



Civil Resolution Tribunal

Date Issued: December 7, 2020

File: ST-2020-004669

Type: Strata

Civil Resolution Tribunal

Indexed as: *Dewaal v. The Owners, Strata Plan NW2*, 2020 BCCRT 1379

B E T W E E N :

GERRIT DEWAAL

APPLICANT

A N D :

The Owners, Strata Plan NW2

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. The applicant, Gerrit Dewaal, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan NW2 (strata). Mr. Dewaal says another strata lot owner, JT, owed strata fees at the time of a recent annual general meeting and so was not eligible to be elected as a strata council member under the strata's bylaws. Mr. Dewaal seeks an order that JT be removed from the strata council.

2. The strata says that the strata bylaw about electing council members is in breach of the *Strata Property Act* (SPA) and so is unenforceable. Even if it was enforceable, the strata says that JT was still eligible to be elected to the strata council.
3. Mr. Dewaal is self-represented. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.
7. 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

8. Was JT eligible to be elected as a strata council member?

EVIDENCE AND ANALYSIS

9. I have read all of the evidence provided but refer only to evidence I find relevant to provide context for my decision. In a civil proceeding such as this, the applicant Mr. Dewaal must prove his claims on a balance of probabilities.
10. The strata was created in 1974 and consists of 30 residential strata lots. The strata filed a new set of bylaws at the Land Title Office on April 23, 2008 and 4 subsequent bylaw amendments. I find the bylaw amendments are not relevant to this dispute.
11. Bylaw 11(3) states that a council member more than 3 months in arrears of maintenance fees, special levies, fines, penalties or interest charges shall not be entitled to a vote and shall immediately be terminated from council.
12. Bylaw 28(8) states that owners who are not current with their monthly strata fees, special levies, fines, penalties and interest charges, are not eligible to vote at an annual or special or council meeting or be elected to office. All payments of the these charges must be by certified cheque or money order if paid 7 days before the meeting.
13. JT was elected as a council member at the February 26, 2020 annual general meeting (AGM). Based on the strata's February 13, 2020 "Aged Receivables Summary", Mr. Dewaal says JT owed \$945.51 for strata fees and special levies at the time of the AGM. He also says that of the amount owed, \$315.17 was 3 months in arrears. Mr. Dewaal says that since JT was in arrears, she was not eligible to be elected to office under bylaw 28(8). He seeks an order that JT be removed from the strata council.
14. The strata says that bylaw 11(3) and bylaw 28(8) are unenforceable. Even if they are enforceable, the strata says JT paid the arrears on the day of the AGM and so was in compliance of the bylaws. I note the strata did not provide any records about JT's alleged payment and so I give this assertion no weight.
15. The strata also says the issue is moot because even if JT is removed from the strata council, she will simply pay the arrears and be immediately re-elected. Mr. Dewaal says if JT is removed as a council member, the person who had the next highest number of votes would be elected as a council member. Bylaw 12(1) states that if a

council member is unable to act for a period of 2 or more months, the remaining council members can appoint a replacement member for the remainder of the term. I find the issue is not moot because there is no certainty that JT would be re-appointed by the remaining council members.

Are bylaw 11(3) and bylaw 28(8) enforceable?

16. Section 28(1) of the SPA states that owners are entitled to be on council. Section 28(3) states that a strata may, by bylaw, provide that a person cannot stand for or be on council if the strata is “entitled to register a lien against the strata lot under section 116(1)”.
17. Section 116(1) of the SPA allows a strata to register a lien against a strata lot for specific types of debts. These lienable debts do not include fines, penalties, and interest charges. Section 121(1) of the SPA states that a bylaw is not enforceable to the extent that it contravenes the SPA. This means that a strata bylaw cannot bar a person from council if non-lienable amounts such as fines, penalties and interest charges are owed.
18. The strata says that bylaw 11(3) and bylaw 28(8) are unenforceable and in breach of SPA section 28(3) since they refer to fines, penalties, and interest charges which are not lienable amounts in section 116(1). Mr. Dewaal says those non-lienable amounts mentioned in the bylaws are irrelevant because JT was in arrears for strata fees and special levies only, which are lienable.
19. Since bylaw 11(3) and bylaw 28(8) do not state that the charge must be lienable and also since both bylaws apply to non-lienable charges, I find both bylaws contravene SPA section 28(3) and are unenforceable. Since the bylaws are unenforceable, I find JT could be elected to the strata council even though she owed strata fees and special levies at the time of the AGM.
20. Mr. Dewaal says even if the bylaws are unenforceable, JT is still not eligible to be a council member under SPA section 28(3) since she owed strata fees or special levies at the time of the election. As stated above, section 28(3) permits a strata to pass a

bylaw restricting a person's eligibility to stand for or be on council. I find that since bylaw 11(3) and bylaw 28(8) are unenforceable, then section 28(3) does not apply.

21. Since I find JT was eligible to be elected as a strata council member, I do not need to consider the consequences if she was not eligible.
22. In his submissions, Mr. Dewaal stated he wanted the strata to notify all owners it erred and make a public apology. Since Mr. Dewaal was unsuccessful in his claim, I do not need to address this issue.

Disclosure

23. In his submissions, Mr. Dewaal also raised the issue of disclosure that was not included in his Dispute Notice. He says that the strata did not respond to his May 16, 2020 request for a copy of all correspondence between the strata and its law firm related to the issues in this dispute until June 18, 2020. He says this is in contravention of SPA section 36(3). Section 36(3) requires a strata corporation to comply within 2 weeks of an owner's request for various records and documents, including correspondence sent or received by the strata corporation and council (see section 35(2)(k)). Mr. Dewaal did not seek a remedy for the delay, aside from the general apology mentioned above. The CRT generally does not order apologies because forced apologies are not productive or helpful, and I agree (see *Wang v. Educare Systems Inc.*, 2019 BCCRT 527). Since I am not prepared to grant Mr. Dewaal's requested remedy in any event, I decline to address this issue.
24. Based on the reasons above, I dismiss Mr. Dewaal's claims and this dispute.

CRT FEES AND EXPENSES

25. 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 Mr. Dewaal was unsuccessful, I dismiss his claim for reimbursement of the CRT filing fees.

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

ORDERS

27. I dismiss Mr. Dewaal's claims and this dispute.

Rama Sood, Tribunal Member