



# Civil Resolution Tribunal

Date Issued: May 28, 2020

File: ST-2019-006964

Type: Strata

Civil Resolution Tribunal

Indexed as: *Heal v. The Owners, Strata Plan VR 2540*, 2020 BCCRT 584

BETWEEN:

DOUGLAS HEAL

**APPLICANT**

AND:

The Owners, Strata Plan VR 2540

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## INTRODUCTION

1. This dispute is about the content of strata corporation meeting minutes, including allegations of defamation.

2. The applicant, Douglas Heal (owner), owns a strata lot in the respondent strata corporation, The Owners, Strata Plan VR 2540 (strata). The owner is self-represented, and the strata is represented by a strata council member.
3. The owner says the strata has published false statements in its meeting minutes which have defamed his character. The owner seeks orders that the minutes be amended, the strata council issue an apology, and \$4,000 in damages for emotional stress and damage to his personal and professional reputation.
4. The strata denies the owner's claims. It says that any statements it published were not defamatory and that the strata was simply informing its ownership of events and activities as it is required to do. The strata also says that claims for defamation are outside the Civil Resolution Tribunal's (tribunal) jurisdiction.
5. For the reasons that follow, I refuse to resolve the owner's claim and this dispute.

## **JURISDICTION AND PROCEDURE**

6. These are the formal written reasons of the 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, email, 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. Section 10(1) of the CRTA says the tribunal must refuse to resolve a claim that it is outside its jurisdiction. Section 10(2) says claims that involve issues not within the tribunal's jurisdiction may be amended to remove the issues that are outside the tribunal's jurisdiction.
10. 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***

11. When I was originally assigned this dispute, I reviewed the strata plan and strata's bylaws filed at the Land Title Office (LTO) to determine if the appropriate respondent was named in this dispute.
12. The strata plan shows the strata was constructed in 2 phases.
13. Based on my review of the strata's bylaws filed at the LTO on January 23, 2002, I determined the strata is comprised of 2 separate sections as permitted under the *Strata Property Act* (SPA). A residential section comprising all residential strata lots in the strata, and a commercial section, comprising all commercial strata lots in the strata. Each section is governed by its own executive.
14. Bylaw 36 states the residential section is comprised of 2 committees, the "Phase I Residential Committee" and the "Phase II Residential Committee". Bylaw 38, and a subsequent SPA section 100 resolution passed unanimously by the strata and filed at the LTO on February 18, 2008, establish separate budgets for each of the 2 phases that must be voted on separately by each phase. Governance and separate voting by phases is not addressed in SPA. While the governance and voting structure created in the strata bylaws appears very complex, and may even be contrary to the SPA, those issues are not before me. I find the strata's bylaws create only 3 separate legal entities under the SPA – the strata, the residential section and the commercial section.

15. I also note the meeting minutes provided in evidence and referenced by both parties are headed "STRATA PLAN VR 2540-1. Pacific Point Phase 1, MINUTES - JOINT COMMITTEE". These minutes do not clearly indicate whether they are strata minutes, residential section minutes, or commercial section minutes and the bylaws do not refer to or define "Joint Committee". There is also reference in the strata's submissions to a "Phase 1 VR 2540 Strata Council" which is also not defined in the bylaws.
16. At my request, following my review of the overall evidence and submissions, I asked tribunal staff to consult the parties as to whether the proper respondent might be the residential section rather the strata. If the respondent agreed to naming the residential section as the respondent, I asked it to confirm if new submissions were required. The responses I received were that the parties both took "no issue" with residential section being the named respondent. The strata did not address whether new submissions were required.
17. Based on the further submissions, that both parties submitted documents referring to the strata as the respondent, and given my conclusion set out below, I have elected not to amend the respondent's name in the style of cause above.
18. Rather, I accept the parties intended the strata to be the sole respondent in this dispute.

## **ISSUES**

19. The issues in this dispute are:
  - a. Does the tribunal have jurisdiction to decide defamation claims and claims involving a strata council member's standard of care?
  - b. Did the strata publish false statements in its meeting minutes?
  - c. What is an appropriate remedy, if any?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

20. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
21. In a civil proceeding such as this, the applicant owner must prove his claims on a balance of probabilities.
22. The strata was created in November 1989 under the *Condominium Act* but now continues to exist under the SPA. It is a mixed-use strata corporation consisting of 379 residential and commercial strata lots in 2 high-rise buildings located in downtown Vancouver.
23. As I have noted, the relevant bylaws in this dispute are those filed in the LTO on January 23, 2002. Subsequent bylaw amendments are not relevant.

### ***Does the tribunal have jurisdiction to decide defamation claims and claims involving a strata council member's standard of care for strata property disputes?***

24. The strata says the owner's claims relate to defamation, which it says is outside the tribunal's jurisdiction. The owner says his claim is not about defamation, but rather inaccurate statements published in the strata's minutes.
25. For the following reasons, I agree with the strata and I find the owner's claim is properly characterized as a claim for defamation. I also find that such a claim is outside the tribunal's strata property jurisdiction.
26. In the Dispute Notice, the owner says "serious false statements regarding my behaviour have been published and distributed to owners." Despite his argument to the contrary, he says in submissions that these false statements have defamed his character.
27. His requested resolutions of \$4,000 are, in part, for alleged damages to his reputation and therefore also to support a defamation claim. His request for an

apology from the strata council “for the damage that these false statements have caused” also supports a defamation claim.

28. I find the owner’s allegations of defamation and false comments published in strata council meeting minutes must be directed at the strata council members (rather than the strata) since the strata acts through its council and cannot itself determine the content of its minutes.
29. In his submissions, the owner says the false statements should be retracted under section 31 of the SPA. Section 31 sets out the standard of care each council member must follow when exercising the powers and performing the duties of the strata. It says that 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. I find a strata council member’s standard of care would capture allegations of defamation and false statements.
30. In *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 at paragraph 267, the BC Supreme Court (BCSC) said that the duties of strata council members under section 31 of the SPA are owed to the strata corporation, and not to individual strata lot owners. This means that a strata lot owner cannot be successful in a claim against a strata corporation for duties owed by its strata council members under section 31.
31. The court’s decision in *Sze Hang* is a binding precedent, and the tribunal must apply it. Following, *Sze Hang* I find the tribunal has no jurisdiction to decide the owner’s claim for defamation as it falls under section 31 of the SPA.
32. For these reasons, I refuse to resolve the owner’s claim and this dispute.
33. If I am wrong in my conclusion, I have considered whether the owner’s allegation that the strata published false statements in its minutes is true.

***Did the strata publish false content in its meeting minutes?***

34. I find the answer to the question is no.

35. Although the owner filed a number of complaints about false statements, except for 2 remaining issues I discuss below, he appears to be satisfied with the statement made by the strata in its January 9, 2020 meeting minutes. The minutes state (on page 7):

It has been brought to the RC's [residential committee's] attention through CRT facilitation that, in its efforts to be transparent in the Minutes, certain wording used when reporting complaints may have been open to negative interpretation even though the intention was completely impartial." **All past complaints or incidents reported in the Minutes were not determinations made by the RC as to the accuracy of the details of the incidents unless specifically stipulated as such in the Minutes.** To avoid any potential issues going forward, and in consideration of privacy policies, the RC will be changing the procedure in dealing with complaints submitted by residents. First point of contact for complaints will be through FSR [property manager] – all complaints should be directed to FSR, preferably in writing; if it appears a bylaw has been violated, FSR will place the matter on the Agenda for the next RC meeting; the matter will then be considered and FSR will be directed to take further action. The details of the complaint will not be minuted at this point and may only be noted if/when a fine is to be levied against the infringer. If no bylaw has been infringed, FSR will advise the complainant of same within 14 days of receipt of the complaint. Also, to clarify, please note that the RC considers a **"complaint" to be an issue which is governed by the Strata Property Act and/or the Bylaws and Rules of Strata VR2540**; all other correspondence will be considered as either a "concern" e.g. notifying Strata of an area of common property requiring maintenance, or a "request" e.g. notifying Strata of a broken window seal in the Strata Lot and a request for repair. The RC will continue to be

transparent and will report all matters in the Minutes in accordance with the new procedure noted above. [Emphasis in original]

36. I do not agree with the owner that this statement is an admission by the strata that previous minutes contained inaccurate statements. Rather I find it is clarification that statements made in previous minutes may not have been interpreted as intended.
37. The 2 remaining statements with which the owner takes issue are contained in the March and July 2019 meeting minutes. I will not reproduce them here as the owner did not provide any evidence to support the statements were false, such as written statement from other residents.
38. For these reasons, I would have found the owner had not proven his claim.
39. Finally, I note the owner cited *McGowan v. Strata Plan NW1018*, 2002 BCSC 673 where the Cullen, J. found that a strata corporation must be careful and respectful of the view of the minority and avoid including comments in minutes that personalize the debate (at paragraph 69):

In my view, comments that can be taken as critical or derogatory of individuals within the organization tend to detract from a sense of professional management and only add to antagonisms. The minutes should be carefully vetted to ensure that no such comments are included.

40. Arguably, the discussion of Cullen, J about meeting minutes is *obiter dicta* (incidental to the issues decided), and is not a binding precedent. However, that does not mean the court's advice should not be followed by the strata. Based on the statement made in the January 9, 2020 meeting minutes set out above, I would find the strata has taken reasonable steps to clarify its previous minuted statements.
41. Finally, I note that in *McGowan* the issues before the court were whether the strata had acted in a significantly unfair manner, and if relief under sections 165 and 174 of the SPA was appropriate. Although relief under sections 165 and 174 of the SPA are clearly outside the tribunal's jurisdiction, claims of significant unfairness are not.



Given the owner did not make a claim of significant unfairness, I will not discuss it here.

## **TRIBUNAL FEES AND EXPENSES**

42. 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. Given the applicant owner was unsuccessful, and the strata did not pay tribunal fees, I make no order for tribunal fees.
43. Neither party claimed disputed-related expenses, so I make no such order.
44. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owner.

## **ORDER**

45. I refuse to resolve the owner's claim and this dispute under section 10 of the CRTA.

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J. Garth Cambrey, Vice Chair