



Civil Resolution Tribunal

Date Issued: March 7, 2022

File: ST-2021-004897

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VIS 2216 v. Hryhorka*, 2022 BCCRT 242

B E T W E E N :

The Owners, Strata Plan VIS 2216

APPLICANT

A N D :

JOHN HRYHORKA

RESPONDENT

A N D :

The Owners, Strata Plan VIS 2216

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. The respondent and applicant by counterclaim, John Hryhorka, owns a strata lot in the applicant strata corporation, The Owners, Strata Plan VIS 2216 (strata). The strata is also the respondent by counterclaim. The strata is represented by a strata council member. Mr. Hryhorka is self-represented.
2. The parties were involved in a previous CRT dispute in 2019. In that dispute, the CRT ordered the strata to investigate and complete repairs in Mr. Hryhorka's strata lot (*Hryhorka v. The Owners, Strata Plan VIS 2216*, 2019 BCCRT 441). The CRT also ordered Mr. Hryhorka to allow the strata access to his strata lot on reasonable notice for the inspection and repairs.
3. In this dispute, the strata alleges that Mr. Hryhorka contravened bylaw 7(1)(b) in the *Strata Property Act* (SPA) schedule of standard bylaws when he refused to allow the strata access to his strata lot during the strata's execution of the CRT's order from the previous CRT dispute. The strata asks the CRT to order Mr. Hryhorka to pay:
 - a. \$400 in bylaw fines for 2 contraventions of bylaw 7(1)(b) on June 27, 2019 and August 21, 2019,
 - b. \$600 to compensate contractors for disruption of schedule and lost wages, and
 - c. \$3,568.61 for the strata's legal fees required to fulfill the CRT order.
4. Mr. Hryhorka disputes the strata's claims and says he reasonably refused entry on June 27, 2019, because the strata was not complying with the CRT order. Mr. Hryhorka says the strata imposing bylaws fines is significantly unfair, excessive, unjustified and retaliatory. He says he provided access on August 21, 2019. Mr. Hryhorka also says the strata's claim for lost contractor wages and legal costs was caused by the strata's own breach of the CRT order.
5. Mr. Hryhorka also filed a counterclaim in this dispute, alleging that the strata failed to comply with the CRT order and claims for "cost recovery and damages". Mr. Hryhorka asks the CRT to order the strata to pay him:

- a. \$469.52 for his proportionate share of the strata's legal costs (\$3,568.61) paid from the strata's contingency reserve fund,
 - b. \$391 he paid to an engineering firm to "address cause & supervision" during the strata's repairs, and
 - c. \$20,000 in punitive damages "to remedy significant unfairness and special costs to reimburse legal costs related to Strata's breaches of CRT order & this proceeding" (reproduced as written).
6. The strata disputes Mr. Hryhorka's counterclaims. The strata says Mr. Hryhorka is not exempt from paying his share of the legal costs incurred to comply with the CRT order. The strata says there was no reason for Mr. Hryhorka to hire an engineer during the strata's repair, and says the expense was unapproved and unwarranted. Finally, the strata says the punitive damages claim is "erroneous and totally without merit".
 7. For the reasons that follow, I dismiss the strata's claim for payment of \$400 in bylaw fines, and I refuse to resolve the parties' remaining claims.

JURISDICTION AND PROCEDURE

8. 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.
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. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction.
11. 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.
12. 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.

ISSUES

13. The issues in this dispute are:
 - a. Does the CRT have jurisdiction to resolve the strata's claims and Mr. Hryhorka's counterclaims?
 - b. If yes, are either of the parties entitled to any of their claimed remedies?

EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, the applicant, whether by claim or counterclaim, must prove their claims on a balance of probabilities (meaning "more likely than not"). I have reviewed all the parties' evidence and submissions but only refer to what is necessary to explain my decision.

Does the CRT have jurisdiction to resolve the strata's claims and Mr. Hryhorka's counterclaims?

15. I asked the parties to provide submissions on whether the CRT has jurisdiction to address the parties' claims because they relate to the enforcement of the CRT order,

and whether the CRT should refuse to resolve the parties' respective claims and this dispute. Both the strata and Mr. Hryhorka say that the CRT should resolve this dispute.

16. The strata says its reason for entering Mr. Hryhorka's strata lot is secondary and inconsequential to its claims. The strata says the CRT order was fulfilled to both parties' satisfaction in August 2019 and the CRT should disregard any comments about enforcement of the CRT order and proceed with the decision-making process, particularly given the time and effort already invested in this dispute.
17. Mr. Hryhorka says the CRT should adjudicate his counterclaims based on significant unfairness. Mr. Hryhorka says he is not seeking an order that the strata be declared in contempt of the CRT order, and says the CRT order is not a live issue. Mr. Hryhorka says if any claims are outside the CRT's jurisdiction, those claims should be removed, and the CRT should proceed to decide any issues within the CRT's jurisdiction.
18. I acknowledge the parties' preference that the issues in this dispute be adjudicated by the CRT. However, as noted above, CRTA section 10 says the CRT must refuse to resolve claims that are outside the CRT's jurisdiction.

Strata's claims

19. The strata seeks orders that Mr. Hryhorka pay \$400 in bylaw fines for refusing entry to his strata lot, \$600 in contractor compensation, and \$3,568.61 in legal fees.

Bylaw fines

20. The strata says it levied the bylaw fines against Mr. Hryhorka for his failure to comply with SPA standard bylaw 7(1)(b) by refusing access to his strata lot on June 27, 2019 and August 21, 2019. I find the CRT has jurisdiction to consider the strata's claim for payment of bylaw fines under CRTA section 121(1)(d), which gives the CRT jurisdiction over a claim for money owing as a fine under the SPA or a bylaw, among other things.

21. Bylaw 7(1)(b) says that an owner must allow a person authorized by the strata to enter the strata lot at a reasonable time on 48 hours written notice to inspect, repair or maintain common property, common assets and any portions of a strata lot that are the responsibility of the strata to repair and maintain under the bylaws or insure under SPA section 149. Bylaw 7(2) says the notice referred to in bylaw 7(1)(b) must include the date and time of entry and the reason for entry.
22. A June 24, 2019 letter from the strata to Mr. Hryhorka advised him that “in accordance with the CRT order” the strata was exercising “that authority to gain access” to his strata lot on June 27, 2019 to continue the work of repairing his ensuite bathroom leak. An August 18, 2019 letter again advised Mr. Hryhorka that the strata was seeking access on August 21, 2019 on the same basis. Neither letter stated that the strata sought access to Mr. Hryhorka’s strata lot under bylaw 7(1)(b).
23. Given the wording of these letters, I find the strata did not give Mr. Hryhorka notice that it sought access pursuant to bylaw 7(1)(b). Even if it did, I find the strata did not seek access to Mr. Hryhorka’s strata lot on that basis. I find that the strata was seeking access to Mr. Hryhorka’s strata lot under the authority of the CRT order. As noted above, the CRT order required Mr. Hryhorka to provide access to his strata lot, on reasonable notice, for the strata to inspect and repair it. I find the strata gave Mr. Hryhorka notice that it sought access to Mr. Hryhorka’s strata lot pursuant to the CRT order and Mr. Hryhorka refused access because he says the strata was not complying with the CRT order.
24. Given the above, I find the strata has no basis to fine Mr. Hryhorka for failing to comply with bylaw 7(1)(b). The strata cannot fine Mr. Hryhorka under bylaw 7(1)(b) for his alleged failure to comply with a CRT order to allow access on reasonable notice. So, I dismiss the strata’s claim for payment of \$400 in bylaw fines.

Contractor costs and legal fees

25. The strata says it had to pay its contractors for the disrupted repair schedule and lost wages when Mr. Hryhorka refused access to his strata lot. The strata also says it had to retain legal counsel to move the CRT order enforcement process forward. The

strata says if Mr. Hryhorka had allowed access, this expense would not have been necessary.

26. As noted above, part of the CRT order required the strata to inspect and repair Mr. Hryhorka's strata lot. It also required Mr. Hryhorka to provide the strata with access, on reasonable notice, for the inspection and repairs. I find that in order for the CRT to determine whether the strata is entitled to either of these claimed remedies, the CRT would have to determine to what extent the strata and Mr. Hryhorka were complying with the CRT order at the time the strata sought access to Mr. Hryhorka's strata lot.
27. Under CRTA sections 57 and 58, only the BC Supreme Court and BC Provincial Court have authority to enforce CRT orders. This means the CRT does not have authority to enforce its own orders. CRTA section 57 says that a CRT final decision may be enforced by filing a validated copy of an order giving effect to the final decision in the Supreme Court, and all proceedings may be taken on that order as if it were a judgment of the Supreme Court. CRTA section 60 says that a person who fails or refuses to comply with a CRT order is liable, on application to the Supreme Court, to be punished for contempt as if in breach of an order or judgment of the Supreme Court. Given these CRTA provisions, I find the CRT does not have jurisdiction to determine whether parties have failed or refused to comply with a CRT order, as this is within the BC Supreme Court's jurisdiction. This means the CRT has no authority to adjudicate proceedings taken on a CRT order, including proceedings for any claimed remedies flowing from any alleged failure to comply with a CRT order.
28. I acknowledge the parties' submissions that the CRT order is no longer at issue. However, the strata's claims for contractor compensation and legal fees are based on the strata's allegation that Mr. Hryhorka did not allow access to his strata lot as required by the CRT order, and as a result they incurred additional costs in enforcing and complying with the CRT order. In other words, the strata alleges that Mr. Hryhorka initially refused to comply with the CRT order, and seeks remedies based on that initial refusal. I find that this issue is outside the CRTA's jurisdiction based on CRTA sections 57 and 60.

29. As noted, CRTA section 10 says that the CRT must refuse to resolve a claim that it considers is not within its jurisdiction. Therefore, I refuse to resolve the strata's claims for contractor costs and legal fees under CRTA section 10.

Mr. Hryhorka's counterclaims

30. Mr. Hryhorka seeks orders that the strata reimburse him \$469.52 for his proportionate share of the strata's legal costs arising from the enforcement of the CRT order and paid from the strata's contingency reserve fund. He also seeks orders that the strata reimburse him \$391 he paid an engineering firm during the strata's investigation and repairs of his strata lot, and \$20,000 in punitive damages for the strata's conduct.

31. With respect to Mr. Hryhorka's claim for reimbursement of his proportionate share of the strata's legal fees to enforce the CRT order, SPA section 189.4, in part, limits the liability of an owner for expenses and judgments in CRT disputes against the strata corporation, including the limits set out in SPA sections 166, 167, and 169. The strata alleges that it incurred legal fees to "move the process forward" after Mr. Hryhorka allegedly refused access to his strata lot. As noted, the CRT order included an order that Mr. Hryhorka provide access on reasonable notice. I find that the issue of whether Mr. Hryhorka's is liable to pay his proportionate share of the strata's legal fees under SPA section 189.4 would require the CRT to determine the strata's reason for incurring those legal fees. This in turn would include determining to what extent, if any, Mr. Hryhorka failed to comply with the CRT order, and the costs the strata incurred as a result.

32. I make the same findings about Mr. Hryhorka's other claimed remedies. I find that Mr. Hryhorka's claim for reimbursement of \$391 he paid to an engineering firm to "address cause & supervise" during the strata's repairs is based on Mr. Hryhorka's allegation that the strata was not complying with the CRT order at the time the investigation and repairs were being carried out. I find this would also require the CRT to determine to what extent the strata complied with the CRT order.

33. As noted, Mr. Hryhorka also claims \$20,000 for punitive damages. He says these are "to remedy significant unfairness and special costs to reimburse legal costs" related

to the strata's breaches of CRT order and this proceeding. On its face, I find this claim flows directly from the strata's alleged conduct in enforcing and complying with the CRT order.

34. In essence, I find Mr. Hryhorka's counterclaims all arise from the steps the strata allegedly took, and the costs he and the strata allegedly incurred, to enforce and comply with the CRT order. As with the strata's claimed remedies discussed above, I find the remedies sought by Mr. Hryhorka require the CRT to determine whether, and to what extent, the strata and Mr. Hryhorka complied with the CRT order. As discussed above, I find that the enforcement of CRT orders, and any proceedings arising from a party's alleged failure to comply with CRT orders, is outside the CRT's jurisdiction based on CRTA section 57 and 60. Given this, I must refuse to resolve Mr. Hryhorka's claims under CRTA section 10.

ORDERS

35. I dismiss the strata's claim for payment of \$400 in bylaw fines.

36. I refuse to resolve the strata's remaining claims and Mr. Hryhorka's claims under CRTA section 10.

Leah Volkers, Tribunal Member