



Civil Resolution Tribunal

Date Issued: August 2, 2019

File: ST-2018-002823

Type: Strata

Civil Resolution Tribunal

Indexed as: *Section 1 of The Owners, Strata Plan BCS 3495 v. The Owners, Strata Plan BCS 3495 et al*, 2019 BCCRT 938

B E T W E E N :

Section 1 of The Owners, Strata Plan BCS 3495

APPLICANT

A N D :

The Owners, Strata Plan BCS 3495 and John Siddons

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicant, Section 1 of the Owners, Strata Plan BCS 3495 (Section 1) is comprised of the non-residential strata lots in the respondent strata corporation, The Owners, Strata Plan BCS 3495 (strata). The respondent John Siddons owns strata lot 636 and is a strata council member. He is also the president of the executive of

Section 2 of The Owners, Strata Plan BCS 3495 (Section 2), which is comprised of the residential strata lots in the strata.

2. Section 1 says the strata and Section 2 have acted in disregard of Section 1, causing Section 1 to incur financial liabilities. Specifically, Section 1 says Mr. Siddons breached the Strata Property Act (SPA) and the strata council members' Code of Conduct and Confidentiality Agreement, causing Section 1 to incur damages. As a remedy, Section 1 wants Mr. Siddons to pay \$7,730 in damages, and it wants Section 1's upgrading expenses to be separated from the strata's budget. It also says Mr. Siddons directed the strata's building manager to stop providing services to Section 1, and as a result it wants the respondents to pay it \$8,650 for Section 1's portion of the building manager's expenses.
3. Mr. Siddons says that at all times, in his capacity as a strata council member and president of the Section 2 executive, he has acted honestly and in good faith with a view to the best interests of the strata and Section 2.
4. As explained further below, I find that Section 1 provided a copy of the Dispute Notice to the strata, but the strata did not provide a Dispute Response or participate in the tribunal process.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.

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. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
9. 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.
10. Tribunal documents incorrectly show the name of Section 1 as “Strata Corporation Commercial Section of Strata Plan BCS3495”. Based on section 193 (4) of the *Strata Property Act* (SPA) and the strata’s bylaws, the correct legal name of Section 1 is Section 1 of The Owners, Strata Plan BCS 3495. Given that the parties operated on the basis that the correct name of Section 1 was used in their documents and submissions, I have exercised my discretion under section 61 of the Act to direct the use of the correct legal name of Section 1 in these proceedings. The style of cause is amended accordingly.

ISSUES

11. The issues in this dispute are:
 - a. Did Section 1 properly serve the Dispute Notice on the strata, and if so, is the strata in default?
 - b. Should the tribunal refuse to resolve this dispute due to lack of jurisdiction?

EVIDENCE AND ANALYSIS

12. Section 1 has made numerous allegations against the respondents, and all of its requested remedies are based on Mr. Siddons' alleged breaches of the SPA or the strata council's Code of Conduct, though it has not specified which provisions Mr. Siddons breached. The Code of Conduct is a document setting out the duties and expectations of council members. The copy of the Code of Conduct in evidence is unsigned and does not include Mr. Siddons' name. It is unclear whether Mr. Siddons ever signed a different copy of this document.
13. Section 1 says Mr. Siddons harassed Section 1, has generally been disrespectful and uncooperative, and antagonized a resident. It says Mr. Siddons has overextended his role on council and constantly interrupts discussions on motions affecting Section 1, which biases deliberations.
14. Section 1 says its executive's president and vice president attended Section 2's AGM on May 3, 2018, at which Mr. Siddons presented to owners about private matters pertaining to Section 1's parking privileges, criticized Section 1, alleged that Section 1 owners stole visitor parking stalls, and claimed Section 1 did not pay its share of electrical consumption. Section 1 also says Mr. Siddons claimed Section 1 failed to properly maintain its condenser and told the owners the condenser caused a fire in the parkade on December 28, 2017, which Section 1 says is untrue. Section 1 says Mr. Siddons called its president a liar, told owners she perjured herself in the Supreme Court, and said that Section 2 wants to send her to jail.
15. Section 1 says the strata makes decisions to hire and fire its building managers without input from Section 1. It says Mr. Siddons instructed the strata's building manager not to provide services to Section 1, and that Mr. Siddons instructed the building manager to remove parking signs without the authority to do so.
16. Mr. Siddons says that at all times he has acted honestly and in good faith with a view to the best interests of the strata and Section 2. He says decisions of the strata council are made by the majority of council, not him alone.

Did Section 1 properly serve the strata with the Dispute Notice, and if so, is the strata in default?

17. On September 4, 2018, Section 1 amended its Dispute Notice to add the strata as a respondent. The service deadline for the amended Dispute Notice was October 4, 2018.
18. Tribunal rule 61, which was in place at the time, required a respondent strata corporation to be served by registered mail, courier delivery requiring a signature, or delivery in person to the strata corporation at its most recent mailing address on file in the Land Title Office (LTO), or by delivery in person to a strata council member.
19. The strata's mailing address on file in the LTO is an address in Vancouver for First Service Residential, the strata's property manager (First Service).
20. On October 2, 2018, Section 1 served the amended Dispute Notice on the strata by courier to Mr. Siddons' personal address in Coquitlam. The evidence before me indicates that Mr. Siddons signed for the package on that date. I find the strata was not served in accordance with the former rule 61, as under that rule delivery to a strata council member requires delivery in person
21. However, the evidence before me indicates that in addition to sending Mr. Siddons the amended Dispute Notice by courier, on September 8, 2018, Section 1 emailed the amended Dispute Notice to First Service and all strata council members. On September 10, 2018 a representative of First Service acknowledged receipt of the September 8, 2018 email. I note the address in the representative's email signature is the strata's mailing address on file in the LTO.
22. On September 24, 2018, Section 1 emailed First Service and all strata council members asking for confirmation that the amended Dispute Notice had been distributed. On September 26, 2018 the same representative of First Service confirmed receipt of the amended Dispute Notice and notified Section 1 that copies had been sent to appropriate representatives at the strata's insurance company and internally at First Service. I note that the tribunal's former rule 53 stated that notice

by email is considered received on the date the respondent emails the reply to the applicant.

23. While I find Section 1 did not serve the strata in strict accordance with former rule 61, on the evidence before me I am satisfied that the strata received the amended Dispute Notice before the service deadline.
24. Since the strata failed to file a Dispute Response, it is in default. Normally when a party is in default its liability is assumed. However, as explained below I refuse to resolve this dispute, and therefore I find there is no assumed liability against the strata in these circumstances.

Should the tribunal refuse to resolve this dispute for lack of jurisdiction?

25. Under section 10 (1) of the Act, the tribunal must refuse to resolve a claim that it considers is not within its jurisdiction.
26. While Section 1's claims in this dispute are against both the strata and Mr. Siddons, I find that all of its requested remedies are based on Mr. Siddons' alleged breaches of the SPA and the council members' Code of Conduct. While Section 1 has not specifically alleged that Mr. Siddons breached section 31 of the SPA, on reviewing the parties' evidence and submissions I find that all of Section 1's allegations against Mr. Siddons are essentially claims that he breached his duty of care as a strata council member and member of Section 2's executive. I find that the Code of Conduct falls under the responsibilities of council members in section 31 of the SPA and does not create a separate enforceable entitlement for Section 1.
27. Section 31 of the SPA sets out the standard of care of strata council members. It requires council members to act honestly and in good faith with a view to the best interests of the strata, and to exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.
28. Section 196 (2) of the SPA states that each section executive has the same powers and duties with respect to the section as the strata council has with respect to the

strata. This means section executives are held to the same standard of care set out in section 31 of the SPA.

29. In *Dockside Brewing Co. Ltd. v. Strata Plan LMS 3837*, 2007 BCCA 183, the Court of Appeal found that remedies for breaches of section 31 are set out in section 33 of the SPA. However, under section 122 of the Act (formerly section 3.6 (2) (a) of the Act), matters under section 33 of the SPA are outside the jurisdiction of the tribunal and must be dealt with by the B.C. Supreme Court.
30. I sought submissions from the parties as to whether the tribunal has jurisdiction to resolve this dispute. Mr. Siddons did not provide submissions. Section 1 said section 33 does not apply in this case but provided no basis for that assertion. Section 1 said both the strata and Mr. Siddons breached the SPA “on several accounts” related to instructing the building manager to discontinue its services to Section 1 and prematurely terminating the building manager’s contract without Section 1’s input. However, I find this is essentially a reiteration of Section 1’s submissions.
31. While Section 1’s submissions indicate that the strata also breached the SPA, I find nothing in these submissions alters Section 1’s requested remedies, which are all based on Mr. Siddons’ alleged breaches of the SPA. I find there is nothing new in Section 1’s submissions to persuade me that its claims are within the tribunal’s jurisdiction.
32. Therefore, under section 10 (1) of the Act, I must refuse to resolve this dispute. Section 1 is free to pursue its claims in the B.C. Supreme Court.

TRIBUNAL FEES AND EXPENSES

33. 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.

34. As I have found the tribunal has no jurisdiction, I must decline to address whether Section 1 is entitled to reimbursement of its claimed legal expenses. I direct the tribunal to refund Section 1 \$225 in tribunal fees.

DECISION AND ORDERS

35. I refuse to resolve this dispute for lack of jurisdiction under section 10 of the Act. Nothing in this decision prevents Section 1 from bringing its claim before the Supreme Court.

Sarah Orr, Tribunal Member