



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Kuan et al v. The Owners, Strata Plan NW2603*, 2019 BCCRT 800

B E T W E E N :

David Beckett and Chia Fang Kuan

APPLICANTS

A N D :

The Owners, Strata Plan NW2603, and Knibbs et. al.

RESPONDENTS

A N D :

David Beckett and Chia Fang Kuan

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Salima Samnani

INTRODUCTION

1. The respondents are a strata corporation established under the *Strata Property Act* (SPA) (strata), and individual owners Kari Lasanen (Lasanen), Heinz Kessenich (Kessenich), Heather Prenty (Prenty), Margaret Silzer (Silzer), and Paul Knibbs (Knibbs). The applicants and respondents by counterclaim are owners of strata lot 46, in the strata (owners).
2. The strata is a 30 year old self-managed strata located in Surrey, BC, comprised of 52 strata lots.
3. This dispute involves a variety of claims about the strata's alleged historic and current failures to fairly enforce the bylaws, and various claims against specific owners.
4. The owners make the following allegations:
 - a. Prenty is violating parking and pet bylaws;
 - b. Silzer is violating parking bylaws;
 - c. Graham is violating parking bylaws,
 - d. Knibbs is violating parking bylaws and the privacy of the owners;
 - e. The strata has wrongfully allowed cameras to be installed in the RV lot; and
 - f. Lasanen has wrongfully removed or caused to have been removed notices posted by the owners, and has abused his position on strata council by breaching his fiduciary duty and not disclosing a conflict of interest.
5. The owners seek various remedies, including the imposition of bylaw violation fines against the respondent strata lot owners, damages for invasion of privacy, and damages for "abuse of office" by strata council member Lasanen. The owners are also seeking the reimbursement of all dispute related expenses.
6. By counterclaim, Knibbs alleges:

- a. the owners are making false allegations about him; and
 - b. the owners are violating a bylaw by taking pictures of him.
7. Knibbs seeks orders that the owner cease these actions. The owners are self-represented, the strata is represented by a council member, and the individually named owners are self-represented.

JURISDICTION AND PROCEDURE

8. 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.
9. 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.
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. 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.

BACKGROUND

12. I would be remiss if I did not acknowledge the intense litigation history between the owners and the strata. Each side has devoted considerable time in alerting me to the behaviour and outcomes at various tribunals and courts in which the owners have filed disputes. I have read everything that has been provided to me, but have not considered the findings of any other court or tribunal except to determine if an issue has already been decided which would bar me from deciding the issue.
13. All parties in this dispute have provided an extraordinarily large volume of evidence. I have read all of the evidence provided, but will only refer to evidence I find relevant to provide context for my decision. As with all civil claims, the owners, and in this case Knibbs by counterclaim, bears the burden of proving their claims on a balance of probabilities.

ISSUES

14. The issues in this dispute are whether:
 - a. The strata meet its statutory duty to enforce strata bylaws?
 - b. Knibbs invaded the privacy of the owners by looking into their unit while making gestures?
 - c. The strata has wrongfully allowed three cameras to be installed in the RV lot?
 - d. Lasanen removed or caused to be removed the owners' posting, and abused his power on the strata council by not disclosing a conflict of interest and breaching his fiduciary duty?
15. By counterclaim the issues are whether the owners:
 - a. Are falsely making allegations against Knibbs?
 - b. Are taking pictures of Knibbs and other owners against the bylaws?

EVIDENCE AND ANALYSIS

16. This dispute reflects the owners' ongoing dissatisfaction with the strata's governance, including the view that the strata is biased in favour of certain owners and allows these owners to violate bylaws with impunity. The dispute also reflects the strata's contrary position that the owners have been unreasonably demanding and have harassed the strata and various owners.
17. Given this backdrop and the tribunal's mandate that includes recognition of the ongoing relationship between parties, the following comments are warranted at the outset of my analysis. Strata councils are made up of volunteers, and mistakes will be made. Within reason, some latitude is justified when scrutinizing its conduct (see *Hill v. The Owners, Strata Plan KAS 510*, 2016 BCSC 1753).

Limitation Act

18. Section 6 of the *Limitation Act* provides that a proceeding must not be commenced more than 2 years after the day on which the claim is discovered. Section 8 of the *Limitation Act* sets out general discovery rules, which for the purposes here are that a claim is discovered by a person on the first day on which the person knew or reasonably ought to have known all of the following
 - a. That injury, loss or damage had occurred,
 - b. That the injury, loss or damage was caused by or contributed to by an act or omission,
 - c. That the act or omission was that of the person against whom the claim is or may be made, and
 - d. That, having regard to the nature of the injury, loss or damage, a court proceeding would be an appropriate means to seek to remedy the injury, loss or damage.
19. Throughout the owners' submissions they have made references and provided evidence of events that took place more than two years from the filing of this

dispute. I have considered this evidence as far as it relates to establishing what the owners claim is a pattern of mis-treatment and unfair targeting for bylaws. However, I have not considered events that occurred and remained uninvestigated by the strata prior to two years from the filing of this dispute. The owners knew or ought to have known about their claims against the strata within 2 years from the date they made their complaints to the strata and they allege the complaints remained uninvestigated.

Claims

20. Most of the owners' claims in this dispute have been framed against individual strata corporation members. Owners cannot sue other owners for bylaw violations. SPA sections 129 and 130 specifically state that only a strata can enforce bylaws, and only a strata can impose fines. This is consistent with s. 3 of the SPA that the strata is responsible for managing and maintaining the common property and common assets of the strata for the benefit of the owners. Thus, owners have no power to impose fines, as that is the strata's responsibility. Given the SPA, I find that this tribunal has no authority to order a fine for a bylaw violation sought from one owner against another owner.
21. However, I infer the owners' claims are mostly against the strata, in that the evidence is framed against the action or lack of action of the strata. I acknowledge that given the owners did not seek a remedy directly against the strata in many claims, this resulted in the strata stating that they were not providing evidence or submissions on most of the claims. However, it is clear from the dispute and claims made therein, that the strata is the subject of this dispute. The strata's choice to not provide any evidence on many of the claims does not deter the tribunal from considering that the claims were against it.

Bylaw Enforcement

22. The owners submit the strata does not fairly enforce its bylaws. They say many owners fail to comply with the bylaws, especially current or former strata council

members, but no action is taken against them. However, the owners allege they are being targeted for ongoing and unfair monitoring and fines. The owners say that enforcement of bylaws needs to be fair for all owners.

23. The owners have named the strata as a respondent but also sought claims against specific owners. I will first make some general comments about this issue as a whole and then deal with each specific claim.
24. A strata must investigate complaints and determine whether a bylaw breach has occurred before it determines if bylaw enforcement actions should be taken. Under section 26 of the SPA, the strata council has a duty to exercise the powers and perform the duties of the strata, including the enforcement of bylaws and rules. When carrying out these duties, such as bylaw enforcement, the strata council must act reasonably. This includes a duty to investigate alleged bylaw violations.
25. Section 135 of the SPA sets out a procedure for investigating a complaint, which includes providing the owner or tenant the opportunity to be heard, before any fine is levied. This protection is for the benefit of the owner or tenant that is the subject of the complaint, not the person making the complaint. Notably, there is otherwise no particular complaint procedure set out in the SPA and a strata council is permitted to deal with complaints of bylaw violations as the council sees fit, so long as it complies with the principles of procedural fairness and is not “significantly unfair” to any person who appears before the council (*Chorney v. Strata Plan VIS 770*, 2016 BCSC 148 (CanLII)).
26. The courts have determined that “significantly unfair” actions are burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable (see *Reid v. Strata Plan LMS 2503*, 2003 BCCA 128). The British Columbia Court of Appeal considered section 164 of the SPA in *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44. The test established in this case was restated in *The Owners, Strata Plan BCS 1721 v. Watson*, 2017 BCSC 763, as follows: What is or was the expectation of the affected owner or tenant? Was that

expectation on the part of the owner or tenant objectively reasonable? If so, was that expectation violated by an action that was significantly unfair?

27. The fact that the strata does not impose fines in all instances does not mean that it is failing to enforce the bylaws. The British Columbia Supreme Court has held that the imposition of fines does not serve to correct, remedy or cure violations of bylaws, but rather the purpose is to discourage bylaw violations (see *Kok v. Strata Plan LMS 463*, (1999), 23 R.P.R. (3d) 296 (BCSC) at para. 55.)
28. The British Columbia Court of Appeal confirmed that a strata does not need to enforce a bylaw, even in cases of a clear breach, where the effect of that breach on others is trifling. See *Abdoh v. The Owners of Strata Plan KAS 2003*, 2014 BCCA 270 (CanLII) (*Abdoh*), a case involving a strata lot owner seeking to prevent the strata from allowing a tenant from storing goods in a designated parking area.

Claims Against Individual Owners

29. Given the law as discussed above, I dismiss all claims made individually against the owners Prenty, Silzer, Graham, Knibbs, and the claim against Lasanen regarding the removal of the owners' postings. Again, I do this because the owners do not have standing in this dispute to seek bylaw enforcement against other owners. Only the strata has the power to enforce bylaws.

Claims against Strata

30. I will infer that the claims made against the individual owners, were also made against the strata given the framing of the dispute, the evidence provided, and that the strata was named as a primary respondent.
31. The strata had the choice to provide evidence about the actions taken to investigate the complaints made by the owners, but chose not to. The individual respondent owners, however, provided considerable evidence in responding to the allegations against them, which was of assistance.

32. The owners have provided a large volume of detailed evidence alleging bylaw violations by specific owners. The owners moved into the strata in 2009. As far back as 2011 the owners submitted a list of 15 alleged bylaw violations to the strata for investigation. In 2013 the owners submitted a further 42 alleged bylaw infractions and in 2016, the owners submitted a list of 113 alleged bylaw violations.
33. The strata argues that the sheer volume of complaints made by the owners is unduly burdensome on the strata. Council members, all of whom are volunteers, split the lists of violations for investigation spending huge amounts of time investigating even those smaller lists of violations.
34. Given the law as discussed above, the tribunal acknowledges that a verbal warning or a simple reminder is an acceptable enforcement mechanism, fines are not mandatory.
35. Further, providing a verbal warning to one owner and a fine to another does not result in 'significantly unfair' treatment of an owner. The strata has wide and necessary discretion on how to deal with bylaw infractions.
36. I also acknowledge that many of the complaints can no longer be investigated given many of the alleged bylaw infractions could only have been investigated immediately. It is unreasonable that the owners expect that the strata investigate bylaw infractions immediately, especially when many of the infractions listed by the owners occurred late at night.
37. Further, as discussed in *Abdoh*, upon investigating the complaints of the owner, if a breach of a bylaw is found the strata is not required to enforce the bylaw if the effect on others is trifling. This is likely to be the case given I find that many of the complaints made by the owners were momentary or time limited bylaw violations that have no effect on anyone. For example, someone parking in front of their strata lot late at night for a short period of time.
38. Dealing with the allegation that the strata treats the owners in a significantly unfair manner, I find the majority of the expectations of the owners to be unreasonable. In

their evidence, the owners seemed to monitor specific cars, and parking spaces for dozens of hours at a time, and record alleged infractions by the minute. People were also followed and recorded for days on end, for what seems like months and sometimes years.

39. This type of surveillance of course results in the compilation of dozens of alleged bylaw infractions. Strata council members cannot dedicate this amount of time policing owners and the strata. It is unreasonable for the owners to expect the strata council to police the strata in this extreme way.
40. Further, I agree with the strata that it is unduly burdensome and not possible for the strata council to investigate the volume of complaints brought forward by the owners. An inability by the strata to investigate all the complaints made by the owners, would not be a failure on their part to comply with the requirements of the SPA or constitute unfair treatment of the owners.
41. I make a further finding that the behaviour of the owners in surveilling their neighbours by following, videotaping, and in some cases exhibiting stalking type behaviour, must immediately cease.
42. It is not lost on the tribunal, that if the strata had a nuisance bylaw, the owners may find themselves at the receiving end of complaints for the large volume of complaints they make.
43. Given the large volume of complaints made by the owners, which are unlikely to relent, it would be advisable for the strata council to develop a transparent and responsive process for dealing with complaints.
44. Given my findings above, that the strata behaved reasonably in the circumstances, I dismiss this claim of the owners.

Conflict of Interest and Abuse of Position/Fiduciary Duty

45. The owners argue that Lasanen, the president of the strata council, abused his position and failed to disclose a conflict of interest when the strata council proposed,

and the ownership voted for a bylaw prohibiting owners from taking pictures and videotaping people on common and limited common property without their permission.

46. The owners are seeking that the tribunal order Lasanen to pay them \$10,000 as damages for abuse of position.

Conflict of Interest

47. Conflict of interest of a strata council member is addressed under section 32 of the SPA. The tribunal has previously found that strata council member obligations under section 32 are not obligations of the strata. See for example *Curtain v. The Owners, Strata Plan VIS 47673*, 2018 BCCRT 100, and *Nass v. The Owners, Strata Plan BCS 2025*, 2018 BCCRT 243.
48. Further, any remedies for a breach of section 32 of the SPA must be brought under section 33 of the SPA, as determined by the British Columbia Court of Appeal in *Dockside Brewing Co. Ltd. v. Strata Plan LMS 3837*, 2007 BCCA 183 at paragraph 59.
49. I find that I have jurisdiction to determine if a conflict of interest was not properly disclosed under section 32 of the SPA, but section 33 of the SPA is expressly outside the tribunal's jurisdiction.
50. Under s.32 of the SPA:

A council member who has a direct or indirect interest in

(a) a contract or transaction with the strata corporation, or

(b) a matter that is or is to be the subject of consideration by the council, if that interest could result in the creation of a duty or interest that materially conflicts with that council member's duty or interest as a council member,

must

- (c) disclose fully and promptly to the council the nature and extent of the interest,
- (d) abstain from voting on the contract, transaction or matter, and
- (e) leave the council meeting
 - (i) while the contract, transaction or matter is discussed, unless asked by council to be present to provide information, and
 - (ii) while the council votes on the contract, transaction or matter.

51. The owners' argument around the conflict of interest seems to be that Lasanen and other council members will benefit from a bylaw amendment recently passed regarding limitations on individual owners taking pictures of others on common and limited common property. A further argument seems to be that the strata is a respondent in another dispute in front of this tribunal where the owners are challenging the validity and the enforceability of this bylaw amendment. Last, the owners seem to be taking issue that if they are not able to conduct covert surveillance on strata council members, the owners will not have the evidence they need to bring claims in different tribunals and the courts.

52. I find that Lasanen and the strata are not in a conflict of interest by being named respondents in another dispute brought against the strata by the owners. Further, I find that it is not a conflict of interest for a council member to benefit from bylaws. Last, it is not the strata's duty to anticipate and maintain the owners evidence gathering plans.

53. Upon a detailed review of the evidence before me, I find the evidence and argument provided by the owners does not meet the test for a conflict of interest under the SPA and dismiss this claim.

Fiduciary Duty

54. A member of a strata council owes both a statutory fiduciary duty and a statutory duty of care in the management of the affairs of the strata (see *Dockside Brewing*).

Section 31 of the SPA sets out the standard of care for members of a strata council, requiring that they act in good faith with a view to the best interests of the strata and that they exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.

55. However, there is no requirement that in all cases they must avoid personal gain as a direct result of their honest and good faith management of the (see Docksides Brewing at paragraph 54).

56. I am not persuaded by the owners' argument Lasanen or any other strata council member breached their fiduciary duty under s.31 of the SPA in participating in the proposal or passing of the bylaw that places limits on taking pictures and videos of others on common and limited common property.

57. It is overwhelmingly clear from evidence presented by both sides that the owners, strata council, and the owners are all participating to varying degrees in surveillance of each other. I find the owners are the most zealous in the use of camera's and video recorders. The constant surveillance via pictures and recordings made by anyone is a gross invasion of privacy and unless there are limitations on surveillance via pictures and video recordings, the acrimony between owners will continue to escalate, when it is already untenable.

58. I find that that the strata council and Lasanen acted in good faith in taking common sense measures to stop this clearly problematic behaviour. I find that Lasanen and the strata acted with the strata's best interest in mind in bringing forward and supporting a bylaw that will hopefully see tensions ease at the strata.

59. In consideration of my findings, I dismiss the owners' claim that Lasanen or any other council member acted in bad faith.

RV Cameras

60. The owners allege that the strata wrongfully allowed three surveillance cameras to be installed in the RV lot. The strata and the owners agree that the cameras are

inoperative cameras meant to deter vandalism and burglaries in the RV lot, and that these cameras are not capable of recording video or taking pictures.

61. The owners' issue with the installation seems to be that the cameras may violate privacy laws, but mostly that some members of the strata council may benefit from the cameras as they have an RV in the RV lot.
62. I find that privacy is not an issue as the cameras are not operational. Further, given the law as stated above, there is nothing inappropriate about a strata council member benefiting from a decision of the strata council.
63. Given the vandalism and break-ins at the RV lot, I find that the strata council acted reasonably and in good faith in installing the dummy cameras in the RV lot. As the owners have not proved their claim on a balance of probabilities, I dismiss this claim.

Other Claims

64. The owners have made a few dozen claims and sought many remedies in their arguments that were not set out in the Dispute Notice. I have not dealt with these claims and remedies in my reasons as they are not properly in front of the tribunal and the strata have not had a proper opportunity to respond to these claims.

Counterclaim

65. By counterclaim, Knibbs alleges the owners are making false allegations against him, and the owners are violating a bylaw by taking pictures of him.
66. As with my findings above, individual strata members cannot sue other strata members for by-law violations. I dismiss this counterclaim against the owners.

TRIBUNAL FEES, EXPENSES AND INTEREST

67. 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. As the owners have been largely unsuccessful, I dismiss the owners' claim for costs and expenses. For the same reason, I dismiss Knibbs' claim for costs and expenses.

68. The strata must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owners.

DECISION AND ORDERS

69. I dismiss all claims and counterclaims.

70. 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.

71. 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 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.

Salima Samnani, Tribunal Member