



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Girard v. The Owners, Strata Plan VR 1364*, 2019 BCCRT 430

B E T W E E N :

Sylvain Girard

APPLICANT

A N D :

The Owners, Strata Plan VR 1364

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about access to a strata corporation's records. The applicant, Sylvain Girard, says that the respondent, The Owners, Strata Plan VR 1364 (strata), has refused to provide him with copies of documents he has requested. He seeks an order that the strata provide him with copies of all requested documents. The

strata says the applicant already has copies of all the documents to which he is entitled.

2. The applicant is represented by a lawyer, Corey Steinberg. The strata is represented by a member of the strata council who is a non-practising lawyer, Catherine Greenall.

JURISDICTION AND PROCEDURE

3. 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.
4. 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, telephone etc., because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
5. 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.
6. 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.

ISSUE

7. Initially, the Dispute Notice identified issues about what the applicant described as unauthorized spending and inappropriate conduct on the part of the strata council. As the amended Dispute Notice did not contain these issues, I will not address them in my decision.
8. The issue in this dispute is whether the strata should be ordered to provide the applicant with copies of all email messages among council members and third parties concerning the north entry basement roof, the laundry rooms, patio doors, the reconfiguration of the basement, and the roof by the main entry of the building next to suite 201.

BACKGROUND AND EVIDENCE

9. Section 35 of the *Strata Property Act* sets out record retention requirements for strata corporations. Section 35(2)(k) requires a strata corporation to retain copies of “correspondence sent or received by the strata corporation and council”. *Strata Property Regulation* 4.1 provides that such correspondence must be retained for a period of 2 years.
10. Section 36 of the SPA states that a strata must make the records and documents described in section 35, other than bylaws and rules, available for inspection and provide copies of them to an owner within 2 weeks of a request. According to section 36(4), a strata may charge a fee for a copy of a record or document provided under this section.
11. According to section 37 of the SPA, if a strata management contact ends, the person providing the strata management services must, within 4 weeks, give the strata corporation any records referred to in section 35 that are in that person’s possession or control.

12. The strata is an air space strata located in Whistler, British Columbia and is comprised of 36 strata lots. The applicant has owned a strata lot in the strata since 2007.
13. Between 2013 and April of 2017, the applicant was a member of the strata council. For part of that time, the applicant held the position of president.
14. In August of 2017, the property manager assigned to the strata changed due to allegations of theft and fraud. The property management company remained the same.
15. In the fall of 2017, the applicant became aware of changes to storage lockers in a common area and the replacement of patio doors. The applicant was concerned that the strata was not communicating important information to the owners about these projects and other matters. In November of 2017, the applicant made 3 requests for copies of documents relating to the replacement of the patio doors. He received copies of strata council meeting minutes, and made a further request for additional documentation.
16. The applicant later learned that, in December of 2017, the strata's contract with the property management company was terminated due to the allegations against the previous property manager. The applicant continued to correspond with the terminated property management company in an attempt to obtain the documentation he desired, which included email messages among council members. According to the applicant, the property management company advised him of the strata's view that correspondence did not include emails, and that it was not to provide copies of any documents without approval.
17. The applicant continued his efforts to obtain the documents he sought and commenced this dispute in January of 2018. The applicant says that, in late 2018, he received some of the documentation he had requested. However, he did not receive copies of email communications to which he believes he is entitled.

POSITION OF THE PARTIES

18. The applicant's view is that the strata made decisions about expenditures and the termination of the former property management company that were not voted upon by the ownership. The applicant's position is that the strata has not produced copies of all existing documentation as he has requested. He seeks an order that the strata provide him with copies of all email messages among council members and third parties concerning the north entry basement roof, the laundry rooms, patio doors, the reconfiguration of the basement, and the roof by the main entry of the building next to suite 201.
19. The applicant's position is that the tribunal's decision in *Hamilton v. The Owners, Strata Plan NWS 1018*, 2017 BCCRT 141 is determinative of the matter, and supports his request for documentation.
20. The strata says that the applicant has received copies of all documents to which he is entitled, either during his tenure on the strata council or through the previous property manager. In the alternative, the strata says that the applicant's requests are made without reason, not in good faith and are frivolous and vexatious. According to the strata, the applicant has routinely used information he had been given to try to prevent the strata from carrying out its statutory duties.
21. The strata's view is that an owner is not entitled to copies of communications between strata council members and the strata's property manager as they are confidential, internal communications between a principal and agent. The strata also says that emails are not correspondence within the meaning of section 35(2)(k), and that they were not sent or received by a council member who has been delegated the power to deal with a matter.
22. The strata says that the *Hamilton* decision was not issued until December 18, 2017, and there should be no retroactive application of the requirement to retain emails. The strata requests that I dismiss the applicant's claim for document production. If the order is granted, the strata asks that the production of documents be conditional on the applicant making a commitment not to contact, directly or indirectly, except

through the strata council or its agent, any contractor or consultant connected to the patio door replacement project, and further, that should the Applicant have contact, directly or indirectly, with any government or administrative body concerning this project, that he do so in writing and provide a copy of such communication contemporaneously to the strata or its agent.

ANALYSIS

23. Section 36 of the SPA says that a strata must provide copies of documents referred to in section 35 to an owner upon request. The section does not place a limit on an owner's ability to request documents, and does not contemplate a request being conditional on the owner doing or not doing something with the information, or a request being refused if the owner has access to the documents from another source.
24. I acknowledge the strata's reference to the tribunal's decision in *Mellor v. The Owners, Strata Plan KAS 463*, 2018 BCCRT 1, in which a Vice Chair determined that vexatious requests for information unduly burden the strata, to the detriment of other owners. In that case, an owner sent up to 50 emails per day and made 53 requests for documents or information within a 4-day period. The Vice Chair found that the owner made the same request more than once, and used rude and vulgar language, and that the requests were baseless and intended to harass the strata council. On that basis, she dismissed the owner's claim for an order that the strata comply with requests for documentation.
25. I do not find the circumstances of the instant case are analogous to those in *Mellor*. While the strata may not agree with the applicant's request, there is no indication that he is not acting reasonably in requesting documentation. This is so despite a suggestion from a third party that the applicant's request for document disclosure was being made in part to obtain information in support of a defamation claim against the strata and individual council members. Even if this report is accurate, the applicant still has a stated concern about strata governance. In any event, section 36 does not require the owner to provide justification for his or her request.

26. Having determined that the applicant is entitled to the production of records kept pursuant to section 35, I must determine whether email messages between strata council members and strata council members and third parties are included in that scope. Although the strata says that the definition of correspondence does not include emails, decisions from the British Columbia Supreme Court and the tribunal suggest otherwise.
27. The court in *Kayne v. Strata Plan LMS2374*, 2007 BCSC 1610, noted at paragraph 21 that “the strata corporation is a different legal entity from the members of the corporation and the council is set up as a body that acts in the name of the corporation. The [SPA] refers to correspondence to the council or by the council, which I take to mean correspondence by an officer that is authorized by council to be sent on behalf of council or by an officer who has been delegated by council the power to deal with a matter.” Smith, J. went on to state that “it would be stretching the language of the [SPA] far beyond what was intended to suggest that it includes all correspondence between individual members of council that may or may not relate to the business of the council.”
28. The tribunal followed the reasoning in *Kayne* in *Pritchard v. The Owners, Strata Plan VIS3743*, 2017 BCCRT 69. The Vice Chair stated at paragraph 36 that “Emails to the strata or from the strata are records within the meaning of section 35. However, I find that section 35 does not include emails between council members, whether or not those emails relate to council business. Just as the SPA does not require documents to be prepared and kept in any particular form or that every bill and receipt be produced, I find that emails between council members also do not have to be produced.”
29. However, this does not include emails between council members and third parties, including the property manager. Although not binding on me, I agree with the conclusion in *Hamilton v. The Owners, Strata Plan NWS 1018*, 2017 BCCRT 141 at paragraph 29 that communications between a strata council and property manager do fall within section 35(2)(k) of the SPA, and must be provided on request.

30. I note that the previous property manager provided documentation to the new property manager under section 37 of the SPA. I also note that the current property manager has stated that it did not receive copies of email communications as part of the transfer of the strata's records and documents.
31. Several members of the strata council provided statements in which they stated that they did not use email for communications in their "official capacity as a representative of the strata council", but did use email for gathering information from contractors. Given the broad scope of section 36 of the SPA, I find that this correspondence would amount to a situation where the member was "delegated by council the power to deal with a matter" as discussed in *Kayne*, in which case the applicant is entitled to receive copies.
32. I acknowledge the strata's submission that it may be inconvenient to search for pertinent email correspondence, and that such messages may not have been retained. However, these submissions do not alter the strata's responsibility to address requests made under section 36 of the SPA. I find that the strata council members must produce any emails to and/or from themselves and third parties, including the past and former property manager, concerning the north entry basement roof, the laundry rooms, patio doors, the reconfiguration of the basement, and the roof by the main entry of the building next to suite 201.
33. The scope of the applicant's request and the strata's obligation to produce documentation is not unlimited. The applicant's request is described as covering the time period of 2 years from the date he commenced this dispute. This correlates to the strata's obligation to retain correspondence for 2 years. Thus, the time frame for document production runs between January 19, 2016 and January 19, 2018.
34. The strata may charge the applicant for copies of the pertinent email messages at a maximum of \$0.25 per page, pursuant to section 4.2(1) of the *Strata Property Regulation*.

TRIBUNAL FEES AND EXPENSES

35. 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. As the applicant was largely successful, I order the strata to reimburse his tribunal fees of \$225.00.
36. 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

37. I order that:
- a. within 30 days of the date of this order, the strata ensure the members of the strata council during the period of January 19, 2016 to January 19, 2018 undertake a search of email correspondence during this time frame, and produce copies of any emails between themselves and third parties (including a property manager), concerning the north entry basement roof, the laundry rooms, patio doors, the reconfiguration of the basement, and the roof by the main entry of the building next to suite 201, to the applicant. If there are no such messages, the members must provide a written statement to the applicant to that effect;
 - b. the strata may charge the applicant for copies of the emails produced, as permitted by the *Strata Property Regulation*; and
 - c. within 30 days of the date of this order, the strata must reimburse the applicant's tribunal fees of \$225.00.
38. The applicant is also entitled to post judgement interest under the *Court Order Interest Act*.

39. 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.
40. 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.

Lynn Scrivener, Tribunal Member