



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Armstrong v. The Owners, Strata Plan NW 3008*, 2021 BCCRT 1255

B E T W E E N :

JAMES LEORY ARMSTRONG

APPLICANT

A N D :

The Owners, Strata Plan NW 3008

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about governance. The applicant, James Leory Armstrong, co-owns a strata lot in the respondent strata corporation, The Owners, Strata Plan NW 3008 (strata).

2. Mr. Armstrong says the strata failed to provide him requested documents about a walkway replacement project. He also says the strata failed to provide owners options to build the walkway to accommodate physical disabilities. He alleges that the strata retaliated against his requests by harassing him, slandering his son, and breaching privacy laws protecting him. Mr. Armstrong claims for orders that the strata 1) disclose financial information about the walkway, 2) develop a plan to change the walkway to accommodate mobility disabilities, 3) apologize to him and pay \$5,000 for emotional distress, and 4) apologize to his son and pay \$5,000 as damages for defamation.
3. On April 23, 2021, Mr. Armstrong withdrew his claims about ordering the strata to permit a service dog. In submissions, he raised additional claims about negligence and discrimination on the basis of race. I discuss my jurisdiction over these and other claims below.
4. The strata denies Mr. Armstrong's claims. It says Mr. Armstrong requested documents that did not exist or did not have to be disclosed. It says it acted appropriately at all times.
5. Mr. Armstrong represents himself. A strata council member represents the strata.
6. For the reasons that follow, I refuse to resolve some of Mr. Armstrong's claims and dismiss the rest.

JURISDICTION AND PROCEDURE

7. 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.

8. 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.
9. 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.
10. 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.

The CRT's Jurisdiction over the BC Privacy Act and the Personal Information Protection Act

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. Mr. Armstrong says the strata breached the BC *Privacy Act*. Section 4 of the *Privacy Act* says an action based on it must be heard by the BC Supreme Court. So, I must refuse to resolve this claim under CRTA section 10.
12. In other submissions Mr. Armstrong says the strata breached the BC *Personal Information Protection Act* (PIPA). Numerous CRT decisions have held that such claims are not within the CRT's strata property jurisdiction. See, for example, *Ruberg v. The Owners, Strata Plan VR 1175*, 2020 BCCRT 389 at paragraph 12 and the Vice Chair's decision in *Rozental v. The Owners, Strata Plan NW 1370*, 2020 BCCRT 156 at paragraph 24. I agree with the reasoning in these non-binding decisions. So, I refuse to resolve Mr. Armstrong's claims for breaches of the *Privacy Act* and PIPA.

Mr. Armstrong's Standing for Claims about the Strata Council's Standard of Care

13. Mr. Armstrong says I should order the removal of the strata council and appoint an administrator. He says this is because its members breached the standard of care outlined in section 31 of the *Strata Property Act* (SPA) in its approach to the walkway replacement project.
14. In *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 at paragraph 267, the BC Supreme Court said that the duties of strata council members under SPA section 31 are owed to the strata corporation, and not to individual strata lot owners. In *Rochette v. Bradburn*, 2021 BCSC 1752 at paragraphs 82, the court confirmed that the SPA does not allow another strata owner to sue for violations of SPA section 31. So, I find Mr. Armstrong also lacks standing to bring such a claim and dismiss it.
15. I find that even if Mr. Armstrong had standing, he seeks a remedy that is outside the CRT's jurisdiction to order. SPA section 174 allows the BC Supreme Court to appoint an administrator to exercise the powers and perform the duties of a strata. CRTA section 122(1)(i) specifically excludes SPA section 174 from the CRT's jurisdiction.
16. I will, however, consider whether the strata met its maintenance and repair obligations under the SPA. I find that issue is within the CRT's jurisdiction to decide.

New Claims Raised by Mr. Armstrong in Submissions

17. Mr. Armstrong made new claims in his submissions that were not in the Dispute Notice. First, he requested an order for the strata to upgrade its building to meet accessibility standards outlined in a handbook. Second, Mr. Armstrong alleged the strata enforced flag bylaws in a discriminatory manner by prohibiting him from displaying a Sioux flag. He requested orders that the strata donate money to the Metis Association of the Fraser Valley, publish an apology in the Langley Times for the strata's alleged discriminatory conduct, and for strata council members to undertake indigenous relations training.

18. Previous CRT decisions have held that deciding issues not included in the Dispute Notice may be a breach of procedural fairness. This is because the Dispute Notice defines and provides notice of the issues. See, for example, my non-binding decision of *Heise v. The Owners, Strata Plan VR 237*, 2021 BCCRT 296. Consistent with this, the CRT rules were amended on May 1, 2021 to include CRT rule 1.19, which says the Dispute Notice will not be amended after the dispute has entered the CRT decision process except where exceptional circumstances apply.
19. CRT rule 1.19 does not apply to this dispute because it was added after Mr. Armstrong applied for dispute resolution. However, I find it would be a breach of the common law principle of procedural fairness to decide these claims as they were raised late in proceedings. I also find that deciding these claims would be counter to the CRT's mandate to apply principles of law and fairness under CRTA section 2(2).
20. I reach this conclusion because I find that by raising these issues late, Mr. Armstrong 1) deprived the strata of adequate notice of the issues and 2) deprived the parties of the opportunity to discuss these issues during facilitation. So, I find the claims about upgrading the complex and the strata's alleged discrimination are not properly before me. I make no findings about these issues.

The CRT's Jurisdiction over Harassment, Defamation, and Slander

21. Mr. Armstrong claims that the strata council harassed and defamed him and his son. Previous CRT decisions have held that, absent a bylaw about harassment, defamation or slander, such claims are outside the CRT's strata property jurisdiction. See, for example, *Wolff v. The Owners, Strata Plan NES3191*, 2021 BCCRT 987 citing *Tomlinson v. The Owners, Strata Plan EPS 938*, 2021 BCCRT 331 and *Larocque v. The Owners, Strata Plan VR 255*, 2021 BCCRT 617. Although prior CRT decisions are not binding, I agree with the reasoning in these decision.
22. The strata's bylaws and amendments are registered in the Land Title Office. The strata repealed and replaced its bylaws with a consolidated set in November 2019. I find there are no bylaws about harassment, defamation, or slander in this dispute.

23. I find that Mr. Armstrong's claims for apologies and \$5,000 in damages for each of himself and his son are based in harassment, defamation, and slander. He explicitly says so in submissions. He says these incidents include 1) questioning his competency as a professional in water and wastewater projects, 2) questioning his son's gasfitter work, 3) breaching the BC *Privacy Act* and the PIPA, 4) acting in a discriminatory manner in connection with enforcing flag bylaws against a Sioux flag, and 5) denying him the service dog.
24. I find that I must refuse to resolve these claims under CRTA section 10. I make no findings about allegations 1 and 2. I would alternatively dismiss Mr. Armstrong's claims about his son because I find he lacks standing to make claims on behalf of another person. Mr. Armstrong's submissions show he claims compensation for harm done to his son and his son's business, and not himself. I have already decided that I must refuse to resolve Mr. Armstrong's claims about discrimination or the *Privacy Act* and PIPA. Mr. Armstrong also withdrew his claims about the service dog, so that is not before me.

ISSUES

25. The remaining issues in this dispute are as follows:
- a. Must the strata disclose further documents about the walkway?
 - b. Did the strata breach any obligation to repair and maintain the walkway, and if so, is any remedy appropriate?

EVIDENCE AND ANALYSIS

26. In a civil proceeding like this one, Mr. Armstrong 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.
27. I begin with the undisputed facts. In November 2019, the strata held its annual general meeting (AGM). The owners passed a 3/4 vote resolution to raise \$55,000 to replace

the central paved walkway of the strata with a new one made from reinforced concrete.

28. At the AGM, Mr. Armstrong expressed concerns that the planned walkway used the wrong materials and did not meet physical accessibility requirements. After the AGM, he emailed the strata on November 22, 2019 to request walkway engineering reports and permits. The strata's property manager, JT, replied that these documents did not exist because they were not required.
29. Mr. Armstrong pressed for further information. So, on December 3, 2019, JT emailed the Township of Langley (Langley). JT asked if the walkway replacement work required a permit, or if any engineering or accessibility code requirements applied. Langley's representative replied on December 6, 2020, that "if the pathway is on private property no permits are required". They gave no indication that any other requirements applied.
30. At some point after this, the strata's contractor finished the replacement walkway. Another contractor then added a handrail. Nothing turns on the exact timing of these events. I find from photos that the new walkway has the following characteristics. It consists of a sloped concrete ramp leading up from a street towards the strata's buildings. It has a single metal handrail. It lacks any stairs and the portion connected to the street lacks any curb. On balance, I find it could likely accommodate a wheelchair or mobility scooter.

Issue #1. Must the strata disclose further documents about the walkway?

31. SPA section 35 and section 4.1 of the *Strata Property Regulation* (SPR) set out the records that a strata corporation must prepare and retain. 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.

32. The list of documents the strata must prepare under SPA section 35(1) is limited. These include meeting minutes, a list of council members and their contact information, a list of owners and other individuals, and books of account. In *The Owners, Strata Plan NWS 1018 v. Hamilton*, 2019 BCSC 863 at paragraph 27, the court found that the CRT could not order production of documents not covered by SPA section 35.
33. Mr. Armstrong says the strata failed to respond to his requests for information about the walkway, so I will examine his requests in turn.
34. On November 22, 2019, Mr. Armstrong requested walkway engineering reports and permits. On February 18, 2020, Mr. Armstrong essentially requested the same documents again. As the strata said in its emails that it did not prepare such documents, and Mr. Armstrong has not proven otherwise, I find they do not exist. The strata does not need to prepare them under SPA section 35. So, I find the strata did not breach the SPA by failing to provide these documents.
35. On February 19, 2020, Mr. Armstrong requested Langley's "engineering decision" on accessibility requirements. Based on Langley's emails, I find this document does not exist. Mr. Armstrong also requested the strata's legal opinion about whether the walkway complied with the accessibility requirements. SPA section 35(2)(h) says a strata corporation must retain any legal opinions it obtains. I find the strata provided the legal opinion as it was attached to JT's March 2, 2020 letter to Mr. Armstrong. The opinion consisted of short December 2019 emails from the strata's lawyer, GH. In the emails, GH said that the strata did not need to hire an engineer or deal with new accessibility codes for the walkway. So, I find the strata did not breach the SPA.
36. In letters dated June 11 and July 10, 2020, Mr. Armstrong requested walkway documents that included the following: project scope of work documents, requests for proposals or tender, construction quotes, identities of qualified individuals to do the work, construction company qualification, construction contract terms, contract addendums if any, and inspection reports. Mr. Armstrong's lawyer repeated a request for such documents in a July 23, 2020 letter to the strata.

37. SPA section 35(2)(g) says a strata corporation must retain written contracts it is a party to. I find that the strata provided this information in this dispute as the signed contract is in evidence. The SPA does not have any explicit requirement for the strata to retain written quotes. It may be that they are included under SPA section 35(2)(k) as correspondence received by the strata that it must retain. I need not decide this as in any event, I find the strata provided this information. There are 3 quotes for the walkway in evidence. As for the other listed documents, I find that the strata had no obligation to provide them. This is because I find that they either do not exist or the strata was not required to prepare them under SPA section 35.
38. On November 9, 2020, Mr. Armstrong asked for information about the walkway's handrail. He requested scope of work documents, bids, and the contract for the work. He also asked where approval for the spending was documented and the identity of any strata council member overseeing the design and installation. I find the strata complied with this request. JT replied by email that the work cost \$1,375, so the strata decided to use a contractor it had used previously for such work. JT said the strata did not obtain any scope of work documents or other bids. So, I find it likely that the requested documents, including any written contract, do not exist. JT also answered questions about funding and the strata council members overseeing the work.
39. As I have found the strata did not breach the SPA, I dismiss this claim.

Issue #2. Did the strata breach any obligation to repair and maintain the walkway?

40. Bylaws 8(a) and (b) say that the strata is obligated to repair and maintain the common property and assets. The parties agree that the replacement walkway is the strata's responsibility. Based on the photos and strata plan, I find the walkway is common property that the strata must repair and maintain.
41. Numerous cases discuss a strata corporation's duty to repair and maintain common property. These cases say that in performing that duty, a strata corporation must act reasonably in the circumstances. Repairs may involve "good, better or best" solutions. Courts, and by extension, the CRT also, should be cautious before inserting

themselves into the process. See, for example, *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784 at paragraphs 23 to 32. I find that the same considerations apply in assessing whether the strata has met its duty to repair and maintain the walkway when it decided to replace it in 2020.

42. It is undisputed that the strata had to replace the pre-existing walkway. The strata obtained 3 quotes for this work. It selected the lowest bid for approval by a $\frac{3}{4}$ vote. There is no evidence the work was deficient. Mr. Armstrong says the strata should have obtained engineering reports, permits, and other documents. I do not find this proven by evidence. There is no indication that Langley complained about the walkway or that the walkway breaches any applicable building codes. Langley's emails suggest the opposite. Given these facts, I find the strata is entitled to deference in its approach.
43. Mr. Armstrong expressed some concerns that the walkway would be insufficient to accommodate other owners' physical disabilities. Section 8 of the *Human Rights Code* prohibits the strata from discriminating against owners in the services it provides. The strata has an obligation to accommodate physical or mental disabilities to the point of undue hardship. See, for example, *Jacobsen v. Strata Plan SP1773 (No. 2)*, 2020 BCHRT 170 at paragraph 75 to 79.
44. Ultimately, I find Mr. Armstrong's concerns to be speculative. The strata says, and I accept, that it received no complaints from other owners about the walkway. Mr. Armstrong did not allege that the walkway had to be changed to accommodate any disability he might have. He did not provide any evidence of such a disability, which would be required to prove a breach of section 8 of the *Code*. See *Jacobsen* at paragraph 76.
45. As there is no evidence of any problems with the replacement walkway, I find the strata has met its duty to repair and maintain it. I find it unnecessary to order the strata to develop a plan to change the walkway or any other remedy. I dismiss this claim.

CRT FEES AND EXPENSES

46. 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. Mr. Armstrong was the unsuccessful party, so I dismiss his claims for reimbursement. This includes his claims for legal fees and CRT fees.
47. The strata paid no CRT fees and claimed no specific dispute-related expenses, so I order none.
48. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Armstrong.

ORDERS

49. I refuse to resolve Mr. Armstrong's claims for breaches of the *Privacy Act* and PIPA.
50. I refuse to resolve Mr. Armstrong's claims for harassment, defamation, and slander, including his claims for apologies and \$5,000 as damages for each of himself and his son.
51. I dismiss Mr. Armstrong's remaining claims.

David Jiang, Tribunal Member