



Civil Resolution Tribunal

Date Issued: February 24, 2022

File: ST-2021-004617

Type: Strata

Civil Resolution Tribunal

Indexed as: *Williams v. The Owners, Strata Plan BCS 2132*, 2022 BCCRT 201

BETWEEN:

ALAN WILLIAMS

APPLICANT

AND:

The Owners, Strata Plan BCS 2132

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute about alleged inconsistent bylaw enforcement.
2. The respondent, The Owners, Strata Plan BCS 2132 (strata) is a strata corporation existing under the *Strata Property Act* (SPA). The strata is represented by a strata council member.

3. The applicant, Alan Williams rents a strata lot in the strata. He is self-represented.
4. Mr. Williams says the strata has selectively enforced its bylaws and that its strata council and management was corrupt and discriminatory by refusing to enforce its parking bylaws. He says the strata failed to enforce its bylaws for use of parking stalls against other owners and forced him to dispose of a piano he was temporarily storing in his designated parking stall. As remedy, Mr. Williams seeks orders that the strata conduct a special general meeting (SGM) to “change the corrupt [property] manager, councils, and president of strata”, and reimburse him \$4,930 for the cost of his piano.
5. The strata denies it was inconsistent about its bylaw enforcement and says it does not owe Mr. Williams anything for his piano. It also says that an order to change property managers or strata council members would deny strata owners the democratic right to vote. The strata asks that Mr. Williams’ claims be dismissed.
6. For the reasons that follow, I refuse to resolve Mr. Williams’ claims against the strata council, council members, or its property manager, and I dismiss Mr. Williams’ remaining claims.

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. In some respects, the parties in this dispute call into question each other’s credibility. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding

appears to be the most truthful. See *Yas v. Pope*, 2018 BCSC 282, where the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, 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 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.
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 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 Issues

Claims against the Strata Council

12. Mr. Williams says the strata council and management is corrupt, discriminatory and exhibits favouritism when enforcing its bylaws. I note he did not name any strata council members or the property manager as respondents. I find Mr. Williams' claims against the strata council and its members are claims under SPA section 31. Section 31 says that when exercising the powers and performing the duties of the strata corporation, each council member must act honestly and in good faith with a view to the best interests of the strata corporation, and exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances. The court has found that individual strata lot owners do not have standing (legal authority) to make claims for breaches of SPA section 31: see *Rochette v. Bradburn*, 2021 BCSC 1752.

13. *Rochette* is a binding precedent that the CRT must follow, so even though Mr. Williams did not name specific council members as respondents, I refuse to resolve his claims the strata council breached SPA section 31 under CRTA section 10(1), for lack of jurisdiction.

Claims against the Strata's Property Manager

14. I dismiss Mr. Williams' claim against the property manager. I find Mr. Williams has no standing (legal authority) to make a claim against the property manager for duties the property manager may owe to the strata: see *Wong v. AA Property Management Ltd.*, 2013 BCSC 1551, summarized in paragraph 66.

ISSUES

15. The remaining issues in this dispute are as follows:

- a. Did the strata act significantly unfairly towards Mr. Williams?
- b. If not, what remedies, if any, are appropriate?

BACKGROUND, EVIDENCE AND ANALYSIS

16. In a civil proceeding such as this the applicant, Mr. Williams, must prove his claims on a balance of probabilities, meaning more likely than not. 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.

17. The strata was created in December 2006 and continues to exist under the SPA. It is a mixed-use strata corporation consisting of 53 residential and non-residential strata lots in a single building. The strata plan shows the parking stalls are designated as limited common property (LCP), which is common property (CP) designated for the exclusive use of the owners of the individual strata lots as shown on the strata plan. It is undisputed that Mr. Williams has the use of an LCP parking stall (#8) located in the underground parking area.

18. On September 20, 2017, the strata filed a complete new set of bylaws with the Land Title Office (LTO) that excluded the Standard Bylaws under the SPA. I find these bylaws are relevant to this dispute. Subsequent bylaw amendments were filed with the LTO, but I find they are not relevant to this dispute. In particular, I find the bylaw amendment about the use of parking stalls filed in 2021, is not relevant because it was filed after this dispute was commenced. I address the applicable bylaws below as necessary.
19. The basic facts are not in dispute. There are as follows:
20. On about May 11, 2020, Mr. Williams moved a piano into his designated parking stall and chained it to an adjacent concrete column. On May 12, 2020, after Mr. Williams spoke with the strata's property manager, the property manager wrote to Mr. Williams and advised him it had received a complaint and that storing the piano in his parking stall was a violation of bylaw 1.1(a) and (e). I find the reference to bylaw 1.1 was an error and that the reference show have been to bylaw 4.1(a) and (e) as the language of that bylaw is identical to the bylaw cited in the letter. Among other things, bylaws 4.1(a) and (e) say strata lot resident or occupant must not use CP in a way that causes a nuisance or hazard to another person, or is contrary to a purpose for which the strata lot or CP is intended.
21. The letter requested Mr. Williams remove the piano and chain "within 10 days of the date of [the] letter" or by May 22, 2020, failing which the strata would impose fines against him. The letter also advised Mr. Williams that he had 20 days to respond to the complaint or request a hearing. I find nothing turns on the conflicting deadlines contained in the letter as no action was taken by the strata, and Mr. Williams removed the piano by May 20, as noted below.
22. Also on May 12, 2020, Mr. Williams emailed the property manager and their supervisor alleging "selective enforcement" of the strata bylaws stating there were commercial vehicles and trailers parked in parking stalls contrary to the bylaws. Mr. Williams also mentioned an earlier communication with the strata manager about noise from an upstairs neighbour that was not addressed. Given Mr. Williams did not

include a noise complaint in his dispute, I will not address that issue further. It is clear that from the emails that Mr. Williams felt he was not being treated fairly.

23. On Friday, May 14, 2020, Mr. Williams wrote to the property manager and their supervisor giving the strata 3 “options”. The options were to allow the piano to remain for as long a trailer was permitted to remain in parking area, that Mr. Williams would remove the piano after the trailer was removed, or if he removed the piano, he would then start a legal process against the property manager, supervisor, “and everyone else involved”.
24. On May 17, 2020, a strata council member emailed Mr. Williams offering to meet with him and another strata council member to discuss the piano issue. Mr. Williams declined the meeting invitation the same day.
25. On May 19, 2020, Mr. Williams emailed the property manager and council members criticizing the strata’s attempt at arranging a meeting and demanding a response to his earlier email about options by 5 pm that day. Within minutes, the property manager replied stating they had instructions to provide a written response to Mr. Williams and would seek the strata council’s approval on a draft letter that day, before providing the response to Mr. Williams. Mr. Williams replied at about 2 pm that day demanding a response by 3 pm or he would remove the piano and proceed with “the legal process”.
26. At 11:34 am on May 20, 2020, Mr. Williams emailed the property manager and 2 council members advising his piano was removed and that he was moving forward with a CRT dispute application. At 11:59 am, the property manager emailed Mr. Williams a letter stating the strata council had agreed to permit his piano to remain in his parking stall for 2 months as it had reviewed the strata’s bylaws and would put forward amendments at the next annual general meeting (AGM) of the strata.
27. Mr. Williams replied that same day at 12:03 pm stating if the strata wanted him not to file his CRT application that evening, he required something “official” deciding whether all “non-vehicle objects can stay or go”, and an official warning be given to

the property manager about their “continued illegal discriminative behaviours”. Notably, Mr. Williams did not state he disposed of the piano.

28. Five days later on May 25, 2020, Mr. Williams emailed the property manager and 2 council members saying he had not yet filed his CRT application and wanted to give the strata “a second chance to redeem [themselves]”. It was in this email that Mr. Williams first advised that he had disposed of his piano without explaining why he did not attempt to sell it. Mr. Williams also said he had paid \$4,930 to purchase it, move it to the parking stall, and subsequently dispose of it. He offered to “drop the case” if the strata reimbursed him for his expenses among other things.
29. Further emails were exchanged between Mr. Williams and the property manager that did not resolve the issues. On June 14, 2020, the property manager wrote to Mr. Williams stating the strata had already provided its response about his piano and that it had now requested a “full legal review” of its bylaws.
30. Further emails were exchanged, and a council hearing was held on July 12, 2020 to consider Mr. Williams’ request for reimbursement of \$4,930 and that an SGM be held to vote for “a new council and management”. On July 16, 2020 the property manager wrote to Mr. Williams advising the strata had denied both requests.
31. Mr. Williams proceeded to file his CRT application, and the Dispute Notice was issued on July 20, 2020.

Did the strata act significantly unfairly towards Mr. Williams?

32. Under section 26 of the SPA, the strata council, acting on the strata’s behalf, must enforce the strata’s bylaws and rules. Mr. Williams says the strata failed to consistently enforce its bylaws. Put another way, Mr. Williams argues the strata treated him significantly unfairly by asking him to remove a piano from his parking stall while at the same time permitting other parking stall storage violations to occur.
33. However, given the strata ultimately authorized Mr. Williams to store his piano in his parking stall for the 2 months he required, I find this dispute turns on the parties actions leading up to and including the time when Mr. Williams removed his piano.

Specifically, I find I must address whether the strata treated Mr. Williams significantly unfairly during that period. I find I do not need to address the alleged bylaw infractions nor interpret the applicable bylaws to decide this dispute.

34. SPA section 164 sets out the BC Supreme Court's authority to remedy significantly unfair actions. The CRT has jurisdiction over significantly unfair actions under CRTA section 123(2), which has the same language as SPA section 164. See *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164. Significantly unfair means conduct that is oppressive in that it is burdensome, harsh, wrongful, lacking in probity or fair dealing, or done in bad faith, or conduct that is unfairly prejudicial in that it is unjust or inequitable. See *Reid v. Strata Plan LMS 2503*, 2001 BCSC 1578, affirmed in 2003 BCCA 126 and *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173.
35. In order to be successful, Mr. Williams must show that the strata's actions are more than mere prejudice or trifling unfairness. See *Ernest & Twins Ventures (PP) Ltd. v. Strata Plan LMS 3259*, 2004 BCCA 597 and *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126 at paragraphs. 27 to 29. I find he has not done so.
36. As noted in 1 of Mr. Williams' May 12, 2020 emails, he stated his intention was to store the piano in his parking stall for about 2 months before gifting it to a friend. He responded immediately to the strata's May 12, 2020 letter objecting to the strata's request to remove it, however, Mr. Williams did not expressly disagree with the strata's interpretation of bylaw 4.1. Rather he replied that storage of the piano was not contrary to the fire code and suggested parking of commercial vehicles and trailers, which the strata had allowed for other owners, was contrary to bylaw 39.1. Mr. Williams essentially continued this position throughout his communications with the strata.
37. As set out above, Mr. Williams gave the strata arbitrary deadlines to meet his changing demands. Further, the strata's property manager advised Mr. Williams on May 19, 2020, before the strata's original deadline, that a response was forthcoming. However, he chose to remove the piano before he received the strata's response, which would have allowed him to keep the piano in his parking stall for the time he intended.

38. I have considered Mr. Williams' submission that the strata provided its permission to allow the piano to remain **after** Mr. Williams advised he had disposed of it. However, there is no evidence to suggest the strata intentionally waited for Mr. Williams to remove the piano before it wrote to give him permission to temporarily store it in his parking stall. I find the strata's May 19, 2020 email saying a response was coming weighs against such an argument. Further, I find there was no reason for Mr. Williams to remove the piano until he had heard the strata's response, which he knew was coming. Thus, I conclude that Mr. Williams' actions to dispose of the piano were premature and unreasonable.
39. Given Mr. Williams chose to decline the strata council members' offer to meet and instead removed the piano before the strata's original May 22, 2020 deadline, I find the strata cannot be found to have acted in an oppressive or significantly unfair manner towards him.

Remedy

40. As I have found the strata did not treat Mr. Williams significantly unfairly, I decline to the strata to reimburse his claimed piano expenses. Even if I had found the strata acted significantly unfairly, I would not have ordered reimbursement of Mr. Williams' claimed piano expenses because he did not prove what the expenses were, such as by providing paid receipts.
41. I also find that ordering the strata to change its property manager and strata council members would be inappropriate given my findings above. In any event, the strata says that it has held an AGM and elected new strata council members, so the strata as already partially complied with Mr. Williams' requested resolution.
42. For these reasons, I decline Mr. Williams' requested remedies and dismiss his remaining claims.

CRT FEES AND EXPENSES

43. 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. Here, Mr. Williams paid \$225 in CRT fees but was not successful, so I make no order for reimbursement of CRT fees.

44. Neither party claimed dispute-related expenses, so I order none.

ORDERS

45. I refuse to resolve Mr. Williams' claims against the strata council or its members under CRTA section 10(1) for lack of jurisdiction.

46. I dismiss Mr. Williams' remaining claims.

J. Garth Cambrey, Vice Chair