



Civil Resolution Tribunal

Date Issued: May 24, 2019

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 3883 v. Brewer et al.*, 2019 BCCRT 629

BETWEEN:

The Owners, Strata Plan LMS 3883

APPLICANT

AND:

David Brewer, Jim Hunter M.D. Inc., Lindsay Gordon, ALJK Holdings Ltd., Ali-Reza Kazemi, Mark Wimmer, Dr. Ramona Penner Inc., Alnoor Gilani, Tahmineh Nikookar, 613198 B.C. LTD., Ali Akhavan, George Chang, 498744 B.C. Ltd., and Wescana Pharmacy Ltd.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about which bylaws govern the strata corporation.

2. The respondents are a combination of residential and non-residential owners of strata lots in the applicant strata corporation, The Owners, Strata Plan LMS 3883 (strata).
3. The applicant is represented by Paul Mendes, legal counsel. The respondents David Brewer, Mark Wimmer and Ali Akhavan are self-represented. The respondents 613198 BC Ltd., George Chang and Wescana Pharmacy Ltd. were served but did not file a Dispute Response or provide evidence or submissions. The remaining respondents are all represented by Rita Schoebel, who I infer is an employee or principal of the respondent, 498744 BC Ltd.

JURISDICTION AND PROCEDURE

4. 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*. 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.
5. As a preliminary matter, I note that Mr. Wimmer raised a concern that the strata is represented by legal counsel without agreement from the respondents. The Act and tribunal rules do not require the consent of the parties, but rule 1.13(5) requires a party requesting legal representation to be granted permission by the tribunal. I find the tribunal granted permission for legal counsel to the applicant, and therefore I reject Mr. Wimmer's argument that the applicant violated the rules in this regard.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not

necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an issue.

7. 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.
8. Under section 123 of the *Act*, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. Order a party to do or stop doing something;
 - b. Order a party to pay money;
 - c. Order any other terms or conditions the tribunal considers appropriate.

ISSUE

9. The issue in this dispute is what bylaws govern the strata.

EVIDENCE, FINDINGS AND ANALYSIS

10. I have read of all of the evidence provided but refer only to evidence I find relevant to provide context for my decision.
11. The strata was created in May 1999 under the *Condominium Act*, a predecessor to the current *Strata Property Act* (SPA), which came into force on July 1, 2000. It is a strata corporation comprising 87 residential strata lots and 14 commercial strata lots.
12. The strata says amendments to the strata's bylaws, other than 1 bylaw amendment in 2016, were not approved through $\frac{3}{4}$ vote resolutions passed by both residential

and non-residential owners, which is contrary to section 128(1)(c) of the SPA. As a remedy, the strata seeks the following declarations:

- a. The strata is not bound by any bylaw amendments not approved pursuant to section 128 of the SPA.
 - b. The strata is governed by the Standard Bylaws set out in the SPA.
13. The respondents say the parties have governed themselves with reference to bylaws put in place by the owner-developer in 1999 and seek either an order that the strata register the original owner-developer bylaws or that the matter be returned to strata for the owners to vote and ratify the owner-developer bylaws.
 14. It is undisputed that the original owner-developer established bylaws were ultimately not filed with the Land Title Office (LTO). Under section 119 of the SPA, a strata corporation **must** have bylaws. The general index of the strata filed at the LTO shows there were no registered bylaws prior to the first set of amendments filed September 21, 2000. As no bylaws were properly filed with the LTO prior to September 21, 2000, under section 120 of the *Strata Property Act* (SPA), I find the strata's bylaws were the Standard Bylaws under the SPA, subject to any future properly filed amendments.
 15. Under sections 126 and 128(1)(c) of the SPA, the only way to pass bylaw amendments applicable to the whole strata corporation, in a strata corporation with both residential and non-residential strata lots, is to hold separate votes for residential and non-residential owners. Section 128(1)(c) of the SPA states that where a strata corporation has both residential and non-residential strata lots, as in these circumstances, bylaws can only be amended by a resolution passed by both a $\frac{3}{4}$ vote of the residential strata lots **and** a $\frac{3}{4}$ vote of the non-residential strata lots. This requires a separate and distinct vote for both categories of strata lots.
 16. The strata's general index at the LTO indicates that bylaw amendments were filed on each of the following dates:

- a. September 21, 2000;
- b. October 8, 2002;
- c. November 9, 2004;
- d. November 21, 2005;
- e. October 18, 2006;
- f. December 3, 2007;
- g. October 24, 2008;
- h. October 7, 2010;
- i. October 24, 2011;
- j. October 8, 2013;
- k. March 26, 2015; and
- l. November 28, 2016.

17. I have reviewed the corresponding annual general meeting (AGM) minutes preceding each of the above-noted bylaw amendments. Other than the November 28, 2016 bylaw amendments, only 1 vote of the owners present at the meeting was recorded for each bylaw amendment. There was no separate vote documented for each of the residential and non-residential strata lots. This means the bylaws were not passed in accordance with section 128(1)(c) of the SPA. Therefore, I find the bylaw amendments from September 21, 2000 to March 26, 2015, inclusive, are not valid or enforceable as they did not meet the requirements of section 128(1)(c).

18. The November 28, 2016 bylaw amendments were voted on during an AGM and special general meeting (SGM) that both took place on October 19, 2016. The bylaw amendments were voted on by each of the residential and non-residential strata lots individually, and the results of each category were recorded in the minutes. However, the proposed bylaw amendments purported to amend bylaws

that were not properly in force. Therefore, although properly voted on pursuant to the SPA, I find the bylaw amendments registered on November 28, 2016 cannot stand.

19. For the reasons set out above, I find that the September 21, 2000 to March 26, 2015 bylaw amendments are invalid, and of no force and effect, as they were not approved in accordance with section 128(1)(c) of the SPA. The November 28, 2016 bylaw amendments are also of no force or effect, as they were amendments to previous, invalid bylaws. I find that the bylaws in effect for the strata corporation are the Standard Bylaws pursuant to the SPA.
20. It is clear from the parties' submissions in evidence that no one really knows which bylaws should be in effect. The strata submits the Standard Bylaws apply, but the respondents request the opportunity to ratify the original owner-developer bylaws that were never filed with the LTO, and alternatively, the respondents ask that **all** bylaws and amendments should be struck. This would leave the Standard Bylaws under the SPA.
21. In *Omnicare Pharmacy Ltd. v. The Owners, Strata Plan LMS 2854*, 2017 BCSC 256, the British Columbia Supreme Court considered a situation where a strata corporation had voted to repeal and replace its previous bylaws with new bylaws, but the vote was not passed by a $\frac{3}{4}$ vote of non-residential owners, as required in section 128(1)(c) of the SPA. The court held that the new bylaws were therefore invalid. In *Omnicare*, both parties agreed that the Standard Bylaws should apply. I find a similar situation in the circumstances before me.
22. I find that as no bylaws were initially registered with the LTO, that the Standard Bylaws apply in this situation. It remains open to the strata corporation to put forward new bylaws for approval by the owners, in accordance with section 128(1)(c) of the SPA. Until that time, I order that the Standard Bylaws under the SPA apply to the strata corporation.

23. The respondents provided lengthy submissions and evidence regarding the responsibility of repair, maintenance and replacement of the building's HVAC system. It appears that initially the strata sought an order determining which party is responsible for the repair, maintenance and replacement of the HVAC system, but the Dispute Notice was amended to exclude this remedy, and the applicant sought only clarification over which bylaws and bylaw amendments are in force and govern the strata corporation. Therefore, I find the HVAC issue is not specifically before me. I make no decision on the strata's obligations regarding the HVAC system and I note nothing in this decision restricts any of the parties from pursuing a claim about the HVAC system, if they are unable to come to an agreement.
24. Given the tribunal's mandate of recognizing the ongoing relationship between parties, I encourage the parties to work together in a productive and constructive manner in future, and to follow the statutory requirements of the SPA regarding governance of the strata and the passing of future bylaw amendments.

TRIBUNAL FEES, EXPENSES AND INTEREST

25. 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. Although the applicant has been mostly successful in the orders sought, I find the orders were of clarification which benefit all parties. I decline to make an order for fees.
26. The strata corporation must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the respondent.

DECISION AND ORDERS

27. I order the following:
- a. The bylaw amendments made the following dates are invalid, and therefore of no force or effect:

- i. September 21, 2000;
- ii. October 8, 2002;
- iii. November 9, 2004;
- iv. November 21, 2005;
- v. October 18, 2006;
- vi. December 3, 2007;
- vii. October 24, 2008;
- viii. October 7, 2010;
- ix. October 24, 2011;
- x. October 8, 2013;
- xi. March 26, 2015; and
- xii. November 28, 2016.

b. The applicable bylaws are the Standard Bylaws under the SPA, effective as of January 1, 2002, which is the date the Standard Bylaws were deemed to be statutory bylaws for every strata corporation.

28. 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 123.1 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.

29. 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 strata 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 123.1 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.

Andrea Ritchie, Vice Chair