



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Ciesek v. The Owners, Strata Plan VIS 4542*, 2019 BCCRT 312

B E T W E E N :

George Ciesek

APPLICANT

A N D :

The Owners, Strata Plan VIS 4542

RESPONDENT

A N D :

George Ciesek

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Shaun Ramdin

INTRODUCTION

1. The applicant and respondent by counterclaim, George Ciesek (owner), owns a strata lot in the respondent strata corporation, The Owners, Strata Plan VIS 4542 (strata). The strata is the applicant in the counterclaim. The parties represent themselves, with a council member, Ms. Jane Liu, representing the strata.
2. The owner claims that despite his requests the strata has not provided him with the strata's annual financial reports for 2010 through 2018. He also claims reimbursement for amounts he spent to benefit the strata, including: signage leasing, chainsaw replacement parts, and weed killer.
3. The strata disputes all of the owner's claims. It counterclaims for orders limiting communication between the owner and the strata to postal mail, stopping the owner from entering Ms. Liu's property, and various expenses. The owner disputes all of the counterclaim.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 121 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. 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.
6. 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.

7. Under section 123 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, or order any other terms or conditions the tribunal considers appropriate.
8. As indicated above, in the strata's counterclaim, it seeks a number of remedies personal to its representative, Ms. Liu. Specifically, the strata seeks an order prohibiting the owner from entering Ms. Liu's property. It also seeks the following amounts to be paid personally to Ms. Liu:
 - a. \$400 in lost wages for time spent on this dispute;
 - b. \$400 in payment of a personal educational course she could not complete as a result of time spent on this dispute; and
 - c. An amount to be determined for her personal time required to prepare a response to this dispute (personal expenses)
9. Ms. Liu is not a party to this dispute, and I do not have jurisdiction to address these claims.
10. As regards the claim for an order prohibiting the owner from entering Ms. Liu's property, this is not a remedy the tribunal may provide even if advanced by the strata and not Ms. Liu in her personal capacity.
11. Specifically, the tribunal may make orders preventing specific conduct as long as it falls within one of the categories described in section 121 of the Act (see *The Owners, Strata Plan NW 2275 v. Siebring*, 2018 BCCRT 734). This includes having jurisdiction concerning the use or enjoyment of a strata lot. If the conduct at issue falls outside of the categories listed in section 121, the tribunal must refuse to resolve the claim pursuant to section 10. Depending on the circumstances, the tribunal may or may not have jurisdiction over the matter.

12. However, in its submission, the strata states it is essentially seeking “a court order or restraining order” for Ms. Liu against the owner. Claims for “restraining orders,” “no contact orders,” “cease and desist orders” and similar claims that cannot be linked to the categories listed in section 121 fall outside of the tribunal’s jurisdiction. Only courts with inherent or statutory jurisdiction to grant such remedies may do so. The tribunal does not have inherent jurisdiction and these types of claims fall outside of the tribunal’s statutory jurisdiction (*Knibbs v. Kuan et al*, 2018 BCCRT 152 and *The Owners, Strata Plan KAS 950 v. McDade et al*, 2018 BCCRT 462).
13. Further, the personal expenses were claimed on behalf of Ms. Liu only, and not on behalf of the strata. As she is not a party to this dispute, I am not able to consider these claims. However, it may be open to Ms. Liu to file a new dispute in respect of them.

ISSUES

14. The issues in this dispute are:
- a. Should the tribunal order the strata to prepare the annual financial reports from 2010 to 2018 for the owner?
 - b. Should the tribunal order the strata to reimburse the owner for any of his claimed expenses?
 - c. Should the tribunal order the owner and strata council to communicate only by way of postal mail?
 - d. Should the tribunal order the owner to reimburse the strata for any of the claimed expenses?

BACKGROUND AND EVIDENCE

15. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.

16. In a civil proceeding like this, the owner must prove his claims on a balance of probabilities. The strata must prove its counterclaims on a balance of probabilities.
17. The strata is located on Vancouver Island. The strata plan shows that the strata was created in February 1997. It shows 3 lots in total, arranged in a cul-de-sac. The cul-de-sac leads into the road access for the strata. The cul-de-sac and road are marked as common property on the strata plan.
18. All 3 lots are represented on the strata council. Ms. Liu owns and resides at Lot 1. She is currently the council president. The current council treasurer owns and resides at Lot 2. The owner owns and resides at Lot 3. He is currently the council secretary.
19. Pursuant to section 120(1) of the Strata Property Act (SPA), the bylaws of the strata are the Standard Bylaws except to the extent that different bylaws are filed at the land title registry. A general index search of the strata shows there were no bylaw amendments of the strata filed in the land title registry as at April 30, 2018. Given this, I find that the strata's bylaws are the Standard Bylaws.

POSITION OF THE PARTIES

20. The owner states that he has asked the strata council for the strata's annual financial reports from 2010 through 2017, but they have not been provided. He also seeks the annual financial report for 2018. He notes that Ms. Liu was the council treasurer from 2010 through 2015. The current treasurer has not provided the subsequent reports. The owner claims that from 2002 through 2006, the strata's annual financial reports were provided at the strata's annual general meetings.
21. The owner also seeks various amounts he claims are owing to him by the strata:
 - a. \$330.00 for signage leasing costs (signage leasing). The owner states that in 2002 the strata agreed to add certain traffic signing in respect of the shared cul-de-sac. The signage sits on his property and he claims the lease cost for this is \$110.00 per year. He seeks payment of this annual fee for 2016, 2017, and 2018.

- b. \$124.30 for replacement parts for his chainsaw (chainsaw expenses). The owner states that in 2015 the strata council considered whether to hire a company to do the strata's cedar tree maintenance or to have the owner do it. No resolution was reached. However, because he had annually maintained the cedar trees within the strata in the past, and in his view they required maintenance, he continued to maintain them. As a result of this maintenance, he eventually required replacement parts for his chainsaw. He states that in the past the strata's practice was to reimburse owners for expenses incurred for improving or maintaining the strata.
 - c. \$555.60 for weed killer (weed killer expenses). The owner claims for the costs of ingredients to prepare a weed killer formula which he applied to weeds in the cul-de-sac.
- 22. The strata requests that the tribunal dismiss the owner's claim. Ms. Liu, as representative of the strata, states that the owner was the president of the strata council from 2010 to 2017 and it was always available to him to review any financial statements. She says that, in any event, when she was treasurer from 2010 to 2015 she created a financial binder which included up-to-date bank statements, hydro bills, strata insurance policies, payment receipts, and strata council minutes from 2009 forward (binder). She states that the binder is available to all owners to review and the owner has done so.
- 23. As regards the owner's claimed amounts, the strata's position is that it:
 - a. did not agree to pay any amounts for the signage leasing and, in any event, the sign posts belong to the strata;
 - b. did not approve the owner performing cedar maintenance and, in any event, did not agree to any reimbursement for related expenses incurred by the owner; and
 - c. did not agree to reimburse the owner for any expenses incurred in creating his weed killer formula.

24. In its counterclaim, the strata requests an order limiting communication between the strata and the owner to postal mail. Ms. Liu states that interacting with the owner is challenging, including at council meetings. Among other things, she states that he is rude. Also, the owner of lot 2 provided a letter stating that he finds the owner insulting and unreasonable in his requests of the strata.
25. The strata also seeks:
- a. Interest for the owner's unpaid strata fees for 2016 and 2017 (unpaid strata fees interest);
 - b. \$50 per year for sign-post rental from 2002 to the present (sign-post rental).
26. The owner acknowledges that postal mail has been used between the owners for strata council communications. He opposes any other non-personal communication method, such as internet teleconferencing, though seems to be agreeable to e-mail. Further, he denies spying or trespassing on Ms. Liu, and states that the amounts claimed in the counterclaim are without merit.

ANALYSIS

Should the tribunal order the strata to prepare the annual financial reports from 2010 to 2018 for the owner?

27. The owner says that despite his requests the strata has failed to give him a copy of the annual strata financial reports for 2010 to 2017. He also seeks the report for 2018.
28. In response, the strata notes that from 2010 to 2017, the owner was president and Ms. Liu was treasurer. The strata also notes that there were no annual general meetings between 2010 through 2015, and formal annual financial reports were not prepared. Nonetheless, the strata states that the binder prepared by Ms. Liu is available for review and includes all strata financial transactions since 2009.

29. Under SPA section 103, a strata must prepare a budget for each coming fiscal year, for approval by a majority vote at each annual general meeting (AGM).
30. The budget must be distributed with the notice of the AGM and must be accompanied by a financial statement.
31. For the purposes of section 103(3) of the SPA, the financial statement must contain certain enumerated financial information (similar to the information required to be set out in the budget) to which the financial statement relates “as of a day that is within the 2 month period” before the date of the AGM.
32. Within 8 weeks of the fiscal year end, the strata must prepare a financial statement updated to the end of the fiscal year. For the purpose of distribution with the AGM notice, the strata may provide, by bylaw, the required financial information “in a summary form” but at the AGM a fully compliant financial statement must be provided. (see *Strata Property Regulation* (regulations) 6.6).
33. While the information contained in the binder appears to provide information similar to an annual budget, it is insufficient to comply with the legislation. Rather, the legislation and regulations are clear that annual reports must meet certain formatting and informational requirements and they must be annually prepared.
34. Nonetheless, I am not willing to order the strata to prepare the past annual financial reports for the owner. The evidence is that the reports do not exist. It would be inconsistent with the tribunal’s mandate to fairly, quickly, and economically resolve disputes to now require the council to prepare annual reports for years past.
35. In relation to this, I note that the owner does not state why he requires the financial reports from 2010 to 2018, beyond a vague allegation of misuse of funds in the summer of 2018. Rather, he simply states that the reports ought to have been done by Ms. Liu when she was treasurer. While this is not determinative of the matter, it supports the strata’s position that this request is consistent with a pattern of creating conflict within the council.

36. In particular, the owner has not offered any evidence why he did not ensure the reports requested were prepared during the time when he was president nor does he suggest that the binder is insufficient for his purposes or unavailable for his review. Further, the minutes from 2016 and 2017, recorded by the owner, do not indicate any concern on his part as to the preparation of an annual report.
37. Accordingly, I dismiss this claim. In doing so, I remind the strata that it must comply with the regulations regarding financial statements, including ensuring the financial statements are properly sent out with the AGM notices, in the future. However, I decline to order any future compliance as it would be meaningless. The strata is already obligated to act and conduct its business in accordance with the SPA. Going forward, it remains available to owners to seek orders requiring the strata to comply with the SPA and its related regulations as they see necessary.

Should the tribunal order the strata to pay the owner for any of his claimed expenses?

38. As noted above, the owner claims various amounts are owing to him by the strata. The evidence does not support payment of any of the amounts.
39. As regards the signage leasing fees, I acknowledge that the owner prepared and provided an invoice to council. However, a review of the council minutes provided does not indicate any agreement that the strata would pay the owner any signage leasing fees. As a result, I find that the strata is not responsible to pay the signage leasing fees.
40. As regards the chainsaw expenses, I acknowledge the owner's evidence that the replacement parts were required after he used his chainsaw for cedar maintenance. I also acknowledge his comments that the strata's practice in the past was to reimburse owners for expenses incurred in strata maintenance.
41. However, the 2016 strata council minutes, which the owner prepared, document that the strata council considered whether the owner or an external company would perform the cedar maintenance. No agreement was reached. The 2017 strata

council minutes, which the owner also prepared, state that the majority of the council voted to use an external company to maintain the cedars. Those minutes do not indicate any agreement that the owner would perform the cedar maintenance for the strata or that he would be reimbursed by the strata for related expenses incurred. Therefore, while the owner may have incurred the chainsaw expenses I find that the strata is not responsible to pay him the chainsaw expenses.

42. As regards the weed killer expenses, the evidence does not support a finding of any agreement that the strata would reimburse the owner. The strata council minutes from 2016 and 2017 confirm that the other owners would remove the weeds themselves, and the owner would apply weed killer for more permanent effect. There is no indication in the minutes that the owner would be reimbursed for the ingredients, or that any of the owners would be reimbursed for their time spent. Accordingly, I find that the strata is not responsible to pay the weed killer expenses.

Should the tribunal order the owner and strata to communicate only by way of postal mail?

43. In its counterclaim, the strata seeks an order that all communication between the owner and the strata be limited to postal mail, with the parties to bear their own mailing costs. The owner acknowledges that postal mail is currently being used.
44. It is clear from the parties' evidence that there is a strained relationship between the owner and the other lot owners. The minutes and correspondence provided indicate disrespectful conduct and extensive disagreement at strata council meetings. There is also evidence of conflict in respect of scheduling and arranging council meetings, including in delivering information related to council meetings.
45. However, given the composition of the strata, the owner is a member of the council. To limit his interaction with the strata council to postal mail would be to require the strata council to conduct its business only by postal mail. This would be inefficient and ineffective. In addition to delay, disagreement over who bears the relevant postal costs would inevitably arise. Further, there would be practical difficulties in conducting strata business solely by way of mail, including voting on resolutions.

46. I acknowledge that there are personality conflicts between the owner and Ms. Liu. However, I am not satisfied this requested order is appropriate in the circumstances. Accordingly, I dismiss this claim. In doing so, I note that sections 61 and 63 of the SPA provide the methods by which owners and the strata may communicate with one another. It is also available to the parties here to consider amending their bylaws to set out an appropriate and mutually agreeable method of communication between the owners and the strata.

Should the tribunal order the owner to reimburse the strata for any of the claimed expenses?

47. As noted above, the strata claims for the unpaid strata fees interest and the sign rental fee.

48. As regards the unpaid strata fees, the evidence establishes that the owner did not pay the 2016 and 2017 strata fees until early 2018. He withheld payment of those strata fees on the basis of his understanding the strata owed him for the various expenses claimed above, which I have all dismissed.

49. Section 107 of the SPA provides that a strata may create a bylaw establishing a schedule for interest due and owing on late strata fee payments. The interest must not exceed 10% as set out in the regulations. Further, the interest payable is not to be collected as a fine under the SPA, but ultimately is part of the strata fees owing under the SPA. Section 116 of the SPA allows for a strata to file a certificate of lien against an owner for unpaid strata fees.

50. However in this case, as I have found, the strata did not enact its own bylaws and the Standard Bylaws apply. The Standard Bylaws do not provide for interest payments on late strata fees. As a result, I find that there is no legal basis for the strata's claim for the unpaid strata fees interest.

51. As regards the sign rental fee, the evidence does not support a finding of an agreement to charge the owner for sign rental. In particular, a review of the

available council minutes does not indicate any sign rental agreement between the strata and the owner.

52. Accordingly, I dismiss these claims.

TRIBUNAL FEES

53. 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. I see no reason in this case to deviate from the general rule. Neither party was successful with their claims. Accordingly, I make no order regarding reimbursement of tribunal fees.

54. Further, I note that 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

55. I dismiss the claim.

56. I dismiss the counterclaim.

Shaun Ramdin, Tribunal Member