



Civil Resolution Tribunal

Date Issued: March 15, 2019

File: ST-2018-003194

Type: Strata

Civil Resolution Tribunal

Indexed as: *Parfitt et al v. The Owners, Strata Plan VR 416 et al*, 2019 BCCRT 330

B E T W E E N :

Brian Parfitt and Rivka Meta

APPLICANTS

A N D :

The Owners, Strata Plan VR 416, June Reichenback and Sean Sibbet

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicants, Brian Parfitt and Rivka Meta (owners), jointly own a strata lot in the respondent strata corporation, The Owners, Strata Plan VR 416 (strata). The

respondents June Reichenback and Sean Sibbet each own separate strata lots in the strata, and are members of the strata council.

2. In this dispute, the owners raise several claims related to governance and management of the strata. They say the strata council has not followed the *Strata Property Act* (SPA), has failed to provide documents, has not been transparent in decision-making, and has not provided reasons for its decisions. The owners request that I make the following orders as remedies in this dispute:
 - a. The strata must provide the documents requested by the owners
 - b. The strata must follow the SPA
 - c. The strata must be transparent in its decision-making
 - d. The strata must provide reasons for its decisions
3. Both owners are represented by Brian Parfitt. June Reichenback and Sean Sibbet are self-represented, and the strata is represented by a strata council member.
4. June Reichenback and Sean Sibbet each deny the owners' claims. They say the claims are directed at the strata corporation, and as individual strata council members they are not liable.
5. The strata also denies the owners' claims, and says the strata made its best efforts to comply with the SPA and its bylaws, and acted honestly and in good faith. The strata says the owners are not entitled to the requested documents under section 169 of the SPA. The strata also says the owners' claims are a vexatious attempt at collateral litigation, as the claims overlap with Rivka Meta's ongoing matter before the BC Supreme Court against the strata, the property manager, and a former strata council member.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.
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 123 of the Act and the tribunal rules, in resolving this dispute the tribunal may make 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.

ISSUES

10. The issues in this dispute are:
 - a) Should the tribunal hear this dispute, given the ongoing Supreme Court matter?
 - b) If the tribunal dispute is heard:
 - i. Must the strata provide documents to the owners, and if so, which documents?

- ii. Should the tribunal order the strata to follow the SPA, be transparent in its decision-making, and provide reasons for its decisions?
- c) Should the owners be ordered to pay the respondents' legal fees?

EVIDENCE, FINDINGS AND ANALYSIS

- 11. I have read all of the evidence provided but refer only to evidence I find relevant to provide context for my decision. In a civil proceeding such as this, the applicant owners must prove their claims on a balance of probabilities.
- 12. The strata was created in 1977, under the former *Strata Titles Act*, a predecessor to the SPA. The strata consists of 64 residential strata lots.

Liability of June Reichenback and Sean Sibbet

- 13. Under section 31 of the SPA, each council member must act honestly and in good faith with a view to the best interests of the strata, and exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.
- 14. In his submissions, Mr. Parfitt says he added June Reichenback and Sean Sibbet as respondents not because he intended to “sue” them, but because they are President and Vice-President of the strata council and he wanted to hear why they denied his requests for decisions and documents.
- 15. Based on the evidence before me, I do not find that either June Reichenback and Sean Sibbet failed to meet the requirements set out in section 31 of the SPA. I therefore find that neither June Reichenback and Sean Sibbet are personally liable, and I dismiss the owners' claims against them.

Should the tribunal hear this dispute, given the ongoing Supreme Court matter?

- 16. The parties agree that one of the owners, Rivka Meta, has an ongoing proceeding against the strata in the BC Supreme Court. The strata says the tribunal has no

jurisdiction to hear the dispute against it, as the subject matter of that proceeding overlaps with the owners' claims in this dispute.

17. Mr. Parfitt says the fact that the tribunal accepted the dispute for adjudication means there is no issue with duplication of action. I disagree. While the matter was raised and discussed during the tribunal's facilitation process, and the parties were invited to provide submissions and evidence, no tribunal member made a decision about whether the tribunal would refuse to resolve the dispute. The discussions with the case manager on the subject were preliminary, as the case manager does not have authority to make a binding decision under the Act. Also, I note that under section 6(2) of the Act, the tribunal's decision to give an initiating notice does not preclude a subsequent decision by the tribunal under section 11 not the resolve the claim.
18. Mr. Parfitt also says that because he is not named as a party to the Supreme Court action, there is no duplication of process. I disagree. Mr. Parfitt and Ms. Meta are joint owners of a single strata lot, and the remedies they seek in this dispute and in the Supreme Court action relate solely to that strata lot. I therefore find the fact that only Ms. Meta is named in the Supreme Court action is not determinative of whether this tribunal dispute should be heard, particularly since Ms. Meta is also one of the applicants in this dispute.
19. I find there are significant overlaps between the remedies requested in Ms. Meta's Supreme Court Petition, and those requested in this dispute. For example, Ms. Meta requested that the Court order the strata to comply with the SPA in relation to governance, and specifically order the strata to provide the owners with the results of all votes taken at strata council meetings. I find that this requested order is the essentially the same in substance as the owners' requested orders in this dispute that the strata council comply with the SPA, make "transparent" decisions, and provide reasons for its decisions.
20. Other areas of overlap between the requested remedies in the Supreme Court Petition and in this dispute include a requested order that the strata council inform

owners about upcoming strata council meetings, and an order that the strata provide an accounting of which strata council members have received compensation or reimbursement from the strata, how much, and for what. Although the wording of the requests is somewhat different, I find the substance of the requests is the same.

21. As another example of overlap, Ms. Meta's Supreme Court Petition requests orders that the strata provide documents under section 36 of the SPA, including financial records, and accounting of special levies. Ms. Meta's Petition also requests a declaration that the strata failed to provide proper financial records. I find that these requested orders overlap substantially with the document request order sought in this tribunal dispute. Mr. Parfitt submits there is no overlap because the documents requested in this dispute relate to a later time period than those sought through the Supreme Court proceeding. However, I find the Court documents provided by the respondent, including Ms. Meta's Petition, do not support that conclusion. Rather, the requested remedies for document disclosure set out in the Petition are open-ended, rather than fixed in a particular time period. The Supreme Court action is still ongoing, although I understand it has been in abeyance for some time.
22. Because of the significant overlap in the remedies requested in the ongoing Supreme Court action and this tribunal dispute, I find it is most appropriate to refuse to resolve the owners' claims against the strata.
23. Section 15(1) of the Act states as follows:

15 (1) Subject to this Division, once a tribunal proceeding is started,

- (a) a party to the tribunal proceeding may not commence, against another party to the tribunal proceeding, a court proceeding or other legally binding process in relation to an issue or claim that is to be resolved in the tribunal proceeding, and
- (b) if a party has already commenced a process referred to in paragraph (a) against another party to the tribunal proceeding, the parties must

adjourn or suspend the process while the tribunal proceeding is continuing.

24. There is no indication that Ms. Meta's Supreme Court proceeding against the strata has been formally adjourned or suspended. While that is not determinative of this dispute, the working of section 15(1) confirms the general intention that parties cannot simultaneously pursue the same issues or claims with the court and the tribunal.
25. Section 11(1)(a)(i) of the Act provides that the tribunal may refuse to resolve a claim or dispute if it considers that the claim or dispute would be more appropriate for another legally binding process or dispute resolution process. Given that Ms. Meta and the strata are already engaged in the Supreme Court action, I find it is more appropriate in the circumstances for the Supreme Court to address the owners' claims. If there are claims that are not determined through that process, it is open to the owners to file a new dispute with the tribunal.
26. For these reasons, I refuse to resolve the owners' claims against the strata, pursuant to section 11(1)(a)(i) of the Act.

Legal Fees and Dispute-Related Expenses

27. The strata requests an order for special costs against the owners. It says the duplicate proceedings are frivolous and an abuse of process, as is the owners' action in naming June Reichenback and Sean Sibbet as parties.
28. Special costs are different from the tribunal's general authority to order a party to pay another party's legal fees in exceptional circumstances. However, in this case the power to order legal fees is analogous to an order of special costs. For that reason, I find it helpful to consider the general legal principals applicable to special costs.
29. Special costs are an unusual order, in which a court will order a party to pay all or part of another party's legal costs. An award of special costs is only made in exceptional circumstances, and is intended to chastise a party for reprehensible,

scandalous or outrageous conduct. By rebuking such conduct, the court punishes and deters bad behaviour and distances itself from it: *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352, at para. 37.

30. Special costs are set out in the BC *Supreme Court Civil Rules*, which do not directly apply to the tribunal. However, the tribunal has authority to order payment of legal fees. Tribunal rule 132 says the tribunal will not order one party to pay another party's legal fees, except in extraordinary cases. This follows from the general rule in section 20(1) of the Act that parties are to represent themselves in tribunal proceedings. To date, there has been no prior tribunal decision ordering payment of dispute-related legal fees.
31. The leading case in British Columbia with respect to special costs is *Garcia v. Crestbrook Forest Industries Ltd.*, [1994] B.C.J. No. 2486 (BCCA). The Court of Appeal said that special costs should be ordered against a party when their conduct in the litigation was reprehensible, in the sense of deserving of reproof or blame.
32. In *Hirji v. Owners Strata Corporation VR44*, 2016 BCSC 548, the court provided detailed reasons on special costs in the context of a strata dispute. The court noted prior decisions and confirmed the "reprehensible" test from *Garcia*. The court stated in paragraph 5 of *Hirji* that an award of special costs should only be made in exceptional circumstances where an element of deterrence or punishment is necessary because of the reprehensible conduct. The court cited the prior authority of *Westsea Construction*, which says the court must exercise restraint in awarding special costs, and not all forms of misconduct meet the threshold of "reprehensible". The court said reprehensibility will likely be found in circumstances where there is evidence of improper motive, abuse of the court's process, misleading the court and persistent breaches of the rules of professional conduct and the rules of court that prejudice the applicant.
33. The strata submits that the owners' conduct was reprehensible. In particular, the strata says Mr. Parfitt threatened to harm Sean Sibbett in front of his young child.

34. The owners' dispute was filed on May 23, 2018. The evidence before me confirms that Mr. Parfitt made threats against Sean Sibbett after that, in an October 30, 2018 email. The email states, in part, as follows (edited to limit profanity):

So Sean, Next time I see you, I will spit in your face, whether or not your Son is with you. It's good for a young lad to know that not everybody thinks that their Dad is OK. You can explain to him why people hate you.

So Sean, my last word to you is F*** OFF AND GIVE THIS TO YOUR A**HOLE LAWYERS IF YOU THINK IT WILL HELP YOU!!

35. The email concludes with the statement, "YOU KNOW WHERE I LIVE YOU CHICKEN-S*** A**HOLE"

36. I find that this written statement constitutes a significant and specific threat, particularly given that the parties were close neighbours. I also note that the subject of the email was directly related to this dispute. In particular, Mr. Parfitt emailed Mr. Sibbett to express his displeasure that another letter he had sent Mr. Sibbett was provided to the tribunal as evidence in the dispute. Because of this threatening email directly related to the tribunal proceeding, which had the implicit goal of suppressing further evidence, I find that Mr. Parfitt's conduct does rise to the level of reprehensible and deserving of reproof, as contemplated in *Garcia and Westsea Construction*, and more recently by the BC Court of Appeal in *Smithies Holdings Inc. v. RCV Holdings Ltd.*, 2017 BCCA 177.

37. As noted above, tribunal rule 132 says the tribunal may order one party to pay another party's legal fees in an extraordinary case. I find that the threatening conduct described above makes this such an extraordinary case, particularly since it is a direct violation of tribunal rule 6(b), which says parties to a dispute must behave and communicate in a respectful manner. I also note that in *Lam v. The Owners, Strata Plan EPS 2328*, 2018 BCCRT 73, the tribunal has found extraordinary circumstances may override the general provision in section 189.4(b) of the SPA that an owner who brings a claim against a strata corporation is not required to contribute to the expense of defending the claim. Again, I find that Mr.

Parfitt's threatening conduct is such an extraordinary circumstance and agree with the conclusion reached by the tribunal in *Lam*. While *Lam* is not a binding precedent, I find it provides helpful guidance on this point.

38. While none of the respondents to this dispute were formally represented by a lawyer, consistent with section 20 of the Act, all of the respondents received legal advice about the dispute from the strata's law firm, which confirmed it represents all 3 named respondents as clients. According to a November 20, 2018 letter from the law firm, the respondents incurred \$8,888.00 in legal fees directly related to the tribunal dispute, plus \$1,578.76 in disbursements for printing costs and land title search fees.
39. In *Gichuru v. Smith*, 2014 BCCA 414, the BC Court of Appeal set out a detailed analysis of when and how special costs should be assessed. The Court considered various methods previously used by trial judges to assess special costs, and concluded that under the *Supreme Court Rules*, it is necessary to base a costs award on evidence of legal fees incurred, such as in the form of a legal services bill, in order to determine whether the claimed fees are objectively reasonable in the circumstances (see paragraphs 156 and 157).
40. I find that in the circumstances of a tribunal dispute, the strict method of assessment contemplated in *Gichuru* is not appropriate. First, the tribunal's mandate is to resolve disputes accessibly, quickly, economically, informally, and flexibly. This necessarily involves an element of proportionality. Also, the tribunal is not governed by the *Supreme Court Rules*, and unlike the Courts, has no process for the routine examination of legal costs.
41. Based in the circumstances of this dispute, and on a judgment basis, I find it is appropriate to order Mr. Parfitt to pay 50% of the respondents' legal fees and disbursements, which equals \$5,233.38. I find this amount is reasonable in the circumstances, based on the nature and complexity of the dispute and the nature of Mr. Parfitt's conduct, which was a threat rather than a physically violent act. I order

that Mr. Parfitt pay this amount to the strata, as it paid the legal bill on behalf of all the respondents.

42. 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. As the owners were unsuccessful, I do not order reimbursement.
43. Under section 189.4 of the SPA, the strata may not charge any other dispute-related expenses against the applicant owners.

DECISION AND ORDERS

44. The owners' claims against June Reichenback and Sean Sibbet are dismissed.
45. I refuse to resolve the owners' claims against the strata, pursuant to section 11(1)(a)(i) of the Act.
46. Within 60 days of this decision, Mr. Parfitt must reimburse the strata \$5,233.38 for dispute-related legal fees and disbursements.
47. 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.

48. 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.

Kate Campbell, Tribunal Member