



Civil Resolution Tribunal

Date Issued: December 14, 2018

File: ST-2018-002098

Type: Strata

Civil Resolution Tribunal

Indexed as: *Hou v. The Owners, Strata Plan EPS 1069*, 2018 BCCRT 855

B E T W E E N :

Crystal Hou

APPLICANT

A N D :

The Owners, Strata Plan EPS 1069

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

John Chesko

INTRODUCTION

1. This dispute is about strata corporation governance involving a sectioned strata corporation.
2. The applicant, Crystal Hou (owner), is an owner of a strata lot in the strata corporation. Her strata lot is also located in Section 2 of the Owners, Strata Plan EPS 1069 (office section).
3. The respondent is the strata corporation, The Owners, Strata Plan EPS 1069 (strata).
4. The owner is self-represented. The strata is represented by an authorized representative.
5. The owner submits the strata is not complying with the *Strata Property Act* (SPA). The owner says the office section has no power in the strata because the other separate sections of the strata are in the majority and the bylaws are written in their favour. The owner submits the strata council is not representing the interests of the strata in good faith and challenges certain cost allocations and decisions of the strata.
6. For reasons set out below, I find the strata must include a representative of the office section on the strata council. On the other issues raised by the owner, I find the strata has complied with the SPA and the bylaws.

JURISDICTION AND PROCEDURE

7. 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.

8. 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.
9. 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.
10. 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, order any other terms or conditions the tribunal considers appropriate.

NOTE ABOUT PARTIES AND ISSUES IN THIS DISPUTE

11. The tribunal only has jurisdiction over certain persons and issues set out in the SPA and the Act.
12. As the strata is the responsible legal entity under the SPA and the owner seeks orders against the strata, the strata is a proper and necessary party to this dispute. See *Bourque et al v McKnight*, 2017 BCCRT 19 (Canlii).
13. While the owner has not named individuals as parties in this dispute, the owner alleges certain members of the strata council are not acting in good faith and seeks an order for their removal and that they 'never become eligible to run for strata council'. I note allegations of bad faith and conflict of interest against individual council members are outside the jurisdiction of the tribunal as the court has determined that remedies under sections 31 and 32 of the SPA fall under section 33 which is expressly outside the tribunal's jurisdiction: See *Act*, section 3.6(2), *The*

Owners, Strata Plan LMS 3259 v Sze Hang Holding Inc., 2017 BCCA 346 (Canlii).
As noted below, I decline to order the relief sought by the owner in this regard.

14. While the owner's allegations are noted as part of the context, the remaining issues in this dispute are legally between the owner and the strata.

ISSUES

15. The issues in this dispute are:

- a. Is the strata council in compliance with the SPA and the bylaws in the representation of the office section on the strata council?
- b. Has the strata improperly assessed HVAC repair costs?
- c. Has the strata improperly refused to return promotion funds held by the strata?
- d. Has the strata improperly ignored requests to change the strata bylaws?
- e. Has the strata improperly refused to disclose requested records to the owner?
- f. Is the owner entitled to reimbursement of \$225.00 tribunal fees and \$10.71 in dispute-related expenses?

BACKGROUND, EVIDENCE AND POSITIONS OF THE PARTIES

16. While I have reviewed the submissions and materials submitted by the parties, I will refer to the facts needed to make my decision.
17. The respondent strata is a sectioned strata corporation located in Richmond, British Columbia. The strata is made up of 3 non-residential sections, namely the retail section, the food court section and the office section. The strata is commonly known as "Aberdeen Centre" or "Aberdeen Square".
18. The Land Title documents show the owner purchased their strata lot in August 2013

19. As background to this dispute, the evidence shows the owner has been an active voice on strata governance issues and has been especially concerned about strata issues between the office section and the other sections of the strata.
20. The current strata council was elected at the Annual General Meeting (AGM) on December 18, 2017. It is agreed by the parties that strata bylaw 14.1 requires that the strata council have at least 3 and not more than 7 members and that each section shall be entitled to elect at least one member on the council. The evidence is that the owner received the most votes as the office section representative, but due to an error by the strata property manager, the owner was not recognized as the elected strata council member.
21. I note the strata in its submission to this tribunal agrees an error was made at the December 18, 2017 AGM and says that a separate vote should have been held for the office section representative.
22. I also note the strata submitted that the strata council subsequently instructed the property manager to hold a Special General Meeting (SGM) for the purpose of electing a representative of the office section to the strata council but the property manager has refused.
23. The evidence includes various attempts by the owner or others to amend the strata bylaws. The resolutions were defeated because the proposed amendments did not receive the required number of votes under the SPA.
24. The evidence also shows efforts by the owner to have monies remaining from a 'grand opening' promotion fund released. The evidence is that the developer provided the money for the grand opening fund to promote the businesses in the strata, with the remaining amounts to be used for future promotions.
25. The owner submits the strata improperly allocated HVAC repair expenses totalling approximately \$28,000.00 to the office section. The evidence shows the HVAC system boilers required ongoing repairs beginning in the fall of 2017 totalling

\$27,606.82. The evidence is that these HVAC system boilers only serve the office section.

26. The owner's submission sets out many complaints about how strata lots from other sections represent a majority of the strata lot owners. I will not go into detail on all the complaints raised by the owner about the strata governance and will only address the issues related to the owner's claims in this dispute.
27. The owner submits the strata has acted in bad faith and is not acting in the interests of the strata council. The owner says each strata section is acting in their own interests only and not in the interests of the strata as a whole. The owner says this bias is 'built in' to the strata council and the strata bylaws because the other sections have greater numbers and the majority can veto proposed changes. The owner says the interests of the office section in particular are ignored because the other 2 sections have the majority of elected council members and can control the council.
28. The owner seeks various orders including the following:
 - An order that the strata council members must resign and are not eligible to run for strata council again.
 - An order the strata pay for the repair of common property (HVAC) totalling approximately \$28,000.
 - An order the strata return to the owners approximately \$68,000 that is held by the strata from a 'grand opening' promotional fund.
 - An order that the strata release to the owner a legal letter about the owner.
 - An order for reimbursement of the owner's tribunal filing fees and dispute-related expenses.

29. The strata submits the application should be dismissed. The strata submits that it has managed the affairs of the strata in good faith and in the best interests of the strata according to the bylaws and the SPA.
30. As noted above, the strata acknowledges there was an error at the December 2017 AGM and there should be a representative from the office section elected to the strata council.
31. With respect to the HVAC expense, the strata submits the office section, and not the owner, is the proper party to bring the claim challenging the approximately \$28,000 charge to the office section for the HVAC repair. In the alternative, the strata submits the HVAC boilers are for the benefit of the office section and the charge was properly allocated to the office section under the strata bylaws.
32. In response to claim for release of the grand opening promotion fund to the owners, the strata refers to correspondence setting out the history of the fund. The strata submits the fund was provided by the developer for the purpose of promoting the strata and remains with the strata for future use.
33. As for the disclosure of documents allegation, the strata says it has already disclosed the legal letter requested by the owner. The strata says the letter is included in the documents filed by strata in this dispute.

ANALYSIS

34. I have reviewed the submissions and evidence, but only address the evidence and arguments to the extent necessary to explain my decision.
35. Strata corporations in British Columbia are governed by the SPA. The basis of strata government under the SPA is democracy and the rule of law. The owners who make up the strata elect the members of the strata council to manage the day to day affairs of the strata. The strata council is required to follow the requirements of the SPA, the strata bylaws and the law for the benefit of the strata as a whole.

Strata governance is about balancing the interests of the individual with the interests of the group for the good of everyone.

36. In carrying out its duties, the strata council must exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances. The standard of care required for a strata council is not perfection. The law recognizes strata councils are made up of real people volunteering their time for the good of the strata community and gives them some latitude. See *John Campbell Law Corp v Strata Plan 1350*, 2001 BCSC 1342, *Wright v Strata Plan No 205*, 1996 Canlii 2460 (BCSC), affirmed 1998 Canlii 5823 (BCCA), *Lo v The Owners, Strata Plan LMS 3094*, 2018 BCCRT 78, *McDowell v. The Owners, Strata Plan 1875*, 2018 BCCRT 11 (Canlii).
37. In mixed use strata corporations where strata lots have significantly different purposes, the SPA provides for the creation of separate sections: See SPA Part 11. Generally, sections have their own different issues which come together under the governance of the strata council. A strata council in a sectioned strata corporation must provide for strata governance balancing the different interests of the section with the interests of the strata as a whole.

IS THE STRATA IN COMPLIANCE WITH THE SPA AND BYLAWS IN THE REPRESENTATION OF THE OFFICE SECTION ON THE STRATA COUNCIL?

38. As noted above, the strata agrees an error was made at the December 18, 2017 AGM and a separate vote should have been held for the office section representative.
39. I find that it is agreed the strata council made an error and it should have had a representative from the office section on the strata council from the December 2017 AGM. I find the strata did not comply with the SPA and the bylaws in not allowing a representative from the office section to be elected to the strata council.

40. Further, I do not accept the submission by the strata that the property manager refused to follow the instructions from the strata council to call a special general meeting (SGM) so the error with the office section representative could be fixed.
41. The SPA establishes the strata and the strata council to represent and manage the affairs of all of the strata lot owners: See SPA sections 2, 4, 26, 27. It is basic to the democratic model of strata governance set out by the SPA that the strata property manager is an agent of the strata and must follow the direction of the strata. The strata council is in charge and not the property manager.
42. While I note the SPA and the strata bylaw allows a property manager to be on the strata council, it is the strata lot owners and the elected strata council that are responsible and in charge. Further, the strata council must act in accordance with the SPA and the strata bylaws.
43. I find the strata is responsible for the failure to address the error in not having a representative of the office section on the strata council, regardless that the strata property manager refused to call a SGM to remedy the issue.
44. I note the strata has agreed that it made an error at the 2017 AGM in not having an elected member of the office section on the strata council. Given the strata's acknowledgement of its error, I accept that the strata now realizes that it is required to have a representative of the office section on the strata council pursuant to the strata bylaws.
45. I am confident the strata will follow the procedure set out by the strata's lawyer to ensure there is a representative from the office section elected to the strata council at the next AGM.
46. In the circumstances, I would order the strata must follow the SPA and applicable bylaws to ensure there is a representative of the office section elected to the strata council.

47. I would also order that the strata must admit an office section member to strata council as soon as that individual has been appointed by the office section executive to serve on the strata council until its next AGM. In the event the strata council currently has 7 members, the council may consist of more than 7 members until the next AGM of the strata, when the number of strata council members is to be made consistent with the bylaws.
48. I decline to order the relief sought by the owner that all council members must resign and are not eligible for re-election.

HAS THE STRATA IMPROPERLY ASSESSED HVAC REPAIR COSTS?

49. I have considered the strata submission that I do not have jurisdiction to consider this claim because only the office section of the strata could apply to challenge the expense. As set out above, I have found on the facts the owner is an appropriate party. I further find in the circumstances that I can consider the owner's claim on this issue. I note the tribunal has a wide jurisdiction to determine its process and procedure under the Act and the rules. This is also consistent with the tribunal's mandate for accessible, informal and flexible justice. See Act section 2.
50. I dismiss the claim by the owner that the strata improperly assessed certain charges for the HVAC system to the office section. I find the owner has not shown the strata improperly assessed the HVAC charge. I note the SPA, the *Strata Property Regulation* (Regulation) and the strata bylaws allow the strata to assess the office section for specific charges related to the section. See SPA sections 194, 195, Regulation 6.4 and bylaws 5.2, 13 and 13.1(5). I find the HVAC repair was properly for the benefit of the office section and the charge to the office section was authorized under the strata bylaws 13 and 13.1(5).

HAS THE STRATA IMPROPERLY REFUSED TO RETURN PROMOTION FUNDS HELD BY THE STRATA?

51. I find the owner has not shown that the strata is required to return the grand opening promotion fund to all the owners as submitted by the owner. I dismiss this claim.
52. While the owner has made much of the grand opening promotion fund as an example of how the strata has favoured the retail sections, the funds are held by the strata and it is required to adhere to the SPA and the law in dealing with the funds. While I have considered the submissions of the owner and the strata concerning the grand opening funds held by the strata, I dismiss the owner's claim. I find that the issue of how the strata handles the funds is an internal financial decision to be made by the strata.
53. I note court decisions have recognized and upheld strata decisions concerning the assessment and use of similar types of promotion funds. See *1240233 Ontario Inc. v. York Region Condominium Corporation #852* 2009 Canlii 1 (ON SC).

HAS THE STRATA IMPROPERLY IGNORED REQUESTS TO CHANGE THE STRATA BYLAWS?

54. I find the owner has not shown the strata is required to change the strata bylaws and I dismiss this claim.
55. As noted by the owner, the SPA sets out the specific requirements to change the strata bylaws. I also note the owner was aware of the bylaws when they purchased the strata lot.
56. I do not find that the owner has shown that the bylaws are significantly unfair, as that term is defined in the law: See *Reid v. The Owners, Strata Plan LMS 2503*, 2001 BCSC 1578, *Dollan v The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, *Sherwood v The Owners, Strata Plan VIS 1549*, 2018 BCSC 890. While the owner may be frustrated about how other strata lot owners vote, I would find it is, for the most part, the owners exercising their democratic right to vote and not unfairness as the owner submitted.

57. To the extent the owner submits the bylaws are unfair as a whole, I do not find the tribunal has jurisdiction to consider whether bylaws are significantly unfair as a whole. To the extent the owner believes a specific bylaw is unfair or that strata council members are not acting in good faith, the SPA and the Act provides that an owner may apply for a remedy to the courts or the tribunal, in the case of bylaw request.

HAS THE STRATA IMPROPERLY REFUSED TO DISCLOSE REQUESTED RECORDS TO THE OWNER?

58. As noted above, the strata has disclosed the documents requested by the owner.
59. The owner has not withdrawn the claim and points to the initial refusal by the strata as further evidence of unjust treatment. As it is part of the mandate of the tribunal to recognize the ongoing relationship, I find the claim about the initial refusal is not academic and make the following determination.
60. I find the strata complied with the SPA by initially refusing to disclose the legal opinion about the owner. While the owner is correct that a strata is generally required to disclose many records, including legal opinions, under section 35 of the SPA, there are exceptions. One exception is under section 169 of the SPA where the strata does not have to produce legal opinions about an owner while litigation is being contemplated. While not bound by other tribunal decisions, I note other decisions are consistent with respect to the council's required disclosure of legal opinions: See *Pritchard v The Owners, Strata Plan VIS3743*, 2017 BCCRT 69 (Canlii), *Hamilton v The Owners, Strata Plan NWS 1018*, 2017 BCCRT 141 (Canlii).

TRIBUNAL FEES AND EXPENSES

IS THE OWNER ENTITLED TO REIMBURSEMENT OF \$225.00 TRIBUNAL FEES AND \$10.71 IN DISPUTE-RELATED EXPENSES?

61. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party the tribunal fees paid and reasonable dispute-related expenses.
62. While I have dismissed many of the owner's claims, I find in the circumstances that the strata is required to reimburse the owner's tribunal fees and dispute-related expenses. As noted in this decision, the strata has agreed that it erred in not having a member of the office section on the strata council. Faced with the strata's refusal to address the issue, I find the owner reasonably brought the matter to this tribunal and is therefore entitled to the reimbursement I have ordered.
63. 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

64. I order that the strata must follow the SPA and applicable bylaws to ensure there is a representative of the office section elected to the strata council.
65. I also order that the strata must admit an office section member to strata council as soon as that individual has been appointed by the office section executive to serve on the strata council until its next AGM. In the event the strata council currently has 7 members, the council may consist of more than 7 members until the next AGM of the strata, when the number of strata council members is to be made consistent with the bylaws.
66. I dismiss the owner's remaining claims as set out above.
67. I also order that within 30 days from the date of this decision, the strata pay the applicant owner a total of \$235.71, broken down as follows:

- \$225.00 for reimbursement of tribunal fees, and

- \$10.71 for dispute expenses.

68. The owner is also entitled to post-judgement interest under the *Court Order Interest Act*.
69. 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. This 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.
70. 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 of 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.

John Chesko, Tribunal Member