



Civil Resolution Tribunal

Date Issued: July 31, 2020

File: ST-2020-001225

Type: Strata

Civil Resolution Tribunal

Indexed as: *Roberts v. The Owners, Strata Plan LMS 1901*, 2020 BCCRT 854

BETWEEN:

DEBORAH L. ROBERTS and RONALD F. RUSSELL

APPLICANTS

AND:

The Owners, Strata Plan LMS 1901

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about document production and the governance of a strata corporation. The applicants, Deborah L. Roberts and Ronald F. Russell (owners), own a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 1901 (strata).

2. The owners say the strata failed to produce all requested documents, audio recordings, and to hold a requested hearing. They seek an order for the missing documents and recordings and for the strata to hold requested hearings. The owners also seek \$27.25 as reimbursement for fees charged by the strata for the documents it did produce. Finally, the owners also seek an order for the strata to comply with the provisions of the *Strata Property Act* (SPA) regarding “information, minutes, financials, insurance, depreciation reports, voting and common property issues”. I found this part of the owners’ claim vague and will discuss it in greater detail below.
3. The strata says it delivered all documents the owners are entitled to under the SPA. It says the requested recordings are not in their possession. The strata also says it granted the owners’ hearing request, but the hearing itself was justifiably delayed. The strata disagrees that any fees charged should be returned. The strata also says it has acted in compliance with the SPA.
4. Ms. Roberts represents the owners. A strata council member represents the strata.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The CRT’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT’s process has ended.
6. The CRT 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 CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The

CRT 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 CRT rules, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

ISSUES

9. The issues in this dispute are as follows:
 - a. Did the strata breach its obligation to produce the requested documents and audio recordings?
 - b. Must the strata reimburse the owners \$27.25 for document and delivery fees charged by the strata?
 - c. Did the strata breach its obligation to hold a hearing with the owners?
 - d. Should the CRT order the strata to comply with the provisions of the SPA regarding “information, minutes, financials, insurance, depreciation reports, voting and common property issues”?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the owners must prove their claims on a balance of probabilities. I have reviewed all the evidence and submissions and only refer to them as necessary to give context to my decision.
11. As discussed below, I find the strata failed to provide some of the requested documents and order production of them. I find the strata acted in a significantly unfair manner by overcharging the owners \$27.25 for the documents. I also find the strata’s refusal to hold a hearing was unreasonable and significantly unfair in the circumstances. I have ordered the strata to provide a hearing upon the owners’

request. Finally, I decline to order the strata to comply with the SPA as the strata must already do so. My reasons follow.

12. As background, the strata is a bare land strata complex that consists of 14 strata lots. The strata lots provide residential housing in a gated community. Mr. Russell was the previous strata council president until June 2018. It is undisputed that Mr. Russell's relationship with the current strata council is turbulent.

Issue #1. Did the strata breach its obligation to produce the requested documents and audio recordings?

13. SPA section 35 and section 4.1 of the *Strata Property Regulation* (SPR) require the strata to prepare and retain various records. Under SPA section 36(1), if an owner requests access to any of these records, the strata must make the records available for inspection and must provide copies. SPA section 36(3) says the strata corporation must comply within 2 weeks of the request, or within 1 week for bylaws or rules.

The November 19, 2019 Request

14. It is undisputed that the strata received the owners' 2 document requests on November 19 and 24, 2019. In their November 19, 2019 letter the owners requested
 - a. audio recordings for the 2018 AGM (held on both June 11 and July 10, 2018) and the 2019 AGM (held on June 27, 2019),
 - b. all copies of emails between the current strata council and municipal bylaw officers and the fire department about parking in the strata's fire lane, and
 - c. copies of the 2018 and 2019 insurance policies for the strata.
15. The strata responded on December 2, 2019 by providing a package of documents with cover letter. The strata refused to provide the audio recordings. I find the strata did not breach any obligation to provide the recordings. The SPA and SPR do not require a strata corporation to prepare or retain audio recordings of meetings. The recordings are therefore not a requestable record under SPA section 36(1). I also

find that it would be impractical to order production of the recordings. This is because the strata's representative says the strata no longer has a copy of the 2018 AGM recording and the 2019 AGM was not recorded.

16. The strata also refused to provide copies of emails between the strata council and the municipal bylaw officers and fire department. The strata says it believes these emails do not need to be disclosed.
17. Under SPA section 35(2)(k), the strata must keep copies of all correspondence the strata council receives and sends. In *Ottens et al v. The Owners, Strata Plan LMS 2785 et al*, 2019 BCCRT 730, a CRT member wrote that SPA section 36 is a mandatory disclosure provision. The CRT member concluded that there was no authority under either the SPA or the *Personal Information Protection Act* for the strata to refuse to disclose or redact correspondence sent or received by the strata council.
18. Although not binding, I find the reasoning in *Ottens et al* to be applicable and persuasive. I find the strata breached its obligation to disclose the requested correspondence. I conclude that the strata must provide the owners the requested emails and I so order.
19. I next consider the insurance policies. From my review of the December 2, 2019 package, I find the strata did not provide a copy of the 2018 insurance policy and provided only a redacted copy of the strata's 2019 insurance policy. The strata says it redacted the 2019 insurance policy for "security purposes" without further explanation. The strata did not explain why it did not provide the 2018 insurance policy.
20. There may be some situations where "security purposes" might justify redactions, but the strata provided no evidence of that here. SPR section 4.1 says the strata must retain its insurance policies for at least 6 years after the termination or expiration of the policy. For much the same reasons as stated in *Ottens et al*, I find the strata breached its obligation to provide complete copies of the 2018 and 2019

insurance policies. I order the strata to provide the owners with full unredacted copies of its 2018 and 2019 insurance policies.

The November 24, 2019 Request

21. In their November 24, 2019 letter the owners requested all minutes for strata council and special general meetings held between July 1, 2014 and June 30, 2016. The owners also requested other documents that are not under dispute.
22. The strata responded on December 3, 2019 by providing a package of documents with a cover letter. The strata sent annual general meeting minutes dated June 26, 2015 and June 13, 2016. The strata says there are no other minutes to send for the requested time period. In submissions, the owners say they learned that the strata council held no strata council or special general meetings during the requested time period. I therefore find the strata did not breach any obligation to respond to the November 24, 2019 request for documents.

Summary and Conclusion

23. Given the above, I order that within 14 days of the date of this decision, the strata must provide the owners the following: 1) all copies of emails between current strata council members and municipal bylaw officers and the fire department about parking in the strata's fire lane, and 2) complete, unredacted copies of the strata's 2018 and 2019 insurance policies. I order that the strata may charge the owners for copies of these documents produced, as permitted by the SPR. The owner's remaining claims for documents and audio recordings are dismissed.

Issue #2. Must the strata reimburse the owners \$27.25 for document and delivery fees charged by the strata?

24. Receipts show the strata charged the owners \$29 for sending the 2 document packages. Correspondence shows the strata did not send the documents until it was paid. The strata acknowledges the fees include \$23.94 for registered mail. The owners say the strata should have only charged \$1.75 because the strata only sent

7 relevant pages. They say the remaining fees are for registered mail and irrelevant documents.

25. SPA section 36(4) allows the strata corporation to charge a fee for copying documents. It says the strata corporation may refuse to supply copies until the fee is paid. SPR section 4.2(1) states that the maximum fee for document copies is 25 cents per page.
26. In *Deng v. The Owners, Strata Plan LMS 3904*, 2018 BCCRT 495, a CRT member found that the SPR was silent on postage charges. The member decided that the owner had no obligation to pay postage in order to obtain copies of documents.
27. Although not binding I find the CRT member's comments in *Deng* applicable to this dispute. I find that the strata was not entitled to charge the owners for the cost of using registered mail. I also agree with the owners and find the strata provided only 7 relevant pages. The remaining 16 pages from the document packages consisted of various AGM minutes, which the owners did not request.
28. Although not expressly raised in their submissions, I find the owners' claim is one of significant unfairness. The CRT has jurisdiction over significantly unfair actions under CRTA section 123(2). I find that it was significantly unfair for the strata to refuse to provide the documents until the owners paid fees that they were not required to pay. In this case, the owners did not have to pay for the registered mail costs or the unrequested documents under SPA section 36(4). The owners had a reasonable expectation to be only charged fees of \$1.75. In these circumstances I order the strata to reimburse the owners \$29, less the cost of 7 pages at 25 cents each. This equals \$27.25.

Issue #3. Did the strata breach its obligation to hold a hearing with the owners?

29. The strata says that on December 30, 2019, it received the owners' letter to request a hearing. The letter lists 10 separate topics for discussion. These topics included the documents and fees charged for them, discussed above.

30. The strata replied in a January 8, 2020 letter that it had scheduled a hearing for March 31, 2020. The strata explained that the strata council president would not be back from the USA until then. The strata subsequently did not hold the March 2020 hearing because the strata council president was delayed by COVID-19 travel restrictions. It is undisputed that the strata never rescheduled or held the requested hearing.
31. SPA section 34.1(1) says an owner may request a hearing at a council meeting by applying in writing with the reason for the request. Section 34.1(2) says that if a hearing is requested, the council must meet to hear the applicant within 4 weeks. SPR section 4.01 defines a hearing to mean an opportunity to be heard in person at a council meeting.
32. The strata's bylaws are the same as those in the Schedule of Standard Bylaws under the SPA, with limited amendments. Bylaw 17(1) states that the strata council may choose to hold council meetings by electronic means. Bylaw 17(2) says such council members are deemed to be present in person.
33. I find that the strata's refusal to hold the requested hearing was unreasonable and breached SPA section 34.1. Bylaw 17 allows the strata to hold meetings where one or more council members are in a different location. There is no evidence that it was impractical for the strata to hold a meeting by electronic means. I appreciate that the president was on vacation at the time of the owners' request. However, I do not find this entitles the strata to ignore the owners' request until the vacation is over, given the mandatory requirement of section 34.1. I find that the strata improperly and unreasonably scheduled the hearing more than 4 weeks after January 8, 2020. I find the strata then worsened the situation by failing to hold a hearing at all.
34. Although not specifically pleaded, I find this claim is also for significant unfairness. I find the strata's refusal to hold a hearing was significantly unfair. The owners had an objectively reasonable expectation for the strata to comply with the mandatory requirements of SPA section 34.1.

35. The owners have requested the strata to hold the requested hearing. I find the Vice Chair's form of order appropriate from the non-binding decision of *Ha v. The Owners, Strata Plan BCS 3778*, 2020 BCCRT 589, with some modifications. I order that if the owners make any other written requests for a hearing, the strata must comply with SPA section 34.1 and hold the requested hearing within 4 weeks of the date the request was received. If a request is made during the COVID-19 pandemic, the hearing may be held by telephone, video conference, or by another method agreed to by the parties.
36. As another remedy, the owners requested for the strata to hold "special meetings" about issues of finance, insurance, common property, and bylaws. I decline to make this order. The owners will have to opportunity to raise these issues directly with the strata council. I note that SPA sections 43 and 46 also allow for persons holding at least 20% of the strata's votes to call a special general meeting and propose a resolution. I leave that for the parties to consider.

Issue #4. Should the CRT order the strata to comply with the provisions of the SPA regarding "information, minutes, financials, insurance, depreciation reports, voting and common property issues"?

37. In their application for dispute resolution, the owners asked for the strata to comply with the SPA regarding "information, minutes, financials, insurance, depreciation reports, voting and common property issues". I decline to make this order. The strata must already follow the SPA, regardless of any order.
38. I infer from the evidence that the owners had concerns about the following: the accuracy of the strata's minutes, the accuracy of financial statements, whether the strata was sufficiently insured, whether the strata should obtain a new depreciation report, whether a fence should be maintained by owners or the strata, and voting discrepancies noted in the 2018 annual general meeting minutes. I considered making orders about these matters, but I found the owners' evidence and submissions vague on what they wanted. I also find that making such orders would be unfair to the strata. This is because the owners did not outline the specific remedies sought about these matters in their application for dispute resolution.

39. I note that the owners identified “lack of communication” as the biggest problem between the parties. It may be the case that the hearing resolves or focuses the parties on their disagreements. I dismiss this claim.

CRT FEES, EXPENSES AND INTEREST

40. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule.

41. I find the owners have been partially successful. I therefore order the strata to reimburse the owners for one-half of their CRT fees. This equals \$125. Neither party claimed dispute-related expenses, so I order none.

42. The *Court Order Interest Act* (COIA) applies to the CRT. The owners are entitled to pre-judgement interest on the \$27.25 amount for reimbursement of postage and copy charges from December 3, 2019 (the date on which the owners paid the strata) to the date of this decision. This equals \$0.32.

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

ORDERS

44. Within 14 days of the date of this order, the I order the strata to provide the owners the following documents. The strata may charge the owners for copies of these documents produced, as permitted by the SPR:

- a. all copies of emails between current strata council members and municipal bylaw officers and the fire department about parking in the strata’s fire lane, and
- b. complete, unredacted copies of the strata’s 2018 and 2019 insurance policies.

45. I order that if the owners make any other written requests for a hearing, the strata must comply with SPA section 34.1 and hold the requested hearing within 4 weeks of the date the request was received. If the hearing request is made during the COVID-19 pandemic, the hearing may be held by telephone, video conference, or by another method agreed to by the parties.
46. Within 14 days of the date of this order, I order the strata to pay the owners a total of \$157.57, broken down as follows:
- a. \$27.25 as compensation for significant unfairness,
 - b. \$0.32 in pre-judgment interest under the COIA, and
 - c. \$125.00 for CRT fees.
47. The owners are entitled to post-judgment interest under the COIA as applicable.
48. The owners' remaining claims are dismissed.
49. Under sections 57 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia. Under section 58 of the CRTA, the order can also be enforced by the Provincial Court of British Columbia if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

David Jiang, Tribunal Member