



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Commercial Section of the Owners, Strata Plan LMS 1991 v. The Owners, Strata Plan LMS 1991, 2020 BCCRT 1459*

B E T W E E N :

Commercial Section of the Owners, Strata Plan LMS 1991

APPLICANT

A N D :

The Owners, Strata Plan LMS 1991 and Residential Section of the Owners, Strata Plan LMS 1991

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This is a preliminary decision of the Civil Resolution Tribunal (CRT) about whether the CRT should refuse to resolve the applicant's claims due to lack of jurisdiction or because the dispute is better resolved through another legally binding process.

2. The applicant Commercial Section of the Owners, Strata Plan LMS 1991 is the commercial section (Commercial Section) of the respondent strata corporation The Owners, Strata Plan LMS 1991 (strata). The respondent Residential Section of the Owners, Strata Plan LMS 1991 is strata's residential section (Residential Section). While the Commercial Section and Residential Section were identified differently in the Dispute Notice, I amended the style of cause to reflect the legal names for both sections as provided in *Strata Property Act* (SPA) section 193(4). There is no prejudice to any party in correcting the style of cause.
3. The Commercial Section seeks an order that the strata reimburse it for \$108,000 in expenses it says it paid for items that were the strata's responsibility. The Commercial Section says this payment is owing under a CRT order.
4. In a July 16, 2018 CRT decision ST-2017-003679 (July 2018 Decision), the CRT ordered the strata to pay the Commercial Section the total of all amounts that the strata should not have paid from the strata operating fund or contingency reserve fund (CRF) for the period from August 1, 2015 to February 28, 2018. The Tribunal Member wrote that if the parties were unable to agree on the amount to be paid to the Commercial Section, they were free to bring a new claim to the CRT on this issue.
5. The strata and the Residential Section filed identical Dispute Responses. They say the Commercial Section has not provided a calculation or evidence to prove the claimed \$108,000 reimbursement. The strata says that the SPA, Bylaws and July 2018 Decision do not permit it to assign or allocate expenses solely to a section, unless the expense relates solely to strata lots in that section. For that reason, the strata refuses to adjust the expenses owing based on the relative benefit to a section. In submissions, the strata says the Commercial Section brings this dispute to attempt to re-argue issues that have already been decided in the July 2018 Decision, or what the law calls issues that are *res judicata*.
6. The Commercial Section is represented by a Commercial Section council member. The strata is represented by lawyer S. Hamilton and the Residential Section by lawyer S. Smith.

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 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.
9. Under section 61 of the CRTA, the CRT may make any order or give any direction in relation to a CRT proceeding it thinks necessary to achieve the objects of the CRT in accordance with its mandate. The CRT may make such an order on its own initiative, on request by a party, or on recommendation by a case manager.
10. Under CRTA section 10(1), the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.
11. CRTA section 11(1) says the CRT may refuse to resolve a claim or a dispute for several reasons. These include where another legally binding process would be more appropriate, if the request for resolution is an abuse of process, or if the claim or dispute is beyond the CRT's jurisdiction.

ISSUE

12. The issue is whether the CRT should refuse to resolve the dispute because it is outside the CRT's jurisdiction or is more appropriately resolved by the British Columbia Supreme Court (BCSC).

REASONS and ANALYSIS

13. As discussed below, I refuse to resolve the Commercial Section's claims and this dispute. In making this decision, I reviewed the Dispute Notice and both Dispute Responses, and evidence and submissions from all parties on the jurisdiction questions. My reasons follow.
14. In this dispute, the Commercial Section seeks an order that the strata reimburse it for \$108,000 in expenses it says it paid for items that were the strata's responsibility. The Commercial Section says these monies are owing under the CRT's July 2018 orders, which I discuss further below.
15. In the July 2018 Decision the CRT made the following orders (CRT Orders), which I am summarizing where the full detail is not relevant:
 - a. Order 1: the strata admit a new commercial section member to strata council as soon as that individual has been appointed by the commercial section executive to serve on the strata council until its next AGM.
 - b. Order 2: the strata follow the SPA and applicable bylaws with respect to the eligibility of candidates for election or appointment to council effective at the next strata annual general meeting;
 - c. Order 3: the strata ensure that, in future, all requests to examine strata records under section 36 of the SPA are met within the required time limit;
 - d. Order 4: the strata take immediate steps to commission a depreciation report under section 94 of the SPA to assist the sections and the strata with future cost-planning and to assist with appropriately assigning expenses to either the residential or the commercial section, the strata, or to individual strata lots;
 - e. Order 5: within 30 days of the date of this order, the strata provide the commercial section owners with fobs to have restricted elevator access to the penthouse only, with all related costs to be paid by the commercial section. The provision of fobs to be on the same basis and at the same cost as provided to the residential section owners, if any. Alternatively, and at the sole discretion

- of the commercial section, the strata is to provide the commercial section with the ability and information it needs to book the penthouse through the strata for the use of the commercial section executive or commercial strata lot owners and to make the necessary arrangements to provide access on the days and times booked;
- f. Order 6: the strata is to ensure that the commercial section is not charged for any laundry-related expenses and is to reimburse the commercial section for any laundry-related expenses charged to that section for the period from August 1, 2015 to the date of this order. If the parties are unable to agree on the amount to be paid to the commercial section, they are free to bring a new claim to the tribunal on this issue;
 - g. Order 7: within 21 days of the date of this order, and to the extent that there are identifiable mechanical rooms where the commercial section has its own equipment, the strata is to provide the commercial section with keys to access those rooms for the commercial section's own repair and maintenance purposes;
 - h. Order 8: within 21 days of the date of this order, the strata reimburse the commercial section the full amount of the commercial section's contribution to the booster fan-related expense. If the parties are unable to agree on the amount to be paid to the commercial section, they are free to bring a new claim to the tribunal on this issue;
 - i. Order 9: within 14 days of the date of this order, the strata provide to the commercial section, all invoices and GLs for the period from November 1, 2017 to February 28, 2018. If the commercial section disagrees with the strata's calculation, it is to provide its own calculation showing incorrect allocation of expenses within 14 days of receiving the new invoices and GLs. The strata is to pay the commercial section the total of all amounts that the strata should not have paid from the strata operating fund or CRF for the period from August 1, 2015 to February 28, 2018. If the parties are unable to agree on the amount to

- be paid to the commercial section, they are free to bring a new claim to the tribunal on this issue;
- j. Order 10: the strata to make adjustments to its financial records for the corrected expense calculations within 30 days of receiving the commercial section's calculation;
 - k. Order 11: within 15 days of making the adjustments to its financial records, the strata to deliver to all of the owners copies of the adjusted financial statements to show the current balances for the operating fund and CRF held for each of the strata, commercial section and residential section, and to continue to do so on an annual basis unless arrangements are made for the commercial section to account for its own funds and subject to the passing of any related bylaws;
 - l. Order 12: following receipt of this order, the strata immediately take steps to obtain information about the possibility and cost of installing separate meters for the commercial section for electricity and gas. The strata to provide this information to the commercial section within 30 days of the date of this decision. If the information indicates that the installation of separate meters is possible, and if the commercial section wishes to proceed with the installation, the commercial section is to pay the cost of the installation;
 - m. Order 13: within 7 days of the date of this order, the strata provide to the commercial section all documentation and information relating to the \$20,000 loan made from the CRF to the residential section, its repayment terms and evidence of its repayment;
 - n. Order 14: within 7 days of the date of this order, the strata provide to the commercial section all documentation and information relating to the shower expenditure and to then immediately repay to the commercial section the amount charged to it. If the parties are unable to agree on the amount to be paid to the commercial section, they may bring a new claim to the tribunal on this issue;

- o. Order 15: the strata immediately take steps to obtain and provide information to the commercial section, within 30 days of the date of this order, about the possibility and cost of connecting the commercial section's hot water tanks to the strata meter. If the connection work is carried out, I order that the cost is to be paid by the commercial section;
 - p. Order 16: within 30 days of the date of this order, the strata arrange for the 4 common area lights to be reconnected to its electrical panel at the cost of the commercial section;
 - q. Order 17: the strata comply with the SPA with respect to expenditures from the CRF and operating fund;
 - r. Order 18: the strata reimburse the commercial section \$225.00 for tribunal fees.
 - s. Order 19: all other commercial section claims are dismissed.
16. It is undisputed that the CRT Orders have not been the subject of an appeal. The strata is now out of time to bring an appeal.
17. In August 2019, the Commercial Section brought a petition before the BCSC in Vancouver Registry No. S-1813433 (Petition). Although neither party provided the Petition itself, I infer from the affidavit material and the BCSC Order that the Commercial Section was bringing "contempt" and enforcement proceedings against the strata related to the CRT Orders.
18. In the Petition, the strata filed an affidavit of a residential strata lot owner, FW, who contested the Commercial Section's submission that the strata had failed to comply with the CRT Orders. FW reported learning that the Commercial Section's calculation of monies owing under Order 9 was \$64,536.33. I mention the figure because in this dispute the Commercial Section claims \$108,000 under Order 9, despite the time frame for those expenses being the fixed period between November 1, 2017 and February 28, 2018. Also in FW's affidavit, the strata noted it could take no further action in respect of Orders 10 and 11 until Order 9 was resolved.

19. On October 4, 2019, the BCSC made a series of orders against the strata, including orders that the strata provide expenses invoices to strata council, prepare a depreciation report and allow the Commercial Section access to some common property and limited common property areas including the mechanical rooms. The strata's contempt application and the Petition were also ordered adjourned generally. This means that the BCSC permitted the application to be postponed, with permission to restore the application for continued hearing if necessary.
20. In this dispute, the Commercial Section's submissions linked the strata's alleged non-compliance with CRT Order 4 with the parties' inability to reach a cost-sharing agreement under CRT Order 9.
21. The Commercial Section ends its submissions in this dispute with requests for relief that do not appear in the Dispute Notice, but which engage many of the CRT Orders aside from Order 9. For example, the Commercial Section seeks an order that
 - a. the Residential Section obtain a sectioned depreciation report within 60 days, which I find relates to CRT Order 4,
 - b. confirm that a contractor for electrical metering has been selected, which I find relates to CRT Order 11, and
 - c. determine a "correct" balance in the strata's CRF, which I find relates to CRT Order 12.
22. In submissions, the Residential Section says the strata cannot comply with Orders 6, 8, 10, 11, 13 and 14 because "they hinge on resolution of Order 9."
23. Based on this history, I find that the relief sought in this dispute is:
 - a. a combination of enforcing and "settling" the CRT Orders, and
 - b. integrally interwoven with the BCSC proceedings.

24. I make this finding because the interpretation and enforcement of Order 9 impacts the strata's ability to comply with many of the other CRT Orders, while those very compliance issues remain open before the BCSC.
25. I turn to the question of whether enforcement of a CRT Order is within CRT jurisdiction.
26. CRTA section 57 provides that a final decision of the CRT may be enforced by filing a validated copy of the order giving effect to that decision in the Supreme Court.
27. CRTA section 60 provides that a person who fails to comply with a CRT Order is liable for contempt as if in breach of an order or judgment of the Supreme Court, on application to the Supreme Court.
28. Taking sections 57 and 60 together, I find that enforcement of the CRT Orders is outside the CRT's jurisdiction. The Commercial Section conceded this point. To the extent that the relief sought here is CRT Order enforcement, I refuse to resolve it under CRTA section 10(1).
29. I will now consider whether the dispute would be more appropriate for resolution by the BCSC.
30. In deciding preliminary issues of this sort, the CRT considers factors such as avoiding duplication of processes, conserving the CRT's resources, and avoiding inconsistent findings between the CRT and the courts. See, for example, *Alves v. Upton*, 2020 BCCRT 1287 at paragraph 21. CRT decisions are not binding but I find these factors are relevant.
31. CRT Order 9 provides that, among other requirements, the parties "are free" to bring a new claim to the CRT if they are unable to agree on the amount the strata owes the Commercial Section. I find that the language in CRT Order 9 is permissive, not mandatory. Contrary to the Commercial Section's submission, I find that the tribunal member did not seize herself of the dispute, nor bind the CRT to resolve the claim later.

32. The Commercial Section submits that its claim under CRT Order 9 is not enforcement but a “new claim”. The Residential Section says it is an application for an order to vary Order 9 to include a principal amount payable. I find the characterization of the claim is not determinative of whether I should resolve it, given the degree of overlap with the BCSC proceedings.
33. The Commercial Section submits that it has applied to the BCSC about the strata’s alleged non-compliance with CRT Order 4 regarding a depreciation report. The Commercial Section submits the CRT will encounter “difficulty” in adjudicating its “new claim” because “...it will be virtually impossible to determine the amount of the alleged overpayment by the commercial section in the absence of the aforementioned depreciation report.”
34. The Commercial Section then submits that the most appropriate process is for it to continue its BCSC enforcement proceedings and “once a proper depreciation order is produced, then the claim should proceed before the Tribunal...”
35. In my view, the Commercial Section’s submission reveals the problem of these inter-related proceedings. I find that, for the CRT to make findings about Order 9 in isolation from the BCSC application, would create a risk of inconsistent findings.
36. Considering these factors, I find that the BCSC provides a more appropriate legally binding process for resolving this dispute. I make this finding because there is an existing BCSC proceeding about compliance with at least some of the CRT Orders.
37. Given the risk of inconsistent findings and duplication of processes, I also refuse to resolve this dispute under section 11(1)(a)(i).
38. Because I am refusing to resolve the dispute under CRTA sections 10(1) and 11(1), I find it unnecessary to make findings about whether the relief sought is *res judicata*.

DECISION AND ORDERS

39. I refuse to resolve the Commercial Section’s claims for enforcement of the CRT Orders under CRTA section 10(1).

40. I refuse to resolve the Commercial Section's remaining claims under section 11(1)(a)(i).

41. Because the Commercial Section's claim to be reimbursed \$4,933.27 for a "section depreciation report" is linked to the substantive dispute, I also refuse to resolve it.

42. In the circumstances, I direct the CRT to refund the Commercial Section's CRT fees.

Julie K. Gibson, Tribunal Member