



Civil Resolution Tribunal

Date Issued: May 22, 2020

File: ST-2019-008565

Type: Strata

Civil Resolution Tribunal

Indexed as: *Luigi Porco (dba Tony's Hair Design & Tanning) v. Hanosh*,
2020 BCCRT 559

B E T W E E N :

LUIGI PORCO (Doing Business As TONY'S HAIR DESIGN &
TANNING), L.D.P. INVESTMENTS LTD. and LUIGI PORCO (Doing
Business As ALL STAR BEAUTY SUPPLY)

APPLICANTS

A N D :

LAMIA ABDULWAHAD HANOSH and The Owners, Strata Plan VIS
3440

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about bylaws for the use of commercial strata lots. The applicant, L.D.P. Investments Ltd. (L.D.P.), owns a strata lot in the respondent strata

corporation, The Owners, Strata Plan VIS 3440 (strata). L.D.P. leases the strata lot to the other applicant, Luigi Porco, doing business as Tony's Hair Design & Tanning and All Star Beauty Supply. The applicants say that the tenant of another strata lot owned by the respondent, Lamia Abdulwaha Hanosh, is operating a nail salon in contravention of an exclusive use granted to the applicants in the strata's bylaws. The applicants ask for an order that the respondents pay them unspecified damages for loss of business and refrain from leasing the strata lot to competing businesses.

2. The respondent Lamia Abdulwaha Hanosh, denies that the tenant's business competes with a substantial part of the business in the applicants' strata lot. The strata says that it investigated the applicants' complaint and found that the evidence did not support a bylaw infraction.
3. The applicants are represented by Luigi Porco. The strata is represented by a member of the strata council. Lamia Abdulwaha Hanosh is 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. Under section 10 of the CRTA, the tribunal must refuse to resolve a claim that it considers to be outside the tribunal's jurisdiction. A dispute that involves some

issues that are outside the tribunal's jurisdiction may be amended to remove those issues.

7. The tribunal's jurisdiction over strata matters is set out in section 121 of the CRTA. I find that the applicants' request for an order that the respondents refrain from renting strata lots to competing businesses amounts to a request for injunctive relief, and does not fall within the scope of the tribunal's jurisdiction. Accordingly, I decline to address this claim. I will consider the issue of competing businesses when determining whether the strata failed to enforce its bylaws, which I find is within the tribunal's jurisdiction.
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.

ISSUES

10. The issues in this dispute are:
 - a. whether the applicants are "grandfathered" under a previous version of the strata's bylaws,
 - b. whether the strata failed to enforce its bylaws, and
 - c. whether the applicants are entitled to damages.

EVIDENCE AND ANALYSIS

11. In a civil dispute such as this, an applicant bears the burden of proof on a balance of probabilities. The parties provided evidence and submissions in support of their

respective positions. While I have considered all of this information, I will refer to only what is relevant to the issues before me and necessary to provide context for my decision.

12. The strata is a commercial complex with 17 strata lots in which a variety of businesses operate. Its bylaws, as filed at the Land Title Office in January of 2016, contain restrictions on the use of strata lots. In addition to identifying several types of prohibited businesses at bylaw 23(1), bylaw 23(2) sets out that no strata lots other than those identified in the subsections shall be used for particular purposes. Bylaw 23(2)(i) says that no strata lot other than strata lot 15 will be used for the purposes of a hair and tanning salon without the permission of the strata lot owner. Further, bylaw 23(2)(l) says that no strata lot shall be used for purposes that are the same as or that compete with a substantial part of the businesses conducted in any strata lot without the written permission of the strata lot's owner. Bylaw 23(3) says that says that the exclusive uses listed in bylaw 23(2) will cease 90 days after they stop being offered in the identified strata lots.
13. L.D.P. is a British Columbia corporation, and the owner of strata lot 15, which is also known as unit 102. Mr. Porco is the lessee of the strata lot, in which he does business as Tony's Hair Design & Tanning and All Star Beauty Supply. It appears that the directors and officers of L.D.P. and Mr. Porco are related to each other, and they have adopted the same positions in their submissions.
14. The respondent Lamia Abdulwaha Hanosh is the owner of the adjacent strata lot 16, which is also known as unit 101. The evidence suggests that a pet store used to operate in strata lot 16. At some point in 2019, a new tenant, VB, leased the space and renovated it for use as a salon offering beauty-related services including nails, waxing, eyelashes, and facials. VB does not offer hair styling or tanning services.
15. Mr. Porco wrote to the strata council and the strata's property manager on May 8, 2019 to state that the strata "should not agree" that unit 101 will offer hair services, barbering, esthetics, nails, waxing, massage, tanning, and skin care/makeup due to the "competition clause".

16. On August 15, 2019, a lawyer representing L.D.P. and Tony's Hair Design wrote to the strata's property manager to advise that his clients did not consent to the proposed "esthetics and nails" business for unit 101. The lawyer asked that the strata "restrain the owner" of unit 101 from conducting these services.
17. On August 16, 2019, the strata's property manager wrote to the lawyer asking for evidence that esthetics, nails, waxing, massage and skin care/makeup services were being provided in unit 102. The lawyer provided photos of the strata lot (which was said to be undergoing minor renovations), a price list showing various esthetics procedures described as "day spa services" and job postings for estheticians.
18. The property manager advised the lawyer on August 29, 2019 that the strata had reviewed the evidence, and noted that it did not include any proof of sales. The property manager stated that a site inspection on August 13, 2019 showed that the described services were not being offered, and that the strata council determined that there was not enough evidence to support enforcement of bylaw 23(2)(l).
19. The lawyer asked for a hearing, which was held on September 11, 2019. In a September 17, 2019 letter, the property manger communicated the strata council's decision that the evidence did not support the enforcement of bylaw 23(2)(l) against strata lot 16.

Preliminary Matter

20. As a preliminary matter, I will address the status of the respondent Lamia Abdulwaha Hanosh. Addressing complaints and enforcing bylaws fall within the responsibility of the strata, not individual strata lot owners. I find that the applicants' claims are properly brought against the strata, but not against Lamia Abdulwaha Hanosh. Accordingly, I dismiss the applicants' claims against Lamia Abdulwaha Hanosh.

Positions of the Parties

21. The applicants say that VB is providing services that are consistent with those being offered in strata lot 15, which is a violation of the bylaws. Although not explicitly

stated, the applicants say the strata failed to enforce its bylaws in response to their complaint.

22. The applicants say a previous version of the bylaws said that no other strata lot would be used as a “hair stylist business, beauty salon, barber shop, or tanning salon”. They suggest that, as they did not agree to any bylaw amendments, the applicants should be “grandfathered” under the old wording.
23. The applicants submit that the definition of a hair salon “entails haircare services, tanning services, esthetic services”, which they say include waxing, pedicures, manicures, nails, massage and tanning. They cite a number of sources in support of this submission. They say that the business’ signs include the words “nails” and “esthetics”, and described a 2017 dispute with the strata when new signs were installed without including a full description of the business’ services. According to the applicants, the use of the strata lot has never changed since it began to be used as a beauty salon in 1980, and the services offered have remained the same since Mr. Porco purchased the business in 2012. They also say that the strata’s site inspection was done without permission, at a time that renovations were in progress, and did not include the entire premises.
24. The strata says it acts in the best interests of all owners, and that it does not approve or disapprove uses. It says that the bylaw about a substantial part of the business was added to clarify the extent of permitted uses for each strata lot. The strata cited the example that the pet store did not object to the veterinary clinic selling pet food as that was not a substantial part of their business. The strata submits that the evidence provided by the applicants did not establish that esthetics formed a substantial part of their business. As such, the strata says there was insufficient evidence of a bylaw contravention.

Grandfathering

25. The evidence shows that the strata’s 1994 bylaws contained the broader description of the permitted use of strata lot 15, as described by the applicant. Subsequent versions of the bylaws describe its use as a hair and tanning salon.

26. A strata corporation is free to amend its bylaws by following the requirements set out in the *Strata Property Act* (SPA). According to section 128 of the SPA, amendments to bylaws must be approved by a 3/4 vote at an annual or general special meeting. The amended bylaws are changed and become effective when they are filed in the Land Title Office. L.D.P. would have been entitled to attend and vote at annual or general special meetings. The SPA does not require that strata lot owners give permission for bylaw amendments outside the voting process.
27. The SPA does not include the term “grandfathered”, but it does state that certain bylaws do not apply in very specific circumstances (including age and pet bylaws). There is no general provision in the SPA that sets out when a bylaw may not apply or when an owner may be exempt.
28. There is no exemption under the SPA to suggest that the current wording of bylaw 23 does not apply to the applicants, and the bylaws themselves do not create any such exemption. I find that the applicants are not “grandfathered” such that previous wording of bylaw 23 would apply to them. I will therefore consider the current wording of bylaw 23 in my analysis.

Enforcement of Bylaws

29. Section 26 of the SPA says that a strata corporation must enforce its bylaws, subject to some limited discretion, such as when the effect of the breach is trivial (see *The Owners, Strata Plan LMS 3259 v. Sze Hang Holdings Inc.*, 2016 BCSC 32). Therefore, when the strata received a complaint from the applicants about the use of strata lot, it had an obligation to address it.
30. In this case, the strata council considered the applicants’ complaint and reviewed their evidence before coming to a decision. The strata council also held a hearing at the applicants’ request. The standard of care that applies to a strata council is not perfection, but rather “reasonable action and fair regard for the interests of all concerned” (see *Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74 at paragraph 61). I must determine whether the strata’s decision was reasonable.

31. As discussed above, bylaw 23(2)(i) says only strata lot 15 may be used for a “hair and tanning salon”. I do not agree with the applicants’ submission a hair salon, by definition, includes esthetic services. If it was the strata’s intention to provide strata lot 15 with exclusive use for a broader scope of services, the bylaw would not have been modified from the previous wording of “hair stylist business, beauty salon, barber shop or tanning salon”. I find that bylaw 23(2)(i) only restricts the use of other strata lots for hair and tanning services, and that the use of strata lot 16 as a nail salon does not conflict with this bylaw or the protected use of strata lot 15.
32. However, this is not the end of the matter. The strata also considered whether esthetics were a substantial part of the business in strata lot 15 such that bylaw 23(2)(i) would prevent a competing business from operating in another strata lot. The strata invited the applicants to provide evidence of use of the strata lot for esthetics. The applicants appear to have provided the same evidence to the strata as they did in this dispute. This includes photographs of the premises and price lists for esthetics “day spa” services, including manicures and pedicures.
33. The evidence before me also contains copies of the webpage for Tony’s Hair Design & Tanning that show services and prices for hair and tanning services, but not for any esthetics services. The applicants say that not all of the services were listed on the website or price lists, and that it did not provide sales records to the strata as it never asked for them. In any event, the applicants say the receipts do not list the services a customer purchased, just the price of those services. The applicants say that the words “nails” and “esthetics” are on their signage, and they have an esthetician on staff.
34. Although the applicants say that 5% would amount to a substantial part of a business, they did not provide evidence to establish that esthetics forms this (or any other) percentage of the business conducted at strata lot 15. Specifically, they did not provide any information about the estimated or actual sales volume for esthetics services, payroll information for the estheticians, or proof of payments for esthetics-related supplies. Further, the fact that the signage contains the words “nails” and

“esthetics” does not establish the amount of these services (if any) that are performed in the strata lot.

35. Although there may be incidental use of the strata lot for esthetics services, I find that the evidence provided by the applicants (both to the strata council and for this dispute) does not establish that esthetics services, including nails, formed a substantial part of the business conducted in strata lot 15. Accordingly, I find that it was reasonable for the strata to conclude that VB’s use of strata lot 16 did not contravene bylaw 23(2)(l).
36. I find that the strata did not fail to enforce its bylaws. Given this decision, it is not necessary for me to consider whether the applicants established any loss of business or associated damages. Accordingly, I dismiss the applicants’ claims.

TRIBUNAL FEES AND EXPENSES

37. 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. As the applicants were not successful, they are not entitled to reimbursement for their tribunal fees or dispute-related expenses. The strata did not make a claim in this regard. Although the respondent Lamia Abdulwaha Hanosh submitted that the applicants should be responsible for their dispute-related expenses, there is no evidence to establish that any fees or expenses were paid. Accordingly, I decline to make an order for reimbursement.
38. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicants.

ORDER

39. I dismiss the applicants’ claims and this dispute.

Lynn Scrivener, Tribunal Member