



# Civil Resolution Tribunal

Date Issued: October 3, 2019

File: ST-2019-000988

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wang v. The Owners, Strata Plan LMS 2970*, 2019 BCCRT 1161

BETWEEN:

YI WANG

**APPLICANT**

AND:

The Owners, Strata Plan LMS 2970

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. The applicant, Yi Wang (owner), owns strata lot 48 in the respondent strata corporation, The Owners, Strata Plan LMS 2970 (strata). The owner claims the strata has failed to provide requested documents within 2 weeks of her request, in breach of the *Strata Property Act* (SPA). The owner also alleges the strata is

“deliberately obstructing” her audit in a “disguised form” by not allowing her to review requested documents on dates she put forward, and is not acting in good faith. The owner seeks an order the strata abide by section 36 of the SPA, an order to stop obstructing her audit, and \$1,400 in compensation as “punishment” for the strata’s behaviour.

2. The strata says it has complied with the owner’s requests and that the owner’s claims are without merit and should be dismissed.
3. The owner is self-represented. The strata is represented by a strata council member.

## **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* (CRTA). The tribunal’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must act fairly and follow the law. It must also 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, 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 the parties and witnesses questions and inform itself in any other way it considers appropriate.

7. Under section 123 of the CRTA, in resolving this dispute the tribunal may make one or more of the following orders:
  - a. Order a party to do or stop doing something;
  - b. Order a party to pay money;
  - c. Order any other terms or conditions the tribunal considers appropriate.

### ***Additional Evidence***

8. The owner made her submissions, and the strata made its submissions in response. During its time for submissions, the strata advised it had an additional piece of evidence, namely an email from its caretaker advising the dates and hours the owner inspected various documents. The applicant objected to this late evidence and requested she also be allowed to produce 4 pieces of late evidence. I have not reviewed any of the additional evidence, however, given my reasons below, I find it is unnecessary to accept and review the additional evidence from either party.

### **ISSUES**

9. The issues in this dispute are:
  - a. Did the strata breach section 36 of the SPA by failing to provide the owner with requested documents within 2 weeks of the owner's request and, if so, what is the appropriate remedy?
  - b. Did the strata unreasonably "obstruct" the owner's audit and, if so, what is the appropriate remedy?
  - c. Is the strata required to pay \$1,400 as "punishment"?

## **BACKGROUND, EVIDENCE & ANALYSIS**

10. The strata was created in October 1997. It is a mixed-use building located in Richmond, BC. The owner purchased her strata lot in 2008.
11. The strata repealed its previous bylaws and filed amended bylaws at the Land Title Office in February 2015. Given my reasons below, I do not need to go into the bylaws' details.
12. In a civil dispute such as this, the applicant owner bears the burden of proof. This means the owner has to provide evidence to prove each of her claims on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
13. The owner has initiated several tribunal disputes against the strata, with mixed success. Given the tribunal's mandate of recognizing the ongoing relationship between parties, I encourage the owner to attempt resolution with the strata directly in the future, before commencing additional tribunal proceedings.

***Did the strata breach section 36 of the SPA by failing to provide the owner with requested documents within 2 weeks of the owner's request and, if so, what is the appropriate remedy?***

14. The owner says that on December 30, 2018, she requested from the strata various insurance documents including amended policies and endorsements, for December 1, 2014 to December 1, 2019. She says the strata did not provide the documents within the required 2 weeks, as required by section 36 of the SPA.
15. I note that in a previous tribunal decision, *Wang v. The Owners, Strata Plan LMS 2970*, 2019 BCCRT 381 (*Wang* 2019), this same issue was raised by the owner. Specifically, in *Wang* 2019, the owner stated that she requested the insurance policies from December 1, 2014 to date (March 27, 2019). The tribunal member dismissed that claim because the owner provided no evidence of her December 30,

2018 request to the strata, or of the strata's alleged failure to comply within the required 2-week period. The owner also commenced this dispute, with evidence she says supports her position that the strata breached section 36 of the SPA.

16. What I must then determine is whether the issue is *res judicata*, which means the issue has already been decided.

17. In *East Barriere Resort Limited et al v. The Owners, Strata Plan KAS1819*, 2017 BCCRT 22, a decision that is not binding on me but which I find persuasive, the tribunal chair aptly explained the two ways in which *res judicata* can arise, at paragraph 24:

The first is called **cause of action estoppel**, which stops someone from pursuing **a matter that was or should have been** the subject of a previous process. The second is called **issue estoppel**, which stops someone from raising an **issue that has already been decided** in another process (*Eschbamer v. Wallster*, 2013 BCCA 76 at paragraph 12, quoted with approval in *Tuokko v. Skulstad*, 2016 BCSC 2200 at paragraph 16).

(Emphasis in original)

18. The test for cause of action estoppel has 4 parts:

- a. There must be a final decision of a court of competent jurisdiction in the prior action [the requirement of “finality”];
- b. The parties to the subsequent litigation must have been parties to or in privy with the parties to the prior action [the requirement of “mutuality”];
- c. The cause of action and the prior action must not be separate and distinct; and
- d. The basis of the cause of action and the subsequent action was argued or could have been argued in the prior action if the parties had exercised reasonable diligence.



19. The test for issue estoppel has 3 parts:
  - a. The same question has been decided;
  - b. The judicial decision deciding the question is final; and
  - c. The parties or their privies were the same in the judicial decision and the subsequent proceeding.
20. In applying both tests, it is clear that the parties in the previous tribunal decision are the same. The owner and the strata were parties in both disputes. Additionally, the *Wang* 2019 decision was a final decision by the tribunal on the merits of the case. The requirements of “finality” and “mutuality” are met.
21. I also find that the owner’s claim in this dispute is the same as in *Wang* 2019. That is, the owner seeks an order against the strata for its alleged failure to properly comply with her December 30, 2018 request for disclosure of the same insurance documents.
22. The owner raised the issue in *Wang* 2019, but failed to provide evidence in support of her claim. I find the claim before me is an attempt to relitigate the same issue, but with additional evidence.
23. Given the above, I find, on the balance of probabilities, that the tests for cause of action estoppel and issue estoppel are both met in this case. The owner’s claim for an order against the strata relating to her December 30, 2018 request for documents is therefore *res judicata*.
24. A decision maker may have a residual discretion not to apply the doctrine of *res judicata* in special circumstances. Section 11(1)(a) of the CRTA is discretionary, and so it is necessary to consider whether there are any special circumstances in this case. Special circumstances may arise, for example, where there are issues of fraud, misconduct, fresh evidence, or overriding fairness concerns (see: *Tuokko*, at paragraph 51). However, the owner has not presented evidence that any of these

special circumstances apply in this case. In fact, I note the evidence produced by the owner in this dispute was available to her at the time of her previous claim.

25. Therefore, I find this claim is *res judicata* and I refuse to resolve it under section 11(1)(a) of the CRTA.

***Did the strata unreasonably “obstruct” the owner’s audit and, if so, what is the appropriate remedy?***

26. The owner says the strata has obstructed her audit of the strata’s finances by changing dates she is allowed to inspect documents. Specifically, she refers to two instances.

27. The first, the owner emailed the strata on December 4, 2018 requesting to inspect various documents on each of December 24, 26, 27, 28, and 31, 2018. In response, the strata advised the documents would be available for 4 hours on each of December 27 and 28, 2018, and January 15 and 16, 2019. The owner says the strata’s denial of 3 audit days with no explanation is a deliberate obstruction of her audit “in a disguised form”.

28. Although the strata’s response did not specifically explain why several dates were denied, I find it is clear those dates requested by the owner were over holidays, including Christmas Eve, Boxing Day, and New Year’s Eve. I also note the strata provided alternative dates to the owner. In the circumstances, I find the strata acted reasonably and did not “obstruct” the owner’s audit.

29. For the second instance of alleged obstruction, as a result of her inspections in December and January, the owner emailed the strata on January 17, 2019 and requested additional records to be inspected on February 4 and 5, 2019. The strata responded by offering February 12 and 14, 2019, for 4 hours each. In a subsequent letter, the strata advised that it could not provide 4-hour inspections on consecutive days because the caretaker, who was to oversee the inspection, would not be able



to complete their other duties. The strata also offered an alternative arrangement possibility, of 2 hours per day over 4 non-consecutive days.

30. In response, the owner wrote to the strata accusing them of obstructing her audit by spreading the inspection over non-consecutive days and by limiting her inspection to 2 hour increments. She says this is the second time they have obstructed her audit, and cites another tribunal case, *Wang v. The Owners, Strata Plan LMS 2970*, 2017 BCCRT 97 (*Wang 2017*). She essentially says the strata has failed to properly follow the findings in that case.
31. In *Wang 2017*, the owner was similarly claiming the strata breached the SPA provisions in providing her access to inspect records and documents. The vice chair found, among other things, that having the owner supervised while inspecting the documents was reasonable, but that limiting the owner's access to the records to 1-hour increments was not reasonable in the circumstances. The vice chair noted that, in the future, inspection arrangements could be extended to 4 hours or more, to allow the owner to complete her inspection over fewer days.
32. In the circumstances, I find the strata has not failed to follow the decision in *Wang 2017*. The strata offered the owner 4-hour inspection windows, but requested that they be on non-consecutive days. The offer of 2-hour increments was an alternative proposal. In fact, the strata ultimately had a council member take a day off work so that the owner could inspect documents on consecutive days. I also note the SPA does not require the strata to strictly adhere to inspection dates suggested by an owner. In fact, to do so would be unnecessarily onerous.
33. Given all of the above, I find the strata has not unreasonably obstructed the owner's audit, or inspection of the strata's documents. Although I acknowledge the owner did not always get her first choice of days, I find the strata attempted to work with the owner to accommodate her requests. As a result, I dismiss the owner's claim for an order requiring the strata to stop obstructing her audit.

***Is the strata required to pay \$1,400 as punishment?***

34. As noted above, the owner submits the strata has failed to comply with the orders in *Wang 2017*, and says the strata must therefore be “punished” for its “second time offense”. She says the strata’s behaviour is reprehensible and deserving of rebuke. She says she should be awarded \$1,400 in “special costs” by “the strata council members”. This is essentially a claim for punitive damages.
35. It is unclear whether the owner is requesting that the strata council members pay \$1,400 personally, or whether the strata corporation should pay.
36. Either way, given my findings above that the strata did not unreasonably obstruct the owner’s audit and did not fail to comply with *Wang 2017*, and given the tribunal’s previous dismissal in *Wang 2019* of the owner’s claim that the strata breached its requirements under section 36 of the SPA, I find there is no legal basis to make such an order for punitive damages. I dismiss the owner’s claim in this regard.
37. Even if I had found a legal basis to make such an order, I note that in support of her claim, the owner relies on section 31 of the SPA, and says the strata council members have acted in bad faith.
38. Section 31 requires a council member to 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. To the extent the owner’s claims are against the individual strata council members, courts have said that the only time an owner can bring a claim against a council member is for a breach of the conflict of interest disclosure requirement under section 32 of the SPA (see: *Wong v. AA Property Management Ltd*, 2003 BCSC 1551). In this case, the owner has not alleged conflict of interest. Therefore, I find there is no right under the SPA for the owner to bring a claim against the council members under section 31 of the SPA.

## **TRIBUNAL FEES, EXPENSES AND INTEREST**

39. 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. As the owner has not been successful in this dispute, I dismiss her claims for reimbursement of tribunal fees and dispute-related expenses.
40. 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**

41. Under section 11(1)(a) of the CRTA, I refuse to resolve the owner's claim that the strata breached section 36 of the SPA as it is *res judicata*.
42. I order the owner's remaining claims dismissed.

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Andrea Ritchie, Vice Chair