



Civil Resolution Tribunal

Date Issued: December 16, 2019

File: ST-2019-001454

Type: Strata

Civil Resolution Tribunal

Indexed as: *Harvey v. The Owners, Strata Plan VR 390*, 2019 BCCRT 1416

BETWEEN:

WENDY HARVEY

APPLICANT

AND:

The Owners, Strata Plan VR 390

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. The applicant, Wendy Harvey (owner) owns a strata lot in the respondent strata corporation, The Owners, Strata Plan VR 390 (strata).

2. The owner says the strata failed to give proper notice of a resolution in favour of a special levy for repairs (repairs resolution), which was passed at the February 2019 annual general meeting (AGM). As remedy, she seeks an order that the resolution be expunged, and she seeks a declaration that the strata violated section 31 of the *Strata Property Act* (SPA), which sets out the standard of care for strata council members.
3. The strata says its AGM notice complied with SPA requirements, and contained sufficient notice of the disputed resolution. It also says the tribunal should refuse to resolve this dispute, on the basis that it is an abuse of process, and also that the owner has no reasonable claim.
4. The owner is self-represented in this dispute. The strata is represented by a lawyer, Veronica Franco.
5. For the reasons set out below, I dismiss the owner's claims.

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.

Preliminary Issue – Refuse to Resolve

10. The strata filed its Dispute Response Form on April 10, 2019. In its response, and in its subsequent submissions to the tribunal, the strata argued that the tribunal should refuse to resolve this dispute under CRTA section 11 because it is an abuse or process, or because the owner has no reasonable claim. The strata said the owner has a history of filing and withdrawing previous disputes, and served an incomplete version of the Dispute Notice for this dispute on the strata in an attempt to influence the outcome of the February 2019 AGM.
11. In September 2019, the owner requested to withdraw this dispute, as well as 2 others she had filed. The strata objected to the owner's request to withdraw and argued that the litigation history between the parties suggested the owner might file the same dispute again in the future, so deciding the dispute would bring finality. In a preliminary decision dated September 19, 2019, I denied the owner's request to withdraw the 3 disputes. With respect to this dispute, I applied the analysis set out in *Grand-Clement v. The Owners, Strata Plan KAS2467*, 2017 BCCRT 45. I concluded that allowing the owner to withdraw her dispute, with the possibility that she could re-file it later, would prejudice the respondent after having already completed most of the facilitation process.
12. For the same reasons set out in my September 19, 2019 preliminary decision on the owner's withdrawal request, I find it is appropriate to make a final decision on this dispute, rather than refuse to resolve it. The parties have completed the submissions process, and this decision will bring finality to the issues set out in the Dispute Notice.

ISSUES

13. The issues in this dispute are:
- a. Does the owner have standing to seek an order about whether the strata violated SPA section 31?
 - b. Did the strata give proper notice of the repairs resolution?
 - c. Is the repairs resolution enforceable?

EVIDENCE AND ANALYSIS

14. I have read all of the evidence provided but refer only to evidence I find relevant to provide context for my decision. I note that much of the extensive evidence provided by the owner does not directly relate to the notice, procedure, or content of the February 2019 AGM, which is the basis of her claims. Rather, it appears to relate to other disagreements with the strata, which are not before me in this dispute.
15. In a civil proceeding like this one, the applicant must prove their claims on a balance of probabilities.

Prior Dispute About February 2019 AGM

16. As previously stated, 1 claim in this dispute is about the enforceability of a resolution voted on at the strata's February 2019 AGM. There were a total of 6 resolutions voted on at that AGM. The repairs resolution, which is the subject of this dispute, was resolution #4.
17. The owner filed a separate dispute about resolution #5 from the February 2019 AGM. In that dispute, ST-2019-002373, the owner requested an order that resolution #5 be expunged. Resolution #5 was about amending the strata's bylaw for council hearings. As in this dispute, the owner argued that the strata had violated SPA sections 31 and 45(3).

18. The tribunal issued a default decision on ST-2019-002373 on May 10, 2019. In that decision, a tribunal vice chair dismissed the owner's claims about resolution #5, finding that the strata had not violated SPA sections 31 or 45(3).

SPA Section 31

19. The owner says the way the strata council put forward the repairs resolution at the February 2019 AGM was a "prejudicial scheme" against her. She submits that this action was contrary to SPA section 31, and she seeks a declaration or order to that effect.

20. 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.

21. Based on the applicable precedents from the BC Supreme Court, I find the owner has no standing to make a claim under SPA section 31. In *Wong v. AA Property Management Ltd*, 2013 BCSC 1551, the BC Supreme Court considered a claim brought by an owner that the strata council members 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).

22. 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). This means that a strata lot owner cannot succeed in a claim against the strata or against individual strata council members for a breach of section 31.

23. These court decisions are binding precedents and the tribunal must apply them. Following *Wong and Sze Hang*, I therefore dismiss the owner's claim for a remedy under SPA section 31.

Notice of Special Levy Resolution

24. The owner says the strata did not give proper notice of the repairs resolution in advance of the February 2019 AGM, contrary to SPA section 45(3). Specifically, she says the description of the resolution in the AGM notice was ambiguous. The owner says the resolution is therefore unenforceable, and should be "expunged".

25. The strata says the February 2019 AGM notice was sent out within the required time period, and that the wording of the repairs resolution in the notice clearly identifies the purpose of the levy. The strata says that because of this, and because the necessary $\frac{3}{4}$ vote was obtained, the repairs resolution is valid and enforceable.

26. SPA section 108(2)(a) says a special levy must generally be approved by a $\frac{3}{4}$ vote resolution passed at an AGM or special general meeting (SGM). There are some circumstances where a unanimous vote is required, depending on how the levy payments are to be shared among the ownership. However, I find those circumstances do not apply here, and the parties have not submitted otherwise. Therefore, a $\frac{3}{4}$ vote was required at the February 2019 AGM in order to approve the repairs resolution.

27. SPA section 45 sets out the general notice requirements for AGMs and SGMs. Section 45(3) says that the proposed wording of any resolution requiring a $\frac{3}{4}$ vote must be set out in the meeting notice.

28. Also, SPA section 108(3) says the resolution to approve a special levy must include the following information:

- a. the purpose of the levy;
- b. the total amount of the levy;
- c. the method used to determine each strata lot's share of the levy;

- d. the amount of each strata lot's share of the levy;
 - e. the date by which the levy is to be paid or, if the levy is payable in instalments, the dates by which the instalments are to be paid.
29. SPA section 61 sets out how notice, including an AGM notice, must be given by the strata. The required notice period for an AGM is effectively 20 days, based on SPA sections 45(1) and 61(3) of the SPA and section 25 of the *Interpretation Act*.
30. The strata's evidence shows that the AGM notice was issued on February 4, 2019, and the meeting was held on February 25, 2019. The owner does not dispute this. I therefore find that the 20 day notice requirement was met.
31. The AGM notice package contains a copy of the meeting agenda. Item 7(d) of that agenda is "Resolution #4 – Special Levy, Repairs".
32. The AGM notice package also included the wording of the repairs resolution. In summary, it is identified as a resolution about "Repairs", requiring a $\frac{3}{4}$ vote. The text of the resolution includes the following information:
- a. The strata proposed to make necessary repairs to the membrane, pavers, fence and irrigation on common property (the Capital Project).
 - b. The strata did not have sufficient funds in the reserve account to pay for the Capital Project, but wished to proceed as it was in the best interests of the strata to complete the work in a timely manner.
 - c. The strata proposed to spend up to \$13,500.00 on the Capital Project, to be raised through a one-time special levy of the owners based on unit entitlement.
 - d. The special levy would become due and payable in full upon on passing of the resolution, based on an attached schedule of payment amounts. Late charges, interest, and consequences for non-payment were specified.

33. The owner says this wording of the repairs resolution is ambiguous, and therefore does not meet the requirement in SPA section 45(3) that the AGM notice include a description of the matters that will be voted on at the meeting, including the proposed wording of any resolution requiring a 3/4 vote.
34. In a February 13, 2019 email to the strata, the owner set out her specific objections to the repairs resolution, as follows:
- a. "Common property of the complex" – phrase is ambiguous and meaningless.
 - b. Repairs to the "membrane", "pavers", "fence", "irrigation system" – no quotes or scopes of work provided, no specific locations, no individual cost breakdown between each of these items.
 - c. "Make the necessary repairs" – the repairs were not necessary. There had been no significant repairs for 10 years, so they were unlikely to all be necessary at the same time.
 - d. "Best interests" and "timely manner" – not sufficiently explained or justified.
35. Based on the evidence, I find that the AGM notice did include a description of all matters to be voted on at the meeting, and the proposed wording of the repairs resolution. The strata says, and the owner does not dispute, that the wording of the repairs resolution set out in the notice package matches the wording of the repairs resolution voted on and approved by the ownership at the February 2019 AGM.
36. I also find the wording of the repairs resolution, as set out in the AGM notice package, meets the requirements of SPA section 108(3). Specifically, the resolution sets out the purpose of the levy, the total amount of the levy, the method used to determine each strata lot's share of the levy, the amount of each strata lot's share of the levy, and the date by which the levy is to be paid. While I agree there is little detail given in the resolution about the specific types of work to be performed, I find that this is not required under the SPA. Rather, I find the description set out in the repairs resolution is sufficient to meet the requirement in SPA section 108(3) that the resolution include the purpose of the special levy.

37. The owner says the strata ought to have provided more details, such as quotes, specific cost allocations, and scopes of work. However, this is not required under the SPA. It was open to the owners, including Ms. Harvey, to ask questions and elicit more information at the AGM. If the ownership was of the view that the information in support of the resolution was insufficient, they could have voted against it. However, the evidence shows that the necessary $\frac{3}{4}$ vote was obtained in favour of the resolution.
38. I find the term “common property” is not ambiguous. Its meaning is clearly set out in the SPA, and its location in this strata is set out in the strata plan. Again, it was open to the ownership to ask questions about specific work locations at the AGM.
39. The owner says the repair work covered by the special levy was not necessary. However, I find that the use of the word “necessary” is not a flaw with the AGM notice. There is no SPA requirement that the strata prove the necessity of an expense before putting forward a special levy resolution. Rather, it simply must obtain the required $\frac{3}{4}$ vote in support from the ownership. In the context of common property repairs, I find the use of the word “necessary” in the resolution was not misleading or unreasonable, especially since the owner says no significant repairs had been done in these areas for 10 years. For the same reasons, I find the use of the phrases “best interests” and “timely manner” in the preamble to the resolution were reasonable, and not contrary to the requirement in SPA section 108(3) that the resolution identify the purpose of the levy.
40. For these reasons, I find the wording of the repairs resolution, as set out in the AGM notice package, met the requirements of SPA sections 45(3) and 108(3). The notice contained the wording of the resolution to be voted on, and the resolution set out the purpose of the special levy, as well as the necessary monetary and payment information.
41. For all these reasons, I dismiss the owner’s claims. I conclude that the repairs resolution is enforceable.

TRIBUNAL FEES AND EXPENSES

42. The owner was unsuccessful in this dispute. In accordance with the CRTA and the tribunal's rules I find she is not entitled to reimbursement of tribunal fees or dispute-related expenses. The strata did not claim dispute-related expenses, so I order none.
43. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to the owner.

ORDER

44. I dismiss the owner's claims, and this dispute.

Kate Campbell, Vice Chair