



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Ottens et al v. The Owners, Strata Plan LMS 2785 et al*, 2019 BCCRT 730

B E T W E E N :

Rachel Ottens and Carole Mills

APPLICANTS

A N D :

The Owners, Strata Plan LMS 2785, Peter Pettirsch and Wilhelmina
Armstrong

RESPONDENTS

REASONS FOR PRELIMINARY DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This is a preliminary decision of the Civil Resolution Tribunal (tribunal) about the disclosure of documents under sections 35 and 36 of the *Strata Property Act* (SPA).
2. The applicants, Rachel Ottens and Carole Mills, each own a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 2785 (strata). The

respondents, Peter Pettirsch and Wilhelmina Armstrong, also each own a strata lot in the strata.

3. This dispute is mostly about the installation of split air conditioners. The applicants say that the strata has allowed several owners, including Mr. Pettirsch and Ms. Armstrong, to install air conditioners even though the bylaws prohibit them. The strata says that the owners with air conditioning require them for medical reasons.
4. The applicants also claim that the strata has failed to properly record minutes and respond to requests for records under sections 35 and 36 of the SPA.
5. The applicants are represented by Ms. Otten. The strata is represented by a member of strata council. Mr. Pettirsch and Ms. Armstrong are each self-represented.
6. Initially, Mr. Pettirsch and Ms. Armstrong each counterclaimed against the applicants, but they withdrew their counterclaims during facilitation. I have amended the style of cause accordingly.

JURISDICTION AND PROCEDURE

7. 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.
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 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.

10. 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.
11. Tribunal documents incorrectly show the name of the respondent as Strata Corporation Sec 31 of Strata Plan LMS 2785. There are no bylaws filed with the Land Title Office that create sections. Based on section 2 of the *Strata Property Act* (SPA), the correct legal name of the strata is The Owners, Strata Plan LMS 2785. Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, I have exercised my discretion under section 61 of the Act to direct the use of the strata's correct legal name in these proceedings. I have amended the style of cause accordingly.

ISSUES

12. The issues in this preliminary decision are:
 - a. Did the strata comply with sections 35 and 36 of the SPA in response to the applicants' requests for records and documents about the split air conditioners?
 - b. Did the strata comply with sections 35 and 36 of the SPA in response to the applicants' requests for financial records and documents?
 - c. Did the strata keep adequate minutes of strata council meetings?

BACKGROUND

13. In a civil claim such as this, the applicants must prove their 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 this preliminary decision.

14. The strata consists of 88 residential strata lots in a 3-storey building. The strata filed consolidated bylaws with the Land Title Office on May 30, 2002. There have been several bylaw amendments filed since then, but none are relevant to this dispute.
15. Bylaw 3(2)(b) says, in part, that an owner must not install or attach an air conditioner on a balcony or other part of the building so that it is visible from the outside of the building.
16. As mentioned above, the main part of this dispute deals with the installation of split air conditioners in several strata lots.
17. A split air conditioner is an air conditioner with 2 separate components, one indoors and one outdoors, that are connected by tubing that carries a refrigerant. As a result, the installation of a split air conditioner requires the tubing to penetrate the building envelope.
18. I will address the full evidence about the split air conditioners in my final decision but will provide some context for this preliminary decision. The question of whether to allow split air conditioners in the strata has been a live issue since at least 2015. There have been 3 separate efforts to amend the strata's bylaws to permit split air conditioners, but none of them have achieved the required $\frac{3}{4}$ majority vote at an annual or special general meeting.
19. Despite the bylaw, at least 8 owners have received approval from the strata to install split air conditioners. The strata relies on its obligations under the *Human Rights Code* (Code) to accommodate persons with disabilities as long as the accommodation is reasonable and does not cause undue hardship. The strata says that each of the owners who has received approval for a split air conditioner has provided medical evidence to justify the accommodation.
20. The applicants dispute that the strata was authorized to approve the installation of any split air conditioners under the Code. The applicants say that the split air conditioners are an unreasonable accommodation to any disability because they could cause considerable damage to the building.

ANALYSIS

21. Section 35 of the SPA sets out the strata's obligations to create and retain records. Section 36 of the SPA says that on receiving a request from an owner, the strata must provide access to the records set out in section 35 of the SPA, either by making them available for inspection or copying them.

Did the strata comply with sections 35 and 36 of the SPA in response to the applicants' requests for records and documents about the split air conditioners?

22. On June 13, 2018, the applicants requested records and detailed information about the strata's approval of the split air conditioners in the strata. The request included "written requests" and "any other correspondence". The property manager, on behalf of council, said that they did not "feel comfortable" releasing any records with personal information.

23. On July 18, 2018, the applicants told the property manager that the strata had no legal authority to redact personal information contained in correspondence. The applicants referred to section 18(1)(o) of the *Personal Information Protection Act* (PIPA), which authorizes the disclosure of personal information if it is authorized by another statute. The applicants sent a further request on August 5, 2018. There is no evidence that the strata has provided any documents in response to these requests.

24. I find that the strata's reason for refusing to provide any response because of its concerns about the owners' privacy concerns was insufficient. That said, the applicants' requests for records go well beyond the strata's obligations in section 35 to retain records. I find that the tribunal does not have jurisdiction to expand the strata's obligation to provide records under section 36 of the SPA beyond what is specifically set out in section 35 of the SPA. See *The Owners, Strata Plan NWS 1018 v. Hamilton*, 2019 BCSC 863.

25. For clarity, rather than identify the aspects of the applicants' requests that are not captured by sections 35 and 36 of the SPA, I will set the records that the strata must provide. If I have not ordered the strata to provide a record that is contained in the applicants' requests, I have determined that it is not captured by sections 35 and 36 of the SPA.
26. First, section 35(2)(g) of the SPA requires the strata to keep copies of written contracts, which I find includes all the assumption of liability (AOL) agreements that owners have signed about the air conditioners. I order the strata to provide copies of each of the signed AOL agreements about split air conditioners.
27. Second, section 35(2)(h) of the SPA requires the strata to keep copies of all legal opinions it obtains. The strata refers to section 169 of the SPA, which allows the strata to claim solicitor-client privilege over legal opinions in certain circumstances. Presumably, the strata intends to assert solicitor-client privilege over legal opinions about the split air conditioners. I considered the scope of a strata corporation's right to claim solicitor-client privilege in *0716712 BC Ltd. v. The Owners, Strata Plan LMS 3924*, 2019 BCCRT 388. I order the strata to provide copies of any legal opinions it has obtained about the split air conditioners, subject to its right to claim solicitor-client privilege over some or all of those legal opinions in accordance with the principles set out in *0716712 BC Ltd.*
28. Third, section 35(2)(k) of the SPA requires the strata to keep copies of all correspondence that the strata council receives and sends. It is the correspondence between the strata council and the owners requesting accommodation that causes the strata's privacy concerns. However, the applicants are correct that section 36 of the SPA is a mandatory disclosure provision. I find that there is no authority either in the SPA or the PIPA for the strata to refuse to disclose or redact correspondence sent or received by the strata council. My conclusion is consistent with the Office of the Information and Privacy Commissioner's publication entitled "PIPA and Strata Corporations: Frequently Asked Questions", the *British Columbia Strata Property Practice Manual*, and the reasoning in *Betuzzi v. The Owners, Strata Plan K350*, 2017 BCCRT 6.

29. I therefore order the strata to provide any correspondence that the strata or strata council has sent or received about the approval of split air conditioners in the strata, including any owner's requests for approval to install a split air conditioner and the strata's response. Furthermore, I find that a plain and ordinary reading of the word "correspondence" includes any attachments to that correspondence. Therefore, I order the strata to include any attachments to the correspondence it must disclose.
30. Pursuant to the reasoning in *Kayne v. The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610, "correspondence" does not include communications between strata council members. Therefore, my order does not require the strata to disclose any correspondence between strata council members.
31. The applicants' initial request was for correspondence going back to 2015. The strata is required under the *Strata Property Regulation* to keep correspondence for 2 years. I find that it is appropriate to limit the order for correspondence to anything sent or received since June 13, 2016, which is 2 years before the applicants' initial request.
32. I order that the strata provide these records within 2 weeks of the date of this decision, which is timeframe set out in section 36(3) of the SPA.

Did the strata comply with sections 35 and 36 of the SPA in response to the applicants' requests for financial records and documents?

33. On March 19, 2018, Ms. Mills requested that the property manager send her "full financials" every month on an ongoing basis, including paid invoices, and the previous year of snow removal invoices. She reiterated her request on November 27, 2018.
34. After initially agreeing to have everything ready for pickup, the property manager said that the strata council wanted to discuss the request first. On December 7, 2018, the property manager said that invoices were not part of the financial records that the strata was required to keep and produce. On December 7, 2018, Ms. Mills requested the books of account for several line items in the budget.

35. On December 19, 2018, Ms. Mills requested copies of all bank statements, cancelled cheques, deposits and credit card statements from March 1, 2018. The strata said that these records were captured by its previous letter informing her that invoices were not included in what the SPA required it to keep. There is no evidence that the strata has provided access to any of the financial records Ms. Mills requested.
36. The strata does not deny that it has failed to provide responses to the requests, despite the fact that some of the requested records clearly fell within the strata's obligations under sections 35 and 36 of the SPA. For example, Ms. Mills requested bank statements, which are included in section 35(2)(l) of the SPA. The strata says that it has received legal advice about the applicants' requests for records since this dispute started and "is now in a position to proceed". The strata does not elaborate on this statement.
37. I interpret the strata's statement as accepting that some of the financial records that the applicants have requested should have been disclosed, and I agree. That said, the strata is correct to point out that it is not required to produce all of the records that Ms. Mills requested, such as copies of invoices. Furthermore, the SPA does not set out the format that the books of account must follow. See *Kayne*. I find that the strata is not required to provide access to any financial records other than those that are specifically set out in section 35 of the SPA.
38. Ms. Mills' requests changed several times and it is unclear if they were cumulative or the newer requests replaced the previous requests. The applicants' submissions are not specific about what records they still request.
39. To ensure that the strata can respond appropriately to the request, I find that the applicants must reiterate the financial documents they wish to access. If they do, I order the strata to respond within 2 weeks.

Did the strata keep adequate minutes of strata council meetings?

40. The applicants also argue that the strata council did not keep adequate minutes of its meetings and that the minutes are not being distributed to the owners in a timely manner.
41. The strata says that it tries its best to accurately record everything that is discussed at strata meetings, but some matters get dealt with between meetings via email and do not always get discussed at the in-person meetings.
42. First, with respect to the minutes at a strata council meeting, section 35(1)(a) requires the minutes to include any votes. There is no obligation on the strata to keep more detailed minutes. See *Kayne*. I therefore dismiss the applicants' claims to the extent that the applicants want the strata council to keep more detailed notes beyond recording the results of any votes.
43. That said, I agree with the applicants that the strata council's minutes are deficient in that they do not show the results of votes that were taken outside of the context of an in-person strata council meeting. Bylaw 17(1) says that the strata council may meet electronically, so the strata council may make decisions via email. However, decisions made by email are still decisions of the strata council that require a vote. Therefore, I find that the results of these votes must be included in the minutes of the next in-person strata council meeting.
44. I order the strata to ensure that it records the results of any votes in the minutes of the strata council meetings, including votes that are taken electronically. I also order the strata to ensure that the minutes of strata council meetings are provided to the owners within 2 weeks of a meeting, as required by bylaw 19.
45. Finally, the applicants also request access to the sign in sheets from the SGM, the proxy sheets from the SGM and the document presented at the 2018 AGM requesting the SGM. The applicants acknowledge that the strata may not have a legal obligation to provide these documents, but they believe that they are important for transparency. Again, the tribunal cannot expand the scope of the strata's

obligation to disclose records under section 36 of the SPA. I find that these requests do not fall within the records that section 35 requires the strata to keep. Therefore, the strata has no obligation to provide them.

PRELIMINARY DECISION AND ORDERS

46. I order that:

- a. The strata must ensure that it properly records the results of any votes in the minutes to its meetings, including votes that are taken electronically.
- b. The strata must ensure that it provides the owners with the minutes of each strata council meeting within 2 weeks of the meeting.
- c. If the applicants make a new request for financial records and documents, the strata must make available to the applicants, and provide copies if the applicants request, the financial records and documents that the applicants request to the extent that they are listed in section 35 of the SPA, within 2 weeks of the applicants' request.
- d. Within 2 weeks of the date of this decision, the strata provide copies of the following records and documents to the applicants:
 - i. Each of the signed AOL agreements approving the installation of split air conditioners,
 - ii. All correspondence sent or received by the strata or strata council about the split air conditioners from June 13, 2016, to the date of this decision, including any owner's requests for approval to install a split air conditioner and the strata's responses, and any attachments to any correspondence, but not including any correspondence between strata council members, and
 - iii. Any legal opinions obtained by the strata about the split air conditioners, subject to the strata's right to claim solicitor-client privilege.

47. I direct that the strata provide the tribunal with copies of the records and documents provided to the applicants in accordance with order (d) above. I direct that the applicants may make further submissions about any new matters raised by the disclosure of those documents and that the respondents may each respond to the applicants' submissions. I leave the timing of those submissions to the discretion of the tribunal administrator, who has the authority to give directions under the tribunal's rules.
48. The applicants' remaining claims under sections 35 and 36 of the SPA are dismissed.
49. I am seized of this dispute and once I have had an opportunity to review the records and the parties' further submissions, I will render a final decision about the remainder of the applicants' claims, including their claim for reimbursement of tribunal fees and dispute-related expenses.

Eric Regehr, Tribunal Member