



Civil Resolution Tribunal

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File: ST-2020-009306

Type: Strata

Civil Resolution Tribunal

Indexed as: *Sweett v. The Owners, Strata Plan EPS606*, 2021 BCCRT 1090

B E T W E E N :

VICTOR SWEETT and JILL SWEETT

APPLICANTS

A N D :

The Owners, Strata Plan EPS606

RESPONDENT

AMENDED REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicants, Victor Sweett and Jill Sweett, own a strata lot in the respondent strata corporation, The Owners, Strata Plan EPS606 (strata). The Sweetts disagree with the strata council's decision to sign a 5 year contract with a cable and internet service

provider (provider) for bulk services for the whole strata (contract). They ask for the following orders:

- a. \$5,700 as reimbursement of the cost of the service to the Sweetts over the course of the 5 year contract.
 - b. A declaration that the strata breached section 98 of the *Strata Property Act* (SPA) by signing the contract without owner approval.
 - c. An order that an unspecified third party complete a “proper cost benefit analysis of different suppliers” of cable and internet services.
 - d. A declaration that the strata did not have authority to enter into the contract because it had not complied with the strata’s bylaw 39A, which sets out the process that the strata must follow to enter into a bulk cable and internet contract.
 - e. An order that the strata “did not enter into” the contract because it did not follow bylaw 39A.
 - f. An order under section 27 of the SPA that the strata be prevented from spending more than \$10,000 or entering into a contract longer than 2 years without owner approval.
 - g. An order that the December 6, 2020 annual general meeting (AGM) is “not valid” because the strata breached sections 31, 96 and 98 of the SPA and bylaw 39A.
 - h. An order that bylaw 39A is unenforceable.
2. The Sweetts also argue that the strata treated them unfairly and ask for unspecified monetary damages. Finally, the Sweetts ask for \$5,000 in damages for the time Mr. Sweett “spent on the file in regard to meetings, research and communication”, including his time spend on this Civil Resolution Tribunal (CRT) dispute.

3. The strata denies the Sweett's allegations. The strata says that it complied with the SPA and its bylaws when it entered into the contract. The strata asks that I dismiss the Sweetts' claims.
4. Mr. Sweett represents both applicants. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

5. These are the CRT's formal written reasons. 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.
6. 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.
7. 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.
8. 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.
9. I note that some of the Sweetts' arguments are based on section 31 of the SPA, which requires strata council members to act honestly and in good faith with a view to the strata's best interests. In *The Owners, Strata Plan LMS 3259 v. Sze Hang Holdings Inc.*, 2016 BCSC 32, the BC Supreme Court concluded that a strata council member

owes these duties to the strata, not to individual strata lot owners. In *Rochette v. Bradburn*, 2021 BCSC 1752, the court confirmed that an owner does not have standing, or a legal right, to bring a claim against a strata corporation because they believe that the strata council breached section 31. I therefore find that the Sweetts have no standing to argue section 31 breaches. To the extent that their arguments are based on section 31 of the SPA, I have not relied on them.

ISSUES

10. The issues in this dispute are:

- a. Is bylaw 39A enforceable?
- b. Did the strata have authority to enter into the contract?
- c. Did the strata comply with bylaw 39A and the SPA when it entered into the contract?
- d. Did the strata treat the Sweetts significantly unfairly? If so, what remedy is appropriate?
- e. Should I make any orders about the validity of other aspects of the 2020 AGM?

BACKGROUND AND EVIDENCE

11. In a civil claim such as this, the Sweetts as the applicants must prove their 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.
12. The strata is a bare land strata that consists of 149 strata lots. The Sweetts are co-owners of strata lot 93.ⁱ Each strata lot has the same unit entitlement.
13. The strata filed a complete set of bylaws in the Land Title Office (LTO) in 2012. I find that the only bylaw relevant to this dispute is bylaw 39A, which was filed on January 13, 2016. In general, bylaw 39A gives the strata council authority to enter into bulk

cable and internet contracts on behalf of the strata as long as it gets owner approval at an AGM. I discuss bylaw 39A in more detail below.

14. On January 18, 2016, the strata entered into a 5-year contract with the provider for bulk cable and internet services. The contract was backdated to December 1, 2015, for reasons not explained in the evidence. In any event, the contract ran until November 30, 2020. Each strata lot paid an equal share of the cost whether they used it or not, as required by bylaw 39A(3).
15. The strata says that in 2019, it began negotiating with the provider for a renewal. The strata says that it also began researching other options for bulk cable and internet services. Sometime in 2020, the strata council decided that signing a new agreement with the provider was the best option.
16. In the meantime, the Sweetts had been negotiating with a competitor. The competitor did not offer a bulk contract for the whole strata. However, in October 2020, the competitor made a proposal where each owner would sign up for individual service with the competitor at a discounted rate. The Sweetts preferred individual service because they only spend part of each year living in the strata, so they could save money by adjusting their level of service up and down as they came and went. According to emails between the competitor and Mr. Sweett, the competitor's rates were roughly comparable to the provider's offer, but the contracts would only be for 2 years and the service levels were not identical.
17. On October 13, 2020, the Sweetts emailed the strata with the competitor's proposal, which expired November 1, 2020. The strata says that it reviewed the proposal but did not believe that it was a better option.
18. On November 11, 2020, the strata council unanimously approved a new 5-year contract with the provider. A strata council member signed the contract on the strata's behalf the next day.
19. It is undisputed that the strata had not held its 2020 AGM when it signed the contract, so the owners had not approved the new contract. The strata says that the worsening

COVID-19 situation in October and November 2020 led to increasingly restrictive public health orders, which required it reschedule the AGM to December 6, 2020, after the initial contract had expired. The strata says that this put them in a “catch-22”, because the old contract expired before the owners would have a chance to vote on a new one. To address this issue, the provider agreed to put the new contract “on hold” until December 7, 2020. The provider also agreed that if the owners rejected the new contract, the strata could cancel it without penalty.

20. The strata distributed an information sheet about the new contract several days before the 2020 AGM. The strata said that the new contract would cost \$99.46 per month, up from \$53 per month under the previous contract. The strata said that this was still well under retail prices for individual service. The strata noted the benefit of locking in that price for 5 years. The strata said that it had contacted 2 other providers and they did not offer comparable bulk prices. The strata said that if the owners did not approve the new contract, they would have to arrange for individual services, which the strata said could cost \$203 per month. The strata did not mention the details of the competitor’s offer that the Sweetts received. I return to this issue below.
21. At the 2020 AGM, the owners voted on an operating fund budget that included the contract, as required by bylaw 39A(2). The resolution passed with 107 votes in favour and 4 votes against.

ANALYSIS

Is bylaw 39A unenforceable?

22. The Sweetts argue that bylaw 39A is unenforceable, and therefore the strata had no authority to enter into the contract.
23. First, the Sweetts argue that bylaw 39A is unenforceable because the LTO form that the strata’s lawyer filed with bylaw 39A included a schedule that listed 42 of the strata’s 147 strata lots. The Sweetts’ strata lot is not on the list. It is unclear why the strata’s lawyer included this schedule, which I find is not a standard practice when filing bylaw amendments. I note that none of the strata’s other bylaw amendments

included a similar schedule. Ultimately, I find that the schedule has no legal effect on bylaw 39A's enforceability. I find nothing in the resolution approving the bylaw amendment to suggest that it only applied to some strata lots. I find that the substance of bylaw 39A shows the opposite intention because its purpose is to authorize the strata to enter into a bulk contract for the entire strata. It also refers to "each strata lot" and "the owners". I find that bylaw 39A applies to all strata lots.

24. The Sweetts also make several arguments about bylaw 39A's individual subsections. The Sweetts argue that bylaw 39A is "so flawed" that it is unenforceable.
25. First, they say that subsections 1 and 2 "appear to be backwards". Bylaw 39A(1) gives the strata council authority to enter into contracts for bulk internet and cable services. Bylaw 39A(2) says that the owners would decide whether to proceed with a bulk contract at the strata's AGM, where the proposed service would be presented as a budget line item for approval. While not entirely clear, I infer that the Sweetts take issue with the fact that the order of these subsection implies that the strata council can enter into a contract before receiving owner approval. I disagree. I find that the effect of these bylaws is clear, regardless of what order they appear in. I find it implicit in bylaw 39A(1) and (2) that the strata must get owner approval *before* entering into a contract.
26. The Sweetts say that subsection 4, which allows the provider to enter strata lots to connect and disconnect the service, violates the *Trespass Act* and *Human Rights Code*. Section 121(1) of the SPA says that a bylaw is unenforceable if it contravenes the SPA or another law or enactment, which I find includes the *Trespass Act* and the *Human Rights Code*. However, the Sweetts do not explain how the bylaw contravenes either law. In the absence of any substantive submissions on this issue, I find the allegation unproven.
27. The Sweetts say that subsection 5, which makes each owner responsible for the cost of connecting the services within their residence, is "problematic" because the "fee maybe a lot more than the owner expects". However, the Sweetts do not explain this

argument further. Again, without any substantive submissions on this issue, I find the argument unproven.

28. In conclusion, I find that bylaw 39A is enforceable.

Did the strata have the authority to enter into the contract?

29. The Sweetts' main argument about Bylaw 39A is based on the BC Supreme Court decision *Owners of Strata Plan LMS 2223 v. Tsubota*, March 5, 2012, Court File No. S111992. Most of the facts in *Tsubota* are similar to this dispute. In that case, the strata corporation entered into a contract for bulk cable and internet services for all strata lots. The strata corporation then charged each owner for cable and internet as a common expense. Ms. Tsubota questioned whether the strata corporation had legal authority to enter into the bulk contract.

30. In *Tsubota*, strata corporation relied on section 38 of the SPA, which allows a strata corporation to enter into contracts "in respect of its powers and duties" under the SPA and its bylaws. Section 3 of the SPA says that a strata corporation's duty includes managing and maintaining common property. However, the court concluded that under the definition of common property in section 1 of the SPA, the wiring for cable and internet was not common property, it was part of the strata lot. So, the court found that the SPA did not give the strata corporation authority to enter into a contract for cable and internet on the owners' behalf, because under the SPA the strata has no power or duty to manage or maintain a strata lot. The court noted that the strata corporation had no bylaw authorizing it to enter into a bulk contract for cable and internet. The court therefore found that Ms. Tsubota did not have to pay her share of the cable and internet cost.

31. The Sweetts say that the outcome in *Tsubota*, which is binding on me, is directly applicable to this dispute. They say that the wires providing cable and internet on their strata lot are not common property, so the strata has no right to enter into contracts for cable and internet services for the whole strata. I agree with the Sweetts that the wires in question are part of their strata lot, based on the strata plan and photos in evidence. However, I find that the court's reasoning in *Tsubota* means that a strata

corporation must have authority in the SPA **or its bylaws** to enter into a bulk cable and internet contract.

32. Section 119(2) of the SPA gives the owners the power to pass bylaws that provide for the control and management of strata lots. I find that bylaw 39A is a bylaw about the control and management of strata lots, so it is a valid bylaw under section 119(2). So, unlike in *Tsubota*, the strata has a valid bylaw authorizing it to enter into bulk contracts for cable and internet. I note that my conclusion is consistent with 2 Ontario Superior Court of Justice cases with similar facts: *Mancuso v. York Condominium Corporation No. 216*, 2008 CanLII 20343 (ON SC) and *Zordel v. MTCC No. 949*, 2017 ONSC 5544. I find that the strata had authority to enter into the contract on behalf of the owners, provided it complied with bylaw 39.

Did the strata comply with bylaw 39A and the SPA when it entered into the contract?

33. The Sweetts argue that the strata did not follow bylaw 39A when it entered into the contract. In particular, they rely on the fact that the strata signed the contract before it had owner approval at an AGM. They argue that because of this, the expense it incurred by signing the contract was an “unapproved expenditure” under section 98 of the SPA.
34. The strata does not deny that it signed the contract before the 2020 AGM. As mentioned above, bylaw 39A(2) requires the strata to get owner approval of any bulk cable and internet contracts at an AGM before entering into the contract. On its face, it appears that the strata breached this bylaw by signing the contract before the 2020 AGM.
35. However, I find that the strata complied with bylaw 39A by ensuring that the contract would not take effect until after the 2020 AGM. I find that obtaining the provider’s explicit, written assurance that the contract was “on hold” until after the owners voted on it means that the strata did not enter into a binding contract before obtaining owner approval. I therefore find that the contract is valid. This means that the expenses the

strata incurred under the contract are not unapproved expenses under section 98 of the SPA, so I do not need to consider the Sweetts' arguments on this point.

36. In conclusion, I dismiss the Sweetts' claims about the contract's validity and enforceability.
37. I also decline to order the strata to hire an unspecified third party to do a cost benefit analysis of different internet providers. I find that there is nothing in the SPA or bylaws that requires the strata to hire an outside consultant to give advice about this issue. I find that this is a decision best left to the owners. I dismiss this claim.
38. The Sweetts also ask for an order limiting the strata council's ability to enter into contracts. Given my conclusion that the strata council complied with the SPA and bylaw 39A when it entered into the contract, I find no basis for this order. Section 27 of the SPA allows the strata to restrict the strata council by a majority vote at a general meeting. Section 27 sets out a democratic process for the owners to control a strata council. In *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333, the court said that it should only interfere with a strata corporation's democratic governance when absolutely necessary. I find this applies equally to the CRT. I dismiss this claim.

Did the strata treat the Sweetts significantly unfairly? If so, what remedy is appropriate?

39. The Sweetts say that the way the strata presented the contract to the owners was significantly unfair. The Sweetts argue that the information sheet about the contract and the available alternatives was misleading. They say that the strata did not tell the owners about the offer from the competitor and misrepresented the owners' options if they did not approve the contract. The Sweetts say that the ability to negotiate individual contracts is particularly important for owners who live only part of the year at the strata, like they do.
40. Section 123(2) of the CRTA gives the CRT the power to make an order to remedy a significantly unfair action nor decision by the strata, including the strata council. In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, the BC Court of Appeal interpreted a significantly unfair action as one that is burdensome, harsh, wrongful, lacking in

probity or fair dealing, done in bad faith, unjust or inequitable. In *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342, the BC Court of Appeal confirmed that the reasonable expectations of an owner may also be relevant to determining whether the strata's actions were significantly unfair.

41. So, did the strata act significantly unfairly in the way it presented the contract to the owners? I agree with the Sweetts that the information sheet was somewhat misleading because the strata said that individual services would be over \$200 when it should have known that it could likely negotiate lower rates through a bulk discount. However, as noted above the competitor's offer to the Sweetts was explicitly only available until November 1, 2020. The competitor's salesperson said that they did not know what promotions or offers might be available after that date. So, I find that it also would have been misleading for the strata to tell the owners about the details of the competitor's offer.
42. The Sweetts suggests that the information sheet's threatening tone likely forced some owners to vote in favour of the contract. However, the Sweetts provided no evidence to support that assertion, such as a statement from another owner.
43. Overall, I am not persuaded that the information sheet was so one-sided or misleading that it was significantly unfair. There is no evidence that the strata council had any ulterior motive in advocating for a bulk contract instead of individual service. I find that the strata council likely wanted to persuade the owners to accept the new contract simply because it believed it was the best overall option. I find that the simplicity of a single bulk contract and the cost certainty of a 5 year fixed rate were valid reasons to encourage the owners to approve the contract. I therefore find that the Sweetts have not proven that the strata's decision was made in bad faith.
44. I accept that the Sweetts, and possibly other part-time owners, would have benefited from individual service because they could save money while they are living elsewhere. From the evidence provided, I find that the amount of money that those owners would save would likely be modest. I therefore find that being part of the bulk service is not overly burdensome or harsh such that it is significantly unfair.

45. I therefore dismiss the Sweetts' claim of significant unfairness.

Should I make any orders about the validity of other aspects of the 2020 AGM?

46. The Sweetts argue that the strata incorrectly required a $\frac{3}{4}$ vote on resolutions about 2 expenditures from the contingency reserve fund at the 2020 AGM. Section 96(b)(i)(A)(II) of the SPA requires only a simple majority vote if the expenditure is recommended in the strata's most recent depreciation report. The Sweetts say that a \$12,000 expenditure on a street lighting upgrade and a \$2,000 expenditure to paint the entrance gate both fall under this exception. They provide an excerpt from a depreciation report that says that both of these projects should be done "ASAP". The strata does not dispute that this excerpt is from its most recent depreciation report, so I accept that it is.

47. Based on the evidence before me, I agree with the Sweetts' interpretation of the SPA. I find that the strata should not have required a $\frac{3}{4}$ vote on those 2 expenditures. However, the resolution about the street lighting received 42 votes in favour and 69 opposed and the resolution about the entrance gate received 25 votes for and 86 votes against. So, nothing turned on the error because the resolutions would have failed at the lower standard. I therefore find that there is nothing to remedy.

48. The Sweetts do not raise any other issues with the 2020 AGM. I dismiss this claim.

TRIBUNAL FEES AND EXPENSES

49. 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. The Sweetts were unsuccessful, so I dismiss their claim for CRT fees and dispute-related expenses. I also dismiss their claim for \$5,000 for Mr. Sweett's time. The strata did not claim any dispute-related expenses or pay any CRT fees.

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

DECISION AND ORDER

51. I dismiss the Sweetts' claims, and this dispute.

Eric Regehr, Tribunal Member

ⁱ Amended pursuant to section 64(a) of the CRTA to correct a typographical error.