



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Dufrane v. The Owners, Strata Plan VIS 6620*, 2021 BCCRT 877

B E T W E E N :

CHRISTOPHER JAMES DUFRANE

APPLICANT

A N D :

The Owners, Strata Plan VIS 6620

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute about document disclosure and council hearings.
2. The applicant, Christopher James Dufrane, owns a strata lot (SL38) in the respondent strata corporation, The Owners, Strata Plan VIS 6620 (strata).

3. Mr. Dufrane says the strata, strata council, and strata's property manager have breached the *Strata Property Act* (SPA) because they did not provide him with strata records he requested under SPA sections 35 and 36, a decision following a council hearing in March 2019 contrary to SPA section 34.1, and failed to conduct a subsequent council hearing he requested in April 2019, also contrary to section 34.1. It is possible that Mr. Dufrane's claims against the strata council as a whole could be interpreted to be claims against the individual strata council members, which I address in more detail below.
4. Mr. Dufrane seeks orders that the strata corporation provide its decision on the matter he requested at the March 21, 2019 council hearing, provide the records and documents he requested at the March 21, 2019 hearing, and report the alleged property manager's SPA breaches to the Real Estate Council of BC.
5. The strata says the issues Mr. Dufrane raises in this dispute have already been decided by the Civil Resolution Tribunal (CRT) in a previous decision indexed as *Dufrane v. The Owners, Strata Plan VIS 6620*, 2021 BCCRT 372 (Dufrane 1). It also says if the issues have not been previously decided, Mr. Dufrane has not proven his claims. The strata asks that Mr. Dufrane's claims be dismissed.
6. Mr. Dufrane is self-represented, and the strata is represented by a strata council member.
7. For the reasons that follow, to the extent Mr. Dufrane's claims are against individual strata council members, I refuse to resolve to resolve them. I dismiss his remaining claims.

JURISDICTION AND PROCEDURE

8. 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.

9. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, email, 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.
10. 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.
11. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.
12. 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.

APPLICANT'S SPECIFIC CLAIMS

13. In order to provide context to my decision, I find it helpful to reproduce Mr. Dufrane's claims in their entirety. They are (reproduced as written in the dispute application):

Claim 1: The Strata Council deliberately ignored providing a decision that I was seeking from the [March 2019] Hearing. The Council & Strata Prop Manger continued to ignore & fail to provide a decision. This information is critical for an owner who has had 3 Strata floods and extreme delays, negligence and dishonesty by Strata's authorized contractor. The decision has never been provided despite the request in the Hearing and several documented emails seeking the decision which were also ignored. This is a Breach by

the Strata Corp & Strata Property Mgr as per section 34.1(3) which significantly impacts me.

Claim 2: The Strata Property Mgr & Strata Corp breached the Act by deliberately ignoring and failing to provide specifically requested records for a list of council members and their contact method as per section 35 (1)(b), the Regulations as per sections 35(1)(e) & 36 which significantly impacted me.

Claim 3: The Strata Property Mgr & Strata Corp breached the Act by failing to provide all Engineering reports such as with the pertinent 2017 Engineers Report as part of the records on March 19-19 which is a Breach as per sections 35(2)(n.2) & 36 that significantly impacted me.

Claim 4: The Strata Property Mgr & Strata Corp breached the Act by deliberately ignoring the request for a second Hearing after it was requested in writing as per section 34.1(2) of the Act. The second Hearing was requested as the aforementioned Breaches occurred with the requests for records negligently and deliberately being ignored by the Strata Property Mgr and Strata Council failing to provide a decision that was being sought from the previous Hearing.

Claim 5: The Strata Property Mgr & Strata Corp breached the Act by failing to provide written contracts and invoices to which the Strata Corp is a party to as per sections 35(2)(g) & 36 pertaining to invoices/contracts that were fulfilled by the Strata Corp regarding the draining system for the condo. This Breach was only discovered after reading the evidence submitted by the Respondent in the other Disputes as these invoices/contracts were not provided in the records on March 19-19.

Claim 6: The Strata Property Mgr & Strata Corp breached the Act by failing to provide the legal opinion that was allegedly obtained by Strata Corp for these floods as this legal opinion was never included in the records that were provided on March 19-19 and has since been added as evidence for the other two CRT Disputes. The failure to provide this legal opinion as part of the records

(if it was actually obtained by the Strata Corp) is a blatant Breach as per sections 35(2)(h) & 36 which significantly impacted me.

Claim 7: The Strata Property Mgr & Strata Corp breached the Act by failing to provide any other correspondence sent or received by the Strata Corp and Council as per section 35(2)(k) that pertained to the draining repairs, communications regarding these Strata insurance floods, communications to Strata's contractors and Insurer, among any other correspondences. This wilful and deliberate action to withhold records that are required to be provided is a negligent Breach and significantly contributed to many of the issues and delays with these two Strata insurance claims.

PRELIMINARY ISSUES

Claims against the strata's property manager

14. In Dufrane 1, I considered whether Mr. Dufrane had standing (was legally able) to make claims against the strata's property manager in his 2 prior CRT disputes and found that he did not. My reasons for dismissing his claims against the property manager were set in paragraphs 21 and 22 of Dufrane 1 as follows:
15. Mr. Dufrane claims the property manager breached the SPA by not providing documents he requested. I infer Mr. Dufrane references section 35 of the SPA, given that is the section that addresses document disclosure. I find Mr. Dufrane has no standing (is not legally able) to make a claim against the property manager for duties it may owe to the strata: *Wong v. AA Property Management Ltd.*, 2013 BCSC 1551, summarized in paragraph 66. Therefore, I dismiss Mr. Dufrane's claim against the strata's property manager.
16. I also note that the property manager was not a named respondent in this dispute. So even if Mr. Dufrane did have standing, I would have dismissed his claim because it would be procedurally unfair to make an order against a non-party.
17. These reasons apply equally here, so I dismiss Mr. Dufrane's claims against the strata's property manager in this dispute.

Claims against the strata council

18. In *Dufrane 1*, I also considered whether the CRT had jurisdiction to make orders against individual strata council members and found that it does not. My reasons for refusing to resolve Mr. Dufrane's claims against individual strata council members for lack of jurisdiction under CRTA section 10(1) were set out in paragraphs 23 through 29 of *Dufrane 1*. The CRT's jurisdiction has not changed, and I find the same reasons apply here. Namely, a claim against a council member is a claim that the council member has breached their standard of care under SPA section 31.
19. In *Wong*, which the court concluded that the only time a strata lot owner can sue an individual strata council member is for a breach of the conflict of interest disclosure requirement under SPA section 32 (at paragraph 36). Remedies for breaches of SPA section 32 are specifically excluded from the tribunal's jurisdiction, as set out in section 122(1)(a) of the CRTA. Thus, the tribunal does not have jurisdiction over claims brought by an owner against an individual strata council member.
20. In *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32, the BC Supreme Court found that the duties of strata council members under SPA section 31 are owed to the strata corporation, and not to individual strata lot owners (at paragraph 267). This means that a strata lot owner cannot be successful in a claim against a strata corporation for duties owed by its strata council members under section 31.
21. Finally, there are no individual strata council members named as respondents in this dispute.
22. Therefore, to the extent Mr. Dufrane's claims are against individual strata council members, I refuse to resolve them.

ISSUES

23. The remaining issues in this dispute are against the strata corporation. They are:
 - a. Are the issues in this dispute *res judicata* (previously decided)?

b. If not, has the strata breached the SPA?

BACKGROUND

24. In a civil proceeding such as this, the applicant, Mr. Dufrane must prove his claims on a balance of probabilities. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision. I note the strata did not provide evidence, despite being given the opportunity to do so.
25. The strata was created in July 2008 under the SPA. It consists of 89 strata lots in a single 4-storey building.
26. On April 9, 2021, I issued the decision in Dufrane 1. This was after the Dispute Notice was issued in this dispute on February 4, 2021. Dufrane 1 was a single decision that decided 2 related disputes in which Mr. Dufrane was the applicant and the strata was the respondent. Details of the disputes and background to them were set out in Dufrane 1 and I will not repeat them here in any detail. Generally speaking, both disputes involved issues surrounding water damage sustained to Mr. Dufrane's SL38 in August and September 2018 and repairs to SL38 that were covered under the strata's insurance policy. The issues in those disputes were centred around disclosure of records and documents, additional expenses paid by Mr. Dufrane, delay in work being completed in SL38, and damage caused by contractors doing the work.

EVIDENCE AND ANALYSIS

Are the issues in this dispute res judicata?

27. As explained by the CRT Chair in *East Barriere Resort Limited et al v. The Owners, Strata Plan KAS1819, 2017 BCCRT 22*, *res judicata* can arise in two ways. The first is cause of action estoppel, which stops someone from pursuing a matter that was or should have been the subject of a previous process. The second is issue estoppel, which stops someone from raising an issue that has already been decided in another process.

28. The legal tests for these 2 types of estoppel are set out in various cases, including *Cliffs Over Maple Bay (Re)*, 2011 BCCA 180. The test for cause of action estoppel has 4 required parts:

- a. There must be a final decision of a court of competent jurisdiction in the prior action,
- b. The parties to the subsequent litigation must have been parties to or in privity with the parties to the prior action,
- c. The cause of action and the prior action must not be separate and distinct, and
- d. The basis of the cause of action and the subsequent action was argued or could have been argued in the prior action if the parties have exercised reasonable diligence.

29. The test for issue estoppel has 3 required parts:

- a. The same question has been decided,
- b. The judicial decision deciding the question is final, and
- c. The parties or their privies were the same in the judicial decision and the subsequent proceeding.

30. I have considered each claim in this current dispute separately, to determine if it is *res judicata*. Based on my review, I find that the test for cause of action estoppel has been met for all 7 claims set out above.

31. In applying the cause of action estoppel test, I find the first 2 parts have been met for these claims. Dufrane 1 was a final decision of the CRT as defined under the CRTA, and the parties were same as they are in this dispute.

32. As for parts 3 and 4 of the test, I find that each claim in this dispute relates to the same set of facts and the same cause of action as in Dufrane 1. Namely the 2018 water leaks described in Dufrane 1. The evidence provided in this dispute is entirely related to the damage caused to SL38 in August and September 2018, and the allegations Mr. Dufrane made against the strata about those water incidents.
33. I find Mr. Dufrane, with reasonable due diligence, could have argued claims 3, 5, 6 and 7 about document disclosure in Dufrane 1. For example, at paragraph 16 in Dufrane 1, I noted late evidence was submitted by Mr. Dufrane that included a March 4, 2021 email exchange about Mr. Dufrane's document requests. While I mainly addressed Mr. Dufrane's allegations about a legal opinion, which is also part of his claims here, he could have reasonably included other documents he claims he did not receive from a March 21, 2019 hearing in Dufrane 1, that he now claims here. It is unclear when Mr. Dufrane first requested the records and documents, but in his submissions, he admits that he became aware of his claims in the fall of 2020. I find Mr. Dufrane could have reasonably included these claims in Dufrane 1 because the Dispute Notices for Dufrane 1 were issued in August and October 2020 and the exchange of evidence and submissions was not complete until 2021 as shown by his late submission of evidence dated March 2021.
34. I also note that claim 3 is about producing copies of a 2017 engineering report. I find Mr. Dufrane is referring to a report from Rocky Point Engineering Ltd. dated January 2017. I find this report, along with related reports dated August 2016 and December 3, 2020 were provided as evidence in Dufrane 1 because I referred to them in paragraph 38 of that decision.
35. As for claim 1, Mr. Dufrane says he requested a decision of the strata council at the March 2019 hearing and the strata has not provided it, contrary to SPA section 34.1. The evidence shows Mr. Dufrane provided a list of 12 questions he says he put forward to the strata council at the hearing. He says the strata did not answer his question about removing certain contractors from its "preferred" contractor list. Given the timing of his initial request was in 2019, I find this claim could have easily been included in Dufrane 1 with reasonable due diligence. I also agree with the strata that

it did answer Mr. Dufrane's question in its March 28, 2019 response as the strata clearly stated it does not have a preferred contractor list.

36. For claim 2, Mr. Dufrane says his request for strata council contact information was ignored by the strata. Given he says he only made requests for records and documents in March and April 2019, I find this claim could have easily been included in Dufrane 1 with reasonable due diligence.
37. As for claim 4, Mr. Dufrane says he requested a second council hearing in April 2019 and the strata ignored it. Based on the evidence, I do not agree that Mr. Dufrane made a second request. I find the emails provided do not clearly request a hearing, which is what section 34.1 requires. Rather, I find the emails are simply demands for the production of documents or answers to Mr. Dufrane's questions posed at the March 2019 council hearing, as I have discussed above. I find this claim could have been included in Dufrane 1 with reasonable due diligence
38. For these reasons, I dismiss Mr. Dufrane's 7 claims in this dispute as being *res judicata*.

CRT FEES AND EXPENSES

39. As noted, under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for reasonable dispute-related expenses, and for CRT fees. I see no reason to deviate from this general rule. The strata was the successful party in this dispute but did not pay CRT fees, so I make no order for CRT fees.
40. No party claimed dispute-related expenses, so I order none.
41. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Mr. Dufrane.

ORDERS

42. I refuse to resolve Mr. Dufrane's claims against strata council members under CRTA section 10(1) for lack of jurisdiction.

43. I order Mr. Dufrane's remaining claims dismissed.

J. Garth Cambrey, Vice Chair