



Civil Resolution Tribunal

Date Issued: August 28, 2019

File: ST-2018-007879

Type: Strata

Civil Resolution Tribunal

Indexed as: *Drysdale et al v. The Owners, Strata Plan NW 155 et al*, 2019 BCCRT 1023

B E T W E E N :

Geraldine Drysdale, James Drysdale and Trevor Holloran

APPLICANTS

A N D :

The Owners, Strata Plan NW 155 and TRACEY SCOTT-MOORE

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. Two of the applicants, Geraldine Drysdale and James Drysdale, own a strata lot in the respondent strata corporation The Owners, Strata Plan NW 155 (strata). The

other applicant, Trevor Holloran, owns a different strata lot in the strata. The respondent Tracey Scott-Moore also owns a strata lot in the strata.

2. The applicants claim that individuals authorized by the strata improperly entered the Drysdale's strata lot. They also requested a number of resolutions that do not relate to that claim and are perhaps best understood as distinct claims. Those requested resolutions include an itemized electrician's bill for certain work performed, payment of \$2,220 allegedly collected by the Ms. Scott-Moore for the rental of a parking space, an audit of the strata's finances, the return of \$500,000 plus interest that the strata paid to a third party, and an order that council stop bullying the applicants.
3. The strata says it entered the Drysdale's strata lot in accordance with the strata's bylaws to investigate a possible bylaw violation. It says the applicants have not provided a legal or factual basis for any of the requested resolutions.
4. Ms. Scott-Moore says she has not been a strata council member since 2014 and has no knowledge of the events in question.
5. The applicants are represented by Geraldine Drysdale. The strata is represented by a strata council member. Ms. Scott-Moore represents herself.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The tribunal must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the tribunal's process has ended.
7. The tribunal has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral

hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.

8. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The tribunal may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
9. Under section 123 of the CRTA and the tribunal rules, in resolving this dispute 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

10. The issues in this dispute are:

- a. Did the strata validly enter the Drysdale's strata lot? If not, what remedy is appropriate?
- b. Should the tribunal order the applicants' other requested resolutions, including resolutions about:
 - i. electrical work,
 - ii. audit of financial records,
 - iii. parking stall funds,
 - iv. the strata's payment to a third party,
 - v. bullying, harassment and a new strata council.

EVIDENCE AND ANALYSIS

Entry to strata lot

11. The strata says that on October 18, 2018 three representatives (OM, ML and KC) attended the Drysdale's strata lot to conduct an inspection regarding a potential bylaw violation. The strata says that James Drysdale invited them into the suite but "almost immediately," Geraldine Drysdale turned them away and accused them of harassment. Before they left, the strata's representatives noted "new" laminate flooring had been installed without council's approval.
12. The applicants raise concerns about the purpose and validity of the strata's entry. They do not dispute that they received 48 hours' written notice as required by the bylaws. However, they say that the letter from the strata's property manager said the strata was inspecting common property and there is no common property in their suite.
13. I believe the applicants' possible confusion arises from bylaw 7, cited in the letter, which refers in 7(1)(b)(i) to inspecting common property. However, bylaw 7(1)(b)(ii) says owners must allow a person authorized by the strata to enter the strata lot to ensure compliance with the *Strata Property Act* (SPA) and the bylaws. The letter states that the purpose of the access request was to inspect for compliance with bylaw 3 pertaining to property use.
14. The applicants also take issue with the attendance of the strata's 'janitor', KC, during the inspection. Bylaw 7 says an owner, tenant, occupant or visitor must allow "a person authorized by the strata" to enter the strata lot. The applicants do not allege that the strata did not authorize KC to enter the strata lot. Rather, they allege that KC has followed each of the applicants around the complex and around town, reporting back to the strata council. I address this allegation later in these reasons.
15. The strata correctly notes that it has an obligation to investigate complaints and enforce the strata's bylaws. Having reviewed the written noise complaints from the neighbour below the Drysdales, I am satisfied that the strata had a valid purpose and was acting in good faith in conducting the inspection. The strata also correctly

notes that Geraldine Drysdale's refusal to allow the strata to complete the inspection was a contravention of bylaw 7.

16. Bylaw 39 contains specifications and restrictions for hard floor surfaces. The Drysdales provided a March 16, 2011 letter from the strata's former property manager granting them permission to install laminate flooring. The strata says the 2011 letter did not grant the Drysdales permission for a 2018 floor change. The applicants appear to deny changing the floor in 2018. Given that there is no evidence before me that the strata has fined the Drysdales for a bylaw contravention, and given that the Drysdales have not specifically requested any resolution about their floor in this dispute, I make no finding about whether the Drysdales installed new flooring or contravened bylaw 39 or any other bylaw in relation to their flooring.

Electrical work

17. On August 20, 2018, the strata's property manager wrote to the Drysdales, attaching an invoice for electrical work. The strata paid the invoice on the Drysdales' behalf and charged it back to the Drysdales' strata lot account.
18. The Drysdales request an itemized electrician's bill to see the portion of the work attributed to their strata lot. They believe the electrician provided services for the benefit of other strata lots.
19. The strata says it provided the requested itemized electrician's invoice. The invoice, dated August 10, 2018, indicated that only the Drysdale's strata lot had work done. There were three charges on the bill: 1.5 hours of work, \$11 worth of supplies, and a single "truck charge". The email correspondence in late July 2018 shows that Geraldine Drysdale asked the strata's property manager to arrange for a contractor to attend because she was having issues with tripping a breaker. The strata's property manager agreed and advised, "if it is a strata problem it would be a strata cost. If not, the amount would be charged back to you."

20. According to the invoice, the electrician spoke with one of the Drysdales and advised that their repair man had read the wrong voltage, and that is why their stove was not working. Although Geraldine Drysdale says the problem was her sewing machine rather than her stove or oven, this does not change the fact that it was not a strata issue and she agreed in advance to pay the cost of the electrician's invoice. I dismiss this aspect of the applicants' claim.

Audit of financial records

21. The applicants request an audit of the strata's financial books from 2010 to present. The applicants do not suggest any specific improprieties, such as a lack of transparency or mismanagement of funds.

22. The SPA does not require a strata to audit its finances. Seeking an audit is generally up to the owners. The strata says that if 3/4 of the owners approved an audit, the strata council would select a qualified outside auditor to conduct an audit.

23. The SPA requires a strata to retain copies of its budget and financial statement for the current year and the previous 6 years. It must provide owners, upon request, access to those records. The applicants have not pointed to any issues in the strata's financial records, and have not said that they were denied access to those records.

24. As a result, I decline to order an audit of the strata's financial records.

Parking stall funds

25. The Drysdales say they own parking stalls 4 and 5 in the "apricot building". It is difficult to understand Geraldine Drysdale's submissions on the parking space. It appears that she is arguing either that the Drysdales have been charged rent for stall 5 since 2011 despite not using it, or that Tracey Scott-Moore has rented out stall 5 without the Drysdales' permission and profited from it.

26. The applicants say that the respondent Ms. Scott-Moore has improperly collected \$35 per month over 92 months, which totals \$3,220 although they have only

claimed \$2,220. They say that the strata council advised them that Ms. Scott Moore was renting the stall, but they do not explain how or when the council said this. This also conflicts with all the correspondence from the strata indicating that the strata rents additional parking stalls to owners at \$25 per month.

27. Ms. Scott-Moore denies renting out or collecting revenue for parking stall 5 in the apricot building. She says her parking stall is stall 11 in peach building and she lives in pear building. She also rented stall 22 in apple building until 2016.
28. The strata says Ms. Scott-Moore has nothing to do with parking allotments for the apricot building, as she lives in a different building. The strata says Ms. Scott-Moore left council in 2016.
29. The strata plan shows that in all buildings with underground parking, the parking area is common property. Based on the evidence, it appears that each strata lot is assigned one parking stall under section 76 of the SPA, and the strata rents the remaining stalls to owners who require additional parking.
30. The Drysdals provided a Multiple Listing Service listing from when they purchased their strata lot, which said that “one secured parking comes with the suite and a second stall is currently rented for \$10 per month.” I find that this reinforces that the Drysdals only had the right to use one stall, which was stall 4. They had the option of renting stall 5.
31. In an April 27, 2018 letter from the strata’s property manager, all owners were advised that if they wanted to use a parking stall in addition to the one allocated by the developer, the charge was \$25 per month. Owners who did not wish to pay the monthly rent were asked to inform the strata council prior to June 1, 2018. It is not clear whether the Drysdals responded to this letter.
32. I find that the listing, together with the correspondence from the strata’s property manager and other evidence, indicates that the Drysdals were granted exclusive use of stall 4 in the apricot building. The parking stalls are all common property

administered by the strata. I find that the Drysdales did not have any right to stall 5 or to the funds collected by renting out stall 5.

33. The applicants bear the burden of proving their claim relating to entitlement to parking stall funds. I find that they have not done so. I dismiss this aspect of their claim.

Strata's payment to a third party

34. The applicants request to have the \$500,000 plus interest that the strata paid to a third-party plumbing company "returned to us" because the work has not been done.
35. The strata says the funds were paid years ago to the third party from the strata's contingency reserve fund and any monies returned would be returned to that fund. The Strata filed a lawsuit against the third party in BC Supreme Court in June 2016. At a special general meeting on May 22, 2019, the strata passed a resolution to proceed to trial against the third party using additional funds from the contingency reserve fund.
36. The strata says that neither the applicants nor the CRT can direct the BCSC proceeding, and says that if the applicants disagree with the Strata's conduct in that action, that is a matter to bring before all owners for a vote. I agree. The applicants have no standing to bring a claim over funds that are the subject of a legal proceeding between the strata and a third party. I dismiss this aspect of the applicants' claim.
37. To the extent that the applicants may have raised this issue as evidence of financial impropriety in support of their request for an audit, I find that the evidence shows that the strata has taken appropriate steps, supported by a majority of owners, to recover its losses.

Bullying, harassment, and new strata council

38. The applicants seek an order that the strata council stop bullying owners.

39. The tribunal may make orders preventing specific conduct if the conduct falls within one of the categories described in section 121 of the CRTA, which includes actions taken by a strata council in relation to an owner. Depending on the circumstances, the tribunal may or may not have jurisdiction to prohibit, with what is called an injunction, conduct that the applicants say amounts to harassment or bullying.
40. Injunctions are extraordinary discretionary remedies that should only be used in the clearest of cases, keeping in mind the nature of the wrong, the availability of other remedies, and the relative effectiveness of other remedies (*Interior Health Authority v. Statham*, 2005 BCSC 1243 at paragraph 10). Under section 60 of the CRTA, a person who fails or refuses to comply with a tribunal's order is liable, on application to the Supreme Court, to be punished for contempt as if in breach of an order or judgment of the Supreme Court. In my view, given the serious consequences, the tribunal should reserve the extraordinary remedy of injunction orders to address repeated or serial wrongful conduct when other remedies have proven ineffective.
41. Parties often seek orders from the tribunal to prevent what the parties perceive as harassment and bullying. These terms are subjective. One person may perceive something as harassment or bullying that others would not. Often, the perception of bullying and harassment is shared by both parties. For these reasons, an order that prohibits a person from harassing or bullying another is likely too vague to be enforceable.
42. In support of their complaints, the applicants point largely to matters involving Mr. Holloran. The applicants allege that KC and R, "the cleaner", made false calls to the RCMP about Mr. Holloran. They say that there have been approximately 20 calls to the RCMP about Mr. Holloran in the last 3 years.
43. The strata says that the strata council's actions do not amount to bullying or unfair actions. It says strata council members and contractors have the right to call the police to protect their safety.
44. On December 19, 2018, police attended the strata complex. In a written statement prepared on that day, KA said that Mr. Holloran threatened KA's and R's lives, and

specifically threatened to get a gun and shoot them. KA called the RCMP, and officers attended and spoke to all parties involved. They recommended KA refrain from direct contact with Mr. Holloran. No charges were laid.

45. Geraldine Drysdale argues that because no charges were laid, the complaint was false. I do not agree. The Crown makes decisions about whether to lay charges based on various factors, including the strength of the evidence and the seriousness of the allegations. I am unable to find that this was a “false” complaint to the RCMP simply because no charges were laid. Mr. Holloran did not provide a statement about the events. The balance of the evidence indicates that KA called the police because he legitimately felt threatened.
46. Geraldine Drysdale also submits that KC and another strata contractor, R, “have been seen following” both Mr. Holloran and Geraldine Drysdale in the downtown Port Coquitlam area when they are supposed to be working at the strata complex. KC submitted a written statement declaring that he has never followed any of the applicant owners or observed them outside the strata’s property. Given KC’s denial and the failure of the applicants to provide any particulars, such as dates, times and locations, I find that the applicants have not established targeted observing or harassment.
47. After weighing the evidence, I am not satisfied that I should make the extraordinary order that the applicants seek. I find that the order sought is too vague to be enforceable. Moreover, there is insufficient evidence that the strata council or its members or others have been unfair to the applicants or have bullied or harassed them in any way. I dismiss this aspect of the applicants’ claim.
48. The applicants also requested an order that all present members of council step down and a new council be permitted to volunteer for the positions. It is unclear what purpose this order would serve, as it is essentially what happens each year at the annual general meeting, where individuals volunteer as council members and are elected by the owners. If the applicants want new council members, they may

attend the next AGM and cast their ballots, or even run for council themselves. I decline to grant this order.

TRIBUNAL FEES AND EXPENSES

49. In accordance with the Act and the tribunal's rules, as the applicants were unsuccessful I find that they are not entitled to any reimbursement of tribunal fees or expenses.

50. The strata corporation must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicants.

ORDER

51. I dismiss the applicants' claims and this dispute.

Micah Carmody, Tribunal Member