



Civil Resolution Tribunal

Date Issued: March 18, 2022

File: ST-2021-005099

Type: Strata

Civil Resolution Tribunal

Indexed as: *Somji v. Alderson*, 2022 BCCRT 300

B E T W E E N :

FEISAL SOMJI

APPLICANT

A N D :

TIMOTHY ALDERSON and The Owners, Strata Plan KAS 3267

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This is a summary decision of the Civil Resolution Tribunal (CRT).
2. This dispute is about the right to exclusive use of a limited common property (LCP) parking stall.

3. The applicant, Feisal Somji, owns strata lot 5 (SL5) in the respondent strata corporation The Owners, Strata Plan KAS 3267 (strata). Mr. Somji says as SL5's owner he is entitled to exclusive use of parking stall B40, which is designated on the strata plan as LCP for SL5's exclusive use. The other respondent, Timothy Alderson, owns another strata lot in the respondent strata. Mr. Alderson also claims he is entitled to exclusive use of parking stall B40 under a licence agreement with another strata lot owner, who I will refer to as Mr. X.
4. The strata denies any liability for Mr. Somji's claims. Its position is summarized below.
5. Mr. Somji and Mr. Alderson are each self-represented. The strata is represented by a strata council member.
6. Having reviewed the initiating documents and the parties' submissions and evidence, I asked the parties to provide submissions on whether the CRT should resolve this dispute under *Civil Resolution Tribunal Act* (CRTA) sections 10, 11(1)(a) and 11(1)(c). Section 10 says the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. Section 11(1)(a)(i) says the CRT may refuse to resolve a dispute within its jurisdiction if it considers that it would be more appropriate for another legally binding process. Section 11(1)(c) says the CRT may refuse to resolve a dispute that it considers "impractical for the tribunal to case manage or resolve".
7. For the reasons set out below, I refuse to resolve this dispute.

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 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. Should the CRT should refuse to resolve this dispute?

BACKGROUND

13. In making this decision, I have considered all the parties' evidence and submissions, including case law. I only refer to what is necessary to explain my decision. I make no findings about the merits of Mr. Somji's claims.
14. In order to give some factual context to this decision, I have summarized the claims in this dispute and the parties' positions below. However, this is a broad overview and is not intended to reflect to entirety of the parties' respective positions in this dispute.
15. Mr. Somji says that when he purchased SL5 in 2020, the information certificate confirmed that two parking stalls, B40 and B41, were designated as LCP for SL5's exclusive use. Mr. Somji says the other respondent, Mr. Alderson claims to have a contractual right to use B40 and is using B40 without Mr. Somji's consent.

16. Mr. Somji also says the strata is not complying with the *Strata Property Act* (SPA) and the strata's bylaws because it is not ensuring that Mr. Somji can use B40 without interference from Mr. Alderson and other owners. Finally, Mr. Somji says he requested a hearing to address the parking stall issues in dispute. He says the strata has not provided a written decision after the April 28, 2021 hearing as required by SPA section 34.1.
17. Mr. Somji seeks the following orders:
- a. The strata pay Mr. Somji \$30,000 for loss of use and value of his parking stall.
 - b. A declaration that there is no binding private agreement for B40 and an order that Mr. Alderson cannot use parking stall B40 under bylaw 3(5)(o).
 - c. The strata acknowledge that parking stall B40 and B41 are LCP designated for SL5's exclusive use.
 - d. The strata comply with SPA section 26 and 59(5) and take steps to prevent Mr. Alderson and others from using B40 without his permission.
 - e. The strata pay Mr. Somji \$5,000 in damages because of the prejudice caused by its delay and failure to comply with SPA section 34.1.
18. Mr. Alderson says another strata lot owner, Mr. X, entered into a 99-year licence agreement for B40's exclusive use with SL5's former owner in 2010. Mr. X and SL5's former owner are not parties to this CRT dispute. Mr. Alderson says Mr. X assigned the licence agreement to him in 2017, and he paid \$30,000 for it. Mr. Alderson says the assigned licence agreement is binding on Mr. Somji as the new owner of SL5 and gives Mr. Alderson the exclusive right to use B40.
19. Mr. Alderson also says Mr. Somji was aware of the licence agreement when he purchased SL5. He says Mr. Somji's contract of purchase and sale with SL5's former owner acknowledged that there was only one parking stall included in SL5's sale and Mr. Somji agreed to assign his interest in B40's exclusive use by way of the 2010 licence agreement. Mr. Alderson says Mr. Somji signed an acknowledgement

agreement to that effect with SL5's former owner. Mr. Somji says he acknowledged the 2010 licence agreement, but did not agree to be bound by its terms.

20. The strata says it accurately reflected B40 as LCP on the Form B provided to Mr. Somji when he purchased SL5. The strata says it has not breached the SPA or the bylaws and Mr. Somji has not provided any legal basis to seek damages from the strata. The strata says this dispute arises from the contractual right to use B40, and says it is not in a position to determine the validity of the private agreements between Mr. Somji and Mr. Alderson or their predecessors in title. The strata says it will enforce its bylaws contingent on the CRT's findings.

REASONS AND ANALYSIS

Should the CRT refuse to resolve this dispute?

21. For the reasons set out below, I find it is appropriate to refuse to resolve this dispute under CRTA sections 11(1)(a) and 11(1)(c).
22. As noted, under section 10 of the CRT, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. Under section 11(1)(a)(i) the CRT may refuse to resolve a dispute within its jurisdiction if it considers that it would be more appropriate for another legally binding process. Section 11(1)(c) says the CRT may refuse to resolve a dispute that it considers "impractical for the tribunal to case manage or resolve".
23. In his submissions on whether the CRT should refuse to resolve this dispute, Mr. Somji says the CRT should resolve this dispute. Mr. Somji says that the CRT has jurisdiction over this dispute because the issues raised all relate to strata property, and specifically LCP. Mr. Somji says the CRT can adjudicate privity of contract issues, and referenced several CRT decisions that do so. However, all of those contractual issues were decided under the CRT's small claims jurisdiction. As noted, this dispute was filed under the CRT's strata property jurisdiction. In his reply submissions, Mr. Somji also referred to one CRT strata dispute, *Pope v. Yas*, 2019 BCCRT 1350, where he says contract law issues were adjudicated under the CRT's strata

jurisdiction. However, in that dispute the agreement at issue was an alteration agreement between the strata and a former strata lot owner involving the same strata lot. The validity of the alteration agreement itself was not at issue, only its applicability to subsequent strata lot owners. Here, the private agreements are between different strata lot owners and involve LCP. I find the validity of these private agreements, including whether SL5's former owner was entitled to assign SL5's LCP parking stall to a third party under a 99-year licence agreement is likely at issue. I also note that prior CRT decisions are not binding on me. I acknowledge Mr. Somji's preference to have the CRT adjudicate this dispute. However, as I will discuss further below, here I find that it is impractical for the CRT to do so.

24. Mr. Alderson says the CRT should refuse to resolve this dispute because resolving certain issues but not others would potentially result in disjointed litigation. Mr. Alderson says the private agreements are of the utmost importance to this dispute. I agree with Mr. Alderson that the validity of the private agreements are central to this dispute, as I will discuss further below.
25. For its part, the strata says it does not want litigation in slices. It says the CRT should combine its small claims and strata jurisdictions in order to resolve all the issues in this dispute.
26. Alternatively, the strata says if the CRT does not resolve the contractual issues in this dispute, the CRT should refuse to resolve all the issues in this dispute so that a more appropriate legally binding process can be commenced without the complication of a partial decision from the CRT and potential judicial reviews.
27. The CRT cannot combine its strata and small claims jurisdiction. Instead, the CRT could separate the small claims issues in this dispute with the parties' consent and adjudicate them separately. I find it is not appropriate to do so here. Mr. Alderson undisputedly paid \$30,000 for the assigned licence agreement. Therefore, I find the value of the private agreements is in excess of the CRT's small claims jurisdiction \$5,000 monetary limit.

28. The CRT's mandate, as set out in CRTA section 2(2), is to provide dispute resolution services in relation to matters within its authority, in a manner that is accessible, speedy, economical, informal and flexible. Based on this mandate, and the combination of factors explained below, I find that this dispute is more appropriate for the BC Supreme Court (BCSC), and would be impractical for the CRT to resolve.
29. As noted, this dispute raises the issue of whether or not the private agreements between SL5's former owner and Mr. X, and between Mr. X and Mr. Alderson, that assign SL5's LCP parking stall (B40) to others are valid or bind Mr. Somji as SL5's new owner.
30. First, the CRT does not have jurisdiction to determine whether a private contract between a former strata lot owner and another strata lot owner is valid under its strata property jurisdiction. The strata itself is not a party to any of the agreements at issue in this dispute. Second, even if I am wrong and the CRT does have jurisdiction to consider these contractual issues, the primary remedy Mr. Somji seeks is a declaration that the private agreements at issue in this dispute are invalid and unenforceable as against him, as the current owner of SL5 and a non-party to the agreements. Mr. Somji's requested order is a declaratory order. The CRT does not have jurisdiction to grant declaratory orders. Finally, even if the CRT did have jurisdiction to grant declaratory orders, I find it would be procedurally unfair to determine the validity and enforceability of these private agreements without the participation of the parties to those agreements. While Mr. Alderson is a party to this CRT dispute, Mr. X and SL5's former owner are not.
31. Mr. Somji also asks for an order that the strata acknowledge that parking stall B40 and B41 are LCP designated for the exclusive use of SL5, as reflected on the form B information certificate. Mr. Somji and the strata both say that the Form B is accurate. However, given the private agreements at issue in this dispute, the accuracy of the Form B may be live issue in this dispute. SPA section 59(6) says that if the strata provides an inaccurate Form B, the strata, an owner, or another person affected by the Form B may apply to the BC Supreme Court for an order to either give effect to

the Form B or relieve the strata from some or all of the Form B's consequences. Only the BC Supreme Court can make such an order.

32. Mr. Somji's other requested remedies against both Mr. Alderson and the strata all relate to or flow from whether the private agreements are valid and binding on Mr. Somji. Although the CRT has jurisdiction to consider some of Mr. Somji's claims against the strata and Mr. Alderson, I find it would be impractical for the CRT to do so. I find that doing so would not bring finality to the parties' dispute and would likely result in litigation in slices. I find it would be more appropriate for all the issues in this dispute to be addressed by the BC Supreme Court.
33. I find that the combined effect of some of Mr. Somji's requested remedies that are likely outside the CRT's jurisdiction to grant, the live issue of the validity of various private agreements related to parking stall B40, and the other factors discussed above, means that this dispute is impractical for the CRT to resolve and is more appropriate for the BC Supreme Court. For these reasons, I refuse to resolve this dispute under CRTA sections 11(1)(a)(i) and 11(1)(c). I make no findings about the merits of Mr. Somji's claims or this dispute.

ORDER

34. I refuse to resolve this dispute under CRTA sections 11(1)(a)(i) and 11(1)(c).
35. In the circumstances, I direct the CRT to refund Mr. Somji his paid CRT fees.

Leah Volkens, Tribunal Member