



Civil Resolution Tribunal

Date Issued: September 26, 2019

File: ST-2017-003668

Type: Strata

Civil Resolution Tribunal

Indexed as: *Steele v. The Owners, Strata Plan LMS 257*, 2019 BCCRT 1137

B E T W E E N :

Allan Steele

APPLICANT

A N D :

The Owners, Strata Plan LMS 257

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. The applicant, Allan Steele, is a director of 593634 B.C. Ltd. (owner). The owner is the registered owner of a commercial strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 257 (strata). The strata has 2 commercial strata lots in total as well as 75 residential strata lots.

2. Mr. Steele says the strata should be ordered to adopt and register proposed bylaws dated April 20, 2015 (proposed bylaws). The proposed bylaws address several issues, including how certain expenses should be allocated between the residential and commercial sections of the strata. The strata disagrees with this claim and says it should be dismissed.
3. Mr. Steele is self-represented. The strata is represented by a lawyer, Lisa Mackie.

JURISDICTION AND PROCEDURE

4. 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an issue.
6. 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 questions of the parties and witnesses and inform itself in any other way it considers appropriate.
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court. The tribunal may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.

8. 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.
9. The strata submits that Mr. Steele is out of time to bring this claim. The basic limitation period under section 6 of the *Limitation Act* is 2 years. If that period expires, the right to bring the claim ends, even if the claim would have otherwise been successful.
10. I do not find there to be enough evidence to show that this claim is statute-barred under the *Limitation Act*. The strata relied on Mr. Steele stating that he became aware of this claim in September 2014. The Dispute Notice was filed on July 27, 2017. However, the proposed bylaws that are the subject of this dispute are dated April 20, 2015. Presumably Mr. Steele became aware of his claim after April 2015, and not before then. It is not clear when this occurred. Given the uncertainties, I decline to dismiss this claim on the basis that it is out of time.

ISSUE

11. Should the strata be ordered to adopt the proposed bylaws?

EVIDENCE AND ANALYSIS

12. In 2015 strata council was considering amending existing bylaws to include separate sets of bylaws for its commercial and residential sections. At the time, it was operating with only one set of bylaws.
13. Mr. Steele was a strata council member and was involved in the process of creating the proposed bylaws. The proposed bylaws had three parts, for each of the entire strata, the commercial section, and the residential section. Mr. Steele says the proposed bylaws should be adopted as they address several important issues.

Chief among these is how revenue and expenses should be shared between the residential and commercial sections of the strata.

14. The strata council did not agree upon the content of the proposed bylaws and they were not presented to the owners for a vote. However, the residential section bylaws from the proposed bylaws were eventually voted upon and approved at the March 2017 AGM.
15. According to the Dispute Notice, Mr. Steele says the strata should be ordered to adopt the proposed bylaws. However, he did not explain the legal basis for making such an order.
16. I decline to order the strata to adopt the proposed bylaws. The proper procedure to amend bylaws is to bring resolutions for a vote by the ownership at a special or annual general meeting. These requirements are outlined in sections 43, 46, and 126 to 128 of the *Strata Property Act*. The evidence and submissions before me support the conclusion that Mr. Steele has simply been unable to garner the support necessary to amend the strata bylaws under these provisions. Mr. Steele provided no basis for the tribunal to interfere with the ordinary functioning of the strata. He also did not allege any specific wrongdoing by the strata. Instead, I find that he disagrees with strata council's decisions.
17. Many BC Supreme Court decisions state that a court should not interfere with the democratic governance of a strata unless absolutely necessary: *Oakley et al v. Strata Plan VIS 1098*, 2003 BCSC 1700; *Lum v. Strata Plan VR519 (Owners of)*, 2001 BCSC 493; and *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333. I find that this reasoning applies equally to the tribunal, which did not exist at the time these decisions were written. The BC Supreme Court has also held that the fact that a minority of owners fear being outvoted does not justify court intervention in democratic strata governance: *Oldaker v. The Owners, Strata Plan VR 1008*, 2010 BCSC 776.
18. Another factor is that Mr. Steele admits that the proposed bylaws require updates and changes under the SPA. The final form of the proposed bylaws is therefore not

before me in this dispute. This creates additional difficulty in assessing the owner's claim. As the owner has the burden of proof in this dispute, this factor weighs against him.

19. Finally, Mr. Steele submits that he now wishes for the new strata council members to read the proposed bylaws and present them at a special general meeting. I find there to be some uncertainty as to what Mr. Steele is seeking in this dispute. This uncertainty is magnified by the fact that circumstances have changed since the proposed bylaws were drafted in April 2015. For example, the strata passed a resolution to install separate hydro meters for the commercial and residential sections at the January 23, 2019 Annual General Meeting. I find this resolution addresses one of Mr. Steele's primary concerns and it is unclear how much the proposed bylaws (still in draft form) would benefit any of the parties.
20. I dismiss this claim.

TRIBUNAL FEES AND EXPENSES

Tribunal Fees

21. Under section 49 of the CRTA, 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 not to follow that general rule.
22. The strata is the successful party in this dispute. However, as it paid no tribunal fees I make no order for reimbursement.

Legal Fees and Dispute-Related Expenses

23. As Mr. Steele was the unsuccessful party, I decline to award him any dispute-related expenses. This leaves the strata's claims for legal fees of \$36,590 and dispute-related expenses of \$547.97, as documented in a July 15, 2019 letter.

24. Tribunal rule 9.4 that says legal fees are only reimbursed in extraordinary cases, and the tribunal generally does not award parties compensation for their time spent on dealing with the dispute. In assessing whether this was an extraordinary case I considered several authorities, including *Napoleone v. The Owners, Strata Plan BCS 2460 et al*, 2018 BCCRT 246. While not binding, I find *Napoleone* persuasive.
25. In *Napoleone* the tribunal considered whether to award reimbursement of legal costs. It applied the test from *Hirji v. Owners Strata Corporation VR44*, 2016 BCSC 548, which provides that special costs should only be made in exceptional circumstances where an element of deterrence or punishment is necessary because of reprehensible conduct.
26. In support of its position, the strata provided numerous emails between the parties that were exchanged during the facilitation phase and a July 15, 2019 affidavit from a former property manager.
27. I do not find this to be an extraordinary case and decline to award legal fees or expenses for time spent to any party. While I considered the emails, I have decided to place no weight upon them, as they were exchanged during settlement discussions. The July 15, 2019 affidavit outlines conduct by Mr. Steele that drew out this litigation. While at times the described conduct was unreasonable, I do not find it to be reprehensible. The affidavit states the Mr. Steele described litigation as “fun”, but I place little weight upon this evidence as the former property manager acknowledges that it was reported to her by an unidentified strata council member.
28. That said, the strata’s counsel provided a printout of dispute-related expenses totaling \$547.97. These expenses were composed of photocopying, printing, scanning, and online searches of the BC Online Registry and Land Title Survey Authority. I find it appropriate to order Mr. Steele to pay \$547.97 as dispute-related expense.
29. Under section 189.4 of the SPA, an owner who brings a tribunal claim against a strata corporation is not required to contribute to any expenses the strata corporation incurs in defending the claim. I order the strata to ensure that no part of

the strata's expenses with respect to this claim, other than the amount set out above, be allocated to the owner.

ORDERS

30. Within 30 days of this order, I order Mr. Steele to pay the strata \$547.97 as dispute-related expenses.
31. The strata is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
32. I dismiss Mr. Steele's claims.
33. Under section 57 of the CRTA, a party can enforce this final tribunal decision by filing a validated copy of the attached order in the Supreme Court of British Columbia (BCSC). The order can only be filed if, among other things, the time for an appeal under section 123.1 of the CRTA has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as a BCSC order.
34. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia (BCPC). However, the principal amount or the value of the personal property must be within the BCPC's monetary limit for claims under the *Small Claims Act* (currently \$35,000). Under section 58 of the CRTA, the owners can enforce this final decision by filing a validated copy of the attached order in the BCPC. The order can only be filed if, among other things, the time for an appeal under section 123.1 of the CRTA has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as a BCPC order.

David Jiang, Tribunal Member

