



Civil Resolution Tribunal

Date Issued: October 8, 2019

File: ST-2019-003440

Type: Strata

Civil Resolution Tribunal

Indexed as: *Greene v. Moxham et al*, 2019 BCCRT 1176

BETWEEN:

GARY GREENE

APPLICANT

AND:

CHRISTOPHER MOXHAM, JEFFREY MCSWEENEY, ALLEN
PETERKIN, 1095314 B.C. LTD., SYLVIANNE ST. ONGE, AND The
Owners, Strata Plan KAS 1244

RESPONDENTS

REASONS FOR PRELIMINARY DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This is a preliminary decision of the Civil Resolution Tribunal (tribunal) about whether the tribunal should refuse to resolve some of the applicant's claims due to lack of jurisdiction.

2. The applicant, Gary Greene owns a strata lot in the respondent strata corporation, The Owners, Strata Plan KAS 1244 (strata). The other named respondents each own other strata lots in the strata. The individual respondents, and Robert Knight, who is an owner or principal of 1095314 B.C. Ltd., are current or former members of the strata council.
3. The applicant's dispute application sets out 9 claims, which are broadly about attic mould remediation, vent cleaning, meeting minutes, financial accounting, damage and repairs to common property, and strata council procedure, spending, and governance.
4. One of the applicant's claims is about alleged actions by the strata council the applicant says were intended to embarrass and discredit him. Specifically, the applicant says that after he sent a complaint letter and mentioned a possible tribunal claim, the strata council published council meeting minutes mentioning the applicant by name and characterizing his actions as threats against the strata council and property manager. As remedy for this claim, the applicant seeks \$5,000 in punitive damages.
5. The tribunal facilitator identified a preliminary jurisdiction issue in this dispute, which has been referred to me for a decision. The parties were asked to provide written submissions on the preliminary issue, which I have read and considered.
6. The applicant is self-represented in this dispute. The strata and 1095314 B.C. Ltd. are represented by a strata council member, Robert Knight. The remaining respondents are self-represented.

JURISDICTION AND PROCEDURE

7. 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.

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.

ISSUE

10. The issue in this preliminary decision is whether I must refuse to resolve the applicant's claims arising under *Strata Property Act* (SPA) section 31, including his claims against the individual respondents and 1095314 B.C. Ltd.

EVIDENCE AND ANALYSIS

11. Section 10(1) of the CRTA says the tribunal must refuse to resolve a claim that it is outside its jurisdiction. Section 10(2) says claim that involves issues not within the tribunal's jurisdiction may be amended to remove the issues that are outside the tribunal's jurisdiction.
12. For the following reasons, I find that some of the applicant's claims are outside the tribunal's jurisdiction, and I refuse to resolve them.
13. SPA Section 31 sets out the standard of care for strata council members. It says that in exercising the powers and performing the duties of the strata corporation, each council member must act honestly and in good faith with a view to the best interests of the strata corporation, and must exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.

14. While the applicant did not cite section 31 in his dispute application, I find that his claim for punitive damages for statements published in strata council meeting minutes arises under section 31. That is, it is a claim about the conduct and actions of strata council members. Also, I find the fact that the applicant named individual strata council members as respondents to the dispute confirms that he seeks remedies under SPA section 31. Through a tribunal staff member, I asked the applicant to clarify why 1095314 B.C. Ltd. was named as a respondent, and what remedy he sought against it. The applicant replied that he named the company as respondent because Robert Knight, its owner, was on the strata council. In his response email, the applicant clarified his claims, as follows:

I now ask for a judgement from the adjudicator that any or all of the following: strata corporation, including the strata council and individual strata council members (including 1095314 BC Ltd. represented by Robert Knight) acted unjustly and unfairly towards the applicant, in violation of SPA s.31.

15. Thus, the applicant's position is that the respondents breached their statutory duties under SPA section 31. However, in *Wong v. AA Property Management Ltd*, 2013 BCSC 1551, the BC Supreme Court considered a claim brought by an owner against the property management company, individual council members, and the strata corporation. The plaintiff alleged that the defendants had acted improperly in the management of the strata's affairs. The court concluded that the only time a strata lot owner can sue an individual strata council member is for a breach of the conflict of interest disclosure requirement under SPA section 32 (see *Wong*, at paragraph 36). Remedies for breaches of SPA section 32 are specifically excluded from the tribunal's jurisdiction, as set out in CRTA section 122(1)(a). Thus, the tribunal does not have jurisdiction over claims brought by an owner against an individual strata council member.

16. Similar to *Wong*, in *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32, the BC Supreme Court said that the duties of strata council

members under SPA section 31 are owed to the strata corporation, and not to individual strata lot owners (see paragraph 267).

17. These court decisions are binding precedents, and the tribunal must apply them. Following *Wong and Sze Hang*, I find the tribunal has no jurisdiction to decide the applicant's section 31 claims.
18. As previously stated, CRTA section 10 says the tribunal must refuse to resolve a claim that is not within its jurisdiction. I therefore refuse to resolve the applicant's claims under SPA section 31, including his claim for punitive damages, and his claims against all the individual respondents and 1095314 BC Ltd.

PRELIMINARY DECISION AND ORDERS

19. Under CRTA section 10, I refuse to resolve the applicant's claims under section 31 of the SPA. This includes his claim for punitive damages, and all his claims against Christopher Moxham, Jeffrey McSweeney, Allen Peterkin, Sylvianne St. Onge, and 1095314 B.C. LTD. Under the authority of CRTA section 61, I order that the names of all these respondents be removed from the style of cause.
20. The applicant's remaining claims against the strata may continue through the tribunal's usual process. The tribunal member assigned to hear the dispute will make a final decision about those claims, including reimbursement of tribunal fees and dispute-related expenses.

Kate Campbell, Tribunal Member