



# Civil Resolution Tribunal

Date Issued: June 1, 2022

File: ST-2021-008342

Type: Strata

Civil Resolution Tribunal

Indexed as: *Suydam v. The Owners, Strata Plan EPS4233*, 2022 BCCRT 642

**B E T W E E N :**

JAMES SUYDAM

**APPLICANT**

**A N D :**

The Owners, Strata Plan EPS4233

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Micah Carmody

## **INTRODUCTION**

1. This dispute is about strata governance, annual budgets, and the validity of bylaws filed by an owner developer.

2. The applicant, James Suydam, co-owns a strata lot in the respondent strata corporation, The Owners, Strata Plan EPS4233 (strata). Mr. Suydam says some of the strata's bylaws, and all of a section's bylaws, are inconsistent with the *Strata Property Act* (SPA). He seeks orders that those bylaws are invalid and must be rescinded. He also seeks orders that the strata must "redo all annual budgets" that allocate common expenses by section and recalculate strata fees.
3. The strata agrees with the claims and says the Civil Resolution Tribunal (CRT) should make the requested orders. For some requested orders, the strata adds clarifying details.
4. Mr. Suydam represents himself. The strata is represented by its president. The owner developer and the sections were not named as parties in this dispute so they have not participated.
5. For the reasons that follow, I refuse to resolve this dispute under *Civil Resolution Tribunal Act* (CRTA) section 11(1)(b) for failing to disclose a reasonable claim.

## **JURISDICTION AND PROCEDURE**

6. These are the CRT's formal written reasons. The CRT has jurisdiction over strata property claims under CRTA section 121. 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.

## **ISSUES**

10. The threshold issue is whether the CRT should refuse to resolve the dispute under section 11(1)(b) for not disclosing a reasonable claim.
11. If the CRT should resolve the dispute, the issues are:
  - a. Are the strata's original bylaws that created sections based on development phase valid under the SPA and the *Strata Property Regulation* (Regulation)?
  - b. Are the "Section R2" bylaws filed at the LTO on July 5, 2019, valid under the SPA and the Regulation?
  - c. Have contributions to the common expenses been calculated in accordance with the SPA and the Regulation?
  - d. Can these questions be answered without section participation?
  - e. What remedies, if any, are appropriate?

## **BACKGROUND AND EVIDENCE**

12. As the applicant in this civil proceeding, Mr. Suydam must prove his claims on a balance of probabilities, meaning more likely than not. That said, the strata does not dispute any of the claims. I have read all the parties' submissions and evidence but refer only to that which I find relevant to provide context for my decision.

13. The strata was created on October 20, 2017, when the owner developer filed the strata plan in the Land Title Office (LTO). The strata plan is a phased strata plan, which means one deposited in successive phases under part 13 of the SPA as construction proceeds.
14. Phase 1 of the strata includes strata lots 1-42 in 3 buildings. Phase 2 includes strata lots 43-66. Each phase includes residential and nonresidential strata lots. No other phases were included in the strata plan when the evidence was submitted for this dispute.
15. SPA section 120(2) says upon deposit of a strata plan with the LTO, an owner developer may file bylaws that differ from the SPA's standard bylaws. SPA section 245(d) and Regulation section 14.6(2) say the owner developer must set out those bylaws in Form Y.
16. Consistent with those provisions, the owner developer filed bylaws upon depositing the strata plan (2017 bylaws). The 2017 bylaws, in bylaw 11, created sections. Sections are separate legal entities with the same powers and duties as a strata corporation with respect to matters that relate solely to the section. An owner developer may create sections under SPA section 192. The strata can create or cancel sections under SPA section 193.
17. Bylaw 11 is unusual in that it appears to create multiple residential and commercial sections reflecting the phased nature of the development. The bylaws created a section consisting of all residential strata lots in phase 1, referred to as "Section R1 of The Owners, Strata Plan EPS4233". The bylaws created Section R2 for residential strata lots in the next phase, Section R3 for the next, and Section R4 for the next.
18. The 2017 bylaws also created Section C1 for the commercial strata lots in phase 1, Section C2 for the commercial strata lots in the next phase, and Section C3 for the next. There is no section C4.
19. In 2019, the owner developer purported to use Form Y again to file more bylaws, titled "Phase 2 Sections R2 Bylaws as part of EPS4233 Bylaws" (R2 bylaws). The R2

bylaws include a 1-page preamble written for new or prospective purchasers explaining the intention to allocate “costs” by section and, within sections, by type of strata lot. R2 bylaw 14 appears to establish 2 types of strata lots within R2: “apartment strata lots” and “brownstone strata lots”. The bylaw says each will be considered a different type for the purposes of Regulation sections 6.4(2) and 11.2(2). The R2 bylaws describe responsibility for different aspects of R2’s operating budget among the apartment, brownstone, and commercial strata lots. The R2 bylaws refer to section C2’s bylaws, which are not before me. There are also no separate bylaws for sections R1 or C1 before me.

### ***Positions of the Parties***

20. Mr. Suydam says 2017 bylaw 11, which created sections based on phases, is inconsistent with the SPA and the Regulation. SPA section 191(1) says that a strata may have sections only for the purpose of representing the different interests of:

- a. owners of residential strata lots and owners of nonresidential strata lots,
- b. owners of nonresidential strata lots, if they use their strata lots for significantly different purposes, or
- c. owners of different types of residential strata lots.

21. Section 191(2) says that strata lots are different types if they fall within the criteria set out in the Regulation. Regulation section 11.1 says for the purposes of section 191, there are 3 types of residential strata lots: apartment-style strata lots, townhouse-style strata lots, and detached houses.

22. Mr. Suydam says the issue with 2017 bylaw 11 is that rather than creating residential and nonresidential sections, or sections based on different types of residential strata lots, it creates sections based on development phase. He says SPA section 191 and Regulation section 11.1 do not permit the creation of sections based on construction date or development phase.

23. Mr. Suydam says the strata's annual budgets were based on the understanding that the strata had these phased sections. Consequently, Mr. Suydam says, strata fees have been calculated in contravention of SPA section 99. He says there cannot be different budgets for R1 and R2, because they should be part of the same section. The same goes for C1 and C2.
24. Mr. Suydam relies on *The Owners, Strata Plan VR2654 v. Mason*, 2004 BCSC 685. In paragraph 55 of that decision, relying on *Oakley et al v. Strata Plan VIS1098*, 2003 BCSC 1700, the court indicated it was settled law that it is not possible to create sub-sections according to which building or which phase of the development the strata lot belongs.
25. Mr. Suydam submits that he cannot determine what the budgets should have been. He says the only reasonable order from the CRT is for the strata to "redo" the budgets properly and revise the strata fees without the requirement of a resolution passed by owners approving the new budgets.
26. The strata agrees with Mr. Suydam's submissions. It says the owner developer stated in a March 6, 2019 meeting with owners that the SPA contemplated sections to allow owners in different phases of strata plans to avoid responsibility for repair costs and other expenses that occur in other phases of the strata. The strata says this is an incorrect interpretation of the SPA, relying on *Mason*. The strata says owners in one building cannot refuse to pay for repair and maintenance of common property only because that repair and maintenance occurs in a building in which the owners do not reside. In short, the strata says the sections created by the 2017 bylaws are unlawful and budgets for 2019 and beyond must be recalculated. It says it has not been able to determine what the budgets should have been, but it does not explain why.
27. Mr. Suydam also takes issue with the R2 bylaws. He says the SPA and the Regulation do not permit an owner developer to file additional bylaws like the R2 bylaws using Form Y. Mr. Suydam points to Regulation section 13.2, which says if a phase other than the first phase of a phased strata plan is deposited, the bylaws of the strata

established by the deposit of the first phase, together with any amendments, are the bylaws for the new phase.

28. The strata agrees with Mr. Suydam and adds that under SPA section 228(1), when a phase of a phased strata plan is deposited, the land is consolidated, the strata corporation is amalgamated, and the new owners become members of the strata corporation established by the deposit of the strata plan for the first phase. The strata says the owner developer cannot file another Form Y after the strata corporation exists and has held its first AGM. It says a section can only amend bylaws that relate solely to the section, and can only do so by resolution passed by  $\frac{3}{4}$  vote at a section general meeting (SPA section 197). The strata says the R2 bylaws must therefore be declared invalid.

## **ANALYSIS**

### ***Should the CRT resolve some or all of the claims?***

29. This dispute is unusual in that the facts are undisputed and parties agree on all the issues. In the Dispute Response, the strata said it agreed with every claim and every requested resolution, including Mr. Suydam's request that the strata cover his legal costs, which the strata says it agreed to do before he filed his CRT dispute.
30. In submissions, the strata bolsters Mr. Suydam's arguments and says it supports the requested orders, in some cases providing additional specifics. The parties are effectively on the same side, seeking the same thing. This raises the issue of whether there is a real dispute between the parties. As noted above, CRTA section 11(1)(b) allows the CRT to refuse to resolve a claim or dispute if it considers that the request for resolution does not disclose a reasonable claim or is an abuse of process.
31. The CRTA defines a "dispute" as the claims that are to be resolved in a CRT proceeding. It defines a "claim" as any matter that the CRT may resolve. CRTA section 2.1 says the CRT may adjudicate claims in relation to the SPA under Division 4 of Part 10 of the CRTA.

32. CRTA section 2(2) says the CRT's mandate is to provide dispute resolution services in relation to matters within its authority. CRTA section 2(3) says in fulfilling its mandate, the CRT's role is to encourage resolution of disputes by agreement, and if that is not possible, to resolve the dispute by deciding the claims.
33. What I take from these provisions is that the CRT is to resolve disputes by deciding the claims where the dispute is not resolved by agreement. In other words, there must be a live dispute, meaning an unresolved claim or claims to be resolved between opposing parties.
34. I find there is no live dispute between the parties here. There is nothing to resolve because the parties agree about everything. With nothing to resolve, there are no claims as that term is defined in the CRTA.
35. Why, then, has Mr. Suydam started this proceeding? If the strata knows what must be done, why has it not done so? The strata says if it tried to remedy the errors Mr. Suydam points out, without a lawful order, it would create confusion and conflict among the owners. I find that speculative and unsupported by evidence. A strata corporation does not need a CRT order to do what the SPA says it can do. The SPA sets out the process to amend bylaws, including unenforceable bylaws, by holding a vote of the strata ownership at a general meeting
36. Courts have consistently held that judicial review may be refused if it lacks utility or would serve no useful purpose (see *Yang v The Real Estate Council of B.C.*, 2018 BCSC 933, at paragraph 24, affirmed in *Yang v. Real Estate Council of British Columbia*, 2019 BCCA 43). The CRT is not a court and this is not an application for judicial review, but I find the analysis applicable to exercises of discretion under CRTA section 11(1)(b).
37. As noted in *Yang*, the issue of whether there is a real dispute to be resolved overlaps considerably with the legal concept of mootness. In *Borowski v. Canada (Attorney General)*, 1989 CanLII 123 (SCC), the Supreme Court of Canada observed that a court's competence to resolve disputes is rooted in the adversarial system. The requirement of an adversarial context, the court said, is a fundamental tenet of our



legal system and helps ensure that issues are fully argued by parties who have a stake in the outcome. I find this applies equally to CRT disputes, as indicated in the CRTA's provisions giving it the authority to resolve disputes and adjudicate claims. The "dispute" before me does not involve 2 parties with an opposing stake in the outcome, fully arguing the issues. They have, together, argued one side. That the strata is paying Mr. Suydam's legal fees supports this conclusion.

38. In court, the adversarial context may be provided by the presence of interveners with a stake in the outcome. As the development in this phased strata is ongoing, the owner developer appears to have a stake in the outcome of this dispute. The evidence indicates that part of the owner developer's business plan involves owners not being responsible for common expenses attributable to other phases. Yet the owner developer is not a party to this dispute, and so cannot provide the necessary adversarial context. Neither can the sections, who are also not named parties in this dispute.
39. The other rationale from mootness that I find applicable here is the need to conserve the court's (or the CRT's) resources. I find the CRT's mandate to provide dispute resolution services accessibly, quickly and economically is impaired if it is asked to give strata corporations approval before they act. It is not the CRT's role to backstop the legal opinions of strata corporations. There is no provision in the CRTA that allows parties to seek a legal opinion from the CRT.
40. Additionally, I find Mr. Suydam's requested remedies are, in substance, largely declarations, such as declaring bylaws and budgets invalid. Although CRT decisions are not binding on me, I agree with and adopt the vice chair's reasoning in *Fisher v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379, at paragraphs 62-67. I find that the CRT does not generally have jurisdiction to make declaratory orders.
41. In summary, I find the CRT should exercise its discretion not to resolve this dispute because there is no live dispute, no adversarial context, the parties are effectively seeking a legal opinion, and the requested remedies are declaratory orders, which

the CRT generally cannot grant. I find the CRT should refuse to resolve this dispute under CRTA section 11(1)(b).

## **CRT FEES AND EXPENSES**

42. In accordance with the CRTA and the CRT's rules, as Mr. Suydam was unsuccessful I find he is not entitled to any reimbursement of CRT fees. Neither party claimed any dispute-related expenses, and I would not have allowed any.

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

## **ORDER**

44. I refuse to resolve this dispute under CRTA section 11(1)(b).

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Micah Carmody, Tribunal Member