



Civil Resolution Tribunal

Date Issued: January 24, 2022

File: ST-2020-006706

Type: Strata

Civil Resolution Tribunal

Indexed as: *Section 1 of The Owners, Strata Plan EPS1069 v. The Owners, Strata Plan EPS1069, 2022 BCCRT 89*

B E T W E E N :

Section 1 of The Owners, Strata Plan EPS1069

APPLICANT

A N D :

The Owners, Strata Plan EPS1069 and Section 3 of The Owners,
Strata Plan EPS1069

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This strata property dispute is about the required level of security and related security expenses within a strata corporation with sections.

2. The applicant, Section 1 of The Owners Strata Plan EPS1069 (retail section), is a section under the *Strata Property Act* (SPA) comprising 215 non-residential strata lots in the respondent strata corporation, The Owners, Strata Plan EPS1069 (strata). The other respondent, Section 3 of The Owners, Strata Plan EPS1069 (food court section) is a section in the strata comprising 7 non-residential strata lots. The remaining section of the strata, Section 2 of The Owners, Strata Plan EPS1069 (office section), is not a party to this dispute.
3. Since the strata was created in 2013, the retail section has entered into a series of contracts with different security firms to provide security services. The retail section says it entered into these contracts on behalf of the strata and food court section. The retail section says the respondents should reimburse it for security services provided to them which have been paid by the retail section. In the Dispute Notice, the retail section says the amount due to it is \$528,741.39 but submits it made a calculation error and says the correct amount is \$564,099.36. It says that as a result of the retail section paying for security services the respondents should have provided, the respondents have been unjustly enriched. The retail section argues it is reasonable for the retail section to expect it should be reimbursed for security expenses the respondents received a benefit from. The retail section also says the current security arrangements allow for it to have 1 security guard for 8 hours per day and that the strata should be responsible for ensuring 2 security guards are on-site 24 hours per day.
4. The retail section seeks the following orders:
 - a. An order that the strata and food court section reimburse the retail section \$564,099.36 for security services it paid for.
 - b. An order that the strata maintain a minimum of 2 security guards at all times for the 1st, 2nd and 3rd floors.
 - c. An order that the strata continue to conduct annual fire drills for the building with “sufficient security services”.

5. The strata disagrees with the retail section and says it was not a party to any of the security agreements involving the retail section, that the retail section had no authority to enter in the security agreements on the strata's behalf, and that the strata never had any duties or obligations under any of the security agreements. The strata also denies it has a duty to secure common property, or that if it does, the retail section has not suffered any damages or loss or has not mitigated its damages or loss. Finally, the strata says the Civil Resolution Tribunal (CRT) does not have jurisdiction to grant equitable relief to compensate for unjust enrichment. The strata asks that the retail section's claims be dismissed.
6. The food court section denies the retail section's claims. It says it had its own security contracts about areas it is responsible for and did not require the retail section to enter into contracts on its behalf. It also says the strata is responsible for any common expenses under the SPA, including common expenses that do not relate solely to 1 section of a strata corporation or that benefit more than 1 type of strata lot.
7. The retail section is represented by a member of the section executive. The respondents are represented by legal counsel. The strata is represented by Mathew Both. The food court section is represented by Zoe Klassen.
8. For the reasons that follow, I refuse to resolve the retail section's claim for unjust enrichment and dismiss its remaining claims.

JURISDICTION AND PROCEDURE

9. These are the formal written reasons of the 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.

10. CRTA section 10 says the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.
11. 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.
12. 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.
13. Under section 123 of the CRTA and the CRT rules, 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.

Preliminary Matters

Unjust Enrichment

14. I find the retail section's claim for reimbursement of security expenses is essentially based on its main argument that the security services agreement it signed also applied to the strata and food court. I address this aspect of the retail section's claim in my decision below.
15. However, as noted earlier, the retail section also says that the strata and food court section have been unjustly enriched due to the retail section paying security expenses it says the respondents were responsible for. I find the retail section's claims for unjust enrichment are outside of the CRT's jurisdiction for the following reasons.
16. The strata says the CRTA does not enable the CRT to grant equitable relief, which it says includes unjust enrichment as claimed by the retail section. I agree.

17. The leading case on unjust enrichment is *Garland v. Consumers' Gas Co.*, 2004 SCC 25, which confirms that unjust enrichment is a form of equitable relief (at paragraph 40).

18. The strata cites *Wong v The Owners, Strata Plan LMS 2461*, 2017 BCCRT 55, where the CRT chair found at paragraph 43:

... unlike a court, the [CRT] has no equitable jurisdiction. Administrative tribunals get their authority from their enabling statute, supplemented by common law principles. The [CRT] gets its authority from the [CRTA] and has no authority to apply general rules of equity.

19. I have reviewed the CRTA and although *Wong* is not binding on me, I agree with the chair's assessment of the CRTA and find the CRT does not have jurisdiction to apply general rules of equity, including those for unjust enrichment.

20. Therefore, under CRTA section 10(1), I refuse to resolve the strata's claims for unjust enrichment.

Limitation Period

21. In submissions, the respondent strata suggests that the *Limitation Act* applies to the retail section's claims for damages. Neither the retail section nor the food court section addressed limitation period issues.

22. While the *Limitation Act* might apply to limit the retail section's reimbursement claim, I have not discussed this issue further given I have dismissed the retail section's claims for other reasons.

Late Evidence

23. The retail section submitted evidence after submissions about this dispute were complete. I am advised by CRT staff that the retail section's late evidence was provided to the respondents and they had an opportunity to respond, but neither respondent did. In the circumstances, I find there are no procedural fairness issues with the exchange of evidence.

ISSUES

24. The issues in this dispute are:
- a. To what extent, if any, are the strata and food court section responsible for security expenses paid by the retail section?
 - b. Is the strata responsible to maintain a minimum of 2 security guards at all times for the 1st, 2nd and 3rd floors?
 - c. Should the CRT order the strata to conduct annual fire drills for the building with “sufficient security services”?

BACKGROUND

25. In a civil proceeding such as this, the applicant retail section must prove its claims on a balance of probabilities. I have read all the submissions and evidence provided by the parties, but refer only to information I find relevant to give context for my decision.
26. The strata plan shows the strata was created in June 2013. It consists of an air space parcel (ASP3) within a 6-level building located next to a skytrain station in Richmond, BC. The building also includes other airspace parcels that are not part of the strata. Airspace parcel 1 (ASP1) is an underground parking area located on level P1 of the building. Airspace parcel 2 (ASP2) includes a 3-level atrium that for the main entrance to the building on level 1 and extends up to level 3 plus an interior corridor on level 3 that connects the atrium to the skytrain station via a bridge. Air space parcel 4 is a parking area located on level 4.
27. It is undisputed that retail section comprises 215 strata lots located on levels 1, 2, and 3 of the building. The food court section is located on level 3 and is surrounded by limited common property (LCP) designated for the benefit of the 7 strata lots in the food court section. There is no other LCP identified on the strata plan. The office section is located on levels 4, 5 and 6 and there are common property corridors and services rooms located on all levels.
28. The entire building, including all 4 air space parcels, and other property associated with the building, is governed by a master air space parcel agreement (ASP

agreement) to which the City of Richmond (City) is also a party. Generally speaking, the ASP agreement grants easements for support, access, parking, utility systems and other uses, as well as covenants over various parts of the building. I discuss certain aspects of the ASP agreement below as necessary.

29. When the strata was created in 2013, the owner developer filed bylaw amendments with the Land Title Office (LTO) that differ from, and I find replace, the Standard Bylaws under the SPA. The bylaws properly create the 3 separate sections I have noted above. Subsequent bylaw amendments have been filed by the strata and the retail section, but I find they are not relevant to this dispute. I discuss the relevant bylaws below as necessary.
30. The retail section entered into a security services contract with Concord Security Corporation (Concord) in February 2013. In May 2017, Concord merged with Paladin Security Group Ltd. (Paladin) and Paladin took over the Concord service agreement at that time. In December 2017, the retail section entered into a new security agreement with Paladin until Paladin terminated the agreement in June 2019 for non-payment of its invoices. The food court section had also retained Concord and Paladin for security services during these times.
31. In November 2019, the retail section retained Intercom Lux Management Inc. (Intercom) for security services. From submissions, I infer this contract is currently ongoing. The strata entered into a security contract with Intercom in May 2020 and says it currently has an agreement with Intercom. None of this is disputed.

EVIDENCE AND ANALYSIS

To what extent, if any, are the strata and food court section responsible for security expenses paid by the retail section?

32. As earlier noted, the retail section says it entered into the Concord and Paladin contracts on behalf of the strata and food court section. Both the strata and food court section disagree. In order for the security contracts to bind the strata and food court section, they must be parties to the contracts, be bound under a separate contract such as the ASP agreement, be required under the SPA or bylaws to contribute the

security expenses, or agree to cover the security expenses paid by the retail section. I find the retail section has not established that either the strata or food court section are bound by the Concord or Paladin contracts signed by the retail section, nor any other reason the respondents must reimburse the retail section for security expenses. My reasons follow.

Security Contracts

33. The contracts the retail section had with both Concord and Paladin were provided in evidence. The contracts show the retail section is a party but not the strata or food court section. The several invoices provided in evidence are addressed only to the retail section. There are no security invoices before me that are addressed to or paid by the strata or the food court section. The retail section also argues that there was only 1 security contract in place for the entire building until 2019 when the strata retained Intercom. However, the food court section provided a signed contract with Concord for the period November 1, 2013 to October 31, 2014 to service the food court area only, which is on level 3 and surrounded by LCP designated to the food court section strata lots as I have mentioned. I note also that the service area described in the retail section security contracts refers to levels 1, 2 and 3, are the only areas where the retail section strata lots are located.

No agreement from the strata and food section

34. Even though the retail section says there was only 1 security agreement, in submissions, it says to the best of its knowledge, 2 contracts were entered into with Concord in 2013. The retail section and the office section. It says its belief was based on the property management agreement in effect at that time giving the property manager authority to enter into contracts on behalf of the strata or any section under clause 4(d)(4). However, the property management agreement was provided in evidence and that section required the property manager to obtain the prior written approval of "Council" before entering into any agreement, and there is no evidence that approval was given by the strata or food court section.

35. Further, the strata and food court section each deny giving the retail section authority to enter into the security agreements on their behalf. The retail section has not

provided any contrary evidence, such as correspondence or emails received from the respondents.

The Information Statement

36. The retail section refers to an “Information Statement” dated September 15, 2010 provided to all owners from the property developer at the time of the original sale of the strata lots by the owner developer. I find the Information Statement is similar to a Disclosure Statement under the *Real Estate Development and Marketing Act* (REDMA), and addressed marketing of the entire development. The Information Statement states in bold text on its face page that REDMA does not apply to development and also that statement was provided for information purposes only, and the developer could make changes.
37. The retail section refers to clauses 3.7 (a) and (b) of the statement to support its argument that the strata is responsible for certain pedestrian areas on level 2 and 3 of the building leading to the atrium. However, I disagree. I interpret those clauses to refer to ASP2 and not the strata that makes up ASP3, and the cost provisions for the described areas will be set out in what I have described above in the ASP agreement. Therefore, I do not find the Information Statement assists the retail section in this dispute.

The ASP agreement

38. The retail section says the ASP agreement “has further demonstrated” that security costs are the strata’s responsibility, but it did not identify which parts of the ASP agreement so stated. Based on my review of the ASP agreement, I could not locate any clause that addressed the responsibility for security expenses with 1 exception. That exception is located at clause 12.1(d) under the heading “Limitations on Easements”. My interpretation of clause 12.1(d) is that the strata, when exercising its “rights, liberties and easements” under the ASP agreement, must maintain the security of the other air space parcels at its expense. I do not interpret this clause to apply to the retail section within the strata. In any event, the ASP agreement contains a dispute resolution provision at clause 17.1 that requires mediation or arbitration of disputes relating to the agreement. Thus, even if the ASP agreement is determinative

here, which I find it is not, the retail section would be required to mediate or arbitrate its dispute under the terms of the ASP agreement rather than bringing the dispute before the CRT. In other words, the CRT would not have the authority to decide the dispute.

Bylaws

39. I have reviewed the strata's bylaws filed with the LTO and I find there is nothing in the bylaws that require the strata or food court section to take responsibility for security expenses. This includes the strata's duty to repair and maintain common property, including LCP, under bylaw 12 which follows the SPA section 72 requirements I discuss below.

SPA

40. The retail section argues that the strata's duty to repair and maintain common property and common assets under SPA section 72 includes a duty to secure and therefore, a duty to provide security services. The strata disagrees entirely, and the food court section agrees the strata has a duty under section 72. While I agree the strata's duty to repair and maintain extends to the building's security of common property and assets in a general sense, I disagree the strata's duty under SPA section 72 creates a duty for the strata to provide security services. This is because the standard of care that applies to a strata corporation with respect to the repair and maintenance of common property and common assets is reasonableness. See *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784. I find the strata has acted reasonably in the circumstances of this dispute given there is no evidence that its actions resulted in damage to or failure of common property or common assets.

41. Had such damage or failure occurred, the retail section might have had a claim in negligence but that is not case here, nor did the retail section make such an argument.

42. SPA section 194 says that a section may enter into contracts about matters that relate solely to the section and must not enter into contracts in the name of the strata corporation. It further says under subsection 3 that "the strata corporation has no liability for contracts made, or debts or legal costs incurred, by the section". In this

dispute the contracts are in the name of the retail section, so it follows, the strata is not responsible for liability or expenses incurred under those contracts.

43. Further, SPA section 195 says expenses of a strata corporation that relate solely to the strata lots in a section are shared by the owners of the strata lots in the section based on unit entitlement of the strata lots in the section. The retail section did not argue that the security expenses it paid did not relate solely to the retail section. Indeed the documentary evidence supports the retail section entered into the security contracts for the strata lots in the retail section. As I have found, there is no evidence the expenses relate to the strata or any other section.

Significant unfairness

44. The retail section did not expressly argue the strata had treated it in a significantly unfair manner. However, I find such an argument can be implied from the retail section's submissions, so I have considered it here.
45. The BC Supreme Court has found the CRT has jurisdiction to remedy significantly unfair actions or decisions under CRTA section 121(1)(e),(f), and (g), which mirror the language used in SPA section 164. See *The Owners, Strata Plan LMS 1721 v. Watson*, 2018 BCSC 164 and *Time Share Section of The Owners, Strata Plan N 50 v. Residential Section of The Owners, Strata Plan N 50*, 2021 BCSC 486 at paragraph 17. CRTA sections 121(e) and (f) apply here and state the CRT has jurisdiction over a claim in respect of the SPA concerning (my emphasis):

(e) an action or threatened action by a strata corporation, including the council, in relation to an owner or tenant,

(f) a decision of a strata corporation, including the council, in relation to an owner or tenant;

46. Notably, the CRT's jurisdiction does not include strata actions, threatened actions, or decisions made in relation to a section.
47. Therefore, I find the CRT's jurisdiction with respect to significant unfairness applies only to actions or decisions made by a strata corporation (or section) in relation to an

owner or tenant, and not in relation to a section. Given the retail section is not an owner or tenant, I find the retail section's claims about significant unfairness are not captured under the CRT's strata property jurisdiction. I find the court's decision in *N 50* supports this conclusion at paragraph 116.

48. For all these reasons, I find the retail section has failed to prove the strata or food court section is responsible for security expenses it paid. Therefore, I dismiss the retail's section for reimbursement of surety security expenses.

Is the strata responsible to maintain a minimum of 2 security guards at all times for the 1st, 2nd and 3rd floors?

49. Based on my analysis above, I have found there is no requirement for the strata to provide security services. The fact it has approved a security budget, and likely made expenditures under that budget, does not mean it must provide security services for the retail section or common property areas that are next to or near the retail section.
50. I agree with the strata that the number of security guards, if any, and the hours of patrol, under a strata security service contract is ultimately a decision of the strata and I decline to interfere with the strata's democratic process. I acknowledge the strata's undisputed submission that the retail section controls about 63% of the strata's votes. I also acknowledge the retail section's reply submission that some of the retail owners holding a larger number of votes have not always voted in favour of a security budget in the amount the retail section believes is appropriate. However, I find that is also part of the democratic process, which I decline to interfere with.

Should the CRT order the strata to conduct annual fire drills for the building with "sufficient security services"?

51. The retail section made no submissions on this requested remedy, so I find it unclear how or why the issue arises. I note that the ASP agreement requires the building's annual fire equipment tests be completed by the same company, but there is no evidence about the strata's involvement in providing security during annual fire drills. The strata simply states there is no legal basis for the CRT to make such an order and I agree.

52. Given I have found there is no requirement for the strata to provide security services at all, I dismiss this claim.

CRT FEES AND EXPENSES

53. 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 to deviate from this general rule. I find the respondents were the most successful parties in this dispute. However, they did not pay CRT fees or claim dispute-related fees, so I order none.

54. The retail section claims legal fees of \$23,594.82 but only in the event it is successful in its claims, which it was not. Therefore, I dismiss the retail section's claim for reimbursement of legal fees.

55. Even if the retail section was the successful party, I would still dismiss its claim for legal fees. As the food court section correctly notes, CRT rule 9.5(3)(b) states the CRT will not order one party to pay to another party any fees charged by a lawyer or another representative in the CRT dispute process except in extraordinary circumstances. In determining whether to order reimbursement of legal expenses, under rule 9.5(4) the CRT may consider the complexity of the dispute, the degree of involvement of a party's representative and whether the representative caused any unnecessary delay expense, and any other factors the CRT considers appropriate.

56. I agree with the food court section that this dispute is not highly complex and that there is no evidence of improper delay or expenses flowing from that delay. I also agree that this dispute does not meet the threshold of extraordinary circumstances.

ORDERS

57. I refuse to resolve the retail section's claim about unjust enrichment under CRTA section 10(1).

58. I dismiss the retail section's remaining claims.

59. 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.

J. Garth Cambrey, Vice Chair