



Civil Resolution Tribunal

Date Issued: May 12, 2020

File: ST-2019-007546

Type: Strata

Civil Resolution Tribunal

Indexed as: *Melstrom v. The Owners, Strata Plan VIS 6313*, 2020 BCCRT 515

BETWEEN:

DAVID MELSTROM

APPLICANT

AND:

The Owners, Strata Plan VIS 6313

RESPONDENT

AND:

DAVID MELSTROM

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about access to strata records. The applicant, David Melstrom (owner), owns a strata lot in the respondent strata corporation, The Owners, Strata Plan VIS 6313 (strata). The owner alleges that the strata has failed to provide requested documents in breach of the *Strata Property Act* (SPA) and seeks an order that the strata provide him with certain financial information. The strata says the owner has already received all documents the owner is entitled to.
2. In its counterclaim, the strata says the owner's claims are without merit. The strata seeks reimbursement of fees and expenses relating to this dispute, including \$200 to compensate it for the time spent to respond to the owner's claims. The strata made further submissions in the owner's dispute that it should be compensated up to \$450 for its time.
3. The owner is self-represented, and the strata is represented by a member of the strata council.

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. Here, I am satisfied an oral hearing is not necessary as I can fairly decide the dispute based on the evidence and submissions provided. I also note that in *Yas v. Pope*, 2018 BCSC 282, the British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an issue.

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.

Additional Evidence

8. In reply submissions, the owner provided additional evidence, including notice of a “special meeting and special resolution” purporting to nominate the owner to replace the current president of the strata, and a transcript of a telephone call between the owner and the current president on January 9, 2020 about the “special resolution”.
9. The owner requests that the tribunal make an order giving effect to the outcome of the “special meeting and special resolution” removing the current president of the strata. This amounts to an attempt by the owner to add a new claim during reply submissions. It would be procedurally unfair to address this additional claim when the strata had no notice of the claim nor any opportunity to respond. Further, I find that such an order would be declaratory in nature which is outside the jurisdiction of the tribunal. I therefore refuse to consider this request.
10. I also find that the additional evidence is unrelated to the owner’s original claim about access to strata records. The owner may consider filing a fresh dispute with the tribunal to address any new issues arising from the additional evidence. However, because the additional evidence is not relevant to the issues in this dispute, I have not considered it and I find it is unnecessary to provide the strata with a copy of the additional evidence for submissions.

ISSUES

11. The issues in this dispute are:

- a. Has the strata complied with sections 35 and 36 of the SPA in response to the owner's request for records?
- b. Should the strata be compensated for the time spent responding to the owner's claim?

BACKGROUND, EVIDENCE AND ANALYSIS

12. The strata was created in July 2007. It is a 7-unit, 2-story residential building located in Port Alice, British Columbia. The owner purchased strata lot 2, also known as unit 402, in June 2018.
13. This dispute reflects the owner's suspicion about the strata council's handling of strata finances and the strata's contrary view that the owner is a trouble-maker in the building and is regularly making allegations of money mismanagement.
14. In a civil dispute such as this, the applicant owner bears the burden of proof for his claims. The strata bears the burden of proof for its counterclaim. This means the parties must provide evidence to prove each of their claims on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.

Has the strata complied with sections 35 and 36 of the SPA in response to the owner's request for records?

15. The applicant alleges that the strata has not maintained or provided proper bank records or receipts to show how strata money is spent, records of strata meetings and minutes, or names of other owners. He also believes "a large sum of money" is missing from the strata's bank account. I find the issue about whether money is missing is not before me, and I decline to address that allegation.
16. Section 35 of the SPA and section 4.1 of the *Strata Property Regulation* (regulation) list the records and documents the strata is required to prepare and retain. Section 36 of the SPA states that the strata must make the records and documents

described in section 35, other than bylaws and rules, available for inspection and provide copies of them to an owner within 2 weeks of a request.

17. Neither party to this dispute identified a list of the specific records the owner requested, the date of the owner's request for records, or what records were provided to the owner or when they were provided.
18. I infer from the evidence and submissions that the owner is dissatisfied overall with the strata's record keeping and disclosure. For some of the records provided and submitted in evidence, such as the books of account, I find that the owner is dissatisfied with the form of the records. However, the SPA does not require that any particular form be used for the books of account. As noted in *Kayne v. Strata Plan LMS 2375*, 2007 BCSC 1610, the purpose of the SPA is to provide information as to how money has been spent, and the books of account must show money received and spent. I find that the strata's books of account comply with the SPA.
19. I further note that, as set out in *Kayne*, while an owner is entitled to review and obtain copies of books of account and financial statements, for the purposes of section 35 this does not include the underlying bills, invoices or receipts reflected in financial statements.
20. While the owner's claim description suggested he had several complaints about access to strata records, the owner's only requested remedy is an order for the strata's bank statements, cancelled cheques and certificates of deposit for the past 3 years.
21. Section 35(2)(l) of the SPA says the strata must retain bank statements, cancelled cheques and certificates of deposit, and section 4.1 of the regulation says these records must be retained by the strata for a period of 6 years.
22. The strata says that the owner is entitled to bank statements only from the date that he purchased his strata lot. It appears the strata may have misinterpreted section 36 of the SPA that imposes certain restrictions on **former** owners. However, there is nothing in the SPA that provides such a restriction on a current owner's entitlement

to access strata records, other than the overall time limit in section 4.1 of the regulation. Therefore, I find that the owner is entitled to access the strata's bank statements for the 3 years requested.

23. It is clear from the evidence and submissions, and I find, that the owner has already received the strata's bank statements and the corresponding cancelled cheques from September 29, 2017 to October 31, 2019.
24. It is undisputed that the owner obtained the bank statements and cancelled cheques directly from the bank, but it is unclear why the owner obtained these records from the bank and not from the strata. Again, the SPA says the strata must retain copies of all bank statements, cancelled cheques and certificates of deposit, and the strata is obligated to make the bank statements available for inspection and provide copies of them to the owner within 2 weeks of the request. The language in the SPA makes these obligations mandatory.
25. In any event, the owner has already received 2 years of bank statements, back to September 29, 2017. Therefore, I order the strata to provide copies of bank statements, cancelled cheques and certificates of deposit to the owner for a further year, for the period September 29, 2016 to September 28, 2017.
26. The owner says that two cancelled cheques, numbers 653 and 655, were missing from the records he received from the bank. The strata says that the bank should have given the owner copies of all cheques. Given that it is the obligation of the strata, not the bank, to provide the owner with these records upon request, I order the strata to provide the owner with copies of cancelled cheques numbered 653 and 655.
27. I note that section 36(4) of the SPA permits the strata to refuse to supply copies of requested documents until the fee for providing such copies has been paid, at the rate of not more than \$0.25 per page.
28. Given the owner only requested an order for bank statements, cancelled cheques, and certificates of deposit, I decline to make any further orders for access to the

strata records. In the future, the owner should ensure that he is specific about the records and documents he is requesting, and he should consider making his requests in writing. When receiving a request for records, the strata must ensure it provides the requested records in compliance with sections 35 and 36 of the SPA.

Should the strata be compensated for the time spent responding to the other party's claim?

29. The strata brought a counterclaim against the owner to compensate it for the time spent to defend the owner's claims in this dispute at the rate of \$100/hour. In its submissions, the strata initially said it should be compensated in the amount of \$200. In other submissions, the strata suggested this compensation should be in the amount of \$400 or \$450, "whatever is deemed fair".
30. I find that the strata has not proven its claim for compensation for time spent. There was no documentation provided of the time it says was required to respond to the owner's dispute, nor any explanation for the basis of the amount claimed.
31. Further, the tribunal does not generally award compensation for time spent on a dispute, which is consistent with its rules against awarding reimbursement of legal fees except in extraordinary cases. I see no reason to deviate from that rule as I find that this is not an extraordinary case. I dismiss the strata's claim for compensation for time spent.

TRIBUNAL FEES AND EXPENSES

32. 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 find the owner was successful in this claim and I order the strata to reimburse the owner \$250 for tribunal fees.
33. The owner claims \$264.90 in dispute-related expenses made up of \$23.89 for photocopies, \$16.01 for registered mail charges and \$225 paid to the bank for copies of bank statements. I accept the claims for photocopies and mailing charges,

based on the receipts provided and I order the strata to reimburse the owner \$39.90 for these expenses.

34. As for the owner's claim of \$225 for obtaining the strata's bank statements from the bank, I find that this is not properly a dispute-related expense because it was not incurred as a result of making the claim. Also, the owner has not provided any documentation supporting this expense, such as an invoice. Therefore, I decline to award reimbursement of the charge for obtaining the bank statements.
35. The strata's counterclaim was dismissed so I find it is not entitled to reimbursement of its tribunal fees.

ORDERS

36. Within 14 days of this decision, I order that the strata:
 - a. provide to the owner copies of the strata's bank statements, cancelled cheques and certificates of deposit for the period September 29, 2016 to September 28, 2017, as well as copies of cancelled cheques numbered 653 and 655.
 - b. pay to the owner \$289.90, made up of \$250 in tribunal fees and \$39.90 in dispute-related expenses.
37. The strata's counterclaim is dismissed.
38. The owner is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable
39. 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.

40. 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.

Kristin Gardner, Tribunal Member