



Civil Resolution Tribunal

Date Issued: November 25, 2020

File: ST-2020-004249

Type: Strata

Civil Resolution Tribunal

Indexed as: *Hutton v. The Owners, Strata Plan BCS 1443*, 2020 BCCRT 1333

B E T W E E N :

DAWN HUTTON

APPLICANT

A N D :

The Owners, Strata Plan BCS 1443

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. The applicant, Dawn Hutton, is the former owner of strata lot 13 in the respondent strata corporation, The Owners, Strata Plan BCS 1443 (strata). Ms. Hutton says that another strata lot owner, MM, did not comply with the strata bylaws, particularly for visitors parking, and the strata's failure to enforce compliance adversely affected the value of her strata lot when she recently sold it. Ms. Hutton seeks an order requiring

the strata to enforce its bylaws. She also seeks an order for the strata to seek an order from the Civil Resolution Tribunal (CRT) to either require MM to comply with the strata's bylaws, or for a "removal order" against MM. Ms. Hutton did not explain what she meant by a removal order.

2. The strata says it has already addressed MM's noncompliance by issuing notices and fines for his visitor parking bylaw violations. It also denies that property values were affected.
3. Ms. Hutton is self-represented. The strata is represented by a strata council member.
4. For the reasons set out below, I dismiss Ms. Hutton's claims.

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.

Jurisdiction to hear dispute filed by a former owner

9. Ms. Hutton says she sold her strata lot after she submitted her application for dispute resolution. Section 189.1(1) of the *Strata Property Act* (SPA) states that only a strata corporation, owner or tenant may apply for dispute resolution with the CRT. According to the Land Title Office, Ms. Hutton was the registered owner of strata lot 13 on June 1, 2020, and so I find she had standing to apply for dispute resolution at the time the Dispute Notice was issued. I also note that in *Carnochan v. The Owners, Strata Plan K 496*, 2020 BCCRT 758 a CRT vice chair determined that the CRT can resolve disputes involving former owners.

ISSUES

10. The issues in this dispute are:
 - a. Is Ms. Hutton's claim moot since she sold her strata lot?
 - b. If the claim is not moot, did the strata fail to enforce its bylaws?

EVIDENCE AND ANALYSIS

11. While I have reviewed all of the evidence and submissions, I only refer to what is necessary to give context to and explain my decision.
12. The strata consists of 36 townhouses. The strata's bylaws are the Standard Bylaws under the SPA, with amendments registered in the Land Title Office. Bylaw 32(5) states that owners, residents, or tenants are not permitted to park their vehicles in the visitor parking spaces unless approved by the strata. In addition, bylaw 23 states that the strata can fine an owner up to \$200 for each bylaw contravention.

Parking complaints

13. Ms. Hutton says that since November 2019, another strata lot owner, MM, has regularly parked his pickup truck in a visitor parking spot near her strata lot. She says MM typically started his vehicle remotely at least 20 minutes before he left which

resulted in exhaust fumes in her strata lot. She also says that MM's vehicle blocked access to fix a broken window in her strata lot, and to her backyard. She says her garbage was not picked up on a few occasions because MM moved her garbage bins when parking his pickup truck.

14. Ms. Hutton emailed numerous complaints to the strata along with a list of the dates that MM was parked in the visitor parking spot. Ms. Hutton says MM's alleged non-compliance with the parking bylaw also decreased strata lot values and affected their marketability. She says an order requiring the strata to enforce its bylaws is necessary since the strata is not willing to adhere to section 31 of the SPA. This is addressed in further detail below. Since this issue was not identified in the Dispute Notice, I find it is not properly before me and I cannot address it in the context of this dispute.
15. Even if it had been properly before me, based on the BC Supreme Court's decision in *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32, Ms. Hutton has no standing to make a claim under SPA section 31. In *Sze Hang* at paragraph 267, the court said the duties of strata council members under SPA section 31 are owed to the strata corporation, and not to individual strata lot owners. This means that a strata lot owner, or group of owners cannot succeed in a claim against the strata, the strata council, or individual strata council members for a breach of section 31.
16. Ms. Hutton also says in addition to the visitor parking issue, the strata did not require MM to comply with other strata directions over the years about repairs and maintenance to his strata lot. Since Ms. Hutton did not request a remedy for these allegations, I make no findings about them.
17. Ms. Hutton attended the May 11, 2020 strata council meeting via videoconference to discuss MM's parking violations. She also alleged that MM was affecting the health, safety and insurance risks of all strata lot owners since there was litter in his yard, he was not complying with regular fire alarm testing, he did not complete attic venting, and he did not remedy a utility drainage issue. She asked the strata council to advise her of the enforcement measures it planned to exercise.

18. In a May 28, 2020 letter, the strata advised Ms. Hutton that it had sent letters to MM, issued fines for the parking violations, and tried to tow the pickup truck. It also stated that it would continue to follow the SPA regarding bylaw enforcement and consider the option of pursuing a CRT dispute. The strata did not address the other issues Ms. Hutton raised.
19. In this dispute, the strata submitted a statement from the towing company that it made multiple attempts to tow the pickup truck, but it was too big for the dollies and so could not be towed without causing damage.
20. According to the June 16, 2020 strata council meeting minutes, the strata issued \$1,850 in fines against MM for 37 separate visitor parking contraventions. The strata council also agreed to serve a CRT Notice of Dispute on MM for an order that MM could no longer park his vehicle in the visitors parking and for payment of the fines levied.
21. The strata filed an application for dispute resolution with the CRT against MM seeking \$2,500 for visitor parking bylaw fines and an order that MM stop parking in visitors parking spaces. In that dispute, the strata is also seeking \$1,466.33 for a garage door replacement charge back. The strata did not explain the discrepancy between the amount of the fines in the June 16, 2020 strata council meeting minutes and the amount it claimed in its CRT dispute. The CRT has not published a decision yet and these issues are not before me in this dispute.

Is Ms. Hutton's claim moot?

22. Ms. Hutton says the strata is obligated under section 26 of the SPA to enforce the bylaws. Under section 26 of the SPA, the strata council has a duty to exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules. When carrying under these duties, such as bylaw enforcement, the strata council must act reasonably (see *Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74).

23. The strata says Ms. Hutton is no longer affected by whether it enforces bylaws against MM since she is no longer owns a strata lot. An issue is said to be moot where, after a dispute is started, events occur which affect the parties' relationship so that no "present live controversy" exists affecting their rights (see *Binnersley v. BCSPCA*, 2016 BCCA 259 and *Mitha et al v. The Owners, Strata Plan VR 2192*, 2019 BCCRT 1259 at paragraphs 33-35). In *Binnersley*, the court found that determining mootness involves a 2-step analysis. First, whether the live issue has disappeared, and any issues are theoretical or academic. Second, if there is no live issue, whether the court or tribunal exercise its discretion to hear the case anyway.
24. As discussed above, Ms. Hutton sold her strata lot after submitting her application for dispute resolution. Neither party provided the date the strata lot was sold. However, I find the sale date is irrelevant since the strata lot was sold after the Dispute Notice was issued. I find that this sale eliminated the live controversy between Ms. Hutton and the strata regarding ongoing bylaw enforcement. I decline to exercise my discretion to consider the moot issue since Ms. Hutton will not be affected by whether bylaws are enforced against MM. As a result, I find Ms. Hutton's claimed remedy of bylaw enforcement is moot and I dismiss her claim.

Property value

25. Ms. Hutton says the value and marketability of strata lots, including hers, was affected by the poor maintenance and repair of MM's strata lot, MM's parking bylaw violations, and the strata's failure to provide information about its CRT claim to interested buyers. The strata says that Ms. Hutton's strata lot sold within market value and its value could have been affected by factors unrelated to the strata's or MM's actions.
26. The only remedy that Ms. Hutton sought in this dispute was for bylaw enforcement, which I have already addressed above. Since Ms. Hutton did not seek a specific remedy related to the alleged decrease in property value, I find it is not properly before me and so I do not need to address this submission.

CRT FEES AND EXPENSES

27. 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. Since Ms. Hutton was unsuccessful, I dismiss her request for reimbursement of the CRT filing fees.
28. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Hutton.

ORDER

29. I dismiss Ms. Hutton's claims and this dispute.

Rama Sood, Tribunal Member