



Civil Resolution Tribunal

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File: ST-2021-002846

Type: Strata

Civil Resolution Tribunal

Indexed as: *Cross v. The Owners, Strata Plan LMS 2970*, 2021 BCCRT 1072

B E T W E E N :

GARY CROSS

APPLICANT

A N D :

The Owners, Strata Plan LMS 2970

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This is a dispute about disclosure of strata records. The applicant, Gary Cross, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 2970 (strata). Mr. Cross says that the strata failed to provide records he requested under sections 35 and 36 of the *Strata Property Act* (SPA). He asks for an order that the

strata provide the requested records. He also asks for an order that the strata pay \$700 in damages to deter the strata from violating the SPA in the future.

2. The strata says that it has already disclosed enough information to Mr. Cross. It says that it refused to disclose the requested records because it was concerned about privacy issues. The strata also believes that Mr. Cross will use the records to intimidate other owners. The strata does not deny that it has not “fully complied” with the SPA.
3. Mr. Cross is self-represented. 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 by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both sides to this dispute call into question the credibility, or truthfulness, of the other. However, in the circumstances of this dispute, I find that it is not necessary for me to resolve the credibility issues that the parties raised. I therefore decided to hear this dispute through written submissions.
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 tribunal 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. I note that some of the evidence that the strata provided was in Chinese. The strata provided English translations, as the CRT's rules require. Mr. Cross does not dispute the accuracy of the translations, so I have accepted them.

ISSUES

9. The issues in this dispute are:
 - a. Does the SPA require the strata to provide the requested records?
 - b. Is Mr. Cross entitled to damages?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, Mr. Cross as the applicant must prove his case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
11. The strata consists of 171 strata lots. Mr. Cross co-owns a strata lot.
12. As mentioned above, this dispute is about disclosure of strata records. Section 35 of the SPA sets out what records the strata must prepare and retain. Section 36 of the SPA says that the strata must provide copies of those records to an owner on request. Section 36(3) says that the strata must comply with a request within 2 weeks.
13. The relevant facts are undisputed. Mr. Cross's initial records request is not in evidence but appears to have been in January or February 2021. On February 25, 2021, the strata's property manager provided Mr. Cross with a list of owners with each owner's strata lot address, a list of parking stall assignments, and a list of tenants.

14. On February 28, 2021, Mr. Cross emailed the property manager to request mailing addresses for any owners who do not collect their mail at the strata. On March 2, 2021, the property manager refused to provide this information.
15. On March 3, 2021, Mr. Cross emailed the property manager and reiterated his request for a list of the owners that included their mailing addresses if different than their strata lot addresses. He also requested each owner's storage locker numbers. Again, the property manager refused to provide this information.
16. In a separate March 3, 2021 email to the property manager, Mr. Cross requested copies of correspondence sent or received by the strata and strata council about "council deliberations on this matter". There is no evidence of a direct response.
17. The strata council met on March 9, 2021. According to the minutes of that meeting, the strata council unanimously voted not to provide any of the requested records, citing a legal opinion and privacy concerns.
18. The strata argues that Mr. Cross will use the requested information to intimidate and confront other owners about strata issues. The strata says that several owners have expressed concerns about their privacy. The strata provided several letters from owners opposing disclosure of further information to Mr. Cross.
19. Mr. Cross says that his motivations or intentions for requesting the records are irrelevant. He says that other owners' concerns about the disclosure of the records are also irrelevant. I agree on both points. Sections 35 and 36 of the SPA are clear and mandatory. I find that the SPA does not allow the strata to refuse to disclose records listed in section 35 because some owners do not want them to be disclosed or because the strata does not agree with how Mr. Cross might use the information. I also note that the *Personal Information Protection Act*, which governs how private organizations like strata corporations can collect, use, and disclose personal information, does not authorize the strata to redact or refuse to disclose records under section 36 of the SPA. See *Ottens et al v. The Owners, Strata Plan LMS 2785*, 2019 BCCRT 730. I turn then to the outstanding requests.

20. Section 35(1)(c)(i) requires the strata to prepare a list of owners, including their mailing addresses if different than their strata lot addresses and storage locker numbers. I therefore find that Mr. Cross is entitled to these records. I order the strata to provide copies of these records within 2 weeks of this decision.
21. Section 35(2)(k) requires the strata to retain copies of all correspondence that the strata and strata council send or receive. Mr. Cross's request is broad and arguably includes correspondence between strata council members. In *Kayne v. The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610, the court concluded that the correspondence in section 35(2)(k) does not include communications between strata council members. I find that Mr. Cross is entitled to correspondence sent or received by the strata or strata council, including with the property manager and non-strata council owners, but not internal strata council correspondence. I order the strata to provide copies of correspondence that the strata and strata council have sent or received about Mr. Cross's records requests within 2 weeks of this decision.
22. I note that Mr. Cross's requested order includes a term that the correspondence be translated into English. There is no requirement that strata business be conducted in English, so I decline to include this term.
23. I turn then to Mr. Cross's damages claim. Mr. Cross asks for \$700 "or more" to deter the strata from making similar mistakes in the future. He argues that damages are appropriate because the strata knew what the SPA required and deliberately refused to follow it.
24. Mr. Cross does not allege that he has suffered any loss because of the strata's failure to disclose records. In general, monetary damages are meant to compensate parties for losses. An exception to this rule is punitive damages, which are not meant to compensate the other party. Instead, punitive damages are meant to denounce and deter bad behaviour. Punitive damages punish a party for "morally culpable" behaviour and are awarded only for malicious, vindictive, or outrageous acts. See *Honda Canada Inc. v. Keays*, 2008 SCC 39. I therefore find that Mr. Cross's damages claim is for punitive damages.

25. Punitive damages are rarely awarded. While I agree with Mr. Cross that the strata had no legal basis to refuse to disclose the requested records, I find that the strata's actions were not so outrageous or extreme that they warrant punitive damages. I dismiss this claim.

TRIBUNAL FEES AND EXPENSES

26. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Mr. Cross was partially successful, so I find he is entitled to reimbursement of half of his \$225 in CRT fees, which is \$112.50. Mr. Cross did not claim any dispute-related expenses. The strata did not claim any dispute-related expenses or pay any CRT fees.

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

DECISION AND ORDERS

28. I order that:

- a. Within 2 weeks of the date of this order, the strata provide Mr. Cross with copies of the following records:
 - i. A list of the strata's owners that includes their mailing addresses if different than their strata lot addresses and storage locker numbers.
 - ii. Correspondence that the strata and strata council sent or received about Mr. Cross's records requests.
- b. Within 30 days of the date of this order, the strata pay Mr. Cross \$112.50 in CRT fees.

29. Mr. Cross is entitled to post judgement interest under the *Court Order Interest Act*.

30. 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.

Eric Regehr, Tribunal Member