



Civil Resolution Tribunal

Original Decision Issued: July 15, 2021

Amended Decision Issued: July 22, 2021

File: ST-2020-008353

Type: Strata

Civil Resolution Tribunal

Indexed as: *Garrow v. The Owners, Strata Plan LMS445*, 2021 BCCRT 773

B E T W E E N :

PHILIP GARROW and RAVEN GARROW

APPLICANTS

A N D :

The Owners, Strata Plan LMS445

RESPONDENT

A N D :

PHILIP GARROW and RAVEN GARROW

RESPONDENTS BY COUNTERCLAIM

AMENDED REASONS FOR PRELIMINARY DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The case manager referred this dispute to me for a preliminary decision about document disclosure. Both parties ask for orders for document disclosure.
2. The applicants, Philip Garrow and Raven Garrow, own strata lot 1 in the respondent strata corporation, The Owners, Strata Plan LMS445 (strata). In the underlying claim, the Garrows say that the strata inappropriately prevented them from completing previously approved renovations in strata lot 1. They say that the strata made a false complaint to the District of West Vancouver (District) that led to the District imposing a stop work order. They ask for several orders, mostly to allow them to complete the renovations. They also ask for \$180,000 in damages and an unspecified amount for legal fees.
3. The strata says that the Garrows' renovations went beyond what the strata had approved. The strata says that the Garrows' work has compromised the strata building's structural integrity and must be repaired. In its counterclaim, the strata asks for an order that the Garrows repair the damage or pay for the strata to do so, and value that claim at \$250,000. It also asks for reimbursement of its engineering expenses and legal fees.
4. Both parties intend to rely on expert reports. The strata hired RJC Engineering (RJC), which has produced a written expert report. The Garrows hired Miyagi Construction Ltd. (Miyagi), Tash Engineering Ltd. (Tash), and Glotman Simpson Consulting Engineers (Glotman Simpson). Based on the limited evidence before me, it appears that the Garrows obtained a written expert report from Miyagi and at least 1 of Tash and Glotman Simpson.
5. The Garrows ask for:
 - a. All emails between the Wynford Group, the strata's property manager, and the strata council that include the term "RJC".

- b. All emails between RJC and the strata council that include the terms “348 Taylor Way” (the strata’s address) or “Strata Lot 1”.
 - c. All emails between the Wynford Group or the strata council and the District that include the terms “348 Taylor Way” or “Strata Lot 1”.
6. The strata asks for:
- a. All communications between the Garrows (and their lawyers) with Miyagi, Tash and Glotman Simpson.
 - b. Unspecified “portions” of the Garrows’ lawyers’ files.

EVIDENCE AND ANALYSIS

7. Section 61 of the *Civil Resolution Tribunal Act* (CRTA) says that the CRT may make any order in relation to a proceeding that is necessary to achieve the CRT’s objects. CRT rule 8.1 says that a party must provide all evidence in their possession that may prove or disprove an issue in dispute, even if it does not support that party’s position. CRT rule 8.3(4) says that if a party provides a written expert report, they must also provide any correspondence with that expert related to the opinion.
8. The burden is on the party asking for documents to prove that the documents likely exist and are likely relevant to the issues in dispute.
9. In addition to the CRT’s rules about disclosure, section 35 of the *Strata Property Act* (SPA) set out the types of records a strata corporation must prepare and keep. Section 36 of the SPA gives owners a right to access these records. Section 169(1)(b) of the SPA sets out an exception to an owner’s right of access. It says that if an owner sues a strata corporation, the owner does not have a right to information or documents related to the suit.
10. With that background in mind, I will address each request in turn.

Emails between Wynford Group and the strata council that include the term “RJC”

11. The Garrows say that the strata’s evidence is “missing” correspondence “prior, during and after” when RJC provided its report. They want all of this correspondence.
12. The strata says that the Garrows have not explained a basis for this document request. The strata says that it is not justified. The Garrows did not provide reply submissions responding to any of the strata’s arguments, despite having the opportunity to do so.
13. First, I agree with the strata that correspondence between the strata council and its property manager is not captured by CRT rule 8.3(4), which only applies to correspondence *with* the expert, not correspondence *about* the expert. I also agree that the Garrows have not proven that any correspondence about RJC is likely to prove or disprove an issue.
14. However, correspondence between the strata council and the strata’s property manager are disclosable under section 35(2)(k) of the SPA, which requires a strata to retain “correspondence sent or received by the strata corporation and council”.
15. The Garrows’ right to copies of this correspondence is limited by section 169(1)(b) of the SPA. I find that the strata is entitled to refuse to disclose any correspondence captured by the Garrows’ request that relates to this dispute.
16. I therefore order the strata to disclose any emails between the strata council and Wynford Group that include the term “RJC”, except for correspondence that relates to this dispute.

Emails between RJC and strata council members that include the terms “348 Taylor Way” or “Strata Lot 1”

17. As with the first request, under the SPA the Garrows have a right to correspondence between RJC and the strata council unless it relates to this dispute.

The CRT rules require the strata to disclose correspondence that is related to the expert report that RJC prepared. The strata does not dispute this but says that it has already fulfilled this obligation.

18. Neither party provided a copy of RJC's report or any correspondence that the strata has already disclosed. Neither party explained whether RJC has had any involvement with the strata's handling of the Garrows' renovations other than as part of this dispute. For example, it is unclear to me whether RJC helped the strata consider the Garrows' initial request to approve the renovations. So, I find that it is possible that the strata has correspondence with RJC that does not relate to this dispute.
19. I order the strata to disclose all emails between the strata council and RJC that include the terms "348 Taylor Way" or "Strata Lot 1", including any emails that relate to the expert opinion RJC produced for use in this dispute, but excluding any other emails that relate to this dispute.

All emails between the Wynford Group or the Strata Council and the District that include the terms "348 Taylor Way" or "Strata Lot 1"

20. While the Garrows do not explain the purpose of this request, I infer that the Garrows wish to see the complaint that the Garrows made to the District that led to the District's stop work order and any other correspondence related to that complaint. The strata says that the Garrows have not said why any of this correspondence is relevant.
21. I agree with the strata that the Garrows have not proven that any of the requested correspondence is relevant, but I find that the strata must produce the requested records under section 36 of the SPA. I find that the Wynford Group, as the strata's property manager, acted as the strata's agent in any communications with the District about the Garrows' strata lot. So I find that correspondence with the Wynford Group is captured by section 35(2)(k) of the SPA. As for section 169(1)(b) of the SPA, the only evidence before me about the District's involvement is that it

issued the stop work order. I find that this is not “related” to this CRT dispute for the purposes of section 169(1)(b). I say this because the purpose of contacting the District was to stop the Garrows’s work before there was any litigation or threat of litigation.

22. I therefore order the strata to disclose all emails between the strata council or the Wynford Group and the District that include the terms “348 Taylor Way” or “Strata Lot 1”.

All communications between the Garrows (and their lawyers) with Miyagi, Tash and Glotman Simpson

23. The strata says that the Garrows’ communication with their contractors is “relevant context” for the expert evidence that the Garrows have provided in this dispute. In particular, the strata says that it is missing the documents that Miyagi reviewed to prepare its opinion, and provides an example of a December 9, 2020 letter from Glotman Simpson. The strata says that the Garrows must disclose these communications under CRT rule 8.3(4).

24. The Garrows say that they have already disclosed all of the written correspondence required by CRT rule 8.3(4). They say that any other information that Miyagi used in its report was given verbally. They do not say anything about the strata’s specific request for Glotman Simpson’s December 9, 2020 letter.

25. Again, neither party provided a copy of any of the Garrows’ expert reports or correspondence that the Garrows have already disclosed.

26. Given that the strata’s request includes a reference to a specific letter and that the Garrows did not dispute that this letter was missing, I find there is likely correspondence that Miyagi relied on that the Garrows have not disclosed. However, I find that the strata has not proven that the Garrows failed to provide correspondence about any other expert report.

27. I order the Garrows to disclose any correspondence not yet disclosed that Miyagi relied on in writing its expert report, including the December 9, 2020 letter from Glotman Simpson.
28. I turn then to the strata's argument that all correspondence with the 3 contractors provides "relevant context" for the expert reports. As with the Garrows' similar request, I find that the strata has not explained why all communications between the Garrows', their lawyers, and their contractors is relevant. This is an extremely broad request. It also potentially touches upon issues of litigation privilege.
29. With the exception of the above order, I dismiss this request.

The Garrows' lawyers' files

30. The strata says that seeing the Garrows' lawyers' files will help it assess the Garrows' claim for legal fees. This claim is already in excess of \$65,000. The Garrows have disclosed several invoices from their lawyers. The strata says that some of the time entries raise questions about the reasonableness of the legal fees the Garrows' lawyers charged.
31. The Garrows say that the strata's request is a roundabout way to access privileged information. They also say that the CRT should wait until after it decides whether the Garrows are entitled to be reimbursed for legal fees before receiving evidence and submissions about how much.
32. In its reply submissions, the strata agrees that the best process would be to have the CRT first determine whether the Garrows are entitled to reimbursement of legal fees. I find that the parties have agreed on the proper process.
33. First, I agree with the Garrows that it would be inappropriate to force them to disclose any of their legal file before the CRT has made a decision on the dispute's merits. This would effectively mean that any party in a CRT dispute would have to waive solicitor-client privilege over their entire lawyer file during the dispute if they

wanted to ask for reimbursement of legal fees. I find this result would be extremely prejudicial.

34. Under section 20 of the CRTA, there is a general rule that parties in CRT disputes will represent themselves. This general rule means that while many parties ask to be reimbursed for legal fees, these requests are rarely successful.
35. Part of the CRT's mandate is to provide a speedy, informal and flexible process. The CRT's mandate also includes proportionality. In general, I find that these goals are best achieved by having parties wait to provide any evidence or submissions about how much they should be reimbursed for their legal fees until after the CRT has determined that they are entitled to reimbursement. While this will add a step in the rare cases where legal fees are awarded, it will reduce the burden on the CRT and the parties in the majority of cases where the CRT does not order reimbursement of legal fees. Also, requiring parties to provide evidence of their legal fees before the CRT process is complete means that successful parties could be undercompensated if they continue to receive legal assistance. Finally, depending on the level of detail in the lawyers' invoices, providing copies of invoices before the CRT makes a decision on a dispute's merits risks disclosing privileged information about the legal advice that party received.
36. With that, I dismiss the strata's request for the Garrows' legal file.

DECISION AND ORDER

37. I order the strata to disclose:
 - a. all emails between the strata council and Wynford Group that include the term "RJC", except for correspondence that relates to this dispute,
 - b. all emails between the strata council and RJC that include the terms "348 Taylor Way" or "Strata Lot 1", including any emails that relate to the expert opinion RJC produced for use in this dispute, but excluding any other emails that relate to this dispute, and

- c. all emails between the strata council or the Wynford Group and the District that include the terms “348 Taylor Way” or “Strata Lot 1”.

38. I order the Garrows to disclose any correspondence not yet disclosed that Miyagi relied on in writing its expert report, including the December 9, 2020 letter from Glotman Simpson.

39. I dismiss the parties’ remaining disclosure requests.

40. I note that I have assessed these disclosure requests based on the limited evidence the parties provided in this preliminary hearing. Nothing in this preliminary decision relieves either party from their obligations under the CRT rules to disclose all relevant evidence, including under CRT rule 8.3(4).

Eric Regehr, Tribunal Member

ⁱ Amended pursuant to section 61 of the CRTA to correct a typographical error.