



# Civil Resolution Tribunal

Date Issued: December 11, 2018

File: ST-2017-006602

Type: Strata

Civil Resolution Tribunal

Indexed as: *White v. The Owners, Strata Plan KAS 3597*, 2018 BCCRT 829

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

Richard White

**APPLICANT**

**A N D :**

The Owners, Strata Plan KAS 3597

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Michael J. Kleisinger

## INTRODUCTION

1. The applicant, Richard White, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan KAS 3597 (strata). He seeks orders requiring the strata to increase strata council (council) size from 5 to 21, to review and justify its depreciation report, correct charges for annual water costs, reconcile its

contingency fund, pass bylaws to promote democratic values and protect owners' privacy, and to rescind a rule that restricts an owner's ability to communicate with council via e-mail.

2. The applicant represents himself and a council member represents the strata.

## **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). 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.
4. The tribunal has discretion to decide the format of the hearing. I decided this dispute based on written submissions, because I found that there were no significant issues of credibility or other reasons that might have required an oral hearing.
5. 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.
6. 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, order a party to pay money, and order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

7. The issues in this dispute are:
  - a. Should the tribunal order the strata to increase the number of members on council?

- b. Should the tribunal order the strata to review and justify its use of a depreciation report?
- c. Should the tribunal order the strata to correct the annual water charges?
- d. Should the tribunal order the strata to reconcile the contingency reserve fund from 2011 to the present?
- e. Should the tribunal order the strata to introduce bylaws regarding the owners' democratic rights and privacy?
- f. Should the tribunal order the strata to rescind its rule 10?

## **BACKGROUND**

- 8. The strata is a multiphase development containing 21 strata lots built between 2008 and 2011 in Lake Country.
- 9. The applicant has been the registered owner of one of the strata lots since 2011.

## **ANALYSIS**

### ***Overview of Law Regarding Strata Governance***

- 10. In this dispute, the applicant asks the tribunal to review a number of decisions that the strata and council have made over many years. He does not agree with the decisions. He requests that the tribunal overturn the decisions or provide him with other remedies. In advance of addressing the individual decisions, it is important to understand the tribunal's role when reviewing decisions of a properly elected council as ratified by the majority of owners.
- 11. Under section 26 of the *Strata Property Act* (SPA), strata councils elected pursuant to section 25 must exercise the powers and perform the duties of the strata corporation. A strata council is required to follow the SPA, the regulations, the strata bylaws and the law, generally, while governing in the best interests of the strata corporation as a whole.

12. The best interests of the strata corporation often conflict with the interests of individual owners. In *Oakley et al v. Strata Plan VIS 1098*, 2003 BCSC 1700 at paragraph 16, Madam Justice Stromberg-Stein, then of the Supreme Court, commented on the realities of living in a strata corporation:

It is not for this court to interfere with the democratic process of the strata council. Those who choose communal living of strata life are bound by the reality of all being in it together for better or for worse.

13. In *Oldaker v. The Owners, Strata Plan VR 1008*, 2010 BCSC 776, the court reviewed a number of cases, including *Oakley*, and found at paragraphs 39 and 40:

These cases establish that for better or worse the majority of owners make the rules. For better or worse the minority of owners are to abide by those rules. ...

Not remarkably the views of disparate groups within a strata corporation are often strongly held. The force of these convictions can lead to internal friction, to competing camps within the strata corporation and to paralysis of the corporation. The ongoing efficacy of the strata corporation requires that the views of the majority be respected. ...

14. The SPA has provisions that attempt to temper the democratic will of the majority against any perceived unfairness to the minority. Section 164 permits the tribunal to remedy any past or future acts of the strata corporation that are “significantly unfair” to an owner or tenant. Establishing that an act is “significantly unfair” is a relatively high bar to reach. The courts have determined that a “significantly unfair” act is oppressive or unfairly prejudicial, unduly burdensome, harsh, wrongful, lacking in probity or fair dealing, or has been done in bad faith. The applicant must show that the act in question rises above mere prejudice or trifling unfairness (*Ernest & Twins Ventures (PP) Ltd. v. Strata Plan LMS 3259*, 2004 BCCA 597; *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126 at paragraphs 27 to 29).

15. In summary, the decisions of a properly elected council or the strata corporation will not be subject to tribunal review unless the decisions are illegal, contrary to the SPA, regulations or bylaws, or if an applicant can establish, on a balance of probabilities, that the decision or its effect is or would be significantly unfair.

***Should the tribunal order the strata to increase the number of members on council?***

16. Since 2013, the strata's bylaws have provided that council must have between 3 and 5 council members. Prior to 2013, the bylaws followed the standard bylaws which allow between 3 and 7 council members.
17. Council is composed of 5 members. The applicant is not one of them.
18. The applicant has been a council member in the past. He was elected in October 2012 at the annual general meeting. However, at a special general meeting held the following April, the owners voted for his removal and elected a new council member in his place. From my review of the annual general meeting minutes, the applicant has not put himself forward to be elected to council since April 2013.
19. The applicant points to several decisions that council has made which he says were improper in the past 2 years, including its purchase of a depreciation report, its direction to prune trees on common property, and its approval of patio installations for a strata lot. The applicant suggests that these decisions and others show that the council members breached the standard of care that the SPA places on them. He suggests that 2 "close friends" control council which has led to improper and unfair decision making. To remedy these alleged breaches of the standard of care, the applicant says council size must be expanded to include all 21 strata lot owners, if possible.
20. The strata disagrees. It says that the owners have approved council's decisions and that the applicant's opinions about how council operates are not correct.

21. I am not satisfied that any of the decisions that the applicant complains were illegal or otherwise outside of the council's authority. I find no merit to the applicant's contention that 2 council members can control the decisions of a council of 5 members. From the evidence, I find that the council made decisions that it believed to be in the best interests of the strata. In each case, a clear majority of owners ratified council's decisions.
22. From my review of the evidence, I find that the strata has attempted to treat the applicant fairly in addressing his various concerns and complaints. Council has heard and responded to the applicant's numerous petitions, presentations, and correspondence. That the council did not resolve the complaints in the applicant's favour does not mean that it acted improperly.
23. The applicant has not persuaded me that any of the complained of decisions can be described as contrary to the SPA or significantly unfair to him. That the applicant does not agree with those decisions does not make them significantly unfair. I am equally unconvinced that council members breached any of the statutory standards expected of them in making the decisions.
24. In any event, I find the applicant's proposed remedy is improper. The owners, as a whole, passed a bylaw setting the size of council. Such a decision falls squarely within the strata's authority. Aside from the manifest impracticality of a 21-person council, I find no proper ground to challenge the council's size or the bylaw establishing its size. I dismiss this claim.

***Should the tribunal order the strata to review and justify its use of a depreciation report?***

25. Further to an October 3, 2012 resolution at its annual general meeting, the strata has obtained and updated 2 depreciation reports. The strata wishes to maintain a 3-year cycle to update the depreciation reports, as required under the SPA, and with the approval of the majority of owners.
26. The applicant says that the strata improperly purchased depreciation reports without appropriate discussion. He says that the reports have been used to justify a large

contingency reserve fund and increases to strata fees. He also says that council has stifled discussion about the utility of the depreciation reports.

27. The strata says that the depreciation reports are important, statutorily mandated planning tools that benefit all present and future owners. It says the owners considered, discussed, and approved the purchase of the depreciation reports at general meetings.

### ***The Law and Discussion***

28. Under section 94 of the SPA, strata corporations are required to obtain depreciation reports to estimate the service life and anticipated maintenance, repair, and replacement costs for specified components of the strata corporation. The purpose of the reports is to assist a strata corporation plan ahead for future maintenance and other expenditures. A strata corporation may waive the statutory requirement for a depreciation report, but only after  $\frac{3}{4}$  of quorum vote to do so at an annual or special general meeting.
29. The strata had a statutory responsibility to obtain a depreciation report. The evidence shows that depreciation reports were on several agendas for discussion and debate. The owners endorsed these measures by voting for them at general meetings. Further, the owners, on at least one occasion, rejected a resolution to waive the requirement for a depreciation report. The evidence shows that the majority of the strata simply does not share the applicant's misgivings about the depreciation reports.
30. I also disagree with the applicant's contention that council has stifled his attempts to speak out against the depreciation reports. The evidence shows that council has reviewed the applicant's specific concerns about the depreciation reports on a number of occasions including in May 2017 when the applicant made a presentation to council on the issue.
31. The applicant, again, seeks the tribunal to interfere with decisions that rest within the authority of council and the strata as a whole. In my view, to do so would be to

improperly interfere with the strata's democratic process. In a democracy that is the strata, the applicant's misgivings must give way to the will of the majority. I do not find that the depreciation reports or their associated costs are or have been significantly unfair to the applicant.

32. In summary, I find no reason to order the strata to "review and justify the use of a depreciation report." I find that the strata has repeatedly and appropriately reviewed the need for depreciation reports. Further, in my view, the policy reasons underlying the SPA's requirement for depreciation reports are justification enough.

33. I dismiss this claim.

***Should the tribunal order the strata to correct the annual water charges?***

34. The strata has only 1 water meter for all 21 strata lots.

35. Until 2017, the district billed each strata lot individually and divided the total costs equally between the 21 strata lots. In 2017, the district began sending 1 bill to the strata for the entire water charge.

36. In preparing its budget for 2017, the strata estimated water consumption charges based on the district's estimates. The strata then used each strata lot's unit entitlement to calculate the amount each strata lot must contribute to operating expenses. As such, each strata lot's strata fees included the amount owed for water consumption.

37. The applicant says that the strata used the incorrect estimate on which to base its calculations. The applicant says all strata lots paid too much with respect to their water usage for 2017. The applicant also says that the strata improperly charged each strata's portion of water costs on the basis of each strata lot's unit entitlement. He suggests that unit entitlement should not be used for the calculation, but rather the total amount should be equally split 21 ways, as before.

***Law and Discussion***



38. Section 91 of the SPA makes the strata responsible for common expenses. As there is only 1 water meter for the entire complex, I find that the water usage is a common expense of the strata, regardless of the manner in which the district billed owners in the past. Without a meter for each strata lot, there is no manner in which to accurately gauge the water consumption of each individual strata lot.
39. Section 92 requires the strata to establish, and the owners to contribute, by means of strata fees, to the operating fund for common expenses, such as the water bill from the district. Section 99 specifies that each owner must contribute to their strata lot's share of the total contribution budgeted for the operating fund by means of strata fees calculated on the basis of their unit entitlement. Under section 100, the strata may change the means of calculating contributions of each strata lot by unanimous vote.
40. The strata has not changed the manner for calculating contributions as section 100 allows. As such, the strata must use unit entitlement as the basis to charge each strata lot for their contribution to the operating fund. By extension, the only means in which the strata may charge the strata lots for their portion of the water consumption is through unit entitlement.
41. I find no fault in the manner that the strata has proceeded since the district began sending 1 bill to the strata rather than 21. While its initial estimate may have proved inaccurate, it remains in the strata's hands how to adjust the following year's budget and address the surplus in the operating account, if any, in accordance with section 105 of the SPA. There is no evidence to suggest that the strata has not dealt with the surplus, if any, improperly or that it has not taken steps to adjust the budget appropriately for the following year's water charges.
42. In charging strata lots for water consumption in proportion to each strata lot's unit entitlement, I find the strata is acting in accordance with section 99 of the SPA. Direct compliance with a specific provision of the governing legislation cannot, by definition, be significantly unfair (*Liverant v. The Owners, Strata Plan VIS-5996*, 2010 BCSC 286 at paragraph 22). As such, I dismiss this claim.

***Should the tribunal order the strata to reconcile the contingency reserve fund from 2011 to the present?***

43. The applicant has significant concerns about the strata's contingency reserve fund. He says that the owners pay too much to it and alleges that the council has improperly bloated the contingency fund "as if there is an expectation for a 25-year dynasty." He says that he and the other owners are unlikely to see any benefit from the reserved funds and, at various times, has suggested other ways that the money could be used.
44. The strata takes a much different view. It says that through approving budgets, the ownership as a whole has decided to maintain a healthy contingency fund. The strata says the contingency fund budgeting is consistent with the anticipated costs found in the depreciation reports. It points to the 2 most recent annual general meetings where the strata, as a whole, discussed and approved the funding for the contingency reserve.
45. One of the applicant's primary complaints is an allegation of an approximately \$5,000 shortfall in the contingency reserve fund. The strata provided the tribunal with evidence that the applicant's allegation is incorrect, and that the shortfall, if any, was temporary and remedied appropriately.
46. I have found nothing in the evidence to suggest that the council or strata have dealt with the contingency fund in a manner that conflicts with the SPA. I find no reason to grant the order sought and dismiss this claim.

**Should the tribunal order the strata to introduce bylaws regarding the owners' democratic rights and privacy?**

47. The applicant asks that the tribunal order the strata to adopt bylaws or rules that:
- a. promote democratic values; and
  - b. protect the privacy rights of the owners.
48. From the applicant's materials, I understand that his request for (a) to be based on his perception that the strata and council have ignored his suggestions for changes

and opinions on various issues. I understand that his request for (b) arises out of several instances where people have walked through the area behind his strata lot rather than taking alternate routes. He says that people infringe his right to privacy when they take shortcuts behind his strata lot.

49. In July 2017, the applicant asked council to consider adopting new bylaws that would include serious penalties for those who interfere with the democratic process of strata. Specifically, the applicant suggested that others in the strata had impinged on his “right of thought and freedom of speech, and the right to be heard and give input towards strata matters.” He also asked council to “reaffirm with owners that privacy rights must not be infringed with the assumption common property gives a right of passage behind our properties.”
50. On October 1, 2017, the strata wrote to the applicant and informed him that council discussed and considered his proposals at its July 27, 2017 meeting. Council declined to advance the bylaws that the applicant sought, because it thought such bylaws would be duplicative of other “municipal, provincial and national laws and codes of conduct, including the Human Rights Code of British Columbia.”
51. I decline to require the strata to adopt the applicant’s proposed bylaws or rules. Again, the passing of bylaws and rules lies within the discretion of council and the ownership as a whole. The proper mechanism to deal with such issues is through the democratic process observed at council and general meetings. There is no evidence that the applicant and his supporters have brought resolutions pursuant to sections 43 or 46 of the SPA at special or annual general meetings to adopt such bylaws. Even if such resolutions had been proposed and failed, the tribunal should not interfere with the result of the democratic process unless there is evidence of illegality, an improper procedure, or significant unfairness. I find no such evidence and dismiss this claim.

***Should the tribunal order the strata to rescind its rule 10?***

52. On October 17, 2017, the strata ratified rule changes at its annual general meeting, including rule 10. Rule 10 requires that all communications between owners and

council must be in written, and not electronic, format and delivered by hand. The applicant says that this rule is improper and was enacted to prevent him from communicating with council. He suggest this rule was an example of council singling him out.

53. Under section 125 of the SPA, the strata may make rules governing the use, safety and condition of common property and common assets. Bylaws, on the other hand, have a much broader scope and may provide for the control, management, maintenance, use and enjoyment of the strata lots, common property and common assets of the strata corporation and for the administration of the strata corporation.
54. In my view, the strata was not able to pass a rule that limits correspondence with council. Rule 10 does not address the use, safety or condition of common property or common assets. The aim of the rule, in my view, is to address the proper administration of the strata. That aim may only be achieved through the passing of a bylaw, not a rule. I find that rule 10 is invalid and order it set aside.

## **TRIBUNAL FEES AND EXPENSES**

55. Under section 49 of the Act and the tribunal's rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. Except with respect to the rule 10 issue, the strata was largely successful in this dispute. As the strata has not claimed any dispute related expenses or paid any tribunal fees, I make no order in this regard. Conversely, the applicant will not recover the amount he paid to bring this dispute.
56. The strata must comply with section 189.4 of the SPA, which prevents it from charging any dispute-related expenses to the applicant.

## **DECISION AND ORDERS**

57. I order that the strata's rule 10 is set aside. I dismiss all of the applicant's other claims.

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.

---

Michael J. Kleisinger, Tribunal Member