



Civil Resolution Tribunal

Date Issued: December 13, 2021

File: ST-2020-009882

Type: Strata

Civil Resolution Tribunal

Indexed as: *Knudsen v. The Owners, Strata Plan K 513*, 2021 BCCRT 1300

B E T W E E N :

DONALD KNUDSEN

APPLICANT

A N D :

The Owners, Strata Plan K 513

RESPONDENT

REASONS FOR SUMMARY DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This is a summary decision of the Civil Resolution Tribunal (CRT), refusing to resolve this dispute.

2. The applicant, Donald Knudsen, co-owns strata lot 2 (SL2) in the respondent bare land strata corporation, The Owners, Strata Plan K 513 (strata).
3. In the amended Dispute Notice, Mr. Knudsen sets out several allegations of mismanagement and bad faith conduct by the strata council, including the following:
 - Lying to owners, and showing favouritism to council member SC (owner of strata lot 1, next to SL2), in relation to SC removing a hydro pole from SL2.
 - Not providing requested information about variance approvals for proposed building on strata lots, and a surveyor's report.
 - Not following strata bylaw 37.6(c) about approving variances, as mentioned in October 27, 2019 annual general meeting (AGM) minutes.
 - Requiring Mr. Knudsen to provide numerous documents about requested approval for strata lot drainage improvements.
 - Improperly postponing a BC Supreme Court (BCSC) hearing date on May 11, 2018, and not providing examination for discovery transcripts.
 - Improperly charging \$809.73 in legal fees to Mr. Knudsen's strata lot account.
 - Withholding information during mediation, leading to Mr. Knudsen giving "misinformed consent" to a settlement agreement.
 - Breach of a settlement agreement.
4. In the amended Dispute Notice, Mr. Knudsen requests the following remedies:
 - Reversal of the \$809.73 charge to SL2's strata lot account.
 - Reimbursement of \$2,247.95 in legal fees.
 - \$17,000.00 in damages for psychological injury and emotional distress.

5. The strata denies Mr. Knudsen's claims, and says the dispute should be dismissed. Among other things, the strata argues that Mr. Knudsen signed a release agreeing that these matters may only be heard by the BCSC.
6. Mr. Knudsen is self-represented in this dispute. The strata is represented by a strata council member.
7. For the reasons explained below, I find the CRT does not have jurisdiction to decide this dispute, and also that it is more appropriate for resolution by the BCSC. So, I refuse to resolve the dispute.

JURISDICTION AND PROCEDURE

8. 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). 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.
9. 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.
10. 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.

11. 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

12. The issues in this dispute are:

- a. Does the CRT have jurisdiction to decide this dispute?
- b. If so, must the strata:
 - i. Reverse a \$809.73 charge to Mr. Knudsen's strata lot account?
 - ii. Reimburse Mr. Knudsen for \$2,247.95 in legal fees?
 - iii. Pay Mr. Knudsen \$17,000.00 in damages?

REASONS AND ANALYSIS

13. In a civil claim like this one, Mr. Knudsen, as applicant, must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision.

Does the CRT have jurisdiction to decide this dispute?

14. The strata says the CRT has no jurisdiction to decide this dispute, based on the terms of a settlement agreement and a mutual release, both dated April 23, 2020. For the following reasons, I agree.

15. The settlement agreement and release relate to 2 legal proceedings:

- CRT dispute ST-2019-003362, between applicant SC and respondent strata (2019 CRT dispute).

- Supreme Court of British Columbia Vancouver Registry Action No. S-176489, between plaintiff SC and defendants Donald Knudsen, Irma Knudsen (co-owner of SL2), and the strata (BCSC Action).
16. The settlement agreement and release were each signed by SC, the Knudsens, and a representative of the strata. This is not disputed.
17. The parts of the settlement agreement relevant to this dispute can be summarized as follows:
- The parties to the settlement agreement attended a mediation on December 17, 2019. The purpose of the mediation was to deal with all issues in the BCSC Action and the 2019 CRT dispute.
 - The parties agreed to follow the recommendations pertaining to SL1 and SL2 set out in a July 29, 2016 drainage study by Wedler Engineering. The settlement agreement contained terms about who would pay for the drainage work, and what would happen if the provincial government did not approve the recommended work.
 - The Knudsens agreed to construct and pay for a retaining wall between SL1 and SL2.
 - SC agreed to remove a hydro pole on SL2 by June 30, 2020 at his expense, and pay for any related damage.
 - The parties agreed to dismiss or withdraw the BCSC Action, the 2019 CRT dispute, and all counterclaims in those proceedings.
 - “Each of the parties irrevocably attorns to the jurisdiction of the courts of the Province of British Columbia”.
18. The following parts of the release are relevant to this dispute:

- The subject matter of the BCSC Action was summarized as concerning “water, retaining wall and hydro pole and wire issues, fines, [the 2019 CRT dispute], and counterclaims.
- The parties agreed to “release and forever discharge each other from any and all claims, proceedings, liabilities, obligations, demands, costs and expenses of any nature existing up to the present time, or in any way connected with, relating to, or arising from the allegations made by” SC in the BCSC Action or 2019 CRT dispute.
- Each party agreed not to make any claims or to take any proceedings against any person or party which might result in a claim for contribution or indemnity or otherwise against any party in respect of the facts alleged in the BCSC Action.
- The parties acknowledged that the facts “in respect of which” the release was made may prove to be other than or different from the facts now known or believed by the parties to be true. The parties accepted and assumed the risk of the facts being different, and agreed that the release was enforceable and not subject to termination, rescission or variation by the discovery of any different facts.
- Each party agreed that the release was executed voluntarily, after receiving independent legal advice.
- Paragraph 11: “This Release Agreement is governed by the laws of British Columbia and action hereon may be brought only within a court of competent jurisdiction in British Columbia.”

19. On May 17, 2021, I issued a preliminary decision in this dispute. In his initial dispute application, Mr. Knudsen had named both the strata and SC as respondents. In the preliminary decision, I refused to resolve the claims against SC for 2 reasons:

- I found the claims against SC did not fit within the CRT’s strata property jurisdiction.
 - I found the claims against SC were more appropriate for resolution by the BCSC due to the term in the settlement agreement that each of the parties “irrevocably attorns to the jurisdiction of the courts of the Province of British Columbia”.
20. I refused to resolve the claims against SC based on CRTA sections 10(1) and 11(1). CRTA section 10(1) says the CRT must refuse to resolve a claim or dispute over which it does not have jurisdiction. CRTA section 11(1)(a) says the CRT may refuse to resolve a dispute if it considers that it would be more appropriate for another legally binding process or dispute resolution process, or it has already been resolved through a legally binding process or dispute resolution process.
21. In my May 17, 2021 preliminary decision, I said in paragraph 22 that the preliminary decision did not address whether the CRT should refuse to resolve Mr. Knudsen’s claims against the strata, as the parties had not yet been given an opportunity to make submissions on that specific issue. However, I suggested the parties might wish to address the following issues in their submissions on the merits of the dispute:
- Mr. Knudsen’s claim that the strata breached the settlement agreement may be outside the CRT’s strata property jurisdiction, because it may not be a claim in respect of the SPA, or because the settlement agreement grants exclusive jurisdiction over the matter to the courts.
 - Mr. Knudsen appeared to have signed a release on April 23, 2020, which may bar his claims against the strata.
22. Following my preliminary decision, Mr. Knudsen amended the Dispute Notice significantly. He removed SC as a respondent, and requested different remedies.
23. In his submissions on the merits of this dispute, Mr. Knudsen says the strata and SC breached and frustrated the settlement agreement. Mr. Knudsen submits that when

the strata breached and frustrated the settlement agreement, the strata also voided its right to enforce the release. Mr. Knudsen also submits that the strata and SC withheld important information that would have “drastically altered” the outcome of the mediation. He says the evidence in this dispute, including information about variance requests pending strata council approval at the time of the mediation, establishes that neither SC nor the strata had any intention of honouring the settlement agreement.

24. Mr. Knudsen also argues that the release only applies after the settlement agreement is fulfilled, which never occurred because the strata breached the settlement agreement by allowing SC’s variance request to construct a building within 10 feet of the property line.
25. For the following reasons, I find the CRT has no jurisdiction to resolve the claims in this dispute.
26. CRTA section 121(1) says the CRT has jurisdiction to resolve claims “in respect of” the SPA. I find that many of Mr. Knudsen’s claims in this dispute are not about alleged breaches of the SPA, but alleged breaches of the settlement agreement. I accept that these things are related, as the settlement agreement is about use and maintenance of strata lots, among other things. However, I find that Mr. Knudsen’s claims and requested remedies are about breaches of the settlement agreement, parties’ actions leading to the settlement agreement, legal fees related to the BCSC Action, and subjects covered by the settlement agreement, such as variance approvals, drainage, and the removal of a hydro pole from SL2.
27. I find that for 2 reasons, I have no jurisdiction to make a decision about whether the strata or SC breached the settlement agreement, or whether the release is enforceable. First, these are not claims in respect of the SPA, so they do not fit within the CRT’s statutory jurisdiction over strata property disputes. Second, paragraph 10.3 of the settlement agreement says that each of the parties “irrevocably attorns to the jurisdiction of the courts of the Province of British Columbia”.

28. The CRT was in operation, and its strata property jurisdiction was in force, when the parties signed the settlement agreement. Therefore, I find the settlement agreement specifically provides that the courts, and not the CRT, have jurisdiction over the agreement, and any claims related to it.
29. For these reasons, I find the CRT does not have jurisdiction to resolve Mr. Knudsen's claims against the strata. In making this finding, I specifically note that Mr. Knudsen's claims for damages and his claims about legal fees relate, at least in part, to the process leading up to the settlement agreement, alleged breaches of the settlement agreement, and matters covered by the settlement agreement.
30. However, even if I did find the CRT had jurisdiction, I would refuse to resolve the claims because I find they are more appropriate for adjudication by the BCSC, or were already resolved through another legally binding process (the mediation and settlement agreement). In essence, I find that the claims in this dispute are a continuation or result from the matters covered in the settlement agreement.
31. For all of these reasons, I refuse to resolve this dispute under CRTA sections 10(1) and 11(1).

CRT FEES

32. Under CRTA section 49 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. Mr. Knudsen paid CRT fees, but was not successful in this dispute. Since Mr. Knudsen had specific notice of the jurisdictional issues that led to my decision to refuse to resolve this dispute, I find it inappropriate to order any fee reimbursement or refund.
33. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Knudsen.

ORDER

34. I refuse to resolve this dispute under CRTA sections 10(1) and 11(1).

Kate Campbell, Vice Chair