



Civil Resolution Tribunal

Date Issued: April 5, 2019

File: ST-2019-000882

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wong v. The Owners, Strata Plan LMS 2461*, 2019 BCCRT 428

BETWEEN:

Stanlis Wong

APPLICANT

AND:

The Owners, Strata Plan LMS 2461

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a final decision of the Civil Resolution Tribunal (tribunal). The respondent strata corporation, The Owners, Strata Plan LMS 2461 (strata), asks the tribunal to

refuse to resolve this dispute on the basis that the applicant's claims have already been decided.

2. The applicant, Stanlis Wong (owner), owns a strata lot in the strata. The main dispute involves the owner's claims for the respondent strata corporation (strata) to reactivate 3 key fobs granting the owner access to the strata's building and common areas and disclosure of who is responsible for keeping and maintaining related key fob records and equipment. The owner seeks orders for the key fob reactivation and disclosure of the requested information.
3. Only the evidence and submissions relevant to this decision are referenced below.
4. The owner is self-represented. The strata is represented by a strata council member.
5. For the reasons that follow, I dismiss the owner's claims.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over strata property claims brought under section 121 of the 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. Section 11 of the Act provides that the tribunal has discretion to refuse to resolve a claim or dispute within its jurisdiction. In particular, the tribunal may refuse to resolve a claim under section 11(1)(a)(ii) of the Act if the tribunal considers the

claim or dispute has been resolved through a legally binding process or under section 11(1)(b) of the Act if the tribunal considers the request for resolution does not disclose a reasonable claim or is an abuse of process. The tribunal may exercise its authority under section 11 of the Act at any time before the tribunal makes a final decision resolving the dispute.

9. 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.
10. 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.
11. On January 1, 2019 the Act was amended and no longer includes an appeal process for strata property claims. Given the Dispute Notice for this proceeding was issued after January 1, 2019, the amended Act in force January 1, 2019 applies to this dispute.

ISSUE

12. The issue I must decide is whether the tribunal should refuse to resolve, dismiss, or continue to hear the owner's claims.

BACKGROUND, EVIDENCE AND ANALYSIS

Reactivation of the key fobs

13. It is undisputed that owner in this dispute is the brother of the applicant in *Wong v. The Owners, Strata Plan LMS 2461*, 2017 BCCRT 55. In *Wong* the tribunal Chair considered a similar request from Mr. Wong to reactivate 3 key fobs and disclose

certain strata records as required under the *Strata Property Act* (SPA). The Chair considered a *res judicata* issue involving 3 BC Supreme Court petitions and determined the claims in *Wong* had not been previously decided by the court and were not *res judicata*. The preliminary decision of the Chair was that both of the claims were statute-barred under the *Limitation Act* (LA) because they were not brought within the required 2-year period following their discovery.

14. The strata argues the same *res judicata* issues here as were argued in *Wong*, claiming the issues were already decided by the Supreme Court and that the owner's claims are an abuse of process. I find that the strata's *res judicata* argument must fail as the parties in the Supreme Court petitions are not the same parties in this proceeding.
15. Although not argued by the parties, I have considered whether the issues in this dispute have been previously decided in *Wong* and I find they have not. An analysis of the *res judicata* issue was succinctly set out in detail by the Chair in *Wong*. I will not reproduce that detail here but simply note that *res judicata* can arise in 2 ways, through cause of action estoppel or through issue estoppel. Both estoppel tests require a final decision of the tribunal and in *Wong*, the Chair's decision was not final. I find I do not need to consider the strata's argument that the owner's claim is an abuse of process, given my conclusion on the LA which follows.
16. I find the same LA test applies here as it did in *Wong*. Based on the submissions and evidence made in this dispute, which included as evidence the completed tribunal decision plan (TDP) in *Wong*, I find the owner requests reactivation of the same 3 key fobs his brother requested in *Wong*. I say this because the key fobs have an identifying number that are the same in the *Wong* TDP as in the TDP for this dispute. I find the fob number is used by the system to track the fobs' use and is also how the strata activates and deactivates a specific fob.
17. It is undisputed that the owner picked up at least 2 of the 3 key fobs on behalf of his brother. I find it is reasonable for me in these circumstances to infer that the siblings share information and for that reason, I find the discovery date under the LA in this

dispute is the same discovery date found by the tribunal Chair in *Wong*. Given the date of discovery is at least as early as July 2014 and the dispute notice was issued for dispute on January 31, 2019, well after the 2-year limitation period, I find owner's claim that the strata reactivate the 3 fobs is dismissed as being statute-barred under the LA for the reasons set out in *Wong*.

Disclosure of who is responsible for key fobs and records

18. As for the owner's second claim that the strata disclose who is responsible for keeping and maintaining related key fob records and equipment, I find the claim is different than a claim for disclosure of records under section 35 of the SPA. There is no evidence before me that the owner's request for disclosure has been previously heard by the court or the tribunal and so I find it is not *res judicata* as suggested by the strata.
19. As for the strata's submission that the owner's claim is an abuse of process, the courts have found that the commencement by a plaintiff of more than one action against a defendant in relation to the same dispute or matter can be an abuse of process (*Lacharity v. University of Victoria Students' Society*, 2012 BCSC 1819, at para. 24).
20. I do not find that the owner's claim for disclosure of who is responsible for keeping and maintaining related key fob records and equipment to be an abuse of process as claimed by the strata because the parties here are not the same parties as in *Wong*.
21. However, I find the strata's obligation to disclose information is confined to sections 35 and 36 of the SPA and includes written documents only. These sections set out what records and documents must be prepared and kept by the strata, for what period (see *Strata Property Regulation* 4.1), and how and by whom this information can be obtained.

22. There is no evidence before me to suggest the owner requested any information captured under section 35 of the SPA. So, until such a request is made and is refused by the strata contrary to the SPA, the owner has no claim.
23. I therefore dismiss the owner's claim in this regard.

TRIBUNAL FEES AND EXPENSES

24. 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. The strata was the successful party but paid no tribunal fees and claimed no expenses. I decline to order the strata reimburse the owner for tribunal fees or dispute-related expenses.
25. 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.

ORDER

26. I dismiss the owner's claim and this dispute.

J. Garth Cambrey, Vice Chair