



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VIS3321 v. Yip*, 2021 BCCRT 213

B E T W E E N :

The Owners, Strata Plan VIS3321

APPLICANT

A N D :

BONNIE YIP, ELIZABETH CONWAY and BILL HARRISON

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This dispute is about alleged bylaw infractions in a strata corporation.
2. The applicant, The Owners, Strata Plan VIS3321, is a strata corporation operating under the *Strata Property Act* (SPA). The respondents, Bonnie Yip and Bill Harrison,

are partners and co-own a strata lot in the strata complex. The respondent, Elizabeth Conway also owns a strata lot in the strata complex.

3. The strata claims the respondents have engaged in harassing and nuisance behaviours in contravention of the strata's bylaws. It also says the respondents made false accusations and defamatory statements about individual council members. The strata seeks a declaration that the respondents contravened the strata's bylaws. It also seeks payment of \$3,400 in bylaw contravention fines against Ms. Conway and \$400 in fines against Ms. Yip and Mr. Harrison together. Further, the strata asks for the following remedy:

An order restraining the respondents from making detrimental false statements about the council members in emails and other written material circulated to the owners or posted online.

4. Ms. Yip and Mr. Harrison say the strata's claims are baseless. They say that they did not harass the council, or otherwise violate the strata's bylaws. They deny that they owe the claimed fines.
5. Ms. Conway says council had a "trying experience" with her but it could have spoken with her personally or blocked her emails rather than "rack up fines" against her strata lot. Ms. Conway says she has apologized and taken steps to change her behaviour.
6. The strata is represented by council member PB. Ms. Yip and Mr. Harrison are represented by Ms. Yip. Ms. Conway represents herself.

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 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.
9. 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.
10. 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.

PRELIMINARY ISSUES

Defamation Claim

11. As mentioned, the strata asks that I make an order restraining the respondents from making “detrimental false statements about council members”. I find the strata’s claim is essentially a claim in defamation and the CRT does not have jurisdiction to decide it. My conclusion is consistent with a CRT Vice Chair decision in *The Owners, Strata Plan LMS 2461 v. Luo*, 2020 BCCRT 1264, which is persuasive though not binding on me.
12. Section 121(1) of the CRTA sets out the CRT’s jurisdiction for strata property claims. It says the CRT has jurisdiction over a claim “in respect of” the SPA concerning a list of matters. Defamation is not expressly mentioned in section 121(1), nor do I find it falls within the list of matters. I find the CRT’s strata jurisdiction does not include jurisdiction over defamation claims.
13. I find the CRT also does not have jurisdiction to decide defamation claims under its small claims jurisdiction. This is because section 119(a) of the CRTA, says claims in

libel and slander are barred from the CRT's small claims jurisdiction. Libel and slander are types of defamatory statements.

14. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. I refuse to resolve the strata's defamation claims under CRTA section 10.

Declaratory Relief

15. In *Fisher v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379, a CRT Vice Chair considered the CRT's jurisdiction to grant purely declaratory orders. After canvassing court decisions on declaratory relief, the Vice Chair held that the CRT may be able to make a declaratory order if such an order is incidental to a claim of relief in which the CRT has jurisdiction. Though not binding on me, I agree with the Vice Chair's conclusion. I find the CRT likely has no authority to provide declaratory relief, save in the narrow circumstances where it is incidental to another claim for relief.
16. I find the strata's request for a declaration that the respondents contravened the bylaws is purely declaratory. I find the CRT does not have authority to order this remedy. However, the CRT has authority to make findings about whether the respondents breached the bylaws and must pay bylaw contravention fines. The CRT also has authority to make a payment order. As I explain below, I find the respondents did not breach the bylaws and the strata had no authority to impose the fines and I dismiss the strata's claims.

Nuisance

17. In the strata's application for dispute resolution, the strata broadly alleged the respondents engaged in nuisance behaviours contrary to the strata's bylaws. However, the strata did not provide particulars of the alleged nuisance. It also did not pursue its nuisance allegations any further in its submissions and does not seek a remedy related to nuisance. As the strata has not argued its claim in nuisance and seeks no remedy related to nuisance, I have not considered the nuisance allegations any further in my decision here.

Counterclaim

18. In their submissions, Ms. Yip and Mr. Harrison assert that they are making a \$400 counterclaim for harassment against the strata. However, they did not file a CRT counterclaim form or pay the fee to file a counterclaim under CRT rule 3.2. For this reason, I have not considered any counterclaim.

ISSUES

19. The remaining issues in this dispute are:

- a. Did the respondents breach the strata's bylaws?
- b. Must Ms. Conway pay all or any of the claimed \$3,400 in bylaw contravention fines?
- c. Must Ms. Yip and Mr. Harrison pay all or any of the claimed \$400 in bylaw contravention fines?

EVIDENCE AND ANALYSIS

20. In a civil proceeding like this one, the applicant strata bears the burden of proving its claims on a balance of probabilities.

21. While I have read all the parties' evidence, I have only referred to what I find relevant to provide context for my decision. In particular, the strata submitted hundreds of pages of emails and website forum postings dating back several years. While I have read all this evidence, I have not extensively summarized it in this decision.

Background

22. On January 3, 2017, the strata filed a set of consolidated bylaws in the Land Title Office. I find bylaw 13 - "No Harassment" is relevant to this dispute.

23. Bylaw 13(1) provides that every owner, tenant or occupant of a strata lot and every employee, contractor or agent of the strata corporation is entitled to use and enjoy

the strata lots and common property, free from harassment or abuse of any kind, (whether in person, over the telephone or in writing) which includes but is not limited to:

- a. verbal abuse or threats of any kind,
 - b. physical abuse which includes but is not limited to unwelcome touching and threats of unwelcome touching, or
 - c. unwelcome remarks, jokes, slurs, or taunting about a person's race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender or age.
24. Bylaw 13(2) says that on being notified by another owner, tenant or occupant verbally or in writing (a "Notifying Person") not to communicate with them, no owner, tenant or occupant may deliver any emails, notices, or any written communication of any kind to the strata lot of any Notifying Person, except for communication that is from the strata corporation or that is authorized to be delivered to a Notifying Person under the SPA, regulations, and bylaws.
25. I find bylaws 28 and 29 are also relevant. They say the strata may fine an owner up to \$200 for each contravention of a bylaw and every 7 days for a continuing contravention.
26. The strata fined Ms. Yip and Ms. Conway for allegedly contravening bylaw 13. In about July 2020, the strata imposed \$3,400 in fines against Ms. Conway's strata lot and \$400 in fines against the strata lot co-owned by Ms. Yip and Mr. Harrison. As noted, the strata seeks orders that the respondents pay these fines.
27. I discuss the details of the alleged bylaw contraventions below. I first address the law applicable to the strata's authority to take bylaw enforcement action and impose fines.

Statutory Framework

28. Under section 3 of the SPA, the strata is responsible for managing and maintaining the common property and common assets for the benefit of the owners.

29. Under section 26 of the SPA, the strata council must exercise the powers and perform the duties of the strata, including the enforcement of bylaws and rules. Under SPA section 133 the strata may do what is reasonably necessary to remedy a contravention of its bylaws or rules. The strata may also enforce a bylaw by imposing a fine as set out in SPA sections 129 and 130. Prior to imposing a fine, the strata must follow the procedural fairness requirements set out in SPA section 135.

The Strata's Claims Against Ms. Conway

30. The strata submitted hundreds of emails Ms. Conway sent to council and other owners dating back to about 2016. I find they show a history of interpersonal conflict and distrust between Ms. Conway and certain council members.

31. By way of context, the strata had a practice of allowing its owners to openly express their complaints and criticisms on website forum postings. The postings before me show disagreements and interpersonal conflict within the ownership that was not unique to Ms. Conway. At any rate, it is clear from the submitted correspondence that the council found Ms. Conway's email complaints unmanageable and some of her allegations against council members and tenants inappropriate.

32. On October 27, 2019, the council president sent Ms. Conway a Notice of Cease and Desist and directed her to stop all verbal and physical attacks, including all communication to council member PB within 15 days (October letter). I note that the strata submitted the October letter in this proceeding without clarifying any part of it. The October letter has no details of the alleged attacks and does not mention the strata's bylaws. Since PB did not send the letter, I find the October letter was not notification under bylaw 13(2). As there is no evidence of physical attacks, I also find Ms. Conway had not physically attacked anyone.

33. On June 18, 2020, the council secretary (PB) sent Ms. Conway 18 separate Notice of Bylaw Complaint letters that Ms. Conway's conduct violated bylaw 13. The complaints were from the council itself over emails Ms. Conway sent between December 16, 2019 and June 8, 2020 expressing her concerns over strata related

matters. The strata gave Ms. Conway until June 26, 2020 to respond to its June 18 letter. The evidence does not show that Ms. Conway requested a hearing.

34. After a vote, the council decided that Ms. Conway had violated bylaw 13 and levied \$3,400 in fines. The July 14, 2020 Notice of Fine letter in evidence states that council calculated the fines based on \$200 per infraction at a frequency of 1 per week, for 17 weeks in which Ms. Conway sent “objectionable emails”. There is only an undated vote tally and no meeting minutes clarifying council’s reasons.
35. The strata argues that Ms. Conway’s emails were “ongoing harassment”. The strata asserts they caused council members to resign and they disrupted council’s functioning. Further, the strata asserts, without supporting evidence, that non-resident council members “feel anguish” when visiting the building. The strata argues that I should uphold the fines because “common sense dictates that Council should not be expected to be subject to unprovoked abuse unleashed by Ms. Conway”.
36. An issue not raised by the parties is whether bylaw 13 is a valid, enforceable bylaw under the SPA. However, I find no need to decide the validity of bylaw 13. As I discuss next, I find in any event, that Ms. Conway’s emails did not amount to harassment or abuse that infringed anyone’s entitlement to use and enjoy their strata lots or common property contrary to bylaw 13.
37. I have reviewed the “objectional emails” that formed the basis of the strata’s fines. Ms. Conway’s emails contain allegations against 2 council members of financial improprieties and conflict of interest. Ms. Conway’s emails also allege that a council member’s tenant had physically and verbally harassed her. Ms. Conway also complained about a tenant’s bird feeder, a satellite dish and other strata related matters. Ms. Conway stated her intention to elevate her complaints, such as to the local health authority or to the police. It is not clear on the evidence that the strata investigated Ms. Conway’s complaints and I do not know whether Ms. Conway’s complaints had any merit. I find Ms. Conway bringing forward her complaints and warning the council that she intends to escalate her complaints does not qualify as harassment, abuse, or a threat under bylaw 13.

38. I find the language in some of Ms. Conway's emails was inappropriate and insulting. For example, Ms. Conway called one council member a "liar" and another "a sanctimonious fecking arse". She wrote in an email about council: "YOU ARE NOT FIT. BITE ME. I HAVE HAD ENOUGH OF THIS BULLCRAP". Some of Ms. Conway's emails also mocked council members. I agree with the strata that council members should not be subjected to insulting emails. However, I find the strata has not proven that Ms. Conway's conduct rose to a level of verbal abuse or harassment under a ground listed in bylaw 13(1)(c). I find the strata has also not proven that Ms. Conway's emails infringed an owner, tenant or occupant's entitlement to "use and enjoy the strata lots and common property" as defined in bylaw 13(1).
39. I find Ms. Conway did email PB after being told to stop all communication on October 27, 2019. However, as mentioned, I find the October letter was not notice under bylaw 13(2). Also, PB continued to engage with Ms. Conway by email after the strata sent the October letter. I find Ms. Conway did not breach bylaw 13(2) by emailing PB.
40. Within the strata's democratic setting, I find the owners must be able to raise complaints to council about strata related matters. It is council's responsibility under the SPA to reasonably respond to an owner's complaints. I find it was open to the strata to have taken pro-active steps to limit Ms. Conway's emails. For example, I find the strata could have set up a formalized process for owner complaints with rules about acceptable complaint conduct. After giving reasonable notice, I find the council members could have stopped reading Ms. Conway's emails if she did not reasonably comply with the process.
41. I find Ms. Conway did not breach the strata's bylaws. Absent a bylaw breach, I find the strata did not have authority to impose the fines against Ms. Conway's strata lot. I find Ms. Conway is not required to pay the \$3,400 in fines.
42. I dismiss the strata's claims against Ms. Conway.

The Strata's Claims Against Ms. Yip

43. On June 8, 2020, the strata notified Ms. Yip of complaints that she engaged in "harassment" contrary to bylaw 13.
44. The first complaint was that Ms. Yip breached bylaw 13 by allegedly picking up the strata's cheque book on February 28, 2020 without the strata's authorization. I find that removing a cheque book is not harassment as defined in bylaw 13, even if it was not authorized by council. Based on a June 8, 2020 statement from council member LO, I find Ms. Yip likely had authorization to pick up the cheque book. I find Ms. Yip did not breach bylaw 13 by picking up the cheque book.
45. The second complaint is "impersonation of a Council Member". The complaint letter states that Ms. Yip violated bylaw 13 by allegedly writing a February 29, 2020 email on council member LO's computer "that disrupted the normal operation of council". The strata has not shown that such conduct, even if true, disrupted the council's operation or constituted abuse or harassment that infringed on a person's use and enjoyment of their strata lot and common property. I find the strata has not proven that Ms. Yip breached bylaw 13.
46. The third complaint is that Ms. Yip sent a May 30, 2020 email, "that attacked PB without basis". In the May 30, 2020 email to council, Ms. Yip complained, in part, that its council member PB was threatening her and abusing his position on council. Ms. Yip stated that she was suspicious of PB's true motivation and if the continual threats and harassment from PB did not come to an immediate end, she would refer the matter to the Human Rights Tribunal.
47. Further to my discussion above, I find bylaw 13 cannot be expanded and used to silence owners from bringing forward complaints to council, including complaints about the conduct of a council member. I find that Ms. Yip did not act contrary to bylaw 13 by sending the May 20, 2020 email. I find no bylaw breach here.
48. Next, the strata argues that Ms. Yip made multiple record requests just to "inconvenience" the council. The SPA has no limit to the number of records an owner

can request to see under sections 35 and 36. I find Ms. Yip did not breach any bylaws by requesting records.

49. As the strata has not proven that Ms. Yip breached the strata's bylaws, I find the strata was not entitled impose any fines against her strata lot. Accordingly, I find Ms. Yip is not required to pay the \$400 in fines.

50. I dismiss the strata's claims against Ms. Yip.

The Strata's Claims Against Mr. Harrison

51. The strata alleges that Mr. Harrison engaged in conduct "designed to disrupt the council's proper functioning". It says Mr. Harrison decided not to volunteer to ensure the hallway ventilation and exterior lighting were functioning and turned off a ventilation fan without permission in 2019. It says Mr. Harrison then warned council of "nasty diseases" in 2020 because the fans were off.

52. I find that none of these alleged actions amount to a breach of the strata's bylaws. Also, based on the strata records before me, I find the strata did not take any enforcement action under SPA section 129 against Mr. Harrison. I find the strata has provided no basis on which to order Mr. Harrison to pay any fines.

53. I dismiss the strata's claims against Mr. Harrison.

CRT FEES and EXPENSES

54. 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. As the strata was unsuccessful, I dismiss its claim for paid CRT fees. None of the parties claimed dispute-related expenses.

55. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the respondent owners.

ORDER

56. I dismiss the strata's claims against Elizabeth Conway, Bonnie Yip and Bill Harrison.

57. I refuse to resolve the strata's defamation claims under CRTA section 10.

Trisha Apland, Tribunal Member