



Civil Resolution Tribunal

Date Issued: December 3, 2019

File: ST-2019-001017

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan 1581 v. Herrmann*, 2019 BCCRT 1353

BETWEEN:

The Owners, Strata Plan 1581

APPLICANT

AND:

BRIANNE LEONA HERRMANN

RESPONDENT

AND:

The Owners, Strata Plan 1581

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about legal fees for a small claims proceeding in BC Provincial Court (BCPC), and removal of a related lien.
2. The applicant (and respondent by counterclaim), The Owners, Strata Plan 1581 (strata) is a strata corporation existing under the *Strata Property Act* (SPA). The respondent (and applicant by counterclaim), Brianne Leona Herrmann (owner), owns strata lot 98 (SL98) in the strata.
3. In August 2015, the strata commenced an action against the owner in the BCPC. The action was about a water leak from SL98.
4. The action was settled in June 2017, and the owner was ordered to pay the strata \$16,288.23. There was no order for the owner to pay the strata's legal costs.
5. The strata now seeks payment of \$31,739.94 in legal fees and disbursements. The strata says it is entitled to payment of these legal costs under SPA section 133 and strata bylaw 39.1.
6. The owner says she is not liable for these legal costs because the BCPC judge did not order her to pay them. She also says some of the fees are barred under the *Limitation Act*, as they were incurred more than 2 years before the strata filed its dispute.
7. In her counterclaim, the owner seeks orders that the strata file an acknowledgement of payment with the BCPC, and remove the lien against her strata lot.
8. The owner is self-represented in this dispute. The strata is represented by a strata council member.
9. For the reasons set out below, I refuse to resolve the strata's claim for legal fees. I dismiss the owner's counterclaims, because they are moot.

JURISDICTION AND PROCEDURE

10. 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.
11. 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.
12. 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.
13. 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.

ISSUES

14. The issues in this dispute are:
 - a. Should the tribunal refuse to resolve the strata's claim for legal fees, under CRTA section 11(1)(a)(i)?
 - b. If not,
 - i. is any part of the strata's claim for legal fees barred under the *Limitation Act*?

- ii. must the owner pay the claimed legal fees?
- c. Must the strata release the lien against SL98 and file an Acknowledgement of Payment with the BCPC?

EVIDENCE AND ANALYSIS

15. 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 must prove their claims on a balance of probabilities.

16. The chronology of relevant events is as follows:

- a. July 10, 2014 – a water leak occurred into the strata lot below SL98.
- b. November 2014 to January 2015 – the strata charged back plumbing and restoration expenses to the owner’s strata lot account. The strata also fined the owner \$50 for a bylaw infraction related to the leak.
- c. August 2015 – the strata filed a claim in BCPC (Small Claims Court) against the owner to collect the chargebacks and fine.
- d. June 9, 2017 – following a trial, the BCPC judge ordered the owner to pay the strata \$16,288.23.
- e. June 14, 2017 – the strata demanded payment of BCPC judgement by June 20, 2017.
- f. June 20, 2017 – the strata filed a certificate of judgement on the title of SL98.
- g. March 29, 2018 – the owner paid the judgement amount.
- h. August 13, 2018 – the strata sent a letter to the owner demanding payment of \$30,989.94 in legal fees. The letter said the amount had been charged to the owner’s strata lot account.
- i. March 1, 2019 – the strata filed documents at the LTO to release the certificate of judgement from the title of SL98.

- j. March 27, 2019 – the strata filed documents at the LTO to cancel the lien against SL98. The documents included a completed Form H – Acknowledgement of Payment, issued under SPA section 116(6) and the *Strata Property Regulation*.

Should the tribunal refuse to resolve the strata’s claim for legal fees, under CRTA section 11(1)(a)(i)?

17. CRTA section 11(1)(a)(i) says the tribunal may refuse to resolve a claim if it considers that the claim would be more appropriate for another legally binding or dispute resolution process.
18. For the following reasons, I refuse to resolve the strata’s claim for legal fees.
19. The strata seeks payment of \$30,989.94 in legal fees and \$750.00 in disbursements it says it incurred in the course of the BCPC proceeding. It says these costs relate to drafting and exchanging pleadings, preparing documents and correspondence, preparing witnesses, and conducting the trial.
20. The owner says she is not responsible to pay these legal costs because the BCPC did not order her to do so, and the strata should have claimed them at that time. She says that the legal fees claimed by the strata are not recoverable under the *Small Claims Rules* or the tribunal’s rules. The owner also says the legal fees claimed by the strata are not reasonable or necessary because the strata did not have to hire a lawyer to represent it in the BCPC small claims proceeding.
21. The strata says it is entitled to reimbursement of the claimed legal fees based on SPA section 133(2) and strata bylaw 36.1.
22. SPA section 133(1) says a strata corporation may do what is reasonably necessary to remedy a bylaw contravention, including doing work on the strata lot or common property, and removing objects from common property. Section 133(2) says a strata may require that the reasonable costs of remedying a bylaw contravention be paid by the person who may be fined for the contravention.

23. The strata repealed and replaced its bylaws in April 2018. Since the chargeback of the disputed legal fees occurred in July 2018, I find that the consolidated bylaws filed at the LTO on April 9, 2018 were in effect at that time. The strata's April 9, 2018 LTO filings specifically state that on April 3, 2018, the ownership approved a $\frac{3}{4}$ vote resolution to repeal and replace the previous bylaws. This means that once the new bylaws were filed on April 9, 2018, the previous bylaws were no longer enforceable, and could not be relied upon as authority for any chargeback.

24. The April 2018 bylaws contain bylaw 34.1, which is substantially similar to the previous bylaw 36.1. Since the differences between the 2 bylaws are so minor, and not relevant to this dispute, I find nothing turns on whether the April 2018 bylaw 34.1 applies, or the previous bylaw 36.1.

25. The April 2018 bylaw 34.1 states as follows:

The strata corporation may proceed under the Small Claims Act, without further authorization by the owners, to recover from an owner or other person, by an action in debt in Small Claims Court, money owing to the strata corporation, including money owing as administration fees, bank charges, fines, penalties, interest or the costs, including legal costs, of remedying a contravention of the bylaws or rules and to recover money which the strata corporation is required to expend as a result of the owner's act, omission, negligence or carelessness or by that of an owner's visitors, occupants, guests, employees, agents, tenants, pets or member of the owner's family or for which the owner is otherwise responsible pursuant to section 158(2) of the Act or these bylaws.

26. The previous bylaw 36.1 was identical in wording, except for the last part, which stated as follows:

... by that of an owner's visitors, occupants, guests, employees, agents, tenants or member of the owner's family.

27. The only differences between these 2 versions of the bylaw are the reference to pets and SPA section 158(2), which relates to insurance deductibles. I find that neither of these distinctions are relevant to this dispute. Accordingly, while my decision is based on the fact that the April 2018 bylaw 34.1 applies, the outcome would be the same under the previous version, bylaw 36.1.
28. The owner submits that the strata should have sought its full legal costs as part of the BCPC action, and since it did not it is now barred from pursuing a new claim for legal costs.
29. Both parties agree that the BCPC action was subject to section 19(4) of the *Small Claims Act*, which says that the court must not order that one party in a proceeding under this Act or the rules pay counsel or solicitor's fees to another party to the proceeding.
30. The strata agrees that under *Small Claims Act* section 19(4) it could not obtain an order for legal costs incurred after filing the Notice of Claim in the BCPC action. However, the strata says it not legally prohibited from doing so in this separate tribunal claim. For the following reasons, I disagree, and find the it would be inappropriate for the tribunal to order payment of legal fees that were specifically prohibited under the *Small Claims Act*.
31. Based on the decision of the BC Supreme Court (BCSC) in *Owners, Strata Plan NW 2477 v. Hill*, 1995 CanLII 2930 (BCSC), I accept that legal costs arising from a court action to remedy a bylaw infraction are potentially recoverable in a separate legal action. The litigation history in *Hill* was as follows:
 - a. The strata fined the plaintiff strata lot owners (the Hills) for alleged breaches of rental and parking bylaws.
 - b. The Hills sued the strata to recover the fines, and also to recover some disputed parking fees.
 - c. The Hills won at trial, but the strata successfully appealed.

- d. After that, the strata commenced a new legal action in the BCPC against the Hills to recover its legal costs from the previous litigation. The strata won, and the BCPC ordered payment of “all costs incurred in defending and enforcing its bylaws”.
 - e. The Hills appealed, and in *Hill*, the BCSC confirmed the BCPC decision. In paragraph 19 of *Hill*, the BCSC concluded that the strata’s claim for the costs associated with enforcing both its parking space and its rental restriction bylaws were payable by the Hills.
32. Thus, in *Hill*, the strata succeeded in a separate legal action for legal costs arising from previous litigation about bylaw breaches. However, I find there is an important distinction between *Hill* and the dispute currently before me. Specifically, in *Hill*, the BCPC heard the original trial about the bylaw breaches, and then also decided the related proceeding about the strata’s entitlement to costs. The BCPC, the same court that heard the original trial, ordered the costs payment. The BCSC confirmed the BCPC’s decision to order payment, but did not hear the original proceeding on the legal costs claim.
33. The strata has not provided a precedent where the tribunal or another court ordered payment of legal costs for a proceeding that was heard by a different court or tribunal. For this reason, I find it that the strata’s claim for legal fees arising from the BCPC action is more appropriate for another forum, such as the BCPC. I therefore refuse to resolve it, under CRTA section 11(1)(a)(i).
34. In its submissions, the strata relies on my previous decision in *The Owners, Strata Plan VR 293 v. Bains*, 2019 BCCRT 504. However, I note that *Bains* is distinguishable, because unlike this case the tribunal decided the substantive dispute about the alleged bylaw breach as part of the same dispute. Also, in *Bains*, my order for payment of legal costs was based on the specific wording of the applicable bylaws, rather than on SPA section 133(2).

35. In this case, the bylaws are different from those in *Bains*. I find the wording of the applicable bylaw in this case does not support the strata's claim for legal fees. In *Bains*, the following bylaws applied:

24.2 An owner is liable for the contravention of the bylaw by his or her tenants, invitees, licensees or visitors and is liable for all costs or expenses incurred or expended by the strata corporation in correcting, remedying or curing such infractions or violations and the same shall be charged to that owner...

24.3 An owner, shall be liable for and indemnify the strata corporation for any legal and administrative expenses, including legal costs on a solicitor and own client basis, incurred or expended by the strata corporation as a result of such infraction or violation or of its having to enforce these bylaws and rules.

36. I find that the wording of these bylaws from *Bains* is substantively different from the wording of the relevant bylaw in this dispute.

37. For these reasons, I find the strata cannot rely on its bylaws to justify its legal costs claim in this tribunal dispute. Again, I note that the legal costs order in *Bains* was specifically based on the wording of that strata's bylaws. Therefore, the reasons and findings in *Bains* are not applicable in this case.

38. In general, a strata does not require authority under a bylaw to pursue a tribunal claim. However, as explained previously, I find that the appropriate forum to recover the legal costs of a proceeding is before the court or tribunal that heard and decided that proceeding.

39. For all of these reasons, I refuse to resolve the strata's claim for legal fees under CRTA section 11(1)(a)(ii). I therefore find it is not necessary or appropriate to make a finding about whether the claim is barred under the *Limitation Act*, as the respondent submits.

Counterclaim – Lien Release and Acknowledgement of Payment

40. In her counterclaim, the owner requested orders that the strata file an acknowledgement of payment with the BCPC, and remove the lien against her strata lot.
41. The strata says it has already released the lien, and that the Form H Acknowledgement of Payment has already been provided. This is confirmed by the documents in evidence. The strata's lawyer also sent the owner written confirmation that the judgement had been fully paid.
42. The evidence also shows that these steps were not taken until March 2019, which was after the owner filed her counterclaim.
43. For these reasons, I dismiss the counterclaim, because I find the requested remedies are moot. In making this finding, I note that the owner did not provide submissions about any ongoing impact after the strata cancelled the lien and issued the Form H. However, because of the timing issue described above, I find the owner is entitled to reimbursement of the \$125.00 tribunal fee she paid to file the counterclaim.

DISPUTE-RELATED EXPENSES

44. Since I have refused to resolve the strata's claim, I find it is appropriate for the tribunal to refund the \$225 it paid in tribunal fees.
45. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to the owner, other than those set out in my orders below.

ORDERS

46. I order that within 30 days of this decision, the strata reimburse the owner \$125 for tribunal fees.
47. I refuse to resolve the strata's claim for legal fees.

48. The owner's counterclaim is dismissed.
49. 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). Once filed, a tribunal order has the same force and effect as a BCSC order.
50. 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 owner can enforce this final decision by filing a validated copy of the attached order in the BCPC. Once filed, a tribunal order has the same force and effect as a BCPC order.

Kate Campbell, Vice Chair