is comprised of 52 strata lots (units). Some of those units are undeveloped, some of those units have private docks and some of those units have occupants that do not own a boat. Justice Betton ordered that the strata give each owner or tenant of a strata lot an equal opportunity to acquire a license to use a boat slip. I find that the strata has made significant efforts to comply with the terms of Justice Betton's order since it was made in 2016. Those steps include attempts to identify a manner of distribution of the available dock slips that is most fair to all of the owners and the pursuit of approval of a dock plan that will allow for 52 slips. On the evidence that was presented it appears that approval for the development of the larger dock will be in place for the 2019 season.
30. Section 3 of the SPA puts the responsibility for the management and maintenance of common property and common assets on the strata. The strata is required to manage and maintain common property and common assets for the benefit of the owners. The existing dock is a common asset of the strata.

31. The current dock with only 22 slips available results in a lack of availability for every owner or tenant of the strata. The Dock Allocation Rule, passed at the March 2018 SGM, now governs the assignment of dock slips. That rule puts certain conditions and limitations on entitlement to dock slips. Those limitations and conditions were approved by a majority of the strata members and I find that they are fair and reasonable in the circumstances. It is not unreasonable or unfair for the strata to put conditions on owners to be entitled to a boat slip in the circumstances where there are less boat slips available than units. In particular, I find the conditions and limitations to be reasonable in that they are put in place to ensure that those that have a need for the dock space will be given first opportunity to obtain a boat slip. I also find that the strata is taking reasonable and appropriate steps to obtain approval to build a dock which will have the capacity to provide dock slips to all owners in the strata.

32. Accordingly, I dismiss the owners' claim about boat slip allocation.

TRIBUNAL FEES AND EXPENSES

33. The applicants have not been successful in this claim and I therefore decline to order reimbursement for tribunal fees and reasonable dispute-related expenses.

34. The strata corporation 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.

DECISION AND ORDERS

35. I order that the applicants claims and dispute are dismissed.

36. 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.

37. 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.

Rose Keith, Tribunal Member