



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Gregoire v. The Owners, Strata Plan BCS3859*, 2022 BCCRT 633

B E T W E E N :

JEAN GREGOIRE

APPLICANT

A N D :

The Owners, Strata Plan BCS3859

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about the enforceability of a rental restriction bylaw in a strata corporation.
2. The applicant, Jean Gregoire, co-owns a strata lot in the respondent strata corporation, The Owners, Strata Plan BCS3859 (strata).

3. Mr. Gregoire says that a strata bylaw imposing a restriction on the number of rentals in the strata was not validly passed at the 2014 annual general meeting (AGM) and violates the *Strata Property Act* (SPA). Mr. Gregoire says the bylaw is unenforceable, and he requests an order that the strata “remove” it.
4. The strata admits that it received a legal opinion suggesting the rental restriction bylaw was not initially validly passed and violated the SPA. However, the strata says that any irregularities with the vote at the 2014 AGM were cured when the owners later adopted the bylaw in a resolution passed at the 2016 AGM. The strata says that the wording of the bylaw as it was filed with the Land Title Office (LTO) does not violate the SPA. The strata also says the Civil Resolution Tribunal (CRT) does not have the jurisdiction to grant Mr. Gregoire’s requested order.
5. Mr. Gregoire is self-represented. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

6. These are the CRT’s formal written reasons. 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.
7. 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.

8. 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.
9. 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.
10. As noted, the strata says the CRT does not have jurisdiction to grant Mr. Gregoire's requested remedy to "remove" the rental restriction bylaw. I find that Mr. Gregoire's claim to determine the enforceability of the rental restriction bylaw falls within the CRT's jurisdiction over claims concerning the interpretation or application of a bylaw in section 121(1)(a) of the CRTA. I also find that Mr. Gregoire's request that the strata "remove" the bylaw is essentially a request for an order that the strata stop applying and enforcing the rental restriction bylaw, which I find is an order the CRT has jurisdiction to make under CRTA section 123(1).

ISSUES

11. The issues in this dispute are:
 - a. Was the 2014 AGM vote on the rental restriction bylaw properly held?
 - b. Did the amended rental restriction bylaw violate the SPA?
 - c. Is the current rental restriction bylaw enforceable?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, as the applicant, Mr. Gregoire must prove his claims on a balance of probabilities (meaning "more likely than not"). I note that the strata made submissions but did not provide any evidence in this dispute, despite having the opportunity to do so. I have read all of the parties' evidence and submissions, but I refer only to what I find is necessary to explain my decision.

13. The strata is an air space parcel strata corporation that was created in 2010. It consists of 185 strata lots in a multi-level building.
14. The strata filed bylaw amendments with the LTO on September 24, 2012, which appear to be a complete set of bylaws. At issue in this dispute are bylaw amendments filed with the LTO on July 8, 2014, about rental restrictions.

The 2014 AGM

15. At the strata's June 24, 2014 AGM, the strata put forward a $\frac{3}{4}$ vote resolution to approve bylaw amendments that would limit the number of strata lots that could be rented and set out the procedure to be followed in administering the limit (Resolution "A"). The proposed bylaw relevant to this dispute was:

32.7 The number of strata lots within the strata corporation that may be leased at any one time is limited to 74 (40%).

16. Section 143(2) of the SPA exempts original owners of strata lots that are designated as a rental strata lot on a Rental Disclosure Statement filed before January 1, 2010, from any rental restriction bylaws. The Rental Disclosure Statement in evidence was filed April 10, 2008, and it shows that the owner developer designated all 185 strata lots in the strata as rental strata lots. Therefore, the proposed rental restriction bylaw would not apply any original owners, who purchased their strata lots directly from the owner developer.
17. The 2014 AGM meeting minutes state that there was a discussion about exempting all current owners from Resolution "A", rather than only original owners. The minutes state there was a motion from the floor to amend the resolution to add: "any current owner would be exempted from this rental restriction until such time there was a transfer in the strata lot title". The motion to amend the resolution was passed (63 in favour, 0 opposed, 1 abstained).
18. The meeting minutes also state there was then "further discussion and clarification" that all owners moving forward would be exempt from the rental restriction bylaw until

the strata lot title was transferred. The minutes state that the vote on the amended resolution also passed (47 in favour, 5 opposed, 12 abstained).

19. I have not considered whether the vote on the amended resolution met the required threshold of a $\frac{3}{4}$ vote under SPA section 1(1), as that issue is not before me to decide in this dispute. Since Mr. Gregoire did not dispute it, I accept the vote calculations set out in the minutes.
20. Mr. Gregoire argues the rental restriction bylaw is not enforceable for other reasons. Specifically, he says the amendments to the resolution during the AGM substantially changed the resolution, which is not permitted under the SPA. He also says the amended resolution that passed at the AGM violates the SPA because it improperly restricts some owners from leasing their strata lots. Finally, Mr. Gregoire says the strata improperly filed the bylaw with its original wording, rather than the amended wording that was voted on and approved by the owners.

Did the amendments substantially change the resolution contrary to the SPA?

21. Section 50(2)(a) of the SPA says that during an AGM, amendments can be made to the proposed wording of a resolution requiring a $\frac{3}{4}$ vote if the amendments do not substantially change the resolution.
22. The courts have held that to comply with section 50(2) of the SPA, amendments to resolutions during an AGM must be of a “technical and relatively minor” nature: see *Thiessen v. Strata Plan KAS2162*, 2010 BCSC 464, at paragraph 17. Further, the courts have noted that SPA section 50(2) is concerned with the relative importance of the change in the context of the resolution as a whole: *The Owners, Strata Plan VR2702 (Re)*, 2018 BCSC 390, at paragraph 28.
23. I agree with Mr. Gregoire that changing the proposed bylaw so that all current owners are exempt was a substantial change to the resolution. The number of non-original owners at the time the bylaw was passed is not before me. Nevertheless, on balance, I find exempting current non-original owners from the rental restriction bylaws could significantly impact the number of rented strata lots.

24. I also find the amendment was not a technical or relatively minor change to the resolution. Rather, I find it changed the substance of the bylaw, in that it would no longer apply equally to all owners, but only those who were not current owners at the time of the 2014 AGM. Therefore, I find the amendment contravened SPA section 50(2), and so the rental restriction bylaw, as voted on, was unenforceable.

Did the wording of the amended resolution violate the SPA?

25. Even if the change to the resolution was permitted under section 50(2) of the SPA, for the following reasons I find the wording of the amended resolution exempting all current owners from the rental restriction bylaw would be unenforceable in any event.

26. SPA section 121 says that a bylaw is not enforceable to the extent that it prohibits or restricts the right of an owner to freely lease their strata lot, except as specifically provided by section 141 of the SPA.

27. SPA section 141(2) allows a strata to prohibit strata lot rentals, or to restrict rentals by limiting the number or percentage of strata lots for rent or limiting the rental period. SPA section 141(1) specifically prohibits a strata from restricting strata lot rentals in any other way.

28. So, while SPA section 141 permits the strata to restrict the number of rentals, it cannot otherwise restrict or discriminate between which owners will be subject to the rental restriction bylaw. This conclusion is consistent with the court's findings in *Cowe v. Strata Plan VR1349*, 1994 CanLII 2268 (BC SC), which considered provisions in the previous *Condominium Act* that were similar to SPA section 141.

29. I find the wording of the amended resolution exempting all current owners from the rental restriction bylaw is an impermissible restriction on the rights of some owners to freely lease their strata lot under section 121 of the SPA. This is because all current owners would be permitted to lease their strata lots, but owners who purchased their strata lots after the bylaw was passed would be subject to the 74 strata lot limit. The timing of when an owner purchased their strata lot is not one of the permitted

restrictions under section 141 of the SPA on the right of an owner to freely lease their strata lot. Therefore, I find the rental restriction bylaw, as amended, is unenforceable.

Is the rental restriction bylaw filed with the LTO enforceable?

30. As noted, the strata undisputedly did not file with the LTO, the amended rental restriction bylaw that passed at the 2014 AGM. Instead, the strata filed the original wording of the bylaw contained in Resolution “A”, which was never voted on. On its face, this clearly violates the SPA because the bylaw the strata filed was not approved by a $\frac{3}{4}$ vote, as required by SPA section 128.
31. Nevertheless, the strata says the rental restriction bylaw it filed is enforceable because it does not contain the impermissible wording exempting current owners from the bylaw’s applicability, and the strata says the filed version was later adopted by a $\frac{3}{4}$ vote resolution at the June 28, 2016 AGM.
32. The 2016 AGM meeting minutes show that the strata put forward a $\frac{3}{4}$ vote resolution to amend the strata’s bylaws. The resolution said that, with the exception the rental restriction bylaw (bylaw 32.7 set out above) originally adopted at the 2014 AGM and 2 other bylaws not relevant to this dispute, all previous bylaws are repealed and replaced with the bylaws set out in a Schedule A.
33. Schedule A appears to be a consolidated and complete set of bylaws (2016 Schedule A bylaws). Despite stating that the rental restriction bylaw is not included in the bylaws’ repeal and replacement, it is included in the 2016 Schedule A bylaws, and is re-numbered as bylaw 33.1. Directly above bylaw 33.1 is a bold “Note to Reader” that states this bylaw has not been repealed or amended from when it was first adopted at the 2014 AGM and filed at the LTO, and that it is restated as bylaw 33.1 “for convenience”.
34. The resolution to repeal and replace the strata’s bylaws, except bylaw 33.1 and the 2 other bylaws, was passed (45 in favour, 1 opposed, 2 abstained). The strata filed the resolution and consolidated bylaws with the LTO on July 11, 2016. The filed Form 1 Amendment to Bylaws specifically states the attached schedule of bylaws replaces

all previously adopted bylaws, except as otherwise noted in such bylaws. The full resolution was filed, with the 2016 Schedule A bylaws.

35. Essentially, the strata says that because the rental restriction bylaw was included in the 2016 Schedule A bylaws that were approved by a $\frac{3}{4}$ vote, the owners adopted and validated bylaw 33.1. On that basis, the strata says bylaw 33.1 is enforceable.
36. I note that Mr. Gregoire says the resolution to repeal and replace the strata's bylaws at the 2016 AGM was merely a "tidy up exercise" that did not make material changes to the strata's bylaws. While this may largely be the case, I find the 2016 Schedule A bylaws also include new bylaws that were not included in the strata's bylaws previously filed with the LTO in 2012 or subsequent amendments. For instance, bylaws 43.1 to 43.3 about responsibility for insurance coverage, damage, and the strata's insurance deductible, appear to be new bylaws. Similarly, there are also new bylaws related to strata lot rentals contained in bylaws 33.7 to 33.10 and 33.12, but those bylaws are not before me and are not directly relevant to the issues in this dispute.
37. A strata is permitted to include new bylaws when putting forward a resolution to consolidate its bylaws, as happened here. It is for owners to carefully review a resolution in its entirety and decide whether to vote in favour or against the resolution.
38. In any event, the issue here is the relevance of the strata's explicit exemption of what was previously bylaw 32.7 from being repealed and replaced by the 2016 Schedule A bylaws. In considering this issue, I place significant weight on the fact that the exemption of this bylaw was clearly stated both in the wording of the resolution and in the body of the 2016 Schedule A bylaws.
39. I find that by explicitly stating the rental restriction bylaw (bylaw 32.7) was not being repealed or replaced by the 2016 Schedule A bylaws, the owners did not adopt that bylaw when it voted in favour of the resolution. In other words, I find that even though the rental restriction bylaw was included in the 2016 Schedule A bylaws (as bylaw 33.1), owners would reasonably interpret the statements exempting it to mean that bylaw 33.1 was not included as part of the resolution.

40. This means that the validity of the rental restriction bylaw must be determined by the original resolution introducing the bylaw at the 2014 AGM. Given my conclusions above that the bylaw was improperly amended at the 2014 AGM, that the bylaw wording, as voted on, violated the SPA, and that the bylaw filed at the LTO was not the bylaw approved by the vote, I find the strata's rental restriction bylaw (now bylaw 33.1) is not enforceable.

41. Therefore, I order the strata to immediately stop enforcing bylaw 33.1.

CRT FEES AND EXPENSES

42. 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. As Mr. Gregoire was successful in this dispute, I find he is entitled to reimbursement of \$225 in CRT fees. Neither party claimed dispute-related expenses, so I order none.

43. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Gregoire.

ORDERS

44. I order that the strata must immediately:

- a. Stop enforcing bylaw 33.1.
- b. Reimburse Mr. Gregoire \$225 for CRT fees.

45. Mr. Gregoire is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

46. 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.

Kristin Gardner, Tribunal Member