



Civil Resolution Tribunal

Date Issued: December 12, 2018

File: ST-2017-002675

Type: Strata

Civil Resolution Tribunal

Indexed as: *Booth et al v. The Owners, Strata Plan NW2575*, 2018 BCCRT 843

B E T W E E N :

George Booth and Verna Booth

APPLICANTS

A N D :

The Owners, Strata Plan NW 2575

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a preliminary decision about whether the Civil Resolution Tribunal (tribunal) should exercise its discretion to suspend this tribunal proceeding pending the respondent strata corporation's BC Court of Appeal application. The respondent, The Owners, Strata Plan NW 2575 (strata), is appealing a BC Supreme Court

decision denying the strata judicial review of an earlier tribunal decision in which the tribunal denied the strata's application for legal representation. (See *Booth et al v. The Owners, Strata Plan NW 2575, 2018 BCCRT 8.*)

2. Only the evidence and submissions relevant to this decision are referenced below. This is not the tribunal's final decision as to the substance or merits of the dispute.
3. For the reasons set out below, I find the tribunal should suspend this dispute and place it on hold until the Court of Appeal has issued its decision.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the 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.
5. Under section 61 of the Act, the tribunal may make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the tribunal in accordance with its mandate. In particular, the tribunal may make such an order on its own initiative, on request by a party, or on recommendation by a case manager (also known as a tribunal facilitator).
6. The Act and tribunal rules are silent with respect to the status of a tribunal dispute after a party has filed an application for judicial review. However, under tribunal rule 119 (c) the tribunal can determine all matters within its authority relating to the tribunal decision process.
7. 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.

ISSUE

8. The sole issue in this preliminary decision is whether the tribunal should exercise its discretion to suspend this tribunal proceeding pending the BC Court of Appeal's decision on the strata's judicial review application.

POSITIONS OF THE PARTIES

9. The strata has requested the tribunal suspend the progress of this dispute until the outcome of its Court of Appeal application is known.
10. The strata submits its application to suspend the progress of this dispute is equivalent to a stay of proceeding request under the *Court of Appeal Act*. It says the strata has met the three-stage test: there is some merit in its request, that it will suffer irreparable harm if its request is refused, and that, on balance, the potential harm to the strata outweighs the potential harm to applicants, if the request is refused. (See *R.J.R.-MacDonald Inc. v. Canada (A.G.)*, 1994 CanLii 117 (SCC), [1994] 1 S.C.R. 311.)
11. The applicants, George Booth and Verna Booth, ask the tribunal to continue the progress of this dispute.
12. The applicants say the strata has not met the test set out in *R.J.R.-MacDonald* as claimed by the strata and that its appeal application is an intentional tactic used by the strata to cause further delay in this tribunal proceeding.

BACKGROUND AND EVIDENCE

13. The background and legal challenges of this dispute are worth setting out for context.
14. On June 27, 2017, the applicants applied for dispute resolution with the tribunal. The dispute involves the authorization and maintenance of a sunroom. The applicants allege the strata must complete sunroom repairs valued at \$700 and they

also seek \$25,000 in compensation for “loss of enjoyment of life, threats, abuse and stress.”

15. The strata has insurance defence coverage, which includes legal representation as an insurance benefit. It asked the tribunal for permission to have a lawyer provided under its insurance contract represent it in this tribunal dispute.
16. On August 18, 2017, the tribunal Chair issued a preliminary decision refusing the strata’s request to have a representative in this dispute. The preliminary decision is indexed as *Booth et al v. The Owners, Strata Plan NW 2575*, 2017 BCCRT 61.
17. The strata petitioned the BC Supreme Court for judicial review of the preliminary decision and asked the tribunal to suspend the proceedings in this dispute pending the review.
18. On January 3, 2018, the tribunal Chair issued a second preliminary decision refusing the strata’s request to suspend these proceedings: *Booth et al v. The Owners, Strata Plan NW 2575*, 2018 BCCRT 8.
19. The strata then petitioned the Supreme Court seeking a judicial stay of proceedings pending a determination on the judicial review (stay petition).
20. On April 25, 2018, the Supreme Court considered the strata’s stay petition and agreed with the strata that these tribunal proceedings be temporarily stayed, or suspended, until final determination of the judicial review. The court also ordered that the strata’s 2 petitions be heard at the same time. (See *The Owners, Strata Plan NW 2575 v. Booth*, 2018 BCSC 715.)
21. On September 19, 2018, Supreme Court issued its decision on judicial review and dismissed the strata’s petition that it be permitted formal legal representation in this tribunal dispute. The court found the tribunal Chair appropriately considered the relevant matters within the governing legislation, arrived at a conclusion within “the range of possible, acceptable outcomes, and provided clear reasons for her decision.

22. On October 17, 2018, the strata filed a Notice of Appeal in the BC Court of Appeal in Vancouver Registry under Action CA 45664 (Appeal), seeking an order to set aside the Supreme Court's decision of September 19, 2018 and permit the strata legal representation in this tribunal proceeding. Alternatively, the strata seeks an order that its request for legal representation be remitted back to the tribunal for reconsideration.
23. The strata again requests the tribunal exercise its discretion to suspend this tribunal proceeding pending determination of the strata's Appeal.

ANALYSIS

24. As the courts have noted, the strata's challenges to the tribunal's denial for legal representation in this dispute are the first of this nature since the tribunal started accepting strata property claims in July 2016.
25. I find that, in January 2018 when the tribunal Chair denied the strata's first request to suspend these proceedings, she properly considered the test set out in *R.J.R.-MacDonald* noted above. However, in its April 25, 2018 decision on the same fact pattern, the Supreme Court reached a different conclusion and ordered these proceedings to be suspended until the judicial review was complete.
26. The strata essentially makes an identical argument in support of its request that these tribunal proceedings be suspended and, as noted above, again relies on the test set out in *R.J.R.-MacDonald*.
27. While I recognize the applicants' frustrations over the delay, I do not accept that the strata is intentionally delaying the progress of this tribunal dispute. Rather, the strata is entitled to challenge the decisions of both the tribunal and the court, and the authority to rule on those challenges lies now with the Court of Appeal.
28. I am bound by Supreme Court decisions and, in particular, by its April 25, 2018 decision in relation to the facts in this dispute, where the court ordered these proceedings stayed. On my review of the evidence and arguments provided by the

parties for this preliminary decision, I find that very little has changed, if anything, since the strata's first request that these proceedings be suspended.

29. In these circumstances, it would be inappropriate for me to decide contrary to the Supreme Court based on the same fact pattern.
30. For these reasons, I find the tribunal must suspend this tribunal proceeding until the strata's Appeal has been determined.

DECISION AND ORDER

31. I order that this dispute be suspended and placed on hold until a decision is rendered in the Appeal. Once written reasons are issued, this dispute will continue in the facilitation stage of the tribunal decision process, unless otherwise determined by the court.
32. As this is a preliminary decision, I make no order about reimbursement of tribunal fees.

J. Garth Cambrey, Vice Chair