



Civil Resolution Tribunal

Date Issued: October 31, 2019

File: ST-2019-005749

Type: Strata

Civil Resolution Tribunal

Indexed as: *Cole v. The Owners, Strata Plan NW 2243*, 2019 BCCRT 1246

B E T W E E N :

DOUGLAS COLE

APPLICANT

A N D :

The Owners, Strata Plan NW 2243

RESPONDENT

REASONS FOR SUMMARY DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This is a summary decision of the Civil Resolution Tribunal (tribunal).

2. The applicant, Douglas Cole (owner) owns a strata lot in the respondent strata corporation, The Owners, Strata Plan NW 2243 (strata).
3. The case manager referred this dispute to me, to determine on a summary basis whether the tribunal should dismiss or refuse to resolve the applicant's claims due to lack of jurisdiction. In his submissions on the preliminary jurisdiction issues, the owner indicated that he wished to withdraw some of his claims. I deal with that request below.
4. For the reasons set out below, I refuse to resolve this dispute.

JURISDICTION AND PROCEDURE

5. These are the tribunal's formal written reasons. 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.
6. 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

7. The issue in this summary decision is whether the owner may withdraw some of his claims, and whether the tribunal has jurisdiction to decide the owner's remaining claims.

BACKGROUND

8. The owner says that around September 2017, the strata council signed an agreement with Telus about installing a fiber network. The strata does not dispute this.
9. The owner says a $\frac{3}{4}$ vote of the ownership was required under SPA section 80 before the strata signed the contract, because it involved the disposition of common property. He says that no vote was held. In the Dispute Notice, the owner requested the following orders:
 - a. An order that strata council members are personally liable for costs arising from voiding the contract.
 - b. An order that strata council members are personally liable for financial damage arising for the strata's ability to negotiate a contract with Telus in the future.
 - c. An order removing the responsible strata council members from the council.
 - d. An order that the strata's contract with Telus is void.
 - e. An order that the strata adhere to the SPA requirements about document production.
10. The strata denies all of the owner's claims, and says no $\frac{3}{4}$ vote was required before signing the Telus contract. The strata also says the tribunal must refuse to resolve the applicant's claims because they are outside the tribunal's jurisdiction. That is the issue in this summary decision, so I have not addressed the merits of the owner's claims.
11. Both parties provided submissions on the jurisdictional issues addressed in this decision, which I have considered.

12. In his submission responding to the strata's jurisdictional arguments, the owner says he withdraws his previously requested resolutions, and instead requests the following findings and order:
- a. Did the strata council execute their duties under the SPA as a reasonable person would, faced with the same set of facts, when considering and approving the Telus contract?
 - b. If not, the tribunal order the strata council to adhere to the SPA in a reasonable and proper manner in the future.

Withdrawal of Claims

13. Tribunal rule 6.1 says a party can request permission to withdraw their claims. Based on the owner's written submission, I find that he has requested to withdraw his claims against individual strata council members, as well as his claim about declaring the Telus contract void, and his claim that the strata follow the SPA in responding to document disclosure requests.
14. I find it is appropriate to grant the withdrawal request in the circumstances, since the strata requests that the tribunal refuse to resolve the claims in any event.
15. I also note that the owner could not succeed in his claims for liability findings against individual council members, or removal of council members. Those claims arise out of alleged breach of the council members' duties set out in SPA section 31. 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). This means that a strata lot owner cannot successfully sue a strata council member for a breach of section 31. (See *Kornylo v. The Owners, Strata Plan VR 2628*, 2019 BCCRT 1215.)
16. I also would not order the Telus contract void, as the tribunal does not have the authority to void a contract with a third party in a strata property dispute.

17. Finally, there is no useful purpose in ordering the strata to follow the SPA in responding to future document requests. The strata must already follow the SPA, regardless of any order. Also, the tribunal does not generally make orders about things that have not yet occurred.

New Claims

18. For the following reasons, I refuse to resolve the new claims set out in the owner's submission.

19. First, the owner seeks a finding that the strata council members did not reasonably execute their duties under the SPA. I find that this is still a claim arising under SPA section 31, as it is about whether the council members (individually or as a group) met their statutory duty 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.

20. As explained above, the duties of strata council members under SPA section 31 are owed to the strata corporation, and not to individual strata lot owners. This means that only the strata corporation can pursue a legal action about a breach of section 31, and an individual owner cannot.

21. The owner seeks an order that the strata council adhere to the SPA in a reasonable and proper manner in the future. As noted above, the strata must follow the SPA already, and the tribunal does not generally make orders about things that have not yet happened.

22. CRTA section 11(1)(b) says, in part, that the tribunal may refuse to resolve a dispute if it considers the request for resolution does not disclose a reasonable claim. For the reasons set out above, I find the owner's dispute does not disclose a reasonable claim. I therefore refuse to resolve it.

ORDER

23. I refuse to resolve this dispute.

Kate Campbell, Vice Chair