



# Civil Resolution Tribunal

Date Issued: October 16, 2020

File: ST-2020-002777

Type: Strata

Civil Resolution Tribunal

Indexed as: *Klager v. The Owners, Strata Plan VR 757*, 2020 BCCRT 1170

BETWEEN:

WAYNE KLAGER

**APPLICANT**

AND:

The Owners, Strata Plan VR 757

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell, Vice Chair

## INTRODUCTION

1. This dispute is about an individual's eligibility to sit on the council of a strata corporation.

2. The applicant, Wayne Klager, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan VR 757 (strata).
3. Mr. Klager says that strata council member MB should be barred from sitting on the strata council. Mr. Klager says MB owns 30% of strata lot 31 (SL31), for which the strata fees are in arrears and subject to a lien. Mr. Klager requests an order that MB be removed from the strata council.
4. The strata says MB is entitled to be on the council, and Mr. Klager's claim should be denied. It says the relevant facts are as follows:
  - In addition to his interest in SL31, MB also owns a different strata lot (unit 405). The strata fees for unit 405 are fully paid and have not been in arrears.
  - The unpaid fees and lien are for, SL31. SL31 is owned by a corporation, Jolly Roger Development Ltd. (JRD).
  - SL31 is owned by 6 different entities, and these entities are primarily owned by MB's father, DB.
  - MB has some equity in one of the 6 entities. His net interest in the JRD is approximately 8.33%.
5. The strata says that since MB is not in arrears for unit 405, he is entitled to sit on the strata council under the strata's bylaws.
6. Mr. Klager is self-represented in this dispute. The strata is represented by a strata council member other than MB.

## **JURISDICTION AND PROCEDURE**

7. 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.

8. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconference, 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.
9. 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.
10. 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.

## **ISSUE**

11. Is MB eligible to hold a strata council position?

## **EVIDENCE AND ANALYSIS**

12. I have read all the evidence provided but refer only to evidence I find relevant to provide context for my decision. In a civil proceeding like this one, Mr. Klager, as applicant, must prove his claims on a balance of probabilities.
13. Section 28(1) of the *Strata Property Act* (SPA) says that only owners, individuals representing corporate owners, or tenants who have been assigned a landlord's right to stand for council may sit on a strata council. Section 28(2) says a strata corporation may also have bylaws allowing additional classes of persons to be council members.
14. SPA section 28(3) says that a strata corporation may also have a bylaw providing that "no person may stand for council or continue to be on council with respect to a

strata lot if the strata corporation is entitled to register a lien against that strata lot under section 116(1).”

15. The strata’s bylaws are those filed at the Land Title Office in June 2001. Bylaw 10(2) says that no person may stand for council or continue to be on council “with respect to a strata lot” if the strata corporation has registered a lien against the strata lot under SPA section 116(1).
16. The parties agree that the strata has registered a lien against SL31 under SPA section 116(1). Section 116(1) allows a strata corporation to register a lien against a strata lot for various debts, including unpaid strata fees.
17. As noted above, the parties disagree about what percentage of JRD is owned by MB. There is no conclusive evidence on this point before me, such as corporate share records. However, I find it does not matter what percentage of JRD MB owns. For the purpose of explaining my reasons in this decision, I accept Mr. Klager’s unproven assertion that MB owns 30% of JRD.
18. As noted, the strata says that in addition to owning some portion of JRD, which owns SL31, MB owns and lives in unit 405. Mr. Klager does not dispute this point, and has not provided contrary evidence.
19. As previously explained, SPA section 28(3) says a strata corporation can have a bylaw limiting a person from being on the strata council “**with respect to a strata lot**” if the strata corporation is entitled to register a section 116(1) lien “**against that strata lot**” (emphasis added).
20. Similarly, bylaw 10(1) says a person may not be on the strata council “**with respect to a strata lot**” if the strata corporation has registered a section 116(1) lien “**against the strata lot**”.
21. The strata says MB was elected to the strata council at an annual general meeting (AGM) in April 2019. It says the voting process was that owners gave a yes or no vote to each individual running for council, and each candidate required a majority of votes in their favour to be elected.

22. There are no minutes or voting records from the April 2019 AGM in evidence. However, since Mr. Klager has not disputed the strata's explanation of the voting process, I accept it.
23. The burden of proof is on Mr. Klager in this dispute. I find he has not proven that MB was elected to council as a representative of JRD. Rather, based on the evidence before me, I find it is most likely that owners did not consider whether MB was running for council as a representative of JRD (the corporate owner of SL31), or whether he was running as owner of unit 405. In any event, I find MB is entitled to sit on the council "with respect to" unit 405, since he is its owner and there is no lien against it.
24. For these reasons, I dismiss Mr. Klager's claims, and do not order the strata to remove MB from the council.
25. The strata says that in order to address any potential conflict of interest, MB leaves council meetings when business about SL31 is discussed. The CRT does not have jurisdiction to make decisions about council members' conflicts of interest, but I note that this is a reasonable practice.

## **CRT FEES AND EXPENSES**

26. 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.
27. The strata is the successful party. It paid no CRT fees and claims no dispute-related expenses. I therefore do not award them to any party.
28. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses to Mr. Klager.

## **ORDER**

29. I dismiss Mr. Klager's claims, and this dispute.

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Kate Campbell, Vice Chair