



Civil Resolution Tribunal

Date Issued: September 30, 2019

File: ST-2019-002507

Type: Strata

Civil Resolution Tribunal

Indexed as: *Seymour v. Allen et al*, 2019 BCCRT 1148

B E T W E E N :

BRENDA SEYMOUR

APPLICANT

A N D :

JAN ALLEN and The Owners, Strata Plan VIS 2551

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. The applicant, Brenda Seymour, is one of the registered owners of a strata lot in the respondent strata corporation, The Owners, Strata Plan VIS 2551 (strata). The respondent Jan Allen is an owner in the strata and a strata council member.

2. Ms. Seymour says the strata acted improperly by threatening fines, refusing to provide certain documents or answer her questions, and lying on a Form B. She added further allegations in her arguments, which I will detail below. She seeks damages for loss of use and enjoyment of her strata lot and damages for privacy violations. She also seeks an order that the strata obey the *Strata Property Act* (SPA) and strata bylaws, rules, and regulations. Ms. Allen and the strata deny they have done anything wrong.
3. Ms. Seymour and Ms. Allen are self-represented. Ms. Allen 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 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, email, or a combination of these. In some respects, this dispute amounts to a "he said, she said" scenario with both sides calling into question the credibility of the other. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.
6. 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the

court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.

7. 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.
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.
10. Before going further, I must consider the tribunal's jurisdiction over several of the matters raised by Ms. Seymour.

Jurisdiction Issue #1. Does the tribunal have jurisdiction over sections 31 and 32 of the SPA?

11. Ms. Seymour alleges that the strata council has not acted honestly and in good faith. She says that the council members have used their position to enrich themselves by providing themselves paid positions and are in a conflict of interest. She claims \$11,105.60 in damages for her resulting loss of use and enjoyment of her strata lot.
12. Section 31 of the SPA provides that each strata council member must act honestly and in good faith, with a view to the best interests of the strata. In *Wong v. AA Property Management Ltd.*, 2013 BCSC 1551, the court said that the only way that an owner can sue a strata council member is for a breach of section 32 of the SPA. Section 32 deals with conflicts of interest. It imposes an obligation on a strata

council member to disclose a conflict of interest, abstain from voting on issues where there is a conflict, and leave the council meeting while it is being discussed. However, the remedies for breaching section 32 of the SPA are in section 33 of the SPA: *Dockside Brewing Co. Ltd. v. Strata Plan LMS 3837*, 2007 BCCA 183. Section 33 of the SPA is expressly outside of the tribunal's jurisdiction under section 122(1)(a) of the CRTA.

13. I conclude that the tribunal has no jurisdiction to resolve Ms. Seymour's claims in relation to sections 31 and 32 of the SPA and against both Ms. Allen and the strata. I refuse to resolve these claims under section 10 of the CRTA due to lack of jurisdiction.
14. I also note that under bylaw 22(1) a council member who acts honestly and in good faith is not personally liable for the actions of the strata. As I have no jurisdiction to consider if Ms. Allen breached these duties, I will focus on the remaining claims against the strata.

Jurisdiction Issue #2. Does the tribunal have jurisdiction over Ms. Seymour's privacy complaints?

15. Ms. Seymour says that the strata breached the *Personal Information Protection Act* (PIPA). She provided a number of documents relating to this matter. One of these is a July 3, 2019 letter from an investigator with the Office of the Information & Privacy Commissioner (Commissioner). The investigator notes that there are currently four complaints under investigation, and that these matters have been referred to an adjudicator for a written inquiry.
16. The owner claims \$50,000 in relation to the privacy violations being investigated by the Commissioner. The investigation is ongoing and, as noted under section 50 of the PIPA, the purpose of the inquiry is to determine all questions of fact and law. The PIPA provides that decisions about PIPA breaches are to be made by the Commissioner.

17. Given the above, I do not find it appropriate to make any determinations on this issue. I refuse to resolve these privacy claims under section 11 of the CRTA as another, more appropriate, legally binding process is underway.

Jurisdiction Issue #3. Does the tribunal have jurisdiction over Ms. Seymour's claim that the strata falsified two Form Bs?

18. Ms. Seymour says the strata falsified two Form B documents for strata lots 27 (dated May 12, 2018) and 13 (dated November 28, 2018). Ms. Seymour owns strata lot 3 and is therefore not directly impacted by the Form Bs. However, she explains that the strata is exposing every strata lot owner to lawsuits by falsifying such documents.

19. Although not binding upon me, I find the reasoning in *Pilehchianlangroodi v. The Owners, Strata Plan LMS 1816*, 2019 BCCRT 367 applicable. In *Pilehchianlangroodi* the tribunal considered whether than applicant could sue for damages arising from relying on incorrect information contained in a Form B and other strata documents.

20. The tribunal wrote that section 59(6) of the SPA states that a person affected by an inaccurate Form B statement must apply to the BC Supreme Court to give effect to or obtain relief from a Form B issued with inaccurate information. The tribunal found the owner's claim to be outside the tribunal's jurisdiction.

21. I find that the analysis from *Pilehchianlangroodi* applies in this case. This part of the owner's claim is outside the tribunal's jurisdiction. I refuse to resolve this claim, under CRTA section 10(1).

ISSUES

22. There are numerous of issues raised in the Dispute Notice and arguments. I have already refused to resolve some of these. The parties also provided evidence showing a fraught relationship, but it was difficult to relate much of this evidence to a cause of action. I find the remaining issues in this dispute are as follows:

- a. Did the strata inappropriately disclose mediation discussions?
- b. Has the strata failed to provide documents to Ms. Seymour?
- c. Has the strata failed to provide the owners with notice of the tribunal decision indexed as 2018 BCCRT 742?
- d. Does the strata have to set up a new email address for the strata?
- e. Did the strata inappropriately threaten to fine Ms. Seymour?
- f. Does the strata have to implement pre-authorized debit payments?

EVIDENCE AND ANALYSIS

23. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

24. As background, the strata consists of 38 residential strata lots. Ms. Seymour has been involved in several disputes with the strata. These include the ongoing investigations before the Commissioner (discussed above), the tribunal case of *Seymour v. Allen et al*, 2018 BCCRT 742, and at least three BC Human Rights Tribunal proceedings indexed as 2018 BCHRT 186, 2018 BCHRT 271, and 2018 BCHRT 275. Some of the submissions and correspondence also refer to a fourth ongoing proceeding.

Issue #1. Did the strata inappropriately disclose mediation discussions?

25. During the facilitation phase of this dispute the parties participated in mediation by teleconference. After the session ended, the strata did not immediately end the call. Instead, Ms. Allen and another council member continued to speak about what occurred in mediation. There were other individuals that participated in these discussions.

26. Ms. Seymour provided an audio recording of these comments. She also typed out what was said and provided names for the speakers.
27. Ms. Seymour says the strata breached the facilitator's instructions that mediation was to be kept confidential. She provides the audio recordings and transcript as proof of her claim.
28. I find it unclear if the strata actually breached the facilitator's instructions. Although Ms. Seymour identified the individuals in her transcript, it is unclear if they are other strata council members. As the strata is a party to this proceeding, strata council members are entitled to information arising from mediation.
29. Ms. Seymour says the end result was that her privacy was violated. However, she did not further specify a cause of action or appropriate remedy. I note that there is no common law cause of action for breach of privacy in BC: *Ari v. Insurance Corporation of British Columbia*, 2015 BCCA 468 at paragraph 9.
30. I find the best approach to addressing Ms. Seymour's concerns is to place no weight upon the transcript and audio recordings of what was said immediately after mediation in the recordings and transcript.

Issue #2. Has the strata failed to provide documents to Ms. Seymour?

31. The production of strata documents has been an issue between the parties since 2017, as noted in the previous tribunal decision indexed as 2018 BCCRT 742.
32. In this dispute, Ms. Seymour requested documents from the strata by email on August 28 and November 27, 2018, and January 24 and February 21, 2019. Ms. Seymour also sent other emails reiterating and following up on these requests. The strata provided some of the documents but not all of them. The owner says many of the documents delivered to her were also sent late, including the July 3, 2019 Annual General Meeting minutes.
33. The February 21, 2019 email consolidates the documents Ms. Seymour says has not been provided to her. They are as follows:

- a. minutes from any general, special, or council meetings from November 27, 2018 until February 21, 2019;
 - b. an updated owner's list with renters' names, as well as copies of all Form Ks current to February 21, 2019;
 - c. all accounts receivable and accounts payable between April 1, 2018 and February 21, 2019 and all bank statements from January and February 2019;
 - d. any correspondence regarding the strata sent or received through Canada Post between January 24, 2017 and February 21, 2019;
 - e. all legal opinions received by strata;
 - f. any decision in legal proceedings involving the strata;
 - g. any correspondence, records and documents to or from Ms. Allen's personal email between January 24, 2017 and February 21, 2019; and
 - h. any electronic communications regarding the strata (including emails, text messages and files held in any cloud service) January 24, 2017 to February 19, 2019, from Ms. Allen and several third parties (AK, DM, and in the strata's possession in general).
34. Section 35 of the SPA limits what records the strata must make, retain, and provide to requesting individuals within 2 weeks. *Strata Property Regulation* 4.1 provides that such correspondence must be retained for 2 years.
35. I have compared the list of documents in section 35 of the SPA to what was requested. I find Ms. Seymour's request exceeds what is required under the law.
36. Section 35 does not include accounts receivable. Further, the strata and Ms. Seymour are currently involved in other legal proceedings. Under section 169(1)(b) the owner is not entitled to documents relating such proceedings, including any legal opinions.

37. Ms. Seymour also essentially requested all emails from Ms. Allen's email account for a period of time. Section 35(2)(k) requires a strata corporation to retain copies of "correspondence sent or received by the strata corporation and council". However, as noted by the court in *Kayne v. Strata Plan LMS2374*, 2007 BCSC 1610 at paragraph 21, "it would be stretching the language of the [SPA] far beyond what was intended to suggest that it includes all correspondence between individual members of council that may or may not relate to the business of the council."
38. I have considered the tribunal decisions of *Pritchard v. The Owners, Strata Plan VIS3743*, 2017 BCCRT 69, *Hamilton v. The Owners, Strata Plan NWS 1018*, 2017 BCCRT 141, and *Girard v. The Owners, Strata Plan VR 1364*, 2019 BCCRT 430. Although not binding upon me, I find their reasoning persuasive. From these cases I conclude that section 35(2)(k) does not required production of emails between council members, whether or not those emails relate to council business. However, the strata must produce emails between council members and third parties, such as the property manager.
39. It is difficult to determine on the evidence before me precisely what has and has not been provided. I order that the strata provide the following documents within 30 days of this decision by registered mail, if they have not been provided already, and subject to the strata's determination that any such documents do not have to be disclosed pursuant to section 169(1)(b) of the SPA:
- a. minutes from any general, special, or council meetings from November 27, 2018 until February 21, 2019;
 - b. a list of current owners;
 - c. a list of current tenants;
 - d. books of account showing money received and spent and the reason for the receipt or expenditure between April 1, 2018 and February 21, 2019;

- e. any correspondence (including emails) from January 24, 2017 to February 21, 2019 sent by strata council between themselves and third parties (including a property manager); and
 - f. bank statements, cancelled cheques and certificates of deposit from January and February 2019.
40. Nothing in this decision is mean to impair or otherwise impact the strata's capacity to assert legal or litigation privilege over its documents.
41. The strata may charge Ms. Seymour for copies of the pertinent email messages at a maximum of \$0.25 per page, under section 4.2(1) of the *Strata Property Regulation*.

Issue #3. Has the strata failed to provide the owners with notice of the tribunal decision indexed as 2018 BCCRT 742?

42. Ms. Seymour says the strata did not advise the owners of the above-mentioned tribunal decision.
43. Section 167 of the SPA requires the strata to advise owners as soon as feasible if it is sued. Section 35 of the SPA requires the strata retain a copy of decisions from legal proceedings. However, the strata is not required to notify the owners of the decision.
44. I dismiss this claim.

Issue #4. Does the strata have to set up a new email address for the strata?

45. Ms. Seymour says Ms. Allen uses her personal email address for strata correspondence. Ms. Seymour seeks an order that the strata use a separate email address that all council members can access.
46. Sections 61 and 63 of the SPA allow for the strata and the owners to provide notice to each other through a variety of means, including email. Section 62 requires the strata to ensure it has a mailing address filed in the land title office. However, there

is no requirement outlined for creating an email address. I therefore have no legal basis to make the order requested.

47. I dismiss this claim.

Issue #5. Did the strata inappropriately “threaten” to fine Ms. Seymour?

48. Ms. Seymour says the strata threatened her through two letters dated August 22, 2018. In the first, the strata wrote it received a formal complaint of Ms. Seymour driving carelessly and excessively fast in the strata parking lot and driveway. It stated that if it received another such complaint it would fine Ms. Seymour \$50.

49. The strata provided a July 6, 2019 email from RS that says RS observed Ms. Seymour driving around a corner in the parking lot “too fast”. RS provided the initial complaint.

50. Bylaw 34(3(d) provides a speed limit of 10 kilometres per hour on the common property. The strata has a duty to enforce its bylaws, as set out in SPA section 26. These facts support the conclusion that the strata behaved reasonably in issuing its letter.

51. In the second August 22, 2018 letter, the strata said it did not receive strata fees for July or August 2018. It wrote that it had to receive a cheque or proof of deposit by August 31, 2018, or a lien would be filed against Ms. Seymour’s strata lot. Bylaw 1 required an owner to pay strata fees on or before the first day of the month to which the strata fees related. Ms. Seymour does not dispute that her strata fees were late at the time.

52. Ms. Seymour says she has been unfairly targeted by the strata. She notes that bylaw 11.1 says that an owner will be fined \$25 for a first offense of the strata rules or bylaws, but the strata said it was prepared to fine her \$50. She also notes that another owner hung photographs in common areas, though this is a breach of the bylaws. Further, Ms. Seymour notes the strata took no steps to place a lien on another unit until 9 months of strata fees had accumulated.

53. The owner did not provide a legal basis for this part of her claim and I am unable to identify a civil cause of action from these facts. As the strata has a duty to enforce bylaws under the SPA, I find that issuing the warning letters was reasonable under the circumstances. I note that a warning letter is also less severe than imposing a fine.

54. I dismiss this claim.

Issue #6. Does the strata have to implement pre-authorized debit payments?

55. The owner says that the strata has unreasonably refused to implement preauthorized debit payments for strata fees. She asks for an order that such a system be set up.

56. I decline to make this order. The owner provided no legal basis for it and the SPA and strata bylaws are silent on this matter. If the owner wishes the strata to implement preauthorized debit payments, there are other avenues available to her, including proposing a bylaw amendment in the manner outlined in the SPA.

57. The owner's primary concerns about strata fee payments are about convenience. There may be other solutions available to the owner, such as providing the strata with a series of post-dated cheques for strata fees. I leave that for the parties to consider.

58. I dismiss this claim.

TRIBUNAL FEES AND EXPENSES

59. 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.

60. While most of Ms. Seymour's claims have been dismissed, I find in the circumstances that the strata is required to reimburse the owner's tribunal fees and dispute-related expenses. That portion of her claim was reasonably brought forward.
61. I order the strata to pay \$225 in tribunal fees and \$22.16 in dispute-related expenses (for registered mail). I did not find any other amounts proven.
62. 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 dispute be allocated to the owner.

ORDERS

63. I order that within 30 days of this decision, the strata provide the following documents to Ms. Seymour by registered mail, if they have not been provided already, and subject to the strata's determination that any such documents do not have to be disclosed pursuant to section 169(1)(b) of the SPA:
- a. minutes from any general, special, or council meetings from November 27, 2018 until February 21, 2019;
 - b. a list of current owners;
 - c. a list of current tenants;
 - d. books of account showing money received and spent and the reason for the receipt or expenditure between April 1, 2018 and February 21, 2019;
 - e. any correspondence (including emails) from January 24, 2017 to February 21, 2019 sent by strata council between themselves and third parties (including a property manager); and
 - f. bank statements, cancelled cheques and certificates of deposit from January and February 2019.

64. I order that the strata may charge Ms. Seymour for copies of the documents produced, as permitted by the *Strata Property Regulation*.
65. I also order that within 30 days of the date of this decision, the strata pay Ms. Seymour a total of \$247.16, broken down as follows:
- a. \$225 for reimbursement of tribunal fees, and
 - b. \$22.16 for dispute-related expenses.
66. Ms. Seymour is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
67. As noted earlier, I refuse to resolve the following claims:
- a. Ms. Seymour's claims in relation to sections 31 and 32 of the SPA under section 10 of the CRTA;
 - b. Ms. Seymour's privacy claims under section 11 of the CRTA; and
 - c. Ms. Seymour's claims in relation to the two Form Bs under section 10(1) of the CRTA.
68. I dismiss Ms. Seymour's remaining claims against the strata and Ms. Allen.
69. 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.
70. 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