



Civil Resolution Tribunal

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File: ST-2019-000436

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wilding v. The Owners, Strata Plan LMS3900*, 2019 BCCRT 971

B E T W E E N :

GAVIN WILDING

APPLICANT

A N D :

The Owners, Strata Plan LMS3900

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Gavin Wilding (owner) owns strata lot 22 (SL22) in the respondent strata corporation The Owners, Strata Plan LMS3900 (strata).
2. The parties agree that they had a payment plan arrangement for past due strata fees, a special levy and legal costs. Then, when the owner missed a payment, he

says despite his offer to pay the amount owing in full, the strata pursued legal avenues against him without justification. As a result, the owner says the total amount he owed almost doubled.

3. The owner claims \$3,869.85, which he describes as an overpayment of legal fees for strata mismanagement of the levy payment matter.
4. The strata denies any responsibility to pay the claimed \$3,869.85. The strata says the owner incurred legal expenses, which were charged to his strata lot account, because he failed to communicate with the strata's counsel in a timely manner, and that the appropriate venue for him to dispute some or all of the legal costs is through a taxation of legal fees before a Registrar of the British Columbia Supreme Court. The strata asks that the dispute be dismissed.
5. The applicant is self-represented. The strata is represented by strata council member Gerry Sair.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.
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 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. I find that the tribunal has jurisdiction over this dispute which is a claim for repayment of money paid to the strata for legal fees that, the owner says, resulted from the strata's failure to engage with him appropriately about the amounts he owed. Even though the underlying issue involves a Certificate of Lien (lien), the claim is one for money allegedly owing, which falls within the tribunal's jurisdiction under section 121(1)(d) of the Act (see *Leidl v. The Owners, Strata LMS 1755*, 2018 BCCRT 371).
11. I have also considered the strata's argument that a more appropriate venue for the owner to dispute the legal costs is through a taxation before a Registrar of the British Columbia Supreme Court. The issue here includes the question of whether the strata has acted within its Bylaws and the provisions of the *Strata Property Act* (SPA), which would not be addressed through a legal fee taxation. For this reason and given the tribunal's strata property jurisdiction and its mandate to provide speedy and relatively inexpensive dispute resolution, I find that this dispute is better resolved before the tribunal.

ISSUES

12. The issues in this dispute are:
 - a. Whether the owner is responsible for legal fees incurred by the strata in enforcing the bylaws and pursuing a section 118 registration of lien? and
 - b. Whether either party is entitled to tribunal fees or dispute-related expenses?

BACKGROUND AND EVIDENCE

13. I have reviewed the evidence and submissions but refer to them here only as I find necessary to explain my decision.
14. The applicable strata bylaws were registered at the Land Title Office (LTO) on June 16, 2014. Unrelated amendments were filed in 2017 and 2018.
15. The relevant bylaws are:
 - a. Bylaw 1(1)(a) - the owner must pay strata fees on or before the first day of the month to which those fees apply.
 - b. Bylaw 1(1)(b) - the strata may charge 10% annual interest on unpaid strata fees.
 - c. Bylaw 1(1)(d) - a special levy must be paid on the day the levy is due and the strata may charge 10% annual interest on an outstanding special levy payment.
 - d. Bylaw 34 – the strata may proceed under the *Small Claims Act*, without further authorization of the owners, to recover from the owner by an action in debt in Small Claims Court, money owing as a result of remedying a bylaw contravention, including legal costs. Bylaw 34 does not include a tribunal proceeding.
16. The owner has been in arrears for amounts owing to the strata since January 2017. The unpaid amounts include unpaid strata fees, special levies, interest and fees such as non-sufficient funds charges (arrears).
17. In late August 2018, the strata referred collection of the arrears to its legal counsel, Hamilton & Co (Hamilton). On September 4, 2018, Hamilton wrote to the owner, warning that a failure to pay the arrears would result in a lien being registered against SL22 under section 116 of the SPA.

18. The September 4, 2018 letter also provided notice of the amount owed, the reason it was owing, and warned that action may be taken if the payment was not made within 21 days. The letter also warned that additional correspondence or negotiations about the outstanding account would likely increase the amount of legal costs being claimed by the strata as part of the collections process. I find this was valid notice under section 112(1) and (2) of the SPA.
19. The parties agree that, on September 28, 2018, they entered a payment plan (plan) under which the owner would pay the arrears. The plan is a written document, signed by the owner. The plan required the owner to make the following payments, totalling \$5,808.66:
 - a. \$1,452.16 on September 28, 2018,
 - b. \$1,452.16 by October 15, 2018,
 - c. \$1,452.16 by November 15, 2018, and
 - d. \$1,452.16 by December 15, 2018.
20. The plan also required the owner to pay his required strata fees when they became due on the 1st of each month, starting October 1, 2018.
21. The plan said that if the owner failed to make a required payment, the strata could initiate legal proceedings against him in the Supreme Court of British Columbia, “without further demand or notice”. Based on the plan document, I find that the \$5,808.66 payable under the plan included \$1,350 in “legal fees and disbursements”.
22. The applicant then failed to make the required payments on September 28, October 1 and October 15, 2018. The owner admits missing a payment on October 15, 2018 only, because of a “banking glitch”. I find the question of whether one payment or more than one was missed is not determinative. The owner admits missing a payment, thereby breaching his commitments under the plan.

23. On October 15, 2018, the strata registered a Certificate of Lien (lien) against SL22 securing the amount owing to the strata as of October 1, 2018 (\$4,322.78).
24. The subsequent correspondence about the missed payments led to further legal fees from Hamilton.
25. The strata says that on October 18, 2018 the owner offered to pay the arrears in full, via credit card. The owner says he offered to resolve this issue on October 16, not October 18. I find that the owner made the offer on October 18, 2018, according to the email he wrote to the strata that day. Because credit card payment is not an acceptable form of payment under the plan, the strata declined this offer. Hamilton communicated this to the owner.
26. The owner filed copies of two bank drafts in evidence, as follows:
 - a. November 13, 2018 - \$2,035.07 for Hamilton's legal fees, and
 - b. November 13, 2018 - \$4,780.08 for "strata fees".
27. On January 11, 2019, the owner paid Hamilton \$1,834.78. The two amounts paid for legal fees, taken together, add up to the \$3,869.85 that is the subject of this dispute.
28. In January 2019, the parties agree that the owner paid "all outstanding amounts concerning this dispute."
29. On February 5, 2019, the strata discharged the lien it had registered against SL22.
30. The strata filed an affidavit of a legal assistant at Hamilton, JJ, who details the steps taken in pursuing the arrears against the owner and provides a detailed description of the legal services.

POSITION OF THE PARTIES

31. The owner argues that:

- a. The strata should reimburse him for \$3,869.85 in legal fees the strata incurred in pursuing him for the arrears, because the strata did not manage the arrears negotiations appropriately.
32. The owner requests that I order that the strata reimburse him the \$3,869.85 plus \$225 in tribunal fees.
 33. The strata argues that:
 - a. It only engaged legal counsel because the owner failed to meet his commitments under the plan,
 - b. The strata has a contractual obligation to pay Hamilton the legal fees for services provided,
 - c. Given section 116 to 118 of the SPA and the decision in *The Owners, Strata Plan KAS 2428 v. Baettig*, 2017 BCCA 377, the applicable is responsible for legal fees associated with the cost of enforcing the lien.
 34. The strata asks that I dismiss the owner's claims and this dispute.

ANALYSIS

Is the owner responsible for legal fees incurred by the strata in enforcing the bylaws and pursuing a section 118 registration of lien?

35. Section 116 of the SPA allows a strata to register a lien against an owner's strata lot by registering a Certificate of Lien at the LTO for failure to pay (a) strata fees and/or (b) a special levy, as well as other items that do not apply here.
36. Section 118 of the SPA says that the costs of registering a lien against an owner's strata lot may be added to the amount owing under a Certificate of Lien. Those costs include (a) reasonable legal costs (b) land title and court registry fees and (c) other reasonable disbursements.

37. The lien here expressly included “costs permitted under section 118” of the SPA, which I find includes reasonable legal costs.
38. One issue is whether the amounts paid by the owner for legal fees are “reasonable legal costs” under section 118 (a) of the SPA.
39. In *The Owners, Strata Plan KAS 2428 v. Baettig*, 2017 BCCA 377, the Court of Appeal found that a strata could collect actual legal costs under section 118 of the SPA, provided the costs were “reasonably necessary.” At paragraph 56 the Court wrote:
- If actual reasonable legal costs are not included in s.118(a), legal fees not covered by the tariff must be borne by non delinquent strata owners by way of increased common fees. This would further increase the financial burden on owners who are paying their share. In my view, this interpretation would be inconsistent with the philosophy and scheme of the SPA.
40. *Baettig* also provides that reasonable legal costs in section 118(a) applies to costs incurred both out of court and in court related to registering a lien.
41. I find the legal costs incurred by the strata to be “reasonably necessary”, based on the detailed affidavit of J.J. which specifies the actions taken and time spent on each aspect of the matter.
42. The strata has no bylaws allowing for reimbursement of legal fees. However, section 133 of the SPA allows the strata reasonable costs from the responsible owner for remedying a bylaw contravention (see *The Owners, Strata Plan LMS 3249 v. AAF Holdings Ltd.*, 2019 BCCRT 127). I find that section 133 includes a strata’s legal fees where reasonably necessary to remedy a bylaw contravention.
43. Despite section 133, section 135 requires that a strata must not require a person to pay the costs of remedying a bylaw contravention unless it has received a complaint about the contravention and given the owner the particulars of the complaint, in writing, and a reasonable opportunity to answer the complaint

44. I find that, in the circumstances here, the September 4, 2018 letter from Hamilton to the owner meets the notice requirements of both sections 112 and section 135.
45. The owner also argues that he was unable to pay some of his arrears partly due to the way the strata treated him in a separate dispute, where he alleged the strata failed to repair the ceiling of SL22. There was no proof provided that the strata's treatment of the owner in the other dispute caused the debt that is the subject of this dispute, which I find is a distinct dispute arising out of the owner's non-payment of required amounts under the SPA.

TRIBUNAL FEES AND EXPENSES

46. 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. I see no reason in this case to deviate from the general rule. I make no order for fees or expenses because the strata paid no tribunal fees and did not claim dispute-related expenses.
47. The strata corporation must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owner.

DECISION AND ORDERS

48. I dismiss the owner's claims and this dispute.

Julie K. Gibson, Tribunal Member