



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Dorn v. The Owners, Strata Plan EPS1433*, 2021 BCCRT 1079

B E T W E E N :

WALTER DORN

APPLICANT

A N D :

The Owners, Strata Plan EPS1433

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about information disclosure. The applicant, Walter Dorn, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan EPS1433 (strata). Mr. Dorn seeks orders for the strata to disclose the following information from 2015 onwards: 1) copies of all legal opinions received by the strata council, 2) copies

of all invoices the strata paid for legal advice, and 3) a list of all complaints received by the strata council including particulars discussed below.

2. The strata disagrees. It says Mr. Dorn is not entitled to the legal opinions and invoices under the provisions of the *Strata Property Act* (SPA). It also say that solicitor-client privilege applies. The strata further says it is not required to create a list of complaints for Mr. Dorn and that disclosing the complaints would breach the confidentiality of complainant owners.
3. Mr. Dorn represents himself. A strata council member represents the strata.
4. For the reasons that follow, I allow Mr. Dorn's request in part and make the orders set out below.

JURISDICTION AND PROCEDURE

5. 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). CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
6. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.
7. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be

admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

8. Under CRTA section 123, 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.

ISSUE

9. The issue in this dispute is whether Mr. Dorn is entitled to the requested information and if so, what remedy is appropriate.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Mr. Dorn as applicant must prove his claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision. Mr. Dorn chose to provide no evidence and relied on his submissions.
11. I begin with the undisputed background facts. On November 11, 2020, Mr. Dorn emailed the strata to request 1) a copy of all documented legal advice received by the strata council and 2) a list of all undocumented legal advice paid for and received by the strata council, including the date received and the reason for the request. The strata council's unnamed representative denied the request in a December 12, 2020 email. I note that Mr. Dorn also seeks legal invoices in this dispute, but there is no evidence he requested these prior to applying for dispute resolution.
12. In a separate November 11, 2020 email to the strata, Mr. Dorn discussed the strata's obligation to disclose complaint letters. I infer this was Mr. Dorn's request for a list of complaints as the parties have treated it so. In a December 12, 2020 email, the strata council's representative said the council had received 2 recent complaints. However, it would not disclose any further information.

13. The strata registered a complete set of bylaws in the Land Title Office in August 2015. I have reviewed the bylaws and its subsequent amendments. I do not find them relevant to this dispute and the parties did not refer to them.

Documented and Undocumented Legal Opinions Obtained Since 2015

14. Section 35 of the SPA and section 4.1 of the *Strata Property Regulation* (SPR) set out the records that a strata corporation must prepare and retain. SPA section 35(2)(h) says this includes any legal opinions obtained by the strata corporation. Under SPA section 35(3) and SPR section 4.1(2), the strata corporation must retain legal opinions permanently.
15. SPA section 36(1)(a) says that on receiving a request, the strata corporation must make the records and documents referred to in section 35 available for inspection by, and provide copies of them, to an owner. SPA section 36(3) says the strata corporation must do so within 2 weeks.
16. There are some restrictions on an owner's access to legal opinions. SPA section 169(1)(b) says that if a strata corporation sues a strata lot owner or is sued by an owner, that owner does not have a right to information or documents relating to the suit, including legal opinions kept under section 35(2)(h). The parties did not say Mr. Dorn was requesting such documents about himself. I outline the documents at issue below.
17. The strata says solicitor-client privilege applies. Solicitor-client privilege keeps confidential communications between a lawyer and client that are made in confidence for the purpose of obtaining legal advice. See *Descôteaux v. Mierzwinski*, 1982 CanLII 22 (SCC). In *Azura Management (Kelowna) Corp. v. The Owners, Strata Plan KAS 2428*, 2009 BCSC 506, varied 2010 BCCA 474 for other reasons, the court held that SPA section 169(1)(b) did not require the strata to waive-solicitor client privilege or for a lawyer to breach solicitor-client privilege. The court found that the proper approach was to allow the owner access to the opinions so long as they did not relate to the requesting owner, and to restrict the owner from sharing the opinions with others.

18. The strata says the majority of its legal expenses related to a BC Supreme Court proceeding. After Mr. Dorn applied for dispute resolution the proceeding ended with an unsuccessful appeal by the owner at the Court of Appeal. From submissions I find that owner is not Mr. Dorn. Other than that, the strata says it received legal advice on bylaw violations and proposed strata bylaw amendments. It is undisputed that the strata disclosed legal advice it received about the proposed bylaw amendments to Mr. Dorn as part of its AGM package. None of the legal opinions at issue are before me in evidence.
19. I find that *Azura Management (Kelowna) Corp.* is binding on me. I conclude that the strata may assert solicitor-client privilege but may not use it to refuse to disclose the legal opinions at issue. Instead, I find it appropriate to order the strata to disclose the legal opinions under the following terms, to reflect the principles stated in *Azura Management (Kelowna) Corp.*
20. I order the strata to provide Mr. Dorn electronic copies of any legal opinions it received about litigation or bylaw violations involving another owner in the strata, but not Mr. Dorn or this dispute, from January 1, 2015 to November 12, 2020, the date of Mr. Dorn's request. My order does not include legal advice about the bylaw amendments because the strata already disclosed this to Mr. Dorn.
21. I order Mr. Dorn not to share or discuss the legal opinions received from the strata under this order with any other person or organization.
22. In the November 11, 2020 email Mr. Dorn also requested a copy of undocumented legal advice. Mr. Dorn did not say whether he still seeks disclosure of such advice. To the extent that he still does, I find that SPA section 35 does not require the strata to reduce such advice into writing. In *The Owners, Strata Plan NWS 1018 v. Hamilton*, 2019 BCSC 863 at paragraph 27, the court found that ordering production of documents not covered by SPA section 35 would be "inconsistent with existing case law" and "unreasonable". In accordance with *Hamilton*, I dismiss this part of his claims.

Legal Invoices Obtained Since 2015

23. Under SPA section 35(1)(d) the strata must prepare books of account showing money received and spent and the reason for the receipt or expenditure. Under SPA section 35(1)(i) the strata must retain the budget and financial statements for the current year and for previous years. In *Kayne v. Strata Plan LMS 2375*, 2007 BCSC 1610, the court held that an owner was entitled to review books of account and financial statements, but not underlying bills, invoices or receipts reflected in the financial statements. This is because the SPA did not require the strata to retain or produce them.
24. Mr. Dorn requested legal invoices. Based on *Kayne*, I find he is not entitled to such documents. I dismiss this part of his claims.
25. In submissions Mr. Dorn requested a copy of the accounts showing money spent for legal opinions or legal advice. Mr. Dorn did not mention this in the November 11, 2020 emails or the Dispute Notice. I find he raised this issue late, so it is not properly before me. So, I decline to make an order about it.

A List of All Complaints Received by the Strata Council Since 2015

26. As stated earlier, Mr. Dorn requested a list of complaints received by the strata council since 2015. He also requested particulars, including the names of any complainants, the issues complained about, the date of the complaints, the address of the persons involved in each matter, and how the complaint was resolved. Mr. Dorn did not request copies of the complaint letters themselves.
27. The strata is not required to prepare or retain such a document under SPA section 35. So, consistent with the reasoning in *Hamilton*, I decline to order the strata to produce such a list. I dismiss this claim.

CRT FEES AND EXPENSES

28. 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.

29. I find that Mr. Dorn has been partially successful. I therefore order the strata to reimburse Mr. Dorn for half his CRT fees. This equals \$112.50. The parties claimed no specific dispute-related expenses, so I order none.
30. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Dorn.

ORDERS

31. I order that within 30 days of the date of this order, the strata provide Mr. Dorn electronic copies of any legal opinions it received about litigation or bylaw violations involving another owner in the strata, but not Mr. Dorn or this dispute, from January 1, 2015 to November 12, 2020.
32. I order Mr. Dorn not to share or discuss the legal opinions received from the strata under this order with any other person or organization.
33. I order the strata to pay Mr. Dorn \$112.50 as partial reimbursement of CRT fees within 30 days of the date of this order.
34. Mr. Dorn is entitled to post-judgment interest under the *Court Order Interest Act*.
35. I dismiss Mr. Dorn's remaining claims.
36. 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.

David Jiang, Tribunal Member