



Civil Resolution Tribunal

Decision Issued: December 15, 2021

File: ST-2021-001230

Type: Strata

Civil Resolution Tribunal

Indexed as: *Hugo v. The Owners, Strata Plan BCS 1697*, 2021 BCCRT 1309

B E T W E E N :

PARIS HUGO

APPLICANT

A N D :

The Owners, Strata Plan BCS 1697

RESPONDENT

REASONS FOR PRELIMINARY DECISION

Tribunal Member:

Eric Regehr

1. This is a preliminary decision about whether the respondent strata corporation, The Owners, Strata Plan BCS 1697 (strata), can be represented by an articulated student in this Civil Resolution Tribunal (CRT) dispute. The CRT previously denied the strata's request. The strata petitioned the court for judicial review of that denial. In *The Owners, Strata Plan BCS 1697 v. Hugo*, 2021 BCSC 2030, the court quashed the CRT's decision and remitted the request back to the CRT for reconsideration.

2. The applicant, Paris Hugo, no longer opposes the strata's representation request.
3. I have been provided with the Dispute Notice, the Dispute Response, and the parties' submissions about this preliminary issue.
4. At present, the strata is represented by Matthew Nied, a strata council member who is also a lawyer. The strata asks to be represented by an articled student appointed by its insurer.
5. Section 20 of the *Civil Resolution Tribunal Act* (CRTA) creates a presumption that parties will represent themselves in CRT proceedings. Sections 20(2)(c) and 20(4) provide that the CRT may allow a lawyer to represent a party if it is in the interests of justice and fairness.
6. In *Hugo*, the court said that one purpose of section 20 of the CRTA is to facilitate a level playing field between parties. I find that another purpose is to prevent the *perception* of an unequal playing field when a self-represented party faces a lawyer. I say this because section 20(3)(b) says that the CRT may consider whether the other parties agree to the representation, which shows that a self-represented party's perspective is important, even though it is not determinative.
7. The court also noted that lawyers might sometimes add formality and delay to the CRT's process, which is contrary to the CRT's mandate. That said, the court found that the CRTA acknowledges the possible positive benefits of a lawyer because section 20(4) creates a general rule that if a party is represented, the representative must be a lawyer.
8. I take from the court's analysis that the question of whether lawyer representation would create an unlevel playing field, real or perceived, and whether a lawyer would frustrate or facilitate the speedy and informal resolution of a dispute will depend on the circumstances.

9. With that background, the court set out a 3-stage analysis that the CRT must follow in assessing a request for lawyer representation under section 20(2)(c) of the CRTA. The 3 questions I must answer are:
- a. Has the party making the request presented a cogent reason for representation, grounded in considerations of justice and fairness?
 - b. If the other party opposes representation, have they presented a cogent reason for that opposition, and will they be prejudiced by the involvement of a representative?
 - c. Balancing the potential prejudice to each party and the potential impact of a representative on the efficient resolution of the dispute, is it in the interests of justice and fairness to allow representation?
10. The strata makes 2 arguments about why it needs a representative. First, the strata argues that because Mr. Nied is a lawyer, the CRTA and CRT's rules do not permit him to represent the strata. Second, the strata argues that Mr. Nied would be "needlessly and unfairly" exposed to liability that is not covered by his professional liability insurance. I disagree with both points.
11. With respect to the first point, sections 4 and 26 of the *Strata Property Act* (SPA) say that a strata corporation acts through its council. CRT rule 1.14(1)(a) reflects these provisions by providing that a strata corporation in a CRT dispute must act through an authorized strata council member. There is no restriction in the CRT's rules based on a strata council member's profession. I therefore find that the fact that Mr. Nied is a lawyer does not disqualify him from being the strata council member that represents the strata.

12. For the same reason, I find that Mr. Nied would not be exposed to uninsured personal liability because he is a lawyer. Mr. Nied may act for the strata in his capacity as a strata council member. This does not require the strata to retain him as its lawyer. Like all strata council members, Mr. Nied's conduct is governed by the standard of care set out in section 31 of the SPA. However, I find that Mr. Nied faces no additional legal risk because he is a lawyer.
13. The strata does not argue that the substance of the dispute itself justifies legal representation. Ms. Paris alleges that the strata's elevator is broken, which has prevented her from moving a couch out of a strata lot. The dispute is not complex. She claims \$5,018.87, a relatively low monetary value.
14. Turning to the second question, as mentioned above, Ms. Paris does not oppose the strata's request to be represented. In terms of the potential prejudice to Ms. Paris, the strata says that if it cannot be represented by an articulated student, Mr. Nied will represent it instead. Mr. Nied has been a civil litigator for around 10 years. Therefore, in the unusual circumstances of this dispute, a representative would not tilt the playing field in the strata's favour. If anything, with no disrespect to the articulated student, the playing field would likely be closer to level with the articulated student's involvement. As the court pointed out, there is "no obvious answer to this point".
15. While the strata has not identified a cogent reason why it needs representation, I find that this is outweighed by Ms. Paris's lack of opposition and the fact that the involvement of the proposed articulated student would not prejudice her. I also find that because someone with legal training will act for the strata either way, the articulated student's involvement is unlikely to affect how efficiently the dispute proceeds through the CRT's process.

16. As mentioned above, section 20 of the CRTA requires a representative to be a lawyer unless the CRT is satisfied that another person is appropriate. I find in the context of section 20 of the CRTA, a lawyer includes an articulated student. I find it unlikely that the legislature intended to disqualify articulated students from representing parties given the CRT's overall mandate to facilitate access to justice. If I am wrong on that point, I find that an articulated student is an appropriate representative in this dispute. I therefore allow the strata's request to be represented by an articulated student.

Eric Regehr, Tribunal Member