



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Song et al v. The Owners, Strata Plan VR 1484*, 2019 BCCRT 1306

B E T W E E N :

Wen Tao Song, Ting Shu Song and Wayne Cattoni

APPLICANTS

A N D :

The Owners, Strata Plan LMS 1484

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This decision addresses the second of 2 related disputes with the same parties. Both disputes are about water damage.

2. The applicants, Wen Tao Song, Ting Shu Song and Wayne Cattoni (owners), own strata lot 2 (SL2) in the respondent strata corporation, The Owners, Strata Plan LMS 1484 (strata).
3. The owners say that around April 2017, there was water ingress and flooding into SL2, which caused damage. They say the water damage was caused by building envelope problems, that the strata has failed to properly repair the building envelope, and that the leaks are ongoing. The owners seek the following remedies:
 - a. An order that the strata require its contractor, WCSE, to provide a written account of its repair work related to the leak.
 - b. An order that the strata provide copies of all relevant documents related to its revised insurance claim for the leak.
 - c. A declaration that the strata's failure to maintain and repair the building exterior was significantly unfair to the owners.
 - d. An order that the strata reimburse the owners for losses including strata fees, property taxes, hydro bills, and mortgage interest.
 - e. Damages for loss of use and enjoyment of SL2, or alternatively reimbursement for loss of rental income on the alternate accommodation used by Ting Shu Song.
4. The strata denies the owners' claims, and says it met its obligations to maintain and repair common property. The strata also says that this dispute arises from the same set of facts as the owners' first dispute, ST-2018-008253, and is therefore an abuse of process and should be dismissed.
5. The owners are self-represented in this dispute. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

6. 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.
7. The tribunal has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.
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. I have written 2 separate decisions for the 2 disputes between the parties because the process for appealing or reviewing tribunal decisions changed effective January 1, 2019. CRTA section 123.1 says that repealed section 56.5 allowing appeals to the BC Supreme Court continues to apply to the tribunal's strata property decisions where the Dispute Notice was issued before January 1, 2019. The Dispute Notice for this dispute was issued on February 1, 2019, which means that repealed section 56.5 does not apply. However, it does apply to the first dispute, ST-2018-008253, as the Dispute Notice for that dispute was issued on November 6, 2018.

Declarations

11. The owners ask the tribunal to make a declaration that the strata's alleged failure to maintain and repair common property was significantly unfair. The strata submits the tribunal has no jurisdiction to make declaratory orders. Based on CRTA sections 121 and 123(2), I find the tribunal has jurisdiction to make findings of fact about whether there has been significant unfairness, and order remedies for significant unfairness under CRTA section 123(2). This jurisdiction was confirmed by the BC Supreme Court in *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164 at para.119. I have therefore framed the issues accordingly.

ISSUES

12. The issues in this dispute are:

- a. Is this dispute an abuse of process?
- b. Must the strata provide copies of documents related to its revised insurance claim for the leak?
- c. Must the strata require its contractor, WCSE, to provide a written account of its work?
- d. Were the strata's actions in relation to building repairs significantly unfair to the owners?
- e. Must the strata reimburse the owners for alleged losses such as strata fees, property taxes, hydro bills, and mortgage interest?
- f. Are the owners entitled to damages for loss of use and enjoyment of SL2, or loss of rental income on their other property?

EVIDENCE AND ANALYSIS

13. I have read all of the evidence provided but refer only to evidence I find relevant to provide context for my decision. In a civil proceeding like this one, the applicant owners must prove their claims on a balance of probabilities.
14. The facts relevant to this dispute are set out in my decision on dispute ST-2018-008253. In this decision I rely on those same facts, but do not repeat them here.

Is this dispute an abuse of process?

15. CRTA section 11(1)(b) says the tribunal may refuse to resolve a dispute if it considers that the request for resolution does not disclose a reasonable claim or is an abuse of process.
16. The strata says this dispute is an abuse of process because it arises from the same set of facts as the owners' previous dispute filed three months earlier, ST-2018-008253. The owners admit that this dispute arises from the same facts, and I agree.
17. However, I find this second dispute is not an abuse of process. In making that finding, I place significant weight on the fact that all of the issues and remedies claimed in this dispute were identified in the Dispute Notice for the first dispute. Therefore, it cannot be said that the owners raised new claims late in the tribunal proceedings, or that the strata did not have notice of all the claims.
18. In *Lacharity v. University of Victoria Students' Society*, 2012 BCSC 1819, the BC Supreme Court confirmed that multiple proceedings in relation to the same matter are not always an abuse of process.
19. The owners say, and the first Dispute Notice confirms, that at the time, the tribunal's form limited them to setting out 5 requested remedies. Their additional claims, which make up this dispute, were added in the text of the Dispute Notice, but were not listed in the "Requested Resolution" section of the form because there was no room. The owners say that tribunal case manager advised them to file a new dispute rather in order to add requested remedies. This second dispute was filed

before the first dispute was referred for adjudication. My finding would likely be different if the owners filed a second dispute after the first decision was issued, but that is not the case here.

20. For these reasons, I find this dispute is not an abuse of process, but is instead analogous to amending a Dispute Notice, which is permitted in CRTA section 6(1.1). I note that CRTA section 2(2)(a) requires the tribunal to take an approach that is both informal and flexible.
21. For reasons of procedural fairness, and at the strata's request, I have considered all the submissions from ST-2018-008253 in making this decision.

Must the strata provide documents about its revised insurance claim?

22. The correspondence in evidence shows that the parties disagreed about whether the strata should file insurance claims for leak repairs. The correspondence shows that the strata initially filed no claims, but the owners requested that the strata do so. The strata filed an initial claim, which I infer was denied, although there is little evidence about that before me.
23. After a strata council hearing on August 30, 2018, the strata agreed to revise its claim and re-submit it. In a September 5, 2018 email, the strata's lawyer confirmed that this had occurred.
24. The owners request an order that the strata provide copies of "all relevant documents" relating to the revised insurance claim to its insurer, HUB international.
25. SPA section 35 sets out a list of the records that a strata must prepare and retain. Section 36 says that "on receiving a request", the strata must make the records listed in section 35 available for inspection and provide copies to an owner, tenant, or person authorized by an owner or tenant within 2 weeks.
26. The strata asserts, and the owners admit, that they did not raise this disclosure request before filing the first dispute application on November 6, 2018. For that reason, I decline to order disclosure in this decision. I find that making this request

for the first and only time in tribunal dispute notices is not consistent with the procedure set out in SPA section 36. The strata admits it is required to provide the documents listed in section 35. It is therefore open to the owners to make their request directly to the strata. I dismiss their claim for a disclosure order.

Must the strata require WCSE to provide a written account of its work?

27. The owners say the invoices from the strata's contractor, WCSE, were "inordinately high", and require explanation. They seek an order that the strata require WCSE to provide an accounting for the work performed in SL2, including labour and hours spent, and an explanation of 2 charges of \$5,000 on one of its invoices.

28. I find that the owners are not entitled to this order. As explained above, SPA section 35 sets out an exhaustive list of the records the strata is required to prepare, retain, and disclose to owners on request. A breakdown of a contractor's invoice is not on that list. In *Kayne v. The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610, the BC Supreme Court said that under section 35, a strata corporation is not required to disclose every bill or receipt reflected in its books of account (paragraph 15).

29. Following *Kayne*, which is a binding precedent, I find that even if the strata obtained a further accounting of WCSE's work, it would not be required to disclose it to the owners. Also, in *The Owners, Strata Plan NWS 1018 v Hamilton*, 2019 BCSC 863, the Court said the tribunal has no authority to order production of documents beyond those set out in SPA section 35.

30. For these reasons, I dismiss this claim.

Remaining Claims

31. The owners' remaining claims are as follows:

- a. The strata's approach to the leak repairs was significantly unfair to the owners.
- b. The strata must reimburse the owners for monetary losses including strata fees, property taxes, hydro bills, and mortgage interest.

c. The owners are entitled to damages for loss of use and enjoyment of SL2, or alternatively loss of rental income on their other property where Mr. Song has been living instead of SL2.

32. I dismiss these claims, for the reasons set out in my decision on the first dispute, ST-2018-008253. In that decision, I found that the strata was not negligent, and did not breach its maintenance and repair duties set out in the SPA and bylaws. Because of that, I find the owners are not entitled to any damages arising from these alleged breaches.

TRIBUNAL FEES AND EXPENSES

33. The owners were unsuccessful in this dispute. In accordance with the Act and the tribunal's rules I find they are not entitled to reimbursement of tribunal fees or dispute-related expenses.

34. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to the owners.

ORDERS

35. I dismiss the owners claims, and this dispute.

Kate Campbell, Vice Chair