



Civil Resolution Tribunal

Date Issued: February 26, 2020

File: ST-2019-005255

Type: Strata

Civil Resolution Tribunal

Indexed as: *Whiting v. Rolfsen*, 2020 BCCRT 217

BETWEEN:

SHARON WHITING

APPLICANT

AND:

MALCOLM RONALD ROLFSEN and DANA ANAIS PETERS

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute involves the owners of 2 strata lots in a duplex strata corporation (strata). The applicant, Sharon Whiting, owns strata lot 2. The respondents,

Malcolm Ronald Rolfsen and Dana Anais Peters, own strata lot 1. The 2 strata lots are the sole members in the strata. The strata is not a party to this dispute.

2. Ms. Whiting says the respondents wrongly delayed providing contractors access to their strata lot to repair 2 leaking water pipes. She says this caused her to hire a lawyer and claims reimbursement for legal fees totaling \$2,738.74. She also requests an order for the respondents to stop harassing her. The cost of repairing the pipes and any water damage are not issues in this dispute. The respondents disagree that they should pay legal fees or that they harassed Ms. Whiting.
3. The parties are self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.

7. 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

8. The issues in this dispute are as follows:
 - a. Must the respondents reimburse the applicant \$2,738.74 in legal fees?
 - b. Should I order the respondents to stop harassing Ms. Whiting?

BACKGROUND AND EVIDENCE

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. I begin with the undisputed facts. In June 2018 Ms. Whiting discovered water leaking into her basement. The parties texted and emailed each other about how to address the leak. On June 25, 2018, a plumbing company, RR, provided a quote to fix the leak. As documented in the quote, the repairs involved the entire duplex.
11. The parties disagreed on how to proceed and who should pay for repairs. In an August 13, 2018 letter, Ms. Whiting's lawyer wrote to the respondents. He advised that the water service lines were common property under the *Strata Property Act* (SPA) and that Ms. Whiting had an implied easement to enter strata lot 1 to inspect and repair the utilities. He demanded that the respondents provide written confirmation that they would provide Ms. Whiting access to strata lot 1 for investigations and repairs, otherwise he would apply to court for orders against both the respondents and the strata, including costs against the strata.
12. Ms. Whiting says she instructed counsel to "proceed with a Court Order" but the lawyer's invoices and other evidence before me show the matter was resolved before a court proceeding. Eventually RR entered strata lot 1 and completed repairs

for the parties. The applicant and respondents each paid for half of the cost of repairs as documented in RR's September 19, 2018 invoice.

Issue #1. Must the respondents reimburse the applicant \$2,738.74 in legal fees?

13. Ms. Whiting claims for 3 lawyer's invoices dated August 14, 2018 for \$1,466.30, August 21, 2018 for \$784.00, and October 23, 2018 for \$488.44. The invoices show that the lawyer charged for work done in August 2018. This consisted of advising Ms. Whiting on her rights under the SPA, writing the August 13, 2018 letter to the respondents, and advising on proposed settlements.
14. Ms. Whiting says she is entitled to reimbursement of these legal fees totaling \$2,738.74. She relies on SPA sections 166, 171 and 172.
15. For the following reasons, I find that Ms. Whiting is not entitled to reimbursement of her legal fees.
16. SPA section 166 says that a judgment against a strata is a judgment against all owners, and a strata lot's share of a judgment against a strata is calculated by unit entitlement. I find that SPA section 166 does not apply as Ms. Whiting never obtained a judgment against the strata.
17. SPA section 171 says that the strata may sue as representative of all owners, except for any who are being sued, about matter affecting the strata. It also says all owners except any being sued must contribute to the expense of suing under this section by unit entitlement. The strata's suit must be authorized by a resolution passed by a 3/4 vote at an annual or special general meeting.
18. SPA section 172 says the strata may sue on behalf of one or more owners about matters affecting only their strata lots. All owners, except any being sued, must contribute to the expense of suing under this section by unit entitlement. Only the owners on whose behalf the suit is brought must contribute to the expense of suing. The strata's suit must also be authorized by a resolution passed by a 3/4 vote at an annual or special general meeting.

19. I find SPA sections 171 and 172 are inapplicable. The strata never commenced a lawsuit that was authorized by a resolution, or at all. The lawyer's invoices and August 13, 2018 letter clearly show that the lawyer represented Ms. Whiting and not the strata. Consistent with that, the lawyer warned in the August 13, 2018 letter that Ms. Whiting would sue the strata if necessary.
20. I also find that the tribunal rules go against Ms. Whiting's claim. Tribunal rule 9.5(3) says that legal fees are not reimbursed in a strata property dispute unless there are extraordinary circumstances. Tribunal rule 9.5(4) says that to determine whether lawyer's fees should be paid by one party to another party, the tribunal considers the complexity of the dispute, the degree of a lawyer's involvement, and whether a party's conduct caused unnecessary delay or expense.
21. As shown in the emails, the central issues to the parties' dispute was whether the respondents had to provide RR access for repairs and how they would be paid. I find this dispute is complex, but not extraordinarily so. It is about the parties' obligations under the SPA and most key events occurred from July to September 2018, which I find is a moderate time period. The lawyer's involvement was also modest as it was limited to the work done in July and August 2018 (the invoices reflect the latter work). I also find the delay and unnecessary expense were limited. Although the matter involved leaking pipes, which increased the urgency, the central issues of access for repairs and their payment were resolved before the matter went to court or a tribunal.
22. Ms. Whiting also says the respondents harassed her after September 2018, but I find this has limited relevance to the legal fees incurred in July and August 2018.
23. In summary, I do not find this dispute involves extraordinary circumstances.
24. I dismiss this claim.

Issue #2. Should I order the respondents to stop harassing Ms. Whiting?

25. Ms. Whiting requests an order that the respondent stop harassing her through emails containing rude and bullying language or shouting and swearing at her. She referred to the respondents' emails and conduct in May and July 2019.
26. I decline to issue this order. As noted in *Louhimo v. The Owners, Strata Plan PG 33*, 2019 BCCRT 491, which is not binding but persuasive, the tribunal's jurisdiction in strata property matters is stated in CRTA section 121. Allegations of harassment are outside of the tribunal's jurisdiction for strata property claims as they do not involve the matters set out in CRTA section 121(1).
27. In arguments Ms. Whiting referred to difficulty accessing the strata's email account and scheduling an annual general meeting. The respondents deny any responsibility for this. Ms. Whiting is free to apply to the tribunal for orders about these matters if necessary.
28. In summary, I refuse to resolve Ms. Whiting's claims for harassment under CRTA section 10 as being outside the tribunal's jurisdiction.

TRIBUNAL FEES AND EXPENSES

29. Under section 49 of the CRTA, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule.
30. The respondents are the successful parties. I do not award any fees or expenses as they did not claim any.

ORDERS

31. I refuse to resolve Ms. Whiting's claims of harassment under CRTA section 10. I dismiss Ms. Whiting's remaining claims and this dispute.

David Jiang, Tribunal Member