



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 1549 v. Hebein et al.*,
2019 BCCRT 930

B E T W E E N :

The Owners, Strata Plan LMS 1549

APPLICANT

A N D :

YVONNE HEBEIN, DAVID STEPHEN and ALBERT BRISSETTE

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Jordanna Cytrynbaum

INTRODUCTION

1. The applicant, The Owners, Strata Plan LMS 1549 (strata) is a residential strata corporation. The respondents Yvonne Hebein, David Stephen and Albert Brissette are each owners of strata lots in the strata, and are also former strata council members.
2. This dispute is about whether the respondents misconducted themselves by: failing to hand over certain documents to the new strata council contrary to the requirements of the *Strata Property Act* (SPA); acting in a conflict of interest, and otherwise acting in breach of their duties owed to the strata. The respondents deny any wrongdoing.
3. The strata was represented by a council member, and the respondents were self represented.

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* (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. It must also recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
5. 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.
6. 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.

7. Under section 123 of the Act and the tribunal rules, in resolving these disputes the tribunal may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

8. The issues in this dispute are as follows:
 - a. are the claims within the tribunal's jurisdiction?
 - b. did the respondents, or any of them, fail to do any of the following, contrary to the provisions of the SPA:
 - i. provide certain categories of documents to the new strata council as required,
 - ii. act in a conflict of interest, or otherwise breach their duties owed to the strata?
 - c. did the respondent Ms. Hebein receive payments for bookkeeping services without proper authorization?
 - d. what, if any, remedies should the tribunal order?
9. The parties did not raise the issue of the tribunal's jurisdiction in their submissions. I find that the tribunal's jurisdiction must be addressed before I can determine parts of the strata's claims.
10. For the reasons that follow, I dismiss the strata's claims under sections 34, 35 and 36 of the SPA and refuse to resolve the balance of strata's claims under sections 31, 32 and 33 SPA claims as required by section 10 of the Act.

EVIDENCE AND ANALYSIS

Introduction

11. In a civil dispute such as this, the applicant bears the burden of proof on a balance of probabilities. That means, the applicant must prove its claims.
12. The parties filed submissions containing both their arguments and evidence. While I have reviewed all of the parties' materials, I will not refer to all of the evidence or deal with each point raised. I will refer only to the evidence and submissions that are relevant to my determination of the issues in this dispute, or to the extent necessary to give context to these reasons.
13. The strata claims that the respondents failed to "hand over" documents as required by sections 35 and 36 of the SPA, acted in a conflict of interest, and otherwise breached duties they owed the strata by overspending, receiving payments without proper authorization and misusing strata funds.
14. The strata seeks remedies that would require the respondents to "hand over" various categories of records belonging to the strata, and for the respondent Ms. Hebein to repay \$3,780 in fees that she received from the strata for bookkeeping work performed while she was a council member.
15. While not expressly included in the strata's requested resolution, the strata also seeks answers to a long list of questions, including the following:
 - a. What was the process for council members getting paid?
 - b. Who authorized the respondents to be paid while they were council members?
 - c. Who authorized Mr. Stephen and Mr. Brissette to repair strata fences, and to be paid for their work?

- d. Were they, or the people who performed the work, professionals in this trade and do they have any professional certifications?
 - e. Were independent quotes obtained?
 - f. Why did the former strata council overpay for fence repairs?
 - g. Why did the former strata council overpay for roof repairs when Mr. Bisette was president of the strata council?
 - h. Why did the strata pay approximately \$540,000 for roof repairs when the appraisal to replace the roof was \$250,000?
 - i. What was the process to appoint Ms. Hebein as a bookkeeper or accountant for the strata and to be paid while she was on council?
 - j. Who authorized the strata to hire and pay a permanent maintenance person?
 - k. What jobs were assigned to the handyman to justify a payment of \$20,000 - \$30,000?
16. Based on their submissions, I do not understand the strata to be suggesting that the respondents are legally required to provide the information requested. Rather, the respondents' alleged failure to provide the information sought appears to form the basis for the strata's allegations against them that they acted in a conflict of interest, and otherwise breached duties they owed to the strata.
17. The strata also makes a number of complaints about GT. He is not a party to these proceedings. I therefore decline to make any findings in relation to the complaints about him.
18. The respondents deny all of the allegations.
- a. Ms. Hebein says that she already provided the strata with any copies of the section 35 documents that she had or created. She says the bookkeeping work she undertook on behalf of the strata was authorized, and the payments

she received for work performed for the strata, or invoices submitted to the strata, were also proper and authorized.

- b. Mr. Stephen says he provided the new council with any documents he had. He also says he was not paid for work performed, but was rather reimbursed for purchases that he made on behalf of the strata using his credit card, and he left copies of all receipts in the strata's office. In response to allegations of overspending, Mr. Stephen says that the strata is comparing the cost of replacing a shake roof with asphalt shingles from 2011 to a figure contained in a 2016 depreciation report, and that the work set out in the report is different in both scope and cost. He also says that all of the work he directed on behalf of the strata was necessary and appropriate, and was properly authorized.
- c. Mr. Brissette says that all of the repairs and other work that he directed on behalf of the strata was properly disclosed and authorized by the strata, and that the work was necessary and appropriate.

Did the respondents fail to provide documents as required by the SPA?

- 19. I first deal with the applicant's claim that the respondents failed to "hand over" documents to the strata corporation as required by section 35 and 36 of the SPA.
- 20. Section 35(1) of the SPA imposes an obligation on a strata corporation to prepare copies of certain documents necessary to manage and carry out the strata corporation's business and functions, such as minutes of strata council meetings, a list of the owners, and books of account showing money spent and received.
- 21. Section 35(2) of the SPA requires a strata corporation to retain copies of the documents referred to in 35(1) summarized above, as well as a number of other records relevant to the proper functioning of strata corporations. This includes: the registered strata plan, the strata corporation's bylaws and rules, written contracts to which the strata corporation is a party, the budget and financial statements for the current and previous years, income tax returns, correspondence sent or received by

the strata corporation and council, reports respecting repair or maintenance of major items in the strata corporation, and bank statements.

22. Pursuant to section 36 of the SPA, an owner, tenant or other authorized person may request that a strata corporation provide copies of the records it is required to keep under section 35. On receiving a request, the strata must make the documents available for inspection and/or provide copies within 2 weeks of receipt of the request.
23. The strata alleges that the respondents failed to “hand over” documents as required pursuant to section 35 and 36 of the SPA. However, sections 35 and 36 of the SPA imposes obligations on strata corporations – not individual owners. Given that the strata’s claims are against the respondents in their personal capacity, sections 35 and 36 does not apply to them. For that reason, I dismiss the strata’s claim under sections 35 and 36 of the SPA.

Did the respondents act in a conflict of Interest, or otherwise breach their duties?

24. I next consider the strata’s claims that the respondents acted in a conflict of interest and otherwise acted in breach of their duties under sections 31, 32, 33 and 34 of the SPA.

Are the claims within the tribunal’s jurisdiction?

25. Section 31 of the SPA requires strata council members to:
 - a. act honestly and in good faith with a view to the best interests of the strata;
and
 - b. exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.

26. Section 32 of the SPA states that a council member who has a direct or indirect interest in a contract or transaction with a strata corporation must disclose fully and promptly to the council the nature and extent of the interest, abstain from voting on the contract or transaction, and not participate in the council meeting while the contract or transaction is being discussed or voted on, unless asked to be present by council to provide information.
27. Section 33 of the SPA provides that, if a council member who has an interest in a contract or transaction fails to comply with section 32, the strata corporation or an owner may apply to a court having jurisdiction for an order that the contract was unreasonable or unfair to the strata corporation at the time it was entered into. If the court makes such an order, the court may set aside the contract or transaction and require the council member to compensate the strata corporation if the council member did not act honestly and in good faith.
28. Section 34 of the SPA states that any remuneration paid to a council member for exercising their power as council members, or for duties they perform as council members, must be approved in advance of payment, either: a) in the budget, b) in the bylaws, or c) by a resolution passed by a $\frac{3}{4}$ vote at an annual general meeting.
29. I deal first with the strata's claims against the respondents pursuant to sections 31, 32 and 33. For the reasons that follow, I find that these claims are outside of the tribunal's jurisdiction.
30. Any remedies for a breach of sections 31 and 32 must be brought under section 33 of the SPA: *Dockside Brewing Co. Ltd. v. Strata Plan LMS 3837*, 2007 BCCA 183 at para. 59.
31. Section 33 of the SPA is expressly outside of the tribunal's jurisdiction. This is set out in section 122(1)(a) of the Act.
32. Even if I were to address the strata's allegations that the respondents breached sections 31 and 32, I would not be able to grant any remedy because those orders must be obtained from the Supreme Court. Any remedy so ordered by the Court

would be informed by findings of fact made regarding the alleged conduct that breached sections 31 and 32. In the circumstances, it would not be appropriate to make findings regarding the strata's claims under sections 31 and 32.

33. Pursuant to section 10 of the Act, the tribunal must refuse to resolve a claim that it considers is not within the jurisdiction or the tribunal. I therefore refuse to resolve the strata's claims against the respondents under sections 31, 32 and 33 of the SPA as required by section 10 of the Act.

34. I now turn to deal with the strata's claims against the respondents under section 34 of the SPA.

Claims against Ms. Hebein

35. The strata argues that Ms. Hebein did the following without proper authorization: a) performed work for the strata as a bookkeeper while she was a council member; and b) used her work photocopier to make copies of documents and submitted an invoice to the strata for those copies. The strata seeks to have Ms. Hebein repay the sum of \$3,780 paid to her for accounting services that Ms. Hebein provided the strata while she was a council member.

36. On the record before me, I find that the strata authorized Ms. Hebein to be paid for bookkeeping services, and that the amounts paid to her were approved by the strata in advance of the payments consistent with section 34 of the SPA. This is reflected in the proposed budget for 2015-2016 and was subsequently approved by the strata at the annual general meeting on January 7, 2015. I also note that the April 8, 2015 council meeting minutes approve the transfer of bookkeeping duties to Ms. Hebein.

37. With respect to the invoices Ms. Hebein submitted for photocopies, I accept her evidence that the photocopies were not made from her place of employment. I also accept her evidence that the copies made were less expensive than making copies at Staples (or another copy service), and that she chose that venue to make copies

to save the strata money. There is no evidence to suggest that the copies were not authorized. I find that the payments to Ms. Hebein for the invoice was merely reimbursing her for the cost of copies made on the strata's behalf.

38. The strata has therefore not proved its claims against Ms. Hebein for breach of section 34 of the SPA, and I dismiss those claims.

Claims against David Stephen

39. While the strata also claims that Mr. Stephen also breached section 34 of the SPA, the strata does not seek a remedy against him that is specific to his conduct.

40. The strata says that Mr. Stephen was paid for work he performed in connection with fence repairs, and claims that this is a breach of section 34 of the SPA. On the evidence, I find that Mr. Stephen was reimbursed for materials he paid for on behalf of the strata corporation, and that the expenditures were authorized by the strata. There is no evidence before me that Mr. Stephen received payments for work performed contrary to section 34, or that he otherwise breached 34 of the SPA and I accordingly dismiss those claims.

Claims against Albert Bissette

41. While the strata claims that Mr. Bissette also breached section 34 of the SPA, the strata does not seek a remedy against him that is specific to his conduct.

42. The strata's claims against Mr. Bissette under section 34 of the SPA are based on his having approved certain expenditures for roof repair payments that the strata now argues were excessive. There is no evidence that Mr. Bissette received any payment for exercising his power to approve the roof repairs, or otherwise in relation to the roof repairs. The strata has therefore not proved its claim for breach of section 34 of the SPA against him and I dismiss those claims.

TRIBUNAL FEES AND EXPENSES

43. The strata has not succeeded in its claims. Under section 49 of the Act, and the tribunal rules, the tribunal will generally only order that a successful party be reimbursed for its tribunal fees and reasonable dispute-related expenses. I see no reason in this case to deviate from the general rule, so I order no reimbursement.

ORDER

44. I order that:

- a. the strata's claims against the respondents under sections 34, 35 and 36 of the SPA are dismissed; and
- b. I refuse to resolve the strata's claims against the respondents under sections 31, 32 and 33 of the SPA based on section 10 of the Act.

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

Jordanna Cytrynbaum, Tribunal Member