



Civil Resolution Tribunal

Date Issued: November 23, 2020

File: ST-2020-004609

Type: Strata

Civil Resolution Tribunal

Indexed as: *Twardy v. The Owners, Strata Plan NW 1581*, 2020 BCCRT 1316

B E T W E E N :

Jolanta Twardy

APPLICANT

A N D :

The Owners, Strata Plan NW 1581

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicant, Jolanta Twardy, co-owns a strata lot in the respondent strata corporation, The Owners, Strata Plan NW 1581 (strata).
2. Ms. Twardy's son, DT, represents her in this dispute. The strata council president, LB, represents the strata.

3. Ms. Twardy makes 3 claims. First, she claims \$1,000 as a partial refund on a special levy because the strata did not make certain repairs. Second, she claims \$327.60 as a partial refund of strata fees because the strata improperly restricted her access to the strata's recreation centre and confiscated her visitor parking pass. Finally, she claims \$3,000 for the time DT has spent dealing with the strata, including the time spent dealing with this dispute and a previous Civil Resolution Tribunal (CRT) dispute, *Twardy v. The Owners, Strata Plan 1581*, 2020 BCCRT 400 (previous dispute).
4. For the reasons that follow, I dismiss Ms. Twardy's claims.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the 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 by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
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. As a preliminary matter, in the previous dispute, Ms. Twardy claimed \$500 for constructing a fence. The CRT found that Ms. Twardy's claim was premature because the strata had not inspected the fence yet. Ms. Twardy initially claimed \$500 in this dispute for the same fence, but the strata has since completed the inspection and paid Ms. Twardy \$500. Therefore, this issue is not before me except in relation to Ms. Twardy's claim about the strata's conduct.
10. The remaining issues in this dispute are:
 - a. Did the strata commit to spending part of the special levy on Ms. Twardy's outdoor area or parking stall? If so, what remedy is appropriate?
 - b. Is Ms. Twardy's claim related to the strata's denial of access to the recreation centre *res judicata*? If not, did the strata improperly deny access?
 - c. Is Ms. Twardy entitled to partial reimbursement of her strata fees because the strata confiscated her visitor parking pass?
 - d. Is Mr. Twardy entitled to compensation for the strata's conduct?

BACKGROUND

11. In a civil claim such as this, Ms. Twardy as the applicant must prove her case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
12. The strata is comprised of 102 strata lots in 6 low-rise buildings. Ms. Twardy's strata lot is on the ground floor.
13. The strata shares a recreation centre with 3 other nearby strata corporations.

14. I will address the evidence and analysis for each issue under separate headings.

EVIDENCE AND ANALYSIS

The Special Levy

15. At the strata's 2019 annual general meeting (AGM), held on February 26, 2019, the strata sought owner approval of a \$400,000 special levy. The proposed special levy was for "repairs, maintenance, upgrades around the NW1581 complex". The strata also proposed alternative resolutions for special levies of \$250,000 and \$150,000. The 3 resolutions were identical other than the amount. The strata said that it would perform repairs in priority sequence.
16. At the AGM, the resolutions seeking a \$400,000 special levy and a \$250,000 special levy both failed. The owners approved a \$150,000 special levy. Ms. Twardy's contribution to the special levy was about \$1,400, which she paid.
17. Before turning to Ms. Twardy's claim, I note that the parties disagree about the use of the words "deck" or "patio" to describe the outdoor area adjacent to Ms. Twardy's strata lot. I find that I do not need to resolve this issue and use the word "outdoor area" instead.
18. The strata says that all the repairs that the special levy funded are complete, except for some roof work. It is undisputed that none of the repairs affected Ms. Twardy's outdoor area or parking stall. The strata says that it never planned to do any repairs to Ms. Twardy's outdoor area or parking stall.
19. Ms. Twardy says that the strata promised to paint her outdoor area. She says that the painters skipped her unit in 2019, so the strata said it would be done in 2020. Ms. Twardy says that the strata has now backtracked on that promise and says that her outdoor area will not be painted, because it is not a "deck".
20. Along the same lines, Ms. Twardy says that the strata promised that her parking stall would be repaired but it never was. She says water pools in the parking stall when it

rains. The strata said that the concrete company inspected many areas but only completed the most urgent repairs.

21. Ms. Twardy does not dispute that there is nothing in the special levy, AGM minutes or strata council minutes to suggest that the special levy project included any specific repairs to her outdoor area or parking stall. She says that the strata sent DT an email, which included photographs, that proves that the strata misled her about repairs to her outdoor area. She did not provide this email as evidence.
22. I find that it is unsurprising that the strata did not complete all possible repairs in the strata given that the owners approved a much smaller special levy than the strata proposed. This result necessarily would necessarily have required the strata to prioritize urgent repairs and defer some maintenance. There is no evidence that Ms. Twardy's parking stall or outdoor area were in such a state of disrepair that they needed to be fixed immediately. There is also no evidence that the strata prioritized less urgent repairs because of personal animosity towards DT, as Ms. Twardy alleges.
23. As mentioned above, Ms. Twardy failed to provide the email that she says proves that the strata committed to certain repairs. I find that she has failed to prove that the strata did not spend the special levy in accordance with the resolution approving it. I therefore dismiss this claim.

The Recreation Centre

24. Ms. Twardy says that in 2018, the strata cancelled DT's access card to the strata's recreational centre. Ms. Twardy says that the strata's policy is that it will only deny access to the recreation centre if an owner's strata account is in arrears of more than \$1,500. There is no bylaw or other written evidence of this policy.
25. Ms. Twardy says that following the previous decision, which cancelled some outstanding fines and charges, her strata account arrears were less than \$1,500. Therefore, she argues that if the strata had never put those improper charges on her

strata lot account, it never would have cancelled DT's access card. She seeks reimbursement of \$327.60, which is 10% of her strata fees for a year.

26. The strata says that there is no policy setting a \$1,500 threshold for arrears. The strata says that when owners sign up for a recreation centre card, they agree that their card will be deactivated if they are in arrears of fines or strata fees.
27. Because Ms. Twardy's claim about the recreation centre appeared to deal with the same claims as the previous dispute, I asked the parties for submissions about whether this claim is *res judicata*. *Res Judicata* is a legal principle that prevents parties from bringing multiple legal proceedings about the same issue.
28. The CRT discussed the concept of *res judicata* in detail in *East Barriere Resort Limited et al v. The Owners, Strata Plan KAS1819*, 2017 BCCRT 22. Briefly, there are 2 types of *res judicata*: cause of action estoppel and issue estoppel. For the reasons that follow, I find that cause of action estoppel prevents Ms. Twardy from bringing a claim about the strata's denial of access to the recreational centre.
29. The 4 elements of cause of action estoppel are set out in *Cliffs Over Maple Bay (Re)*, 2011 BCCA 180, at paragraph 28 (emphasis in original):
 - a. There must be a final decision of a court of competent jurisdiction in the prior action [the requirement of "finality"];
 - b. The parties to the subsequent litigation must have been parties to or in privy with the parties to the prior action [the requirement of "mutuality"];
 - c. The cause of action and the prior action must not be separate and distinct; and
 - d. The basis of the cause of action and the subsequent action was argued or could have been argued in the prior action if the parties had exercised reasonable diligence.
30. First, the CRT made a final decision about Ms. Twardy's allegations about being charged inappropriate amounts. Ms. Twardy was partially successful in those claims. The CRT had jurisdiction over those claims.

31. Second, while the parties are not identical because the other owner of Ms. Twardy's strata lot is not an applicant in this dispute, I find that the requirement of mutuality is met. Ms. Twardy and the other owner are joint tenants of their strata lot, so I find that Ms. Twardy is entitled to represent their joint interests in a CRT dispute.
32. Third, I find that Ms. Twardy's claim for reimbursement of strata fees is not separate and distinct from her claims in the previous dispute for cancellation of certain charges against her strata lot account. They both relate to the same underlying allegation that the strata put inappropriate charges on Ms. Twardy's strata lot account.
33. Finally, I find that the basis for Ms. Twardy's claim could have been argued in the previous dispute if Ms. Twardy had exercised reasonable diligence. Cause of action estoppel requires parties to raise all of the issues arising from a certain set of facts in one proceeding. If there is more than one remedy based on the same facts, the party must ask for them all in the same proceeding. See *Carr v. Cheng, Dorset College Inc.*, 2007 BCSC 1693.
34. I find that if Ms. Twardy is correct that the strata has a policy of allowing arrears to reach \$1,500 before denying access to the recreation centre, she could have asked the CRT to address this issue in the previous dispute. This is because her claim in this dispute is explicitly linked to her success in having some charges on her strata lot account reversed in the previous dispute. Therefore, she could have asked the CRT for an order about the strata's denial of access to the recreation centre in the previous dispute. I find that Ms. Twardy's claim in this dispute is a new remedy based on the same facts as the previous dispute. Therefore, I find that she failed to exercise reasonable diligence by failing to ask for a remedy about the recreation centre in the previous dispute.
35. For these reasons, I dismiss Ms. Twardy's claim about the recreation centre as *res judicata*. I find that I therefore do not need to address the party's submissions on the merits of this claim.

The Visitor Parking Pass

36. Ms. Twardy says that the strata “confiscated” her visitor parking pass. She says that LB took the visitor parking pass from DT’s girlfriend. Ms. Twardy says that LB refused to issue a new visitor parking pass until Ms. Twardy paid her outstanding fines and charges. There is no evidence from DT’s girlfriend about her alleged conversation with LB.
37. The strata denies that it confiscated Ms. Twardy’s visitor parking pass. The strata says that it does not confiscate visitor parking passes. The strata says that Ms. Twardy may get a new visitor parking pass by completing the required form and providing it to the strata’s property manager. There is no evidence that Ms. Twardy has attempted to obtain a new visitor parking pass through the normal procedure.
38. I find that Ms. Twardy has failed to prove that the strata confiscated her visitor parking pass, or that the strata has refused to issue her a new visitor parking pass.
39. I therefore dismiss this claim.

Is Ms. Twardy entitled to compensation for the strata’s conduct?

40. Throughout Ms. Twardy’s submissions, she repeats allegations that LB is a “proven liar” with a personal vendetta against Ms. Twardy and DT. Ms. Twardy claims \$3,000 for time spent dealing with the strata. She says that there need to be “consequences” for LB’s repeated lying. The legal basis for this claim is unclear. Based on Ms. Twardy’s submissions, I infer that she alleges that the strata’s behaviour towards her has affected her quiet enjoyment of her strata lot and wants general or punitive damages. I find that the legal basis is not important because Ms. Twardy has failed to prove any of her allegations.
41. Ms. Twardy believes that LB is out to get her and DT because DT uncovered a \$20,000 “parking stall scam”. She implies that LB, and maybe others in the strata, personally enriched themselves with this scam, and LB has targeted her ever since. There is no evidence about this alleged scam.

42. Ms. Twardy argues that she has proven that LB has lied many times. For the most part, the only evidence about these alleged lies is DT's uncorroborated statements. I find that all of Ms. Twardy's allegations about the LB's and the strata's misconduct are speculative and unproven.
43. To take an example, Ms. Twardy alleges that the strata lied in the previous dispute about DT having a cat. The CRT found as a fact that DT did have a cat, but he continued to deny it after the previous decision. The strata's property manager sent DT an email stating that the strata would "no longer pursue the pet issue". I note that Ms. Twardy mischaracterizes this email in her submissions. She says that the strata "admitted" that the pet registration bylaw fine "was never justified". I find that the property manager's email does not make any admission.
44. Ms. Twardy says that this email is proof that the strata knew all along that DT did not have a cat, and that it lied in the previous dispute. I find that this explanation makes no common sense. First, the email came from the property manager. There is no explanation about why the property manager would involve themselves in LB's alleged campaign against Ms. Twardy and DT. Second, if the strata and LB were targeting DT to make his life miserable, they would not drop the pet issue for no reason. I find it far more likely that the strata dropped the pet issue because it was not worth continuing to argue about it after receiving a decision in the previous dispute.
45. I find that Ms. Twardy has failed to prove any of her allegations of misconduct by LB or the strata. I dismiss this claim.

TRIBUNAL FEES AND EXPENSES

46. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. While I have dismissed all of Ms. Twardy's outstanding claims, I considered whether to order partial reimbursement of her CRT fees because the strata ultimately paid for the fence. Ms. Twardy says that the strata only did so

because she started this dispute. I find that the evidence does not support Ms. Twardy's position. I agree with the strata that it was in the process of arranging for an inspection when Ms. Twardy started this dispute. I therefore decline to award Ms. Twardy reimbursement for her CRT fees. Ms. Twardy did not claim any dispute-related expenses.

47. The strata must comply with the provisions in section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Twardy.

DECISION AND ORDER

48. I dismiss Ms. Twardy's claims, and this dispute.

Eric Regehr, Tribunal Member