



Civil Resolution Tribunal

Date Issued: July 21, 2021

File: ST-2020-009480

Type: Strata

Civil Resolution Tribunal

Indexed as: *Johnson v. The Owners, Strata Plan KAS 2716*, 2021 BCCRT 797

B E T W E E N :

KEN JOHNSON

APPLICANT

A N D :

The Owners, Strata Plan KAS 2716

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about disclosure of a strata corporation's owner contact list. The applicant, Ken Johnson, co-owns strata lot 50 in the respondent strata corporation, The Owners, Strata Plan KAS 2716 (strata). Mr. Johnson requested a copy of the strata lot owners contact list from the strata, which the strata refused to provide. Mr. Johnson requests an order for the strata to provide him with an owner contact list,

which he says he is entitled to under the *Strata Property Act* (SPA), and an order for the strata to abide by SPA section 36 about providing records upon request.

2. The strata says it refused Mr. Johnson's request because he did not provide an adequate reason for wanting the owners list, and because of concerns about disclosing strata lot owners' personal information. The strata opposes Mr. Johnson's claims.
3. Mr. Johnson is self-represented in this dispute. 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.

8. The strata made no counterclaim in this dispute, although it recommended a “governmental review” of applicable laws and regulations governing the disclosure of owner information under the SPA. I decline to address the strata’s recommendation for lack of a counterclaim, and note that the CRT lacks jurisdiction to order any government body to review legislation.

ISSUE

9. The issue in this dispute is whether the strata may refuse Mr. Johnson’s request under the SPA for a copy of a strata lot owner contact list.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Mr. Johnson must prove his claims on a balance of probabilities. I have read and weighed the parties’ evidence and submissions, but I refer only to that which I find necessary to explain my decision.
11. The strata was formed in 2004 under the SPA. Mr. Johnson requested a copy of the strata owners contact list several times in 2020. The strata refused each time. The strata council passed an August 25, 2020 motion confirming this refusal. The strata council held a hearing with Mr. Johnson on December 2, 2020 and decided not to release owner contact information “to anyone”, including Mr. Johnson. None of this is disputed.
12. Section 35 of the SPA sets out the strata’s obligations to create and retain certain records. Section 36 says that on receiving a request from a strata lot owner, properly authorized tenant, or other person authorized by an owner or authorized tenant, the strata must make available for the requestor’s inspection the records described in section 35, or provide copies of them. The strata must comply with the records request within 2 weeks. The strata may charge a fee for copies of a record or document provided under section 36, up to a maximum of 25 cents per page, as described in *Strata Property Regulation* (SPR) 4.2.

13. Under SPA section 35(1)(c)(i), the strata must prepare a list of owners, with their strata lot addresses, mailing addresses if different, strata lot numbers as shown on the strata plan, parking stall and storage locker numbers, if any, and unit entitlements. I find this is the list requested by Mr. Johnson and will refer to it as the owner contact list. This section of the SPA is mandatory, so the strata must prepare an owner contact list as described. SPA section 36 is also mandatory, so the strata must provide the owner contact list to an owner upon request. The SPA does not grant the strata any ability to refuse an owner's request for the owner contact list.
14. The strata says that although it has the required owner contact information, it is distributed among the strata's individual owner files and has not been compiled into a separate list. The strata says that compiling an owner contact list would require administrative time and effort, and the strata says Mr. Johnson should bear the cost of creating the list.
15. Given that the strata has not prepared the mandatory SPA section 35(1)(c)(i) owner contact list, I find the strata is in violation of SPA section 35. I find the strata must create an owner contact list. As for charging Mr. Johnson, the SPA does not provide a mechanism whereby the strata may directly charge Mr. Johnson for creating that list. Given that the owner list is a statutory obligation of the strata, I find it would not be appropriate for Mr. Johnson alone to pay for its creation. However, as noted, the strata may charge owners for requested copies after the list has been created.
16. The strata says that the SPA does not adequately address strata lot owners' privacy concerns about disclosure of their personal information through the owner contact list. The strata says that several strata lot owners requested that their personal information be withheld from the list, although the strata provided no evidence showing any such request.
17. A February 7, 2019 strata bylaw amendment filed with the Land Title Office contains "Privacy Rules", which are also referred to as a "privacy policy." Given that the Privacy Rules are called rules and were filed together with other strata rules in the same bylaw amendment, I infer that they are strata rules, although nothing turns on this. The

Privacy Rules say that the strata may collect personal information to create an owner contact list under SPA section 35, and that the strata may use and disclose personal information if required or authorized by law. Similarly, section 18(1)(o) of the *Personal Information Protection Act* (PIPA) says that an organization may disclose personal information about an individual without the consent of the individual if the disclosure is required or authorized by law.

18. I find that SPA section 36 is a law requiring and authorizing the disclosure of records identified in section 35, including records containing personal information. So, I find that disclosing a section 35(1)(c)(i) owner contact list under section 36 is authorized under PIPA section 18(1)(o). I find this conclusion is consistent with the Office of the Information and Privacy Commissioner's (OIPC) publication "PIPA and Strata Corporations: Frequently Asked Questions", as well as the *British Columbia Strata Property Practice Manual*. Further, previous CRT decisions have reached the same conclusion. Those CRT decisions are not binding on me, but I agree with them. For example, see *Ottens et al v. The Owners, Strata Plan LMS 2785 et al*, 2019 BCCRT 730. I find it unnecessary to determine whether any information in a section 35(1)(c)(i) owner contact list is actually "personal information" as defined in PIPA, because even if it is, its disclosure is permitted under PIPA and required under SPA section 36.
19. Further, I note that the strata says its legal advisor indicated that the CRT generally followed OIPC guidelines stating that PIPA does not provide a legal basis for refusing to provide records identified in SPA section 35. The strata says that despite that advice, the personal or private information in an owner contact list raises important issues. However, as further explained below, I find nothing before me demonstrates that the strata has a valid basis for refusing Mr. Johnson's owner contact list request.
20. In particular, the strata says that disclosing owner contact information could be detrimental to owners who have experienced abusive relationships or who have sensitive jobs such as policing. The strata provided no evidence or particulars proving that such circumstances apply to any strata lot owners, and in any event, I find that the SPA does not allow owners to be omitted from an owner contact list for any

reason. The strata also says that the owner contact list could be used for criminal purposes, but again there is no evidence of potential criminal activity before me and the SPA does not permit the strata to refuse a section 36 records request on that basis. The strata also says that Mr. Johnson did not provide a valid or sufficient reason for wanting the owner contact list, and that disclosure of the list was not in the best interests of the “community”. Under the SPA and SPR, I find Mr. Johnson does not need to provide any reason for requesting the owner contact list, and he does not need to demonstrate that his request is in the best interests of anyone, in order to obtain the owner contact list.

21. I note the strata admits that, “most of the owner information is publicly available from other sources,” such as the Land Title Office and others. I find that is likely an accurate statement. Still, the strata says it is justified in refusing to release any owner contact information, citing privacy concerns about the mostly-public owner information. The strata does not explain whether, or how, strata lot owners have an alleged privacy interest in publicly available information. Overall, I find the strata has provided no valid justification for its refusal.
22. For these reasons, I find the strata failed to comply with Mr. Johnson’s SPA section 36 request for a section 35(1)(c)(i) owner contact list.
23. Within 21 days of the date of this decision, I order the strata to create a section 35(1)(c)(i) owner contact list, at no cost to Mr. Johnson, and to provide the list to Mr. Johnson. The strata may charge Mr. Johnson for copies of the list, as permitted under SPA section 36(4) and SPR 4.2.
24. It is undisputed that on December 2, 2020, the strata council directed the strata’s privacy officer not to release owner contact information to anyone. I find that any strata council decision refusing to provide a strata lot owner, authorized tenant, or other authorized person, access to a section 35(1)(c)(i) owner contact list violates the SPA and is therefore not an enforceable strata council decision. Mr. Johnson requests that the strata be directed to abide by SPA section 36 and provide any requested section 35 documents, “so that owners in the future do not have to go

through what I did.” Even though SPA sections 35 and 36 are mandatory obligations of the strata as I have discussed, I find that such an order is appropriate in the circumstances. I order the strata to immediately comply with SPA sections 35 and 36, including the provisions about providing access to any records and documents referred to in section 35 upon request and in accordance with section 36.

25. I allow Mr. Johnson's claims for the reasons stated above.

CRT FEES AND EXPENSES

26. 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. I find Mr. Johnson was successful here, so he is entitled to reimbursement of the \$225 he paid in CRT fees and I order the strata to pay him that amount. Neither party claimed CRT dispute-related expenses, so I order none.

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

ORDERS

28. Within 21 days of the date of this Order,

- a. I order the strata to create an owner contact list as set out in SPA section 35(1)(c)(i), at no cost to Mr. Johnson,
- b. I order the strata to provide Mr. Johnson a list of strata lot owners, with their strata lot addresses, mailing addresses if different, strata lot numbers as shown on the strata plan, parking stall and storage locker numbers, if any, and unit entitlements, and
- c. I order that the strata pay Mr. Johnson \$225 in CRT fees.

29. I order the strata to immediately comply with SPA sections 35 and 36.
30. Mr. Johnson is entitled to post-judgment interest, as applicable, from the date of this Order.
31. 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.

Chad McCarthy, Tribunal Member