



# Civil Resolution Tribunal

Date Issued: August 8, 2019

File: ST-2018-008749

Type: Strata

Civil Resolution Tribunal

Indexed as: *Crozier et al v. The Owners, Strata Plan LMS 4582*, 2019 BCCRT 948

**B E T W E E N :**

Eugene Crozier and Diana Quan

**OWNERS**

**A N D :**

The Owners, Strata Plan LMS 4582

**RESPONDENT**

---

## **REASONS FOR DECISION**

---

Tribunal Member:

Kathleen Mell

### **INTRODUCTION**

1. The owners, Eugene Crozier and Diana Quan (owners), each own separate strata lots in the respondent strata corporation, The Owners, Strata Plan LMS 4582 (strata). The owners say that the strata violated the *Strata Property Act* (SPA) and strata bylaws. The owners also say that the strata has not properly conducted itself.

2. The owners seek an order that the strata comply with the SPA, the Strata Property Regulation and bylaws. They also ask that the tribunal order the strata to attend the condominium homeowner's association (CHOA) education programs, that the tribunal order the strata to hire CHOA to attend and provide guidance at strata council meetings, and to order the strata to reimburse Mr. Crozier \$100.00 for his CHOA membership. The owners are self-represented.
3. The strata says that the owners do not have standing to dispute several of the issues. The strata also argue that the issues are frivolous. The strata requests that all the claims in this dispute be dismissed. C. B., a council member, represents the strata.

## **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, and 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, in resolving this dispute the tribunal may make one or more of the following orders:
  - a. order a party to do something;
  - b. order a party to refrain from doing something;
  - c. order a party to pay money.

## **ISSUES**

8. The issues in this dispute are:
  - a. Do the owners have standing to bring this dispute?
  - b. Did the strata breach the SPA or its bylaws?
  - c. Has the strata failed to meet its statutory standard of care when exercising the powers and performing the duties of the strata?
  - d. What, if any, remedy is appropriate?
9. In a civil dispute such as this, the owners must prove their claims. They bear the burden of proof on a balance of probabilities.
10. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my decision, or as necessary to give context to these reasons.

## **POSITIONS OF THE PARTIES**

11. The owners say that the strata has violated sections 34.1(2) and 34.1(3) of the SPA because of its unreasonable delay in responding to owners' requests and in making decisions. They point to the strata's delay in making a decision as to whether Ms. Quan could get an air conditioner for her strata lot, and also a delay about whether another strata lot owner could change the blinds in her strata lot.

12. The owners also argue that certain strata council members were disrespectful to them, as well as the caretaker. They state that one council member raised his voice to Mr. Crozier and yelled at the building caretaker.
13. The owners also say that the strata violated section 31 of the SPA. The owners argue that the strata intentionally excluded Mr. Cozier from a council meeting in November 2018, accusing him of having a conflict of interest because the council was discussing a matter before this tribunal about whether Ms. Quan could get an air conditioning unit for her strata lot. The owners argue that the strata admitted it excluded Mr. Crozier from a meeting which involved seeking legal advice from a lawyer.
14. The owners say that the strata did not revise their council minutes correctly and that the minutes should include the subject and issues and decisions made by the council, but not opinions.
15. The owners also argue that the strata violated the rules of the tribunal because the minutes of the strata meeting held on November 5, 2018 disclosed the details of the dispute and the identity of a strata lot owner.
16. The strata says that the issue around Ms. Quan's air conditioning unit has already been decided in another tribunal decision and therefore it cannot be adjudicated again in this dispute.
17. The strata argues that the owners do not have standing to ask that some of these issues be adjudicated as they do not affect them personally. The strata also argues that the claims are without substance. The strata denies any misconduct or violation of the SPA.

## EVIDENCE AND ANALYSIS

### ***Do the owners have standing to bring this dispute?***

18. In certain circumstances the owners have made allegations against specific members of the strata and have said they engaged in bullying behaviour. I first note that in the tribunal decision of *Townsend et al v. The Owners, Strata Plan NW 2545*, 2018 BCCRT 209, the tribunal dismissed the owners' claims against individual strata council members because they were not named parties. Although not binding on me, I find that the reasoning in *Townsend* applies to this dispute. The owners' claim against specific members of the strata council are dismissed as those members were not named as respondents in their personal capacity.
19. Further, even if I were to accept that the individuals named were acting on behalf of the strata, which I do not, I also find that the allegations claimed have not proven on a balance of probabilities. There is insufficient evidence for me to find that the named members bullied the owners or the caretaker. The owners have provided no proof that these incidents happened except for their own claims that they did. I dismiss these claims of bullying.
20. The strata argues that the issue about the delay in making a decision as to whether Ms. Quan could get an air conditioner for her strata lot has already been determined by the tribunal in *Quan v. The Owners, Strata Plan LMS 4582*, 2019 BCCRT 826. I have reviewed this decision and find it considered specifically whether or not Ms. Quan could get an air conditioner for her strata lot. It did not consider whether the strata violated the SPA or bylaws in allegedly delaying its decision on this matter. Therefore, although I find there is an overlap in the facts that underlie the two disputes, the issue before me is different than that previously decided by the tribunal. Therefore, I find that the issue is not *res judicata* (already decided).
21. The strata also argues that the owners do not have standing to request adjudication of disputes over other issues that more personally affect other strata lot owners, specifically the time it took to approve blinds for another strata lot owner, second-

hand smoke, and a substance leaking onto a parking stall which is common property. Essentially, the strata argues that the issues raised by the owners do not involve them personally so they do not have the right to ask that these issues be considered by the tribunal. The strata also submits that Mr. Crozier does not have standing to request adjudication of Ms. Quan's issue about the delay in determining whether the air conditioning unit was approved.

22. I find that the owners do have an interest over issues such as second-hand smoke, and alleged oil leaks on the common property, as well an interest in the proper governance of the strata as a whole.
23. Having said that, I find that the owners do not have standing to bring a dispute on behalf of another strata lot owner in the specific circumstances of her request for blinds. I note that if the other owner wished to bring a dispute about this issue she was able to do so and did not. Also, the issue before me is really about whether the strata breached the SPA in its decision-making around Ms. Quan's request for an air conditioner. I do not find the strata's dealing with the other strata lot owner's request for blinds relevant to this issue.
24. I conclude that the owners have standing to bring this dispute, aside from the specific issues about bullying by individual strata council members and the issue of another strata lot owner's request for blinds.
25. The owners argue that the strata breached sections 34.1(2) and (3) of the SPA in delaying its decisions about whether Ms. Quan's air conditioner would be approved. The SPA states that:

Request for council hearing

34.1 (1) By application in writing stating the reason for the request, an owner or tenant may request a hearing at a council meeting.

(2) If a hearing is requested under subsection (1), the council must hold a council meeting to hear the applicant within 4 weeks after the request.

(3) If the purpose of the hearing is to seek a decision of the council, the council must give the applicant a written decision within one week after the hearing.

26. The owners also argue that the strata violated strata bylaws by unreasonably withholding approval of the air conditioning unit.
27. Ms. Quan sent a request to the property manager for approval of an air conditioner for her strata lot on February 16, 2018 and asked that this request be shared with new council members on March 6, 2018. Ms. Quan says that the council did not consider her request until the new strata council was formed and held its first meeting on March 28, 2018. She states that this was 21 days after she made the request. I note that the SPA sets out that a hearing must take place within 4 weeks. The evidence does not establish that Ms. Quan asked for a hearing. However, even if she had, the strata would have still been within this timeline.
28. Ms. Quan says that the strata said it wanted an engineering report and that the matter would be considered again at the next meeting on May 9, 2018. This, in itself, is a decision that Ms. Quan was notified of, considering she was still a member of the strata council at the time. The council minutes from May 9, 2018 indicate that the strata decided to get legal advice to consider risk, indemnity, and liability. The minutes said that the report provided by Ms. Quan did not consider what impact it would have if other strata lot owners also bored holes into the building envelope for air conditioners. The strata recommended that a building envelope engineer be consulted as well.
29. The July 9, 2018 council minutes indicate that the strata decided to refuse the request and suggested bringing the matter forth for further consideration at the next general meeting. On July 11, 2018, the strata sent Ms. Quan notification that her hearing was on July 9, 2018 and permission for the air conditioner was denied.
30. The owners suggest that the strata was in violation of the SPA due to the delay between the request and the decision. I find that the strata was not in violation as it

allowed Ms. Quan to present evidence and considered her request on several occasions after which it made decisions as to what further steps needed to be taken until it ultimately received the reports it needed to make its decision to deny in July 2018. I dismiss this claim.

31. The owners also argue that the strata acted inappropriately in failing to prevent a strata lot owner from allowing his car to leak oil in a parking stall which is common property. They argue that this is because some of the strata council members are friends with the owner of the car. The owners argue that the strata levied fines against a strata lot owner for smoking but not against the owner of the car. They argue that bylaw violations should be fined equally.
32. I note that in *Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32, the British Columbia Supreme Court held that a strata council has discretion whether to enforce its bylaws in certain circumstances but that such discretion is limited, particularly in circumstances where the strata owners have a reasonable expectation that the bylaw will be consistently enforced.
33. The British Columbia Court of Appeal confirmed that a strata corporation need not enforce a bylaw, even though there is a clear breach, where the effect of the breach on other owners is trifling (see: *Abdoh v. The Owners of Strata Plan KAS 2003*, 2014 BCCA 270).
34. Here the strata had discretion to enforce its bylaw regarding a car leaking fluids differently than it enforced its bylaw regarding second-hand smoke. This is not a question of consistently enforcing the same bylaw. The bylaws address distinct issues which may have a different impact on the strata lot owners.
35. Further, I have reviewed the evidence and find that the strata did follow up with the car owner and the evidence establishes that the matter was properly dealt with. Ms. Quan suggested in her emails that the car owner should be forced to get his car fixed. The strata determined that the problem had ended because the evidence did not show a current oil leak and noted in its email to Ms. Quan that it did not have the



authority to tell the owner of the car to repair it. There is no evidence that suggests that the strata was giving the car owner preferential treatment. I dismiss this claim.

***Has the strata council or its members failed to meet their statutory standard of care when exercising the powers and performing the duties of the strata? If so, what is an appropriate remedy?***

36. The owners allege that the strata failed to meet the standard of care because it acted contrary to the SPA. I have earlier addressed the owners' claims about the SPA, aside from section 31.
37. Under section 31 of the SPA, each council member must act honestly and in good faith with a view to the best interests of the strata, and exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.
38. The owners argue that the strata excluded Mr. Crozier from a meeting with its lawyer as it was going to discuss the earlier decided dispute involving Ms. Quan. The strata told Mr. Crozier that it felt the two were acting in collaboration and believed he had a conflict of interest and could not be objective.
39. A strata council member owes both a statutory fiduciary duty and a statutory duty of care in the management of the affairs of the strata. The standard of care expected of strata council members under section 31 of the SPA has been addressed in several previous tribunal cases. (See for example *Mason v. The Owners, Strata Plan BCS 4338*, 2017 BCCRT 47, *Lo v. The Owners, Strata Plan LMS 3094*, 2018 BCCRT 78, *Corner v. The Owners, Strata Plan K 833*, 2018 BCCRT 189 and *Schuler v. The Owners, Strata Plan BCS 4064*, 2018 BCCRT 175.)
40. In order to find the strata failed to meet their statutory duty of care, it is necessary to find they acted dishonestly, in bad faith or with a view to best interests of someone other than the strata and failed to exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances. These factors are simply not present here.

41. While the strata did act to restrict Mr. Crozier from attending the meeting with the lawyer, based on the evidence, I do not find the strata acted in bad faith or contrary to section 31 of the SPA. The strata was seeking legal advice about a dispute which it was involved in. It may be argued that its concern over whether Mr. Crozier could be objective was misplaced but the evidence does not establish that the strata was acting in bad faith or with anything other than the best interests of the strata in mind.
42. I also note that although the tribunal has jurisdiction to determine if the strata may have breached their standard of care under section 31 of the SPA, I do not agree the tribunal has jurisdiction to address a requested remedy for such a finding. I rely on *Dockside Brewing Co. Ltd. v. Strata Plan LMS 3837*, 2007 BCCA 183, in which the court found, at paragraph 59, that remedies for breaches of sections 31 and 32 of the SPA are found in section 33 of the SPA. Section 3.6(2)(a) of the Act expressly states matters under section 33 of the SPA are outside the jurisdiction of the tribunal and must be dealt with by the BC Supreme Court. Accordingly, even if I had found a breach of section 31, it would be outside my jurisdiction to provide a remedy.
43. The owners also argue that the strata has not followed best practice in keeping their minutes and that sometimes the minutes contained information which was inaccurate, such as whether somebody received an email, or thoughts and opinions. They also say that confidentiality was sometimes breached when people were able to be identified by information contained in the council minutes.
44. The owners note that the strata did not follow the exact procedure in keeping its minutes as recommended by the CHOA. I find that these guidelines are not binding on the strata. I also find that the owners have not proved that the strata fell below the standard of care required or that they sustained any damages as a result of what was contained in the strata council minutes. The standard of care required for a strata council is not perfection. The law recognizes strata councils are made up of real people volunteering their time for the good of the strata community and gives them some latitude.

45. Further, *Kayne v. The Owners, Strata Plan LMS 2374*, 2007 BCSC 16210, found the SPA does not set out any degree of detail that must be contained in strata minutes beyond recording the outcome of the vote. Minutes must contain records of decisions taken by council but may or may not report in detail the discussions leading to those decisions.
46. Based on this, I find that the strata did not violate the SPA by the way it kept its minutes of council meetings. I dismiss this claim.
47. The owners say that the strata council agreed to add a code of conduct to the strata bylaws but was not acting in good faith as the code of conduct was defeated at the annual general meeting. The evidence shows that the strata agreed to have the code of conduct voted on at the general meeting, it did not and could not guarantee that it would be passed.
48. The owners make vague allegations that the strata disclosed information about the code of conduct to friends and owners which is a violation of the *Privacy Act*. I find that the code of conduct is not a private document and that the owners have not established that the strata did anything wrong in putting the code of conduct to a vote at the general meeting.
49. The owners also say that the strata inappropriately spoke about matters that were before this tribunal. Section 89 of the Act deals with settlement information and facilitation. It indicates that a person must not disclose or be compelled to disclose information about the dispute in a court proceeding or other legally binding process. This section does not apply to discussions during a strata council meeting. Therefore, I find that the owners have not established that the strata breached section 89 of the Act.
50. The owners also question whether the strata was entitled to the assistance of an articling student in this dispute. There is nothing in the tribunal rules or Act that prevents the strata from getting the assistance of an articling student.

51. Based on all of the evidence, I find that the owners have not proved their claims against the strata. Therefore, I dismiss this dispute.

### **TRIBUNAL FEES AND DISPUTE RELATED EXPENSES**

52. Under section 49 of the Act, and 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 were unsuccessful in their claim they are not entitled to have their tribunal fees or expenses reimbursed.

### **ORDER**

53. I dismiss the owners' claims and this dispute.

---

Kathleen Mell, Tribunal Member