



# Civil Resolution Tribunal

Date Issued: December 31, 2018

File: ST-2018-001882

Type: Strata

Civil Resolution Tribunal

Indexed as: *Michaels et al v. The Owners, Strata Plan NW 526*, 2018 BCCRT 917

B E T W E E N :

Celeste Michaels and Sean Michaels

**APPLICANTS**

A N D :

The Owners, Strata Plan NW 526

**RESPONDENT**

A N D :

Celeste Michaels and Sean Michaels

**RESPONDENTS BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Michael J. Kleisinger

## INTRODUCTION

1. The applicants and respondents by counterclaim, Celeste and Sean Michaels (owners), are joint owners of a strata lot within the respondent strata corporation, The Owners, Strata Plan NW526 (strata). The strata is the applicant in the counterclaim.
2. The owners say that the strata has not provided them with various strata records and minutes in accordance with the requirements of the *Strata Property Act* (SPA) and the strata's bylaws. The owners seek an order requiring the strata to do so.
3. The strata counterclaims for various orders including that the owners cease "bullying and harassment" and interfering with strata council (council) members, the strata management company, and the strata's contractors.
4. The parties represent themselves, with a council member representing the strata.

## JURISDICTION AND PROCEDURE

5. 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.
6. 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 were no significant issues of credibility or other reasons that might have required an oral hearing.
7. Under section 10 of the Act, the tribunal must refuse to resolve a claim that it considers is not within the tribunal's jurisdiction. A dispute that involves one or more

issues that are within the tribunal's jurisdiction and one or more that are outside its jurisdiction may be amended to remove those issues that are outside its jurisdiction.

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 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**

10. The issues in this dispute are:
  - a. Should the tribunal order the strata to comply with the *Strata Property Act* (SPA) and bylaw 19.1 with respect to disclosing records and council minutes to the owners?
  - b. Should the tribunal order the owners to cease and desist bullying, harassing, and interfering with council, the strata's management company, and strata's contractors?

## **EVIDENCE AND ANALYSIS**

***Should the tribunal order the strata to comply with the SPA and bylaw 19.1 with respect to disclosing records and council minutes to the owners?***

11. Since July 2017, the owners have repeatedly requested that the strata provide them with minutes from general meetings and council meetings. The evidence shows that the owners have sought minutes on no less than 10 different occasions during this time. In several cases, the strata ultimately provided the owners with the minutes, albeit after considerable delays spanning several months.

12. The strata admits (and the evidence shows) that it has repeatedly failed to provide the owners with minutes in a timely manner. The strata says that over the past few years it has experienced difficulty getting the minutes to all owners of the strata because it lost e-mail addresses and for other reasons.
13. In defence of this claim, the strata says that it has not responded to the owners' e-mails at all times because it is not comfortable receiving correspondence from the owners' company e-mail address. The owners operate a strata management company. The strata says that it wants some assurance that the owners are writing to it as owners in the strata complex as opposed to owners of a property management company. On January 18, 2017, the council sent a letter to the owners saying it would not accept any further correspondence or requests that came from the owners' business. Throughout the strata's submissions, it is apparent that the strata is concerned that the owners seek to manage the strata in place of the strata's property management company.
14. The strata also says that it has posted minutes on the website of the strata's management company which owners may access.
15. Under section 35 of the SPA, the strata must prepare minutes of general and council meetings. There is no statutory requirement for the circulation of minutes of general meetings or council meetings. That said, under section 36, on receiving a request, the strata must make the requested records available to the person requesting the records and provide copies, if sought, within 2 weeks. Section 61 allows the strata to choose a manner in which to provide the requestor with the records requested, including in person, mail, fax, and e-mail, if an e-mail address has been provided for the purposes of receiving such records.
16. Bylaw 19.1 requires council to inform the owners of the minutes of all council meetings within 2 weeks of the meeting, whether or not the minutes have been approved.
17. The evidence shows that the strata has not fulfilled its responsibility to a) provide the owners with records or access to the records within 2 weeks of the request as

section 35 requires; and b) provide the owners with council minutes within 2 weeks of the meeting per bylaw 19.1.

18. I find the owners are entitled to use their company's e-mail addresses when corresponding with strata, including when seeking records. While section 61 allows the strata to deliver copies of records in a variety of ways, there is nothing in the SPA or bylaws that prohibit the owners from making requests for records from an e-mail address of their choosing.
19. The SPA and bylaws make the strata's responsibilities clear. On request, the strata must provide records or access to the records within 2 weeks of the request. Further, it must provide the minutes of its council meetings within 2 weeks of the meeting. The owners have established (and the strata has admitted) the strata has repeatedly failed to meet its responsibilities in this regard. As such, I order the strata to comply with the record disclosure requirements of section 36 and notice requirements of section 61 of the SPA, if and when it receives a request from the owners. Further, I order the strata to comply with bylaw 19.1 regarding council minutes.
20. With respect to the strata posting minutes on its strata company's website, such disclosure may satisfy the requirements of bylaw 19.1, provided that all owners have access to the website, all owners know to find council minutes on the website, and that the council minutes are posted within 2 weeks of the meeting. However, if an owner requests records (including minutes) from the strata, it is required to provide those records to the owner in one of the manners listed in section 36 of the SPA, which include providing copies or access to the records. Posting records on the property manager's website is not one of the ways listed in section 36.

***Should the tribunal order the owners to cease and desist bullying, harassing and interfering with council, the strata's management company, and its contractors?***

*General Comments about Injunctions*

21. The tribunal may make orders preventing specific conduct as long as it falls within one of categories described in section 3.6 of the Act (see *The Owners, Strata Plan*

*NW 2275 v. Siebring*, 2018 BCCRT 734 at paragraphs 10 to 13). If the conduct falls outside of those categories, the tribunal must refuse to resolve the claim pursuant to section 10 of the Act. Depending on the circumstances, the tribunal may or may not have jurisdiction to prohibit conduct that the strata says amounts to “harassment,” “bullying,” or “interfering.”

22. Injunctions, such as the one the strata seeks, are extraordinary discretionary remedies that should only be used in the clearest of cases, keeping in mind the nature of the wrong, the availability of other sanctions, and the relative effectiveness of other sanctions (*Interior Health Authority v. Statham*, 2005 BCSC 1243 at paragraph 10). Under section 60 of the Act, a person who fails or refuses to comply with a tribunal’s order is liable, on application to the Supreme Court, to be punished for contempt as if in breach of an order or judgment of the Supreme Court. In my view, given these serious consequences, the tribunal should reserve the extraordinary remedy of injunction orders to address repeated or serial wrongful conduct when other remedies have proven ineffective.
23. Parties often seek orders from the tribunal to prevent what the parties perceive as “harassment” and “bullying.” These descriptors are very subjective. One person may perceive something as harassment or bullying that others would not. The upshot is that an order that generally prevents a person from “harassing” or “bullying” another is very difficult to interpret and enforce. In my view, parties would benefit from seeking orders from the tribunal that prohibit specific conduct, rather than general orders preventing “harassment,” or “bullying.” For example, if a party thinks a neighbour’s late night music is annoying, and wants the annoyance to stop, he or she should ask the tribunal for an order that the neighbour not play music after 10 pm, rather than an order that the neighbour stop being annoying. The former order is specific and enforceable, the latter is vague and likely unenforceable.

### ***Discussion and Decision***

24. In this dispute, the strata seeks orders preventing the owners from “bullying, harassing, and interfering.” In support of its complaints, the strata points to e-mails that Mr. Michaels wrote in 2007 and 2008. It also says that Mr. Michaels acted

improperly when he was the council president in 2016 and 2017. The strata relies on “interview statements” of a former employee, a council member, and property managers all of whom state that Mr. Michaels’ manner of council leadership made them feel ignored, belittled, intimidated and bullied. The strata also says that during his time as a council member, he and another council member bullied and threatened a plumbing contractor, leading the contractor to walk off the job. The strata also points to the volume and tenor of the owners’ 2017 and 2018 e-mails requesting strata records and questioning the abilities of the current strata management company.

25. After reviewing all of the evidence, I am not satisfied that I should make the extraordinary order that the strata seeks. First, I find the orders sought to be too vague and subjective to be enforceable. Second, Mr. Michaels’ conduct while a council member has been addressed with his exit from that post. Any fear that the strata may have of Mr. Michaels exerting undue influence or acting inappropriately on the strata’s behalf should have abated with the end of his term on council. Third, and as addressed above, I find that the owners’ repeated requests for records was appropriate given that the strata repeatedly failed its disclosure obligations under the SPA. I do not find that the owners’ requests for records can support the strata’s allegations of harassment or interference. Fourth, while the evidence shows that the owners’ correspondence (specifically that of Mr. Michaels) has been uncivil and discourteous in the past, I am not satisfied, on the evidence provided, that the orders sought are an appropriate remedy at this time.
26. In its materials, the strata also requests that the owners’ be prevented from applying to act as the strata’s property management company. I see no need for such an order. The decision of which contractors the strata should employ falls squarely within the discretion of council and the ownership as a whole. I see no reason why the tribunal should interfere with the strata’s future choice of its property manager. If the owners’ company applied to be the property managers, the strata would have to make a decision at that time. Undoubtedly, before any bid could be made or considered, both the owners and the strata would need to address the serious

conflict of interest issues that would arise if owners' company were to act as property managers for the strata.

27. I dismiss the strata's counterclaim.

## **TRIBUNAL FEES AND EXPENSES**

28. 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. As the owners' were successful in this dispute, I order the strata to reimburse the owners for tribunal fees of \$225 and dispute-related registered mail expenses of \$10.50 for a total of \$235.50.

29. 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.

## **DECISION AND ORDERS**

30. I order that:

- a. The strata must comply with sections 36 and 61 of the SPA if and when the owners submit a request for strata records.
- b. The strata must notify the owners of council minutes in accordance with bylaw 19.1.
- c. The strata must pay the owners \$235.50 in tribunal costs and dispute-related expenses.

31. The owners are entitled to post-judgement interest under the *Court Order Interest Act* R.S.B.C. 1996, c. 79, as applicable.

32. I dismiss the strata's counterclaim.

33. 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.

34. 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.

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Michael J. Kleisinger, Tribunal Member