



# Civil Resolution Tribunal

Date Issued: January 20, 2021

File: ST-2020-004877

Type: Strata

Civil Resolution Tribunal

Indexed as: *Oja v. The Owners, Strata Plan VIS4078*, 2021 BCCRT 69

**B E T W E E N :**

CARYL OJA

**APPLICANT**

**A N D :**

The Owners, Strata Plan VIS4078

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Lynn Scrivener

## **INTRODUCTION**

1. This dispute is about the suspension of housekeeping services by a strata corporation. The applicant, Caryl Oja, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan VIS4078 (strata). The strata's residents receive support services, including housekeeping services, that are funded by their monthly strata fees. During the early stages of the COVID-19 pandemic, the strata suspended

Ms. Oja's housekeeping services for 2 weeks. Ms. Oja says the strata overstepped its authority and acted in violation of a covenant registered against the title of her strata lot. The strata says it had an obligation to protect its elderly residents and its staff, and that it acted in good faith to ensure safety.

2. Ms. Oja is self-represented. A member of the strata council represents the strata.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. 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.
5. 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.
6. 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.
7. 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.

8. On August 24, 2020, a CRT Vice Chair made a preliminary decision about whether the CRT has the jurisdiction to decide this dispute. Section 121(1)(f) of the CRTA gives the CRT jurisdiction over claims in respect of the *Strata Property Act* (SPA) concerning a decision of the strata corporation. The Vice Chair determined that the strata's decision to withhold housekeeping services from the applicant fell within this section. I agree with the Vice Chair's reasoning, and find that the CRT has the jurisdiction to decide the dispute.
9. Although not included in her Dispute Notice, Ms. Oja made submissions about her view that an unidentified individual bullied and harassed her. She did not provide details of the allegations or make a request for an associated remedy. As the unidentified individual is not a party to this dispute, I am not able to make any orders against them. As such, I will not address this matter further.

## **ISSUE**

10. The issue in this dispute is whether the strata's decision to suspend Ms. Oja's housekeeping services was significantly unfair.

## **EVIDENCE AND ANALYSIS**

11. In a civil dispute like this, an applicant bears the burden of proof on a balance of probabilities. While both parties provided evidence and submissions, I will refer to only what is necessary to provide context to my decision.
12. The strata is comprised of residential strata lots and common laundry, dining and recreation facilities.
13. The strata offers independent living for seniors in a supported environment. A covenant, which was made between the owner developer and the municipality, is registered against the title of the strata lots. The covenant says that the land must be used for "multiple dwelling use" for people 55 years of age and over. It provides that the use of the land "shall be augmented at all times" by the provision of basic support services by or through the strata corporation. These services include at least 1 meal

per day in the common dining area, weekly light housekeeping, weekly linen laundering, an emergency response system and on-site staff.

14. Although it is a strata corporation operating under the SPA, the strata describes itself as a “not-for-profit corporation”. It did not provide any information about how it employs workers or contractors to provide the support services. There is no dispute that the support services are funded by the owners’ monthly strata fees. The strata’s bylaws do not address the support services or the circumstances under which they may be suspended.
15. The strata says that many of its residents are in their 80s and 90s and have health issues. When the COVID-19 pandemic was declared in March 2020, the strata was concerned about the risks its residents would face due to their vulnerabilities. It says that it moved to institute unspecified safety protocols to protect residents and staff.
16. On March 16, 2020, the strata held a meeting with its residents about pandemic-related matters. The evidence before me does not contain any minutes, but the strata says that there was a discussion of proposed safety protocols and the risks associated with being “out in the larger community”. The strata says the residents came to the conclusion that it was best to stay home, and that it asked the residents not to take risks that could lead to the spread of the coronavirus.
17. The strata says, and Ms. Oja does not dispute, that she was present at the March 16 meeting. It does not appear that the owners voted on any matters discussed at this meeting, or that it was an official annual or general special meeting, as contemplated in the SPA. In addition, the evidence before me does not indicate that the strata council enacted any rules under section 125 of the SPA that restricted gatherings or the use of public transportation. Further, the evidence does not establish that there was any communication about potential consequences for failing to stay home or engaging in behaviour that the strata deemed to be risky, including attending gatherings or using public transportation.
18. On March 17, 2020, Ms. Oja used a taxi to travel to and from a funeral service. An unknown number of other strata residents also attended this event. On that same

date, the strata closed the common dining room and moved to tray service to reduce contact between staff and residents.

19. Ms. Oja says she received a notice from the strata council on March 18, 2020 to advise that her housekeeping services would be suspended for 2 weeks. The notice was addressed to all funeral attendees, and stated that at the March 16 meeting “a concern was expressed a number of times” about the risks associated with people choosing to attend events where people are not spaced 6 feet apart and the use of public transportation, including taxis. The strata council advised in the notice that it had decided that its housekeepers would not enter any strata lots where the occupants took these risks.
20. Ms. Oja asked for a hearing about the strata council’s decision. The hearing was held on June 16, 2020. The minutes of this hearing are not in evidence, but it appears that the parties did not resolve the matter as Ms. Oja commenced this dispute on June 21, 2020.
21. Ms. Oja says the strata acted on a “whim”, overstepped its authority and made rules that restricted her rights. Her position is that withholding services violates the covenant and that it is not the strata’s concern if she decides to attend a funeral. She also questioned why it was considered unsafe for her to take a taxi when many of the strata’s staff use public transportation to travel to work.
22. The strata says that Ms. Oja was aware of the pandemic-related concerns, yet attended a gathering at which social distancing could not be guaranteed. It says that it acted honestly and in good faith to protect its vulnerable residents and its staff. The strata notes that Ms. Oja received a refund for the portion of housekeeping services she did not receive.
23. I find that the thrust of Ms. Oja’s submissions is that it was significantly unfair for the strata to suspend her housekeeping services. The courts have interpreted “significantly unfair” to mean conduct that is oppressive or unfairly prejudicial. “Oppressive” conduct has been interpreted as conduct that is burdensome, harsh, wrongful, lacking fair dealing or done in bad faith. “Prejudicial” conduct means

conduct that is unjust and inequitable (*Reid v. Strata Plan LMS 2503*, 2001 BCSC 1578, affirmed 2003 BCCA 126).

24. The test for significant unfairness was summarized by a tribunal vice chair in *A.P. v. The Owners, Strata Plan ABC*, 2017 BCCRT 94, with reference to *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44: what is or was the expectation of the affected owner or tenant? Was that expectation on the part of the owner or tenant objectively reasonable? If so, was that expectation violated by an action that was significantly unfair? The British Columbia Court of Appeal confirmed in *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342 that consideration of the reasonable expectations of a party is “simply one relevant factor to be taken into account” (see paragraph 89).
25. Ms. Oja’s expectation was that she would be provided with the support services that are described in the covenant. I find that the covenant requires that the described support services be provided in the strata’s building. While these services are an obligation of the strata, the covenant itself does not govern how the strata must provide the services or prevent it from making decisions about how they are provided. Further, the evidence and submissions do not indicate that there is a separate form of agreement involving the support services.
26. The British Columbia Supreme Court considered a similar scope of support services in *The Owners, Strata Plan VIS4686 v. Craig*, 2016 BCSC 90. The support services were described as an amenity that was “comparable to other types of common amenities or services typically found in residential strata buildings such as gyms, pools, and guest suites” (see paragraph 55). *Craig* also found that the support services were necessary to meet a specific obligation of the strata as contemplated by section 91 of the SPA, and therefore fell within the definition of “common expenses” in section 1 of the SPA (see paragraph 60).
27. I find that it was reasonable for Ms. Oja to expect to receive the services funded by the strata’s common expenses. I also accept that little was known about the coronavirus in March of 2020. Therefore, it was reasonable for the strata to take steps

to safeguard its residents and staff. However, as there is no indication that the strata was responding to an order from a public health official or WorkSafeBC, the strata's decisions had to be made within its authority under the SPA or the bylaws.

28. As noted, the bylaws do not address the provision of the support services or the strata's authority to make decisions about those services. Therefore, the key consideration is whether the SPA gives the strata the authority to make decisions to suspend owners' access to services funded by common expenses.
29. Section 71(b) of the SPA allows a strata corporation to make a significant change in the use of common property or a common asset without putting the matter to a vote if there are reasonable grounds to believe that an immediate change is necessary to ensure safety or prevent significant loss or damage. In *Borgan v. The Owners, Strata Plan 845*, 2020 BCCRT 1196, another CRT member found that a strata corporation had the authority to close a common swimming pool as it had reasonable grounds to believe that it was necessary to ensure safety during the pandemic. Although this decision is not binding on me, I agree with the reasoning that section 71(b) gives the strata the authority to restrict access to common areas, such as the dining room, recreational facilities or hallways. However, I find that this section does not apply to services covered by common expenses that are rendered inside strata lots.
30. A strata may also make rules under section 125 of the SPA. Any new rules must be set out in a written document capable of being copied and must be communicated to owners and tenants "as soon as feasible". Although the strata may implement rules without approval from the owners, any new rules cease to have effect unless they are ratified by a resolution passed by a majority vote at an annual or special general meeting.
31. Ms. Oja's submissions say that there were motions about restriction of housekeeping services and visitors presented to the strata lot owners for their consideration and approval in April and June of 2020. Although the contents of these motions or the results of the associated votes are not clear, I find that there were no rules enacted or votes taken at the March 16 meeting. In the result, there were no rules in effect on

March 17, 2020 that would have restricted Ms. Oja from attending a gathering or using public transportation.

32. Even if a rule restricting gatherings or transportation use was enacted, the enforcement options for a rule breach set out in section 129(1) of the SPA (imposing a fine, remedying a contravention, or denying access to a recreational facility) would not encompass the suspension of housekeeping services. In addition, the strata would need to comply with section 135 of the SPA before implementing an enforcement option.
33. I accept that the strata's decision was motivated by a desire to keep everyone safe and find that the strata did not act in bad faith when suspending Ms. Oja's housekeeping services. However, I find that the evidence before me does not establish that there were rules against attending gatherings or using public transportation, or that residents had been warned of possible consequences associated with these activities. I find that the decision to suspend services without warning was prejudicial to Ms. Oja, and therefore significantly unfair to her.
34. The strata must refrain from suspending support services unless such a suspension is specifically authorized by a rule or necessary to comply with orders from public health authorities or WorkSafeBC.

## **CRT FEES AND EXPENSES**

35. Under section 49 of the CRTA, and the CRT rules, the CRT generally will 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. I therefore order the strata to reimburse Ms. Oja for CRT fees of \$225. Ms. Oja did not make a claim for dispute-related expenses.
36. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Oja.



## ORDERS

37. I order that:

- a. The strata must refrain from suspending support services unless such a suspension is specifically authorized by a rule or necessary to comply with orders from public health authorities or WorkSafeBC, and
- b. Within 30 days of the date of this order, the strata must reimburse Ms. Oja for \$225 in CRT fees.

38. Ms. Oja is also entitled to post-judgment interest under the *Court Order Interest Act*.

39. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

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Lynn Scrivener, Tribunal Member