



# Civil Resolution Tribunal

Date Issued: April 30, 2020

Files: ST-2019-002816 and  
ST-2019-003856

Type: Strata

Civil Resolution Tribunal

Indexed as: *Harvey v. The Owners, Strata Plan VR 390*, 2020 BCCRT 474

**B E T W E E N :**

WENDY HARVEY

**APPLICANT**

**A N D :**

The Owners, Strata Plan VR 390

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kathleen Mell

## **INTRODUCTION**

1. The applicant, Wendy Harvey (owner), owns a strata lot in the respondent strata corporation, The Owners, Strata Plan VR 390 (strata). This decision addresses 2 disputes between the same parties. In Dispute ST-2019-003856, the owner says the strata's 2018 special general meeting (SGM) was significantly unfair and

targeted against her to make her get rid of her two wood-burning fireplaces. She says the strata did this because it refuses to accept responsibility for the repairs the chimney needs, when the chimney is common property and the strata's responsibility. She asks that the meeting be "expunged." The owner also says a June 24, 2015 SGM passing a bylaw targeted against her barbeque should be expunged because she did not have proper two weeks' notice of the meeting.

2. In Dispute ST-2019-002816, the owner says that the strata collected property management fees but told her she could not communicate with the property management company. She asks for a refund of the \$1,466.36 in fees and an order that the strata allows her to communicate with the property management company or that it stops collecting the fees. She also requests an order that the strata is in violation of section 31 of the *Strata Property Act* (SPA) because it cut off communication between her and the property management company. The owner represents herself.
3. The strata says it was justified in cutting off contact with the property management company due to the excessive number of communications the owner was sending it. The strata also says that the owner is still responsible for paying strata management fees.
4. The strata also says that it did not act unfairly. It also notes that the owner has filed a number of disputes involving the same issues. It says the tribunal should refuse to resolve the disputes because they are an abuse of process. The strata also argues that the claim about whether a barbeque is allowed under the bylaws was filed outside the time limits of the *Limitation Act* (LA) and therefore should not be considered. The strata is represented by a lawyer, Veronica Franco.

## **JURISDICTION AND PROCEDURE**

5. 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.

6. 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.
7. 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.
8. 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 Issues***

#### **Abuse of Process—Res Judicata**

9. The strata submits that the owner's claims in these disputes are an abuse of process because they are the same or similar to those raised in previous disputes she has filed. The strata says the tribunal should therefore refuse to resolve the disputes, under CRTA section 11(1)(b). That section says the tribunal may refuse to resolve a claim or dispute if the request for resolution does not disclose a reasonable claim or is an abuse of process.
10. I note that the vice chair in a September 17, 2019 decision denied the owner's request to withdraw these disputes. The vice chair stated that it would be unfairly prejudicial to allow the withdrawal only to have the owner file the same disputes again at a later date.

11. Similarly, the vice chair decided in *Harvey v. The Owners, Strata Plan VR 390*, 2019 BCCRT 1416, that she would not refuse to resolve that dispute because it was appropriate to make a final decision on the dispute rather than refusing to resolve it because the decision would bring finality to the issues. I am not bound by this decision but find its reasoning persuasive and apply it to these disputes as well.
12. Having said that, I note that the owner frames part of her dispute as being unfairly prejudiced by the strata's decision to ban wood-burning fireplaces because she says she is the only owner left who has them. The crux of her claim is that because the wood-burning fireplaces are banned the strata is refusing to repair her chimney, which is common property and therefore the strata's duty to repair.
13. Since the strata filed its Dispute Response, the vice chair released her decision in *Harvey v. The Owners, Strata Plan VR 390*, 2019 BCCRT 1417. She noted that at the June 25, 2018 SGM, owners voted to ban wood-burning fireplaces. The strata offered to convert the owner's wood-burning fireplace to gas, including making the chimney gas ready. The vice chair decided that the strata met its repair and maintenance obligations by making this offer.
14. The jurisdiction issue I must decide is whether the claim has already been decided. If it has, the tribunal may refuse to resolve the claim. This legal concept is called *res judicata*. Although the vice chair did not specifically decide the validity of the SGM, I find that there has been a final decision on whether the strata met its obligation of repair and maintenance of the chimney. Although here the owner has reframed the issue to focus on whether the passing of the bylaw was unfair, most of her submissions are actually about whether the strata has an obligation to repair the chimney. The owner is arguing that the strata only put forward the bylaw to avoid paying to have her chimney repaired.
15. The vice chair took into account that the new bylaw banning wood-burning fireplaces had been passed. I find that the owner had the opportunity to argue that the bylaw was improperly passed in the prior action if she had exercised reasonable diligence. The courts have confirmed that a party is required to raise all its arguments in the

first proceeding, *Dowling v. Bhandar*, 2009 BCSC 1812. Accordingly, I refuse to resolve this claim about the wood-burning fireplaces because it is an attempt to reargue whether the strata should repair the chimney which is *res judicata*, that is, already decided by the vice chair.

16. I also note that, even if I did not find the claim about the wood-burning fireplaces *res judicata*, I would not have found that the strata's 2018 SGM, which resulted in the wood-burning fireplace ban, was significantly unfair. The strata council minutes indicate valid reasons why the strata wanted to prohibit wood-burning fireplaces. It noted that wood-burning fireplaces presented a fire hazard and negatively affected air quality. The other owners also stated that the smoke rises and affected all the units. The strata also indicated that the cost to maintain the chimneys for wood-burning fireplaces was significant. These were all valid concerns and appropriate for the strata to consider. The owner's representative presented his objection regarding banning the wood-burning fireplaces at the meeting. There was discussion and then the owners voted to approve the resolution. The meeting was procedurally correct and the bylaw was properly passed with the required  $\frac{3}{4}$  vote to amend the bylaws. I find that 2018 SGM and the passing of the bylaw was not significantly unfair to the owner.

### ***Limitation Act***

17. Section 13 of the CRTA states that the LA applies to the tribunal as if it were a court. The LA defines a "claim" as "a claim to remedy an injury, loss or damage that occurred as a result of an act or omission." The owner argues that the decisions taken at the 2015 SGM are invalid because they were significantly unfair and targeted at the owner and specifically designed to make her remove things from her patio. I find that this is a claim for injury, loss, or damage and therefore the LA applies. Section 6 of the LA says that the basic limitation period is 2 years, and that a claim may not be commenced more than 2 years after it is discovered.
18. The strata says that the owner's dispute involving whether she is prohibited from having a barbeque is outside the two year time limit set out in the LA. The meeting

passing the bylaw took place on June 24, 2015. Bylaw 3(12)) stated that an owner could not place or store anything on a deck, balcony or patio other than patio furniture, a reasonable number of plants, outside seasonal lights, and a trellis (with prior written approval of the Council). The bylaw amendment was registered with the Land Title Office in 2015. The owner filed her Dispute Notice on May 16, 2019. Since the owner did not submit her application until May 16, 2019, the dispute is statute-barred by the LA. Therefore, I dismiss the applicant's claim about the June 24, 2015 SGM being significantly unfair.

## **ISSUES**

19. The remaining issues in these disputes are
  - a. Did the strata improperly stop communication between the owner and the property management company and, if so, what is the appropriate remedy?
  - b. Does the owner have standing to seek an order about whether the strata violated SPA section 31?

## **EVIDENCE AND ANALYSIS**

20. I have reviewed all of the evidence provided but refer only to evidence I find relevant to provide context to my decision.

### ***Did the strata improperly stop communication between the owner and the property management company?***

21. The strata contracted with a property management company, X, to provide strata management services. The strata says that this agreement is between the strata and X and not between the individual owners and X. I have reviewed the agreement and accept the strata's argument on this point.
22. The evidence shows that the owner and her common law spouse DE sent a significant number of communications to X until X finally told the strata in June 2018

that it would no longer communicate directly with the owner or DE on matters outside the collection of strata fees and special levies.

23. The strata says that it was concerned that it would not be able to find another management company, especially given the long-standing and publicized litigation between the parties, so it agreed to take on the owner's as well as DE's correspondence. The strata notes that X still assists them in dealing with the owner's and DE's complaints but that X does not communicate with them directly.
24. I have reviewed the evidence and am satisfied that the owner and DE sent X and the strata a significant amount of correspondence.
25. The owner says that because the owner has withdrawn from providing her a service, she should no longer have to pay property management fees.
26. The strata points out that X continues to perform services that benefit the owner including: paying strata bills, collecting strata fees, maintaining the necessary funds and accounts, obtaining contractors' quotes, finalizing contracts, preparing books of account, budgeting, and financial statements, as well as maintaining the strata's records.
27. The strata also says that strata management fees are common expenses and, under SPA section 99, all owners must contribute to their strata lot's share of common expenses based on unit entitlement. The strata also notes that without a unanimous vote under SPA section 100 it is not possible to exclude an owner from payment of a common expense. The owner did not reply to this argument.
28. Based on the evidence, I find that it was reasonable for the strata to allow X to disengage from communicating with the owner directly. Considering the amount of correspondence, I accept that the strata's concern was that X would not wish to continue working with the strata and that it would be difficult to find another company to replace them. I also find that the owner has not shown how she has suffered any prejudice from dealing with the strata directly. Additionally, the owner

has not addressed the SPA's restriction on being excluded from paying common expenses.

29. Based on all of the above, I dismiss the owner's claim that she should be reimbursed property management fees or that she be found not obligated to pay them going forward.
30. Because I have found that the strata was justified in cutting off contact between X and the owner, I need not consider whether the strata breached section 31 of the SPA. However, I note that under section 31 of the SPA, each council member must 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.
31. 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).
32. 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.
33. These court decisions are binding precedents and the tribunal must apply them. Following *Wong* and *Sze Hang*, I dismiss the owner's claim for a remedy under SPA section 31.



34. Therefore, I dismiss the owner's claim that she should be reimbursed a portion of her strata fees or that she should not have to continue paying them.

## **TRIBUNAL FEES AND EXPENSES**

35. 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. The owner was unsuccessful in her claims. Therefore, I find that she is not entitled to reimbursement of her tribunal fees or dispute related expenses.

36. The strata claims \$36.89 in expenses and has provided a receipt showing that a council member needed to scan and email documents from a remote location. Because the strata was successful in the disputes, I accept this expense as reasonable and find the strata is entitled to reimbursement.

37. On ST-2019-002816 The strata stated that it requests dispute expenses and that the "copy costs" would be determined but provided no evidence of expenses. Therefore, I find the strata is not entitled to expenses on this dispute.

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

## **ORDER**

39. I refuse to resolve the owner's wood-burning fireplace claim as it has already been decided.

40. I dismiss the owner's claim about the June 24, 2015 SGM being significantly unfair.

41. I dismiss the owner's claim for reimbursement of property management fees and order that she continues to pay them.

42. I dismiss the owner's other claims.

43. I order the owner to pay the strata's \$36.89 expenses within 14 days of this decision.
44. Under section 57 of the CRTA, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia (BCSC), a validated copy of the order which is attached to this decision. Once filed, a tribunal order has the same force and effect as a BCSC order.
45. 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.

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Kathleen Mell, Tribunal Member