



Civil Resolution Tribunal

Date Issued: May 10, 2019

File: ST-2018-005903

Type: Strata

Civil Resolution Tribunal

Indexed as: *Bessie v. The Owners, Strata Plan LMS 4257*, 2019 BCCRT 560

B E T W E E N :

Raymond Bruce Bessie

APPLICANT

A N D :

The Owners, Strata Plan LMS 4257

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicant, Raymond Bruce Bessie, is an owner of strata lot 42 in the respondent strata corporation, The Owners, Strata Plan LMS 4257 (strata). The applicant wants the strata to reimburse him for legal fees he incurred defending a criminal matter arising out of an alleged assault. The applicant says that the incident occurred as part of his duties on strata council. The strata says that the applicant

was not on strata business at the time and did not act in good faith as required by the applicable bylaw.

2. The applicant is self-represented. The strata is represented by the strata council president.

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. In some respects, this dispute amounts to a "he said, he said" scenario with the witnesses calling into question the credibility of the other witnesses. In the circumstances of this dispute, I find that it is not necessary for me to resolve the credibility issues that the parties raised. I therefore decided to hear this dispute through written submissions.
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. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
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, order any other terms or conditions the tribunal considers appropriate.

ISSUE

8. The issues in this dispute are:
 - a. Does the strata's bylaw 26.1 require the strata to reimburse the applicant for his legal fees?
 - b. Should either party be reimbursed for the legal fees incurred in this dispute?

BACKGROUND AND EVIDENCE

9. In a civil claim such as this, the applicant must prove his case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
10. The strata is a phased strata plan on the coast of Howe Sound, near Squamish. The strata filed a complete set of bylaws with the Land Title Office on January 18, 2002. Bylaw 26.1 says:

A council member who acts honestly and in good faith is not personally liable because of anything done or omitted in the exercise or intended exercise of any power or the performance or intended performance of any duty of the council.
11. The incident at the heart of this dispute occurred on August 17, 2017. At the time, the strata was dealing with a contentious issue with the owner developer, the details of which are complicated and irrelevant to this dispute. A special general meeting (SGM) was scheduled for the evening of August 17, 2017, to discuss possible solutions. It is undisputed that the owners were deeply split about how best to proceed.
12. At the time, the applicant was the vice president of the strata council. He had sent a letter to all owners about the issues under discussion at the SGM. The applicant received an email from an owner, DN, in which DN strongly disagreed with the applicant's characterization of the options facing the strata.

13. On the day of the SGM, he encountered DN while on a walk. The parties discussed the strata's contentious issue, the discussion became heated, and there was a physical altercation that resulted in DN being pushed to the ground.
14. The details of the altercation are hotly contested. The applicant says that DN aggressively entered his "personal space". The applicant says that he shoved DN away, which infuriated DN and caused him to charge at the applicant. The applicant defended himself by "deflecting" DN, who ended up falling in his garden. DN alleges that he suffered serious personal injuries because the applicant assaulted him unprovoked.
15. The applicant and DN both reported the incident to the RCMP. The applicant retained defence counsel because he understood that DN wished to press charges. The Crown applied for a peace bond under section 810 of the *Criminal Code*. On January 30, 2018, the day before the scheduled hearing, the Crown stayed the proceedings. The applicant was not charged with a criminal offence and disputes that the matter was "criminal" in nature. However, peace bonds are handled in criminal court and, in any event, nothing turns on these semantics. For ease and clarity, I will refer to the peace bond proceedings as the applicant's "criminal matter".
16. Shortly after the incident, the applicant made insurance claims with the strata's 3 insurers for his legal defence costs. However, because the applicant was advised not to provide details about the incident while the criminal matter was outstanding, these claims did not proceed.
17. After the criminal matter resolved, the applicant asked the property manager to re-initiate the insurance claims, which the property manager did. The applicant provided his version of events to the insurers. While the response of only 1 of the insurers is in evidence, I understand that all 3 of the strata's insurers denied the applicant's claims.
18. On May 29, 2018, the strata council held a hearing. The applicant demanded reimbursement for his legal fees in the criminal matter. The strata council decided

not to reimburse the applicant, finding that his actions were not in good faith and were not within the duties of a member of strata council.

POSITION OF THE PARTIES

19. The applicant argues that because of his role as vice president of the strata council, he was on council business when the altercation occurred because DN would not have stopped him if he had not been on strata council. He also argues that he acted in good faith when he spoke to DN, who instigated the physical altercation. Therefore, he argues that his legal defence costs must be covered by bylaw 26.1.
20. The applicant also argues that the strata's refusal to reimburse his legal fees and refusal to pursue insurance coverage were significantly unfair actions.
21. The applicant requests that I order the strata to pay \$5,795.72 in legal fees for his criminal defence lawyer. He also requests that I order the strata to send a letter to the owners explaining why they have to pay his legal fees and apologizing for the strata's handling of the issue. Finally, he asks for an order that the strata pay his legal fees for this dispute of \$1,434.33.
22. The strata argues that the applicant was not performing the duties of a strata council member when the incident occurred. In addition, the strata maintains that the applicant assaulted DN, which it says is not an action that the applicant could have taken in good faith. Therefore, the strata says that the applicant's legal fees are not covered by bylaw 26.1.
23. The strata requests that I dismiss the applicant's claims.

ANALYSIS

Does bylaw 26.1 require the strata to reimburse the applicant for his legal fees?

24. For bylaw 26.1 to apply, the applicant must prove 2 things. First, he must prove that at the time of the altercation he was exercising a power or performing a duty of the council. Second, he must prove that he was acting honestly and in good faith.
25. With respect to the first question, the applicant relies on *Armstrong and Thiessen v. The Owners Strata Plan NW416*, 2010 BCPC 55.
26. In *Armstrong*, the Court considered 2 distinct circumstances. The first claimant, Armstrong, was not a strata council member. The strata council delegated to him the responsibility to deal with the breach of a strata bylaw restricting the number of occupants in a strata lot against an owner. In delegating its authority, the strata council wrote that he would “incur no personal liability in this matter”. The second claimant, Thiessen, was the strata council president at the relevant times. The strata had a bylaw with the same wording as bylaw 26.1.¹
27. The owner in question made a Human Rights Tribunal complaint against the claimants. The claimants incurred legal expenses defending themselves and successfully relied on the bylaw to force the strata to pay those legal expenses. The Court rejected the strata corporation’s argument that the Human Rights Tribunal case was a personal matter.
28. Section 129 of the SPA gives a strata corporation the power to enforce its bylaws. Under section 4 of the SPA, a strata corporation acts through its strata council.
29. The applicant says that *Armstrong* is precedent for the idea that a strata council member’s role is “24/7”. I find that *Armstrong* does not stand for such a broad proposition because the Human Rights Tribunal claim against Thiessen was a direct result of her performing her duties and exercising her powers as a strata council member.

¹ I note that in *Armstrong*, the Court says that section 22 of the SPA provides that a strata council member will have no personal liability for performing strata council duties. Section 22 of the SPA is about the transfer of control from the owner developer to the first elected strata council. I infer that the Court made a typographical error and that the decision involved the strata corporation’s bylaw 22.

30. I agree with the strata that the applicant's discussion with DN was not his duty as a strata council member. I do not accept that the applicant's membership on strata council means that any interaction between a him and another owner about strata business becomes part of his duties within the meaning of bylaw 26.1. I find that if the strata intended to impose such a broad indemnity to its strata council members, it would have chosen broader language.
31. The applicant says that DN's email "forced" the applicant to discuss council business with DN while on his walk. I disagree. The evidence is clear that the strata council at the time had not asked or empowered the applicant to represent the strata council in discussions with owners prior to the SGM.
32. In any event, on the applicant's own evidence, the physical altercation escalated after he shoved DN out of his "personal space". Even if the discussion about strata matters had been part of the applicant's duties on strata council, the ensuing physical altercation was not. It was the physical altercation, not the discussion, that led to the applicant's legal fees.
33. For this reason, I find that bylaw 26.1 does not apply to the applicant's legal fees in defending the criminal matter.
34. Because the applicant has not satisfied the first part of the test in bylaw 26.1, I find that I do not need to determine whether he was acting honestly and in good faith. I therefore find that I do not need to decide what happened during the altercation. I make no finding in that regard.
35. I find that the applicant is not entitled to reimbursement of his legal fees for the criminal matter under bylaw 26.1.

Did the strata act significantly unfairly in refusing to reimburse the applicant's legal fees?

36. The applicant also claims that the strata acted significantly unfairly by refusing to reimburse his legal fees and failing to continue pursuing insurance coverage for his

legal fees. Section 123(2) of the Act gives the tribunal the authority to make orders to prevent or remedy a significantly unfair action or decision by a strata corporation, which mirrors the language of section 164 of the SPA.

37. The test for what actions are significantly unfair is found in *Dollan v. The Strata Plan BCS 1589*, 2012 BCCA 44, which I summarize as follows:

a. Did the owner have a reasonable expectation of the strata?

b. If so, did the strata violate that reasonable expectation in a way that was significantly unfair?

38. Because I have found that bylaw 26.1 does not apply to the applicant's claim for legal fees, I find that his expectation of reimbursement of legal fees to defend against possible criminal charges was not a reasonable one.

39. Therefore, I find that the strata did not act significantly unfairly towards the applicant in refusing to reimburse his legal fees. I dismiss the applicant's claim for reimbursement of his legal fees in the criminal matter.

40. As for the insurers' denials of the applicant's claims, the applicant relies on his belief that insurers typically deny valid claims at first and that it is to be expected that the strata would need to press the issue. I do not accept that the insurer's initial denials were cynical or meaningless. As stated above, only one of the insurers' denials is in evidence and it appears to be well supported by the applicable policy language.

41. In any event, it is unclear what action the applicant expects the strata to take. The logical next step would be to commence litigation against the insurers for failing to provide coverage. Given that the strata had no obligation to reimburse the applicant's legal fees, I disagree that it had any obligation to pursue an insurer to reimburse the applicant's legal fees. Again, if the applicant expected the strata to pursue the insurers for coverage, I find that the expectation was not a reasonable one.

42. Therefore, I find that the strata did not act significantly unfairly towards the applicant by refusing to fight the strata's insurers' denials of coverage for the applicant's legal fees. I dismiss the applicant's claim in this regard.

Should I order the strata to write a letter to the owners?

43. As for the order for a letter explaining the strata's decision, the strata has indicated its intention to circulate this decision. I also note that this decision will be publicly available. I therefore find that there is no basis for this order.

44. The applicant also sought an apology. I have found that the strata was correct in its interpretation of bylaw 26.1. In any event, the tribunal does not generally order apologies, because forced apologies necessarily lack sincerity. They therefore serve no purpose.

45. I dismiss the applicant's claim that the strata send a letter to the owners.

TRIBUNAL FEES AND EXPENSES

46. 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. Because the applicant was unsuccessful, I dismiss his claim for reimbursement of his tribunal fees and dispute-related expenses, including his legal fees in this dispute.

47. Even if the applicant had been successful, the tribunal rules provide that the tribunal will only reimburse a party for legal fees in extraordinary circumstances. I find that this dispute is not extraordinary. Therefore, I would not have ordered the strata to reimburse the applicant's legal fees for this dispute.

48. 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

49. I dismiss the applicant's claims, and this dispute.

Eric Regehr, Tribunal Member