



Civil Resolution Tribunal

Date Issued: March 27, 2019

File: ST-2018-006396

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wang v. The Owners, Strata Plan LMS 2970*, 2019 BCCRT 381

B E T W E E N :

Yi Wang

APPLICANT

A N D :

The Owners, Strata Plan LMS 2970

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicant, Yi Wang (owner) owns strata lot 48 in the respondent strata corporation, The Owners, Strata Plan LMS 2970 (strata).

2. The owner is concerned about insurance coverage included in the strata's insurance policy for "Employee Dishonesty – Including Property Manager and Elected Officer Theft" (coverage). The owner seeks the following remedies:
 - a. The owner wants the strata to remove the coverage for the 2017-2018 insurance year and provide the owner with the revised insurance policy,
 - b. The owner wants the strata council to refund the strata \$2,000 of premiums for the coverage from December 1, 2016 to November 30, 2018, and to provide proof of this refund to the owner,
 - c. The owner wants each strata council member to pay \$2,000, for a total of \$14,000, as a penalty, and
 - d. The owner wants the strata to revise the minutes of its August 13, 2018 council meeting to accurately reflect the owner's statements during a July 23, 2018 hearing.
3. The owner also claims the strata failed to provide requested insurance documents within 2 weeks of their request, in breach of the *Strata Property Act* (SPA).
4. The strata says it has always obtained and maintained insurance in accordance with the SPA, and that there is no basis to grant any of the remedies the owner seeks. The strata says its decision after the July 23, 2018 hearing is accurately recorded in its August 13, 2018 council meeting minutes.
5. The owner is self-represented and the strata is represented by a 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. Is the strata required to remove the coverage from its insurance policy?
 - b. Is the strata council required to refund the strata \$2,000 of insurance premiums for the coverage for the period December 1, 2016 to November 30, 2018?
 - c. Are the strata council members required to personally pay \$2,000 per member, for a total of \$14,000, as punishment?
 - d. Is the strata required to amend the minutes from its August 13, 2018 council meeting?
 - e. Did the strata breach section 36 of the SPA by failing to provide the owner with requested insurance documents within 2 weeks of the owner's request, and if so, what is an appropriate remedy?

BACKGROUND AND EVIDENCE

11. The strata was created in October 1997. It is a mixed-used building located in Richmond, B.C. The owner purchased their strata lot in 2008.
12. On February 26, 2015 the strata deposited bylaw amendments at the Land Title Office (LTO) which repealed and replaced the existing bylaws. In 2015 and 2016 the strata deposited subsequent bylaw amendments at the LTO, none of which are relevant to this dispute.
13. On November 9, 2016 the strata sent notice of its November 30, 2016 annual general meeting (AGM) to the ownership. That notice package included the strata's certificate of insurance for the period December 1, 2015 to November 30, 2016 (2015/2016 insurance year). That document shows that under the "Crime" coverage section, the strata had coverage for "Comprehensive Dishonesty, Disappearance and Destruction – Form A" up to \$25,000, and the following coverages for up to \$10,000 each: loss inside the premises, loss outside the premises, money orders and counterfeit currency, and depositors forgery. The document indicates there were no deductibles for any of these coverage categories.
14. The November 30, 2016 AGM minutes state that the owners were advised the strata had renewed its insurance coverage for the period December 1, 2016 to December 1, 2017 (the 2016/2017 insurance year) and the cost of annual premiums would be \$66,100, which was \$6,140 less than the previous year. Attached to these minutes is the strata's summary of insurance coverage for the 2016/2017 insurance year. This document shows that in the "Crime" coverage section, the strata had the "Employee Dishonesty – Including Property Manager and Elected Officer Theft" coverage up to \$1,000,000 with no deductible, as well as "Broad Form Money And Securities" coverage up to \$10,000 with no deductible.
15. The November 30, 2016 AGM minutes attach the operating budget for the fiscal year December 1, 2016 to November 30, 2017, which includes \$76,000 budgeted for insurance premiums. The minutes show the budget was unanimously approved at that AGM.

16. The owner says that at the November 30, 2016 AGM, the strata property manager presented the certificate of insurance for the 2015/2016 insurance year, not for the 2016/2017 insurance year, and said the 2016/2017 certificate of insurance was not ready for presentation at the AGM.
17. The minutes of the strata's January 11, 2018 AGM state that the strata had provided proof of insurance coverage for the period December 1, 2017 to December 1, 2018 (2017/2018 insurance year) with its AGM notice package. That notice package is not in evidence.
18. The owner says that at the January 11, 2018 AGM, the strata's property manager did not report the addition of the coverage for the 2017/2018 insurance year.
19. On February 23, 2018 the owner emailed the strata's property manager notifying them that it was against the law for a strata council to have the coverage and requesting that the strata council remove the coverage from their insurance policy. The owner also requested that the strata council members bear the insurance premiums personally and reimburse all the owners any insurance premiums paid for this coverage since December 1, 2016.
20. On April 10, 2018 and May 7, 2018, the owner emailed the strata requesting that all strata council members resign immediately to prevent theft.
21. The owner says that despite multiple communications with the strata throughout the spring of 2018 there was no progress on this issue, so on June 27, 2018 they requested a hearing before the strata council.
22. On July 23, 2018 the owner attended a hearing before the strata council, at which they raised the following issues:
 - a. The coverage for the 2016/2017 and 2017/2018 insurance years was not disclosed to owners at the November 30, 2016 AGM or at the January 11, 2018 AGM respectively,
 - b. The strata council members are not employees, so they cannot buy the coverage, and in doing so they have contravened the SPA,

- c. The owner suggested the strata council members sign a declaration instead of purchasing the coverage,
 - d. The owner suggested the strata obtain legal advice to determine which provisions of the SPA it had violated, and
 - e. The owner asked the strata council to remove the coverage for the 2017/2018 insurance year, and to refund the premiums paid since December 1, 2016.
23. On July 27, 2018 the strata council sent the owner a letter with its decision that none of the owner's requests could be met. In the letter, the strata cited earlier correspondence from its insurer to the owner in which the insurer explained that the intent of the coverage is to protect the strata's funds against theft by employees, council members, and the property manager. The insurer explained that the coverage was not intended to protect council members or a property manager who steals from the strata. In the letter the strata stated that its insurer strongly advised against removing the coverage from the insurance policy.
24. The owner says this decision was not accurately recorded in the minutes of the next strata council meeting on August 13, 2018. However, the strata submitted its council meeting minutes from August 13, 2018, which indicate a hearing was held on July 23, 2018 regarding an owner's request to remove the coverage from the strata insurance policy and refund the associated premiums. The minutes state that council decided the coverage offers protection to the strata, and therefore there is no reason to remove the coverage.
25. The owner says that on December 30, 2018 they made a request to the strata to inspect the strata's insurance policies from December 1, 2014 to present, and that the strata did not provide them with the requested documents within 2 weeks of the request, in breach of section 36 of the SPA.

ANALYSIS

26. In a civil claim like this one, the applicant owner must prove their claim on a balance of probabilities. This means the tribunal must find it is more likely than not that the owner's position is correct.
27. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.

Is the strata required to remove the coverage from its insurance policy?

28. The owner wants the strata to remove the coverage from the insurance policy for the 2017/2018 insurance year. As it is now 2019, the specific order the owner seeks is no longer possible. However, given the nature of the strata's annually renewable insurance policy, I will address the merits of the owner's claim to determine if the coverage should be removed from the strata's 2018/2019 policy, or future policies.
29. I find the owner contests the coverage on 2 grounds: the first being that the strata council members are not employees, and the second being that the strata did not properly notify the ownership when it changed its policy to obtain the coverage for the 2016/2017 insurance year, or for the 2017/2018 year. I will address each of these grounds below.
30. The owner says that by adding the coverage when they are not employees, the strata council members breached their duties under section 31 of the SPA to act honestly, in good faith, in the best interests of the strata, and to exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances while fulfilling their strata council duties.
31. Section 149 of the SPA requires a strata to obtain and maintain property insurance on common property, common assets, buildings shown on the strata plan, and fixtures built or installed on the strata lot, if those fixtures are built or installed by the owner developer as part of the strata lot's original construction. This property insurance must be based on full replacement value, and it must insure against major perils which, under section 9.1 of the *Strata Property Regulation*, include fire,

lightning, smoke, windstorm, hail, explosion, water escape, strikes, riots or civil commotion, impact by aircraft and vehicles, vandalism, and malicious acts.

32. Section 150 of the SPA requires a strata to obtain and maintain liability insurance to insure the strata against liability for property damage and bodily injury for a minimum of \$2,000,000.
33. Section 152 of the SPA allows a strata to obtain and maintain insurance in respect of a peril or liability not referred to in sections 149 or 150 of the SPA. It is this section of the SPA on which the strata relies to justify its chosen insurance coverage.
34. The strata submitted the wording from its insurance policies for the 2015/2016, 2016/2017, and 2017/2018 insurance years. For each of these years, the policy defines “employee” to include any elected officer of the insured. The wording for the 2017/2018 insurance year also includes in the definition of “employee” any director or council member of the insured. The owner is concerned that by adding the coverage, the strata council members added themselves as insured parties, and that this shows their intention to steal from the strata. However, the owner seems to have misunderstood the purpose of the coverage. The strata’s July 27, 2018 letter to the owner explains that the purpose of the coverage is to protect the strata from theft by a council member or a property manager, and this is supported by the wording of the insurance policy.
35. On the evidence before me I am satisfied that the strata’s council members fall within the insurer’s definition of “employee,” that the coverage is meant to be in the best interest of the strata, and that the strata was authorized to obtain the coverage in accordance with section 152 of the SPA. I find there is no evidence that any of the strata council members breached section 31 of the SPA.
36. The owner is also concerned that the strata did not notify the ownership when it changed its policy to obtain the coverage. Section 154 of the SPA requires the strata to review the adequacy of its insurance coverage on an annual basis, and to

report on its insurance coverage at each AGM. The SPA does not elaborate on what information the strata must include in such reports.

37. On the evidence before me, I find the strata has complied with section 154 of the SPA. The minutes from the November 30, 2016 AGM and the January 11, 2018 AGM both include reports on insurance.
38. The owner's concerns seem to stem from the fact that the notice package for the November 30, 2016 AGM attached the strata's certificate of insurance for the 2015/2016 insurance year, not the upcoming 2016/2017 insurance year. However, the minutes from that AGM state that the reason the strata did that was because the insurance policy for the 2016/2017 year had not yet been finalized. Given the 2016/2017 insurance year started on December 1, 2016, and the strata sent the notice package on November 9, 2016, I find this to be a reasonable explanation. The November 30, 2016 AGM minutes state that the ownership was notified that the strata had renewed its insurance for the 2016/2017 insurance year at a lower premium than the year prior. In the circumstances I do not find this to be a breach of the strata's duty to report on insurance under section 154 of the SPA.
39. The strata did not specifically report on the new coverage at the November 30, 2016 AGM, however there is no specific requirement in the SPA for the strata to do so. There is no evidence the new coverage cost the strata any additional expense or exposed the strata to any new risks. On the contrary, the evidence indicates the strata obtained additional coverage at a lower cost. The 2016/2017 budget was unanimously approved at that AGM, which included \$76,000 for insurance premiums. There is no indication the strata misled or intended to mislead the ownership about the strata's insurance coverage. On the evidence before me, I find the strata fulfilled its responsibility to report on insurance coverage at the November 30, 2016 AGM.
40. The minutes from the January 11, 2018 AGM indicate that proof of insurance for the 2017/2018 insurance year was included with the notice package sent to the ownership. Although the notice package is not in evidence, the owner does not

specifically dispute its contents. It seems the owner is concerned that the strata did not report on the coverage at this AGM. However, the minutes show the strata reported on insurance, and that the 2017/2018 budget, which was approved at that AGM, included \$75,000 for insurance premiums. I find the strata reported on its insurance coverage at the January 11, 2018 AGM in accordance with section 154 of the Act.

41. I find the owner has not established that the strata or its council members breached the SPA, acted negligently, or did anything wrong which would require the strata to remove the coverage from its insurance policy. I dismiss this claim.

Is the strata council required to refund the strata \$2,000 of insurance premiums for the coverage for the period December 1, 2016 to November 30, 2018?

42. I have found the strata obtained the coverage in accordance with the SPA, and that it fulfilled the requirements of section 154 of the SPA to review its insurance coverage annually and to report on its insurance coverage at each AGM. As I have found there is no basis for the strata to remove the coverage from its insurance policy, I find there is also no basis for the strata council to refund the strata any amount of premiums paid between December 1, 2016 and November 30, 2018. I dismiss this claim.

Are the strata council members required to personally pay \$2,000 per member, for a total of \$14,000, as punishment?

43. It is unclear whether the owner is requesting that the strata council members pay a total of \$14,000 to the owner or to the strata. Either way, I find there is no legal basis to make such an order. I have found the strata obtained and maintained insurance in accordance with the SPA and fulfilled the requirements of section 154 of the SPA. Even if the strata was in breach of the SPA, such a punishment is not contemplated by the SPA, nor is it reasonable, as there is no evidence that any of the strata council members did anything wrong or acted negligently. I dismiss this claim.

Is the strata required to amend the minutes from its August 13, 2018 council meeting?

44. The owner says the strata council members breached section 31 of the SPA by not revising the minutes of their August 13, 2018 meeting to reflect what the owner says are inaccuracies in the description of the July 23, 2018 hearing.

45. I find that while the minutes from the August 13, 2018 council meeting in evidence do not include every detail of the owner's stated concerns, they clearly summarize the outcome of the July 23, 2018 meeting. The owner is concerned that the specifics of the hearing, and some of the specific wording they used at the hearing, is not reflected in the minutes. However, section 35 of the SPA requires only that the results of votes are recorded in the minutes, and the owner's hearing was not subject to a vote. The SPA and bylaws are silent with respect to the content of strata council meeting minutes. In *Kayne v. The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610 (CanLII), the court said minutes of council meeting must record the strata council's decisions, but the details of the discussions leading to those decisions are not required to be included in the minutes.

46. In the circumstances I find the owner has not established the strata council members breached section 31 of the SPA, and I find there is no legal basis requiring the strata to amend the minutes of its August 13, 2018 council meeting.

Did the strata breach section 36 of the SPA by failing to provide the owner with requested insurance documents within 2 weeks of the owner's request, and if so, what is the remedy?

47. The owner says that on December 30, 2018 they made a request to the strata to inspect the strata's insurance policies from December 1, 2014 to present. However, the owner did not raise this claim until its reply to the strata's submissions, which means the strata did not have an opportunity to respond to this claim. However, for the following reasons I dismiss this claim, and therefore I find it is unnecessary to canvass submissions from the strata on this issue.

48. Under section 36 of the SPA, when an owner requests documents that the strata is required to keep, which includes insurance contracts, a strata must make the requested records available for inspection within 2 weeks of the request.
49. The owner provided no evidence of their December 30, 2018 request to the strata, or of the strata's alleged failure to comply within the required 2-week period. The minutes from the January 11, 2018 AGM indicate the owner requested the strata's insurance claim history, however this is a different request than the one the owner allegedly made on December 30, 2018. I find the owner has not established that they made a request to the strata on December 30, 2018 or that the strata breached section 36 of the SPA, and I dismiss this claim.

TRIBUNAL FEES AND EXPENSES

50. 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. Since the owner was unsuccessful they are not entitled to reimbursement of their tribunal fees or dispute-related expenses. The strata did not incur any tribunal fees or claim any dispute-related expenses.
51. 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

52. I dismiss the owner's claims and this dispute.

Sarah Orr, Tribunal Member

