



Civil Resolution Tribunal

Date Issued: July 27, 2021

File: ST-2020-007675

Type: Strata

Civil Resolution Tribunal

Indexed as: *Webster v. Residential Section of The Owners, Strata Plan VR 2540*,
2021 BCCRT 820

B E T W E E N :

TIMOTHY WEBSTER

APPLICANT

A N D :

RESIDENTIAL SECTION OF THE OWNERS, STRATA PLAN VR 2540

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about access to a strata corporation's records. The applicant, Timothy Webster, is an owner of a strata lot in the strata corporation, The Owners, Strata Plan VR 2540 (strata). Mr. Webster made a request that the respondent, Residential

Section of The Owners, Strata Plan VR 2540 (Residential Section), provide him with electronic copies of correspondence and legal opinions relating to three previous disputes that were before the Civil Resolution Tribunal (CRT). Mr. Webster says that the Residential Section did not comply with his request, and requests an order that the Residential Section provide him with his requested documents.

2. The Residential Section admits that its agent did not respond to Mr. Webster's request in a timely manner. The Residential Section says it does not have access to the correspondence Mr. Webster requested, and that he can obtain it from the CRT. The Residential Section says that it has not waived privilege over any correspondence between itself and its legal counsel, and that it will not do so.
3. Mr. Webster is self-represented. The Residential Section is represented by a member of its executive.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the 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. CRT documents show the name of the respondent as “Section 1 of The Owners, Strata Plan VR2504”. Although the parties did not dispute the Section being named in this way, I find that this name is not consistent with the strata’s bylaws.
9. Section 193(4) of the *Strata Property Act* (SPA) says that, when a bylaw amendment creating a section is filed at the Land Title Office, the section is created bearing the name “Section [number of section] of [name of strata corporation]”. However, the strata’s bylaws do not name the sections in this way, referring instead to “Residential” and “Commercial” sections. Although not consistent with the SPA, I find that there is nothing in the bylaws that creates “Section 1” or any other numbered section. Therefore, based on the strata’s bylaw 32, I find that the proper name of the respondent in this dispute is Residential Section of The Owners, Strata Plan VR2540, and I have amended the style of cause accordingly.

ISSUE

10. The issue in this dispute is whether the Residential Section must prepare, retain and disclose the information Mr. Webster requested.

EVIDENCE AND ANALYSIS

11. The strata is comprised of residential and commercial strata lots and was developed in phases. The strata, through its bylaws, has created residential and commercial sections. The bylaws also divide the Residential Section’s executive into committees representing Phase I and Phase II residential owners, and set out the number of strata council members that may be elected from residential and commercial strata lot owners.
12. A section is a separate legal entity from a strata corporation. Under section 194(1) of the SPA, a strata corporation retains its powers and duties in matters of common

interest to all owners. Section 194(2) provides that, with respect to matters that relate solely to a section, a section is its own entity and has the same powers and duties as a strata corporation.

13. Strata corporations and sections have a duty under section 35 of the SPA to create and retain certain types of records. Section 35(2)(h) requires a strata corporation to retain legal opinions it obtains, and section 35(2)(k) requires that a strata corporation retain copies of correspondence sent or received by the strata corporation and council. Section 36 of the SPA addresses access to records, and requires a strata corporation to make requested documents and records available to owners who request them within two weeks.
14. The strata has been a respondent in CRT disputes with other owners. On July 29, 2020, Mr. Webster sent an email to the Residential Section's property manager requesting electronic copies of "Strata Councillor(s) communication" relating to the following disputes:
 - a. ST-2019-006964 - *Heal v. The Owners, Strata Plan VR 2540*, 2020 BCCRT 584,
 - b. ST-2019-005415 - *Heal v. The Owners, Strata Plan VR 2540*, 2020 BCCRT 599, and
 - c. ST-2019-005270 - *Pretto v. The Owners, Strata Plan VR 2450*, 2020 BCCRT 600.
15. Specifically, Mr. Webster requested "correspondence between any member of VR2540 Strata Council and legal representatives consulted and retained, other VR2540 owners council members and non-council members" and the property management firm.
16. Mr. Webster did not receive the information he requested. He commenced this dispute, and submits that he is entitled to the requested records under sections 35 and 36 of the SPA.

17. The Residential Section admits that its property manager failed to respond to Mr. Webster's request as required by section 36 of the SPA. However, the Residential Section says that it does not have access to strata council members' correspondence. The Residential Section points out that it is a separate legal entity from the strata and it was not a party to the CRT disputes in question. The Residential Section says that Mr. Webster could obtain the documents he seeks directly from the CRT.
18. Section 35 of the SPA is mandatory and the Residential Section must prepare and retain the records it describes, to the extent that those records relate to the Residential Section. The question of what relevance records retained under section 35 of the SPA may have to a dispute between an owner and a strata is not relevant to whether they must be produced (see *Kayne v. The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610 at paragraph 7). Section 36 is also mandatory, and the Residential Section must disclose the records described in section 35 upon an owner's request to it. This is so even if the requested records are available from other sources.
19. Here, I find that the key consideration is the subject of Mr. Webster's request. Mr. Webster's disclosure request, and his submissions in this dispute, refer to the "strata council" and "strata councillors". He did not request records about the Residential Section or the Residential Section executive.
20. The Residential Section is a separate entity from the strata and the Residential Section executive is separate from the strata council. Although sections 35 and 36 apply to the Residential Section, I find that the SPA does not require it to create, retain, or provide access to records on behalf of the strata. Therefore, the Residential Section is not required to retain or disclose legal opinions obtained by the strata and correspondence sent or received by the strata and strata council about the CRT disputes in question.
21. Given my conclusion that the Residential Section is not required to retain or produce records on behalf of the strata, I find it is not necessary for me to consider whether any of the records requested by Mr. Webster may be subject to privilege. Although I dismiss Mr. Webster's claim for disclosure from the Residential Section, I would point

out that nothing in my decision affects Mr. Webster's ability to make new requests for disclosure from either the strata or the Residential Section under section 36 of the SPA.

CRT FEES AND EXPENSES

22. 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. As Mr. Webster was not successful, I dismiss his claim for reimbursement of CRT fees.
23. The successful Residential Section did not pay CRT fees or make a claim for reimbursement of dispute-related expenses.

ORDERS

24. I dismiss Mr. Webster's claims and this dispute.

Lynn Scrivener, Tribunal Member