



Civil Resolution Tribunal

Decision Issued: December 3, 2021

File: ST-2020-007724

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VR 390 v. Harvey*, 2021 BCCRT 1269

B E T W E E N :

The Owners, Strata Plan VR 390

APPLICANT

A N D :

WENDY HARVEY

RESPONDENT

REASONS FOR PRELIMINARY DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. Wendy Harvey owns a strata lot in the strata corporation, The Owners, Strata Plan VR 390 (strata). The parties, along with Ms. Harvey's spouse and representative in this dispute, David Edgar, have a lengthy litigation history, including several Civil Resolution Tribunal (CRT) disputes.

2. In this dispute, the strata claims \$177,687.81 in damages because it says that Ms. Harvey and Mr. Edgar delayed the strata's repair and maintenance work, increasing its cost. The strata also claims \$95,274.80 in damages because it says Mr. Edgar damaged a common property patio, which the strata had to repair. These claims are based on events from 2009. I will refer to these claims together as the damages claims. The strata also claims \$53,400 in outstanding fines it imposed between May 2009 to September 2017. I will refer to this claim as the fines claim. The strata filed its Dispute Notice on March 29, 2021.
3. The case manager referred this dispute for a preliminary decision about whether any of the strata's claims are out of time under the *Limitation Act*. At my request, the parties also provided submissions about whether I should refuse to resolve any of the strata's claims under section 11 of the *Civil Resolution Tribunal Act* (CRTA).
4. As noted above, Mr. Edgar represents Ms. Harvey, although a lawyer, Michael Steven, helped draft her submissions. The strata is represented by a lawyer, Veronica Franco.

JURISDICTION AND PROCEDURE

5. The CRT has jurisdiction over strata property claims under section 121 of the 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. Under section 61 of the CRTA, the CRT may make any order or give any direction in relation to a CRT proceeding it thinks necessary to achieve the objects of the CRT in accordance with its mandate. The CRT may make such an order on its own initiative, on request by a party, or on recommendation by a case manager.

ISSUES

7. The issues in this preliminary decision are:
 - a. Should I refuse to resolve this dispute or any part of it?
 - b. If the CRT should resolve any part of this dispute, are any of the claims out of time under the *Limitation Act*?

BACKGROUND

8. As mentioned above, the events giving rise to the strata's damages claims happened in 2009. The strata started a BC Supreme Court action against both Mr. Harvey and Ms. Edgar on June 30, 2011 (BCSC action). While the notice of civil claim does not specify the amount of damages the strata claimed, the parties agree that the strata's damages claims in the BCSC action is based on the same events as the damages claims in this dispute.
9. In the BCSC action, the strata also claimed payment of 5 fines of \$200 each for alleged bylaw contraventions between May and September 2009. Given the overlapping dates, I find that these 5 fines are included in the fines claim in this dispute.
10. Mr. Edgar and Ms. Harvey filed a counterclaim in the BCSC action in August 2011. Neither party has taken any step in the BCSC action since the strata filed a response to counterclaim on August 26, 2011.
11. The parties have been involved in extensive litigation since then, in the BC Supreme Court, the BC Provincial Court, and the CRT. The strata provided a detailed history which I found to be helpful context but will not summarize here, as I find that it is ultimately irrelevant to this decision.

12. As mentioned above, this dispute initially came before me to determine whether some or all of the strata's claims were out of time under the *Limitation Act*. Section 13 of the CRTA says that the *Limitation Act* applies to CRT disputes. The parties agree that the strata started this dispute well past the expiration of the applicable limitation period for the damages claims. They also agree that the strata started the BCSC action within the applicable limitation period. However, the strata argues that this dispute is a continuation of the BCSC action, so it benefits from the fact that the BCSC action was started in time. As for the fines claim, the parties disagree about whether or not there is an applicable limitation period. I address these arguments in more detail below.
13. I note that the current *Limitation Act* came into force on June 1, 2013. So, the damages claims and some of the fines are subject to the former *Limitation Act*. I will refer to them as the current and former *Limitation Act* when the context requires me to make the distinction.

ANALYSIS

Should I refuse to resolve some or all of this dispute?

14. Section 11(1)(a)(i) of the CRTA says that the CRT may refuse to resolve a claim if it would be more appropriate for another legally binding process. Section 11(b) says that the CRT may refuse to resolve a claim if it is an abuse of process.
15. I acknowledge that in response to my request for submissions about section 11 of the CRTA, both parties said that they wanted the CRT to adjudicate this dispute. However, I find that the parties' wishes are not determinative of whether I exercise my discretion to refuse to resolve some or all of the strata's claims. Given that there are different considerations for the damages claims and the fines claim, I will address them separately, starting with the damages claims.

The Damages Claims

16. As mentioned above, Ms. Harvey's primary submission is that the CRT should resolve this dispute and dismiss it as out of time under the *Limitation Act*. Ms. Harvey says that the CRT is the most appropriate forum for the strata's claims. In the alternative, Ms. Harvey says that this dispute is an abuse of process because it involves the same facts and issues as the BCSC action. Ms. Harvey says that the strata "abandoned" the BCSC action. She says that the 10-year delay is evidence of bad faith and malice.
17. The strata also says that the CRT is the most appropriate forum for its claims because this dispute is a continuation of the BCSC action, which is suspended. The strata says that starting this dispute as a continuation of the BCSC action is a step that the CRTA contemplates. The strata also says that none of the issues in the damages claims have been adjudicated. So, the strata says that this dispute is not an abuse of process.
18. So, the parties characterize the status of the BCSC action differently. The strata says that it has been suspended and this dispute is a continuation of the BCSC action. Ms. Harvey says that it has been abandoned. I do not agree with either party.
19. Ms. Harvey's argument that the strata has "abandoned" the BCSC action is based solely on how much time has passed since the last step a party took. The BCSC action has not been discontinued, stayed, or dismissed. The court process is party-driven, which means that if parties do not take any steps, nothing happens. There is nothing in the Supreme Court Civil Rules about an action being considered "abandoned" after a certain period of inactivity. Rather, they allow a party to ask the court to dismiss a proceeding for want of prosecution. Neither party has made such an application, so the court has not dismissed either party's claims because of the lack of action over the past decade. Likewise, the court has not ordered that the BCSC action is suspended, as the strata suggests. With that, I find that the BCSC action is ongoing, unless it is discontinued or the court orders otherwise.

20. I turn then to the strata's argument that this dispute is a continuation of the BCSC action. The importance of the strata's use of the word "continuation" is obvious. It is the basis for the strata's argument that it started this dispute within the limitation period. In effect, the strata argues that the BCSC action and this dispute are the same legal proceeding for the purposes of the *Limitation Act*.
21. The strata relies on Part 2, Division 3 of the CRTA, which governs the relationship between court actions and CRT disputes. I will summarize the relevant portions.
22. Section 15(1)(b) of the CRTA says that once a CRT dispute is started, a party in another legally binding process must adjourn or suspend that process while the CRT dispute is ongoing. Section 16.1(1)(b) says that if a court determines that all matters in a court proceeding are claims that the CRT is considered to have specialized expertise in, the court must dismiss the proceeding unless it is not in the interests of justice and fairness for the CRT to adjudicate the claims. The CRT is considered to have specialized expertise in strata property disputes. Section 16.4(1) says that a person may not "bring or continue" a claim in court that is within the CRT's jurisdiction except in certain situations.
23. I agree with the strata that the CRTA contemplates duplicate proceedings in court and the CRT and sets out a process for how to deal with them. However, the strata does not explain how the CRTA provides for a court proceeding to be continued or transferred to the CRT. Unlike the *Supreme Court Act* and the *Small Claims Rules*, the CRTA provides no process for transferring claims between forums. Instead, it provides for the dismissal of a court action unless doing so would not be in the interests of justice and fairness. I therefore find that this dispute is not a continuation of the BCSC action. I find that it is a separate legal proceeding.
24. If I am wrong and the CRTA does provide for the court to transfer proceedings to the CRT, I find that this is something that the court must do. I find that a party cannot transfer a court proceeding to the CRT simply by filing a Dispute Notice about the same issues and asserting that it is a continuation.

25. With that, the strata provided no authority for the proposition that a limitation defence in one legal forum can essentially carry over to a proceeding in another forum. I find that the *Limitation Act* applies to this dispute independently of the BCSC action. I therefore find that the strata started this dispute well after the applicable limitation period expired for the damages claims.
26. However, I disagree with Ms. Harvey that the appropriate result is a dismissal. In the unusual context of this dispute, I find that the appropriate result is to refuse to resolve the damages claims because the BC Supreme Court is a more appropriate forum.
27. I say this primarily because under the CRTA's scheme, a refusal to resolve is not a final decision like a dismissal. By refusing to resolve the damages claims, I leave open the possibility that the court will disagree with my interpretation of the CRTA and transfer the BCSC action to the CRT such that the CRT could adjudicate the damages claims on their merits. I find that it would be inappropriate for me to potentially foreclose this possibility by dismissing the damages claims. Under the CRTA, and as a matter of common sense, the court must decide what should happen to an existing court proceeding. It is not the CRT's decision to make.
28. The parties both made submissions about how Part 2, Division 3 of the CRTA applies to court proceedings that existed before the CRT had jurisdiction over strata property claims in 2016. I find that I do not need to address these submissions. This is because under section 16.4(1) of the CRTA, the prohibition against continuing a court proceeding does not apply if the CRT has refused to resolve the claim, as I have done here.
29. I also find that I do not need to decide whether the damages claims are an abuse of process.

The Fines Claim

30. As mentioned above, the fines claim relates to fines the strata imposed between May 2009 and September 2017. I find that a different analysis applies to fines imposed before and after June 1, 2013, when the current *Limitation Act* came into force. The

evidence before me does not establish how many of the fines the strata imposed before and after this date. I will first address the more recent fines that are governed by the current *Limitation Act*.

31. In *The Owners, Strata Plan KAS 3549 v. 0738039 B.C. Ltd.*, 2015 BCSC 2273, the court determined that the current *Limitation Act* does not apply to fines. This is because the current *Limitation Act* defines a claim as a remedy to an “injury, loss or damage”, which the court found does not include a fine, which is a penalty. *0738039* was not about bylaw fines, but the CRT has consistently applied this reasoning to bylaw fines, most recently in *The Owners, Strata Plan VR245 v. Jiwa*, 2021 BCCRT 1171. Previous CRT decisions are not binding on me.
32. Ms. Harvey argues that the CRT cases that follow *0738039* were wrongly decided. She relies on the definition of a “claim” in the CRTA and the way the CRTA incorporates the current *Limitation Act*. Section 13(a) of the CRTA says that the *Limitation Act* applies to a claim as defined under the CRTA. Section 1 of the CRTA says that a claim includes any matter that the CRT can resolve. Ms. Harvey therefore argues that the 2-year limitation period in the current *Limitation Act* applies to any claim that the CRT can adjudicate, which includes claims about fines.
33. The strata says that the CRT has correctly applied *0738039*. The strata argues that it would be absurd to interpret the CRTA as creating different limitation periods for the same claim depending on whether it was at the CRT or in court. The strata says that section 13 of the CRTA exists simply to apply the same time limits set out in the current *Limitation Act* to CRT claims, not to create new limitation periods.
34. I agree with the strata. The CRTA says that the *Limitation Act* applies to CRT claims, which I agree includes claims for the payment of fines. However, the CRTA does not say that the 2-year limitation period in the current *Limitation Act* applies to all CRT claims. Rather, it says that the entire statute applies to CRT claims. Because the current *Limitation Act* does not provide for limitation periods for claims to collect fines, it follows that the CRTA does not either. There is nothing in the CRTA to suggest that the legislature intended to create new limitation periods where none existed before.

In fact, this result would be contrary to the CRTA's purpose because it would require parties to pursue fines claims that are more than 2 years old in court, where there is no limitation period, instead of the CRT.

35. I therefore find that the strata's claim for payment of fines imposed after June 1, 2013, are not out of time. I note that my conclusion is not binding on a future tribunal member who may adjudicate this claim.
36. The court in *0738039* relied on the definition of a "claim" in the current *Limitation Act*. The former *Limitation Act* does not define a claim but defines an "action" as including "any proceeding in a court". It is therefore unclear whether any fines that the strata imposed before June 1, 2013, are subject to a limitation period. Both parties based their submissions entirely on the current *Limitation Act*. I decline to decide this issue on a preliminary basis because it would require the parties to provide a considerable amount of evidence and submissions. I therefore find that it is not suitable for a summary determination. Also, given that part of the fines claim will continue, deciding this issue would not end this dispute, so there is little efficiency to be gained by deciding it now. Rather, it would further delay this dispute from going through the CRT's facilitation process. That said, the parties may wish to address this potential issue in their submissions if the matter proceeds to adjudication.
37. I therefore find that the fines claim should continue through the CRT's process, subject to the following caveat. As mentioned above, the BCSC action includes a claim for payment of 5 fines, for a total of \$1,000, which are also part of the fines claim. To avoid duplicate proceedings, I find that it is appropriate to ensure that the same fines are not at issue in both the CRT dispute and the BCSC action. I find that the strata must decide which venue it wants to pursue these 5 fines.
38. The strata will therefore have 14 days to either amend its Dispute Notice to remove any fines that are included in the BCSC action or confirm with the CRT that it will not pursue those claims in the BCSC action. I make this order under section 61 of the CRTA.

DECISION AND ORDER

39. I refuse to resolve the damages claims under section 11(1)(a)(i) of the CRTA.

40. I order the strata to either amend its Dispute Notice to remove any fines at issue in the BCSC action, or confirm with the CRT that it will not pursue those claims in the BCSC action, within 14 days of the date of this decision.

Eric Regehr, Tribunal Member