



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Simpson v. The Owners, Strata Plan BCS 3591*, 2022 BCCRT 661

B E T W E E N :

JESSICA SIMPSON

APPLICANT

A N D :

The Owners, Strata Plan BCS 3591

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. Jessica Simpson owns a strata lot in the respondent strata corporation, The Owners, Strata Plan BCS 3591 (strata). Ms. Simpson says that the strata failed to retain her fob records, which prevented her from auditing the performance of a security firm she hired to patrol her strata lot, storage unit, and parking space while she was away. She claims \$5,000 in damages.

2. The strata says that Ms. Simpson's claim is *res judicata*, which means already decided, because she could have made it in 2 previous Civil Resolution Tribunal (CRT) disputes, which were decided together earlier this year (*Simpson v. The Owners, Strata Plan BCS 3591, 2022 BCCRT 317*) (previous dispute). The strata also says that the claim is *res judicata* because she already made a complaint to the Information and Privacy Commissioner (IPC) about the deleted records.
3. In response to the merits of Ms. Simpson's claim, the strata says that the *Strata Property Act* (SPA) only requires it to retain and disclose certain records, which do not include fob records. The strata also says that its bylaws do not provide for a resident to request their own fob records.
4. Ms. Simpson is self-represented. A strata council member represents the strata.
5. For the reasons that follow, I dismiss Ms. Simpson's claim.

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). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.
7. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.
8. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.

9. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the tribunal 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. CRT documents incorrectly show the name of the respondent as The Owners, Strata Plan 3591. Based on section 2 of the SPA, the correct legal name of the strata is The Owners, Strata Plan BCS 3591. Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, I have exercised my discretion under section 61 of the CRTA to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the style of cause above.
11. Ms. Simpson provided 2 pieces of late evidence. Both are email chains with security companies. I find that this evidence goes to Ms. Simpson's damages claim. Because I have dismissed Ms. Simpson's claims, I find that nothing turns on this evidence, so I have admitted it.

The Personal Information Protection Act (PIPA)

12. PIPA is provincial legislation that governs how private organizations, including strata corporations, collect, use, disclose, and destroy personal information. Ms. Simpson does not directly mention PIPA in her submissions, but some of her arguments appear to address issues covered by PIPA. Under PIPA, the IPC makes decisions about PIPA.
13. As mentioned above, section 121 of the CRTA gives the CRT jurisdiction over claims "in respect of" the SPA or a strata's bylaws. I find that claims about whether a strata corporation complied with PIPA is therefore outside the CRT's jurisdiction. Therefore, this decision does not consider what PIPA may have required the strata to do. That would be a matter for the IPC. I have only considered Ms. Simpson's arguments about the strata's obligations to retain and disclose records to the extent they rely on the SPA or the strata's bylaws.

ISSUES

14. The issues in this dispute are:
 - a. Is this claim *res judicata*?
 - b. Did the strata breach its bylaws or the SPA by failing to respond to Ms. Simpson's request for fob records?
 - c. What remedy, if any, is appropriate?

BACKGROUND AND EVIDENCE

15. In a civil claim such as this, Ms. Simpson as the applicant must prove her case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
16. The strata filed a complete set of bylaws in the Land Title Office on March 12, 2019. Relevant to this dispute, bylaw 48.2 says that the strata collects data with respect to the use of each security fob. Bylaw 48.3 says that these records will only be used for law enforcement or bylaw enforcement related to the safety and security of the building and residents. Bylaw 48.5 says that the fob records are kept for 3 months.
17. On December 31, 2020, Ms. Simpson requested an additional security fob from the strata manager. She said she needed it because she planned on hiring a security company to patrol her strata lot, storage locker, and parking stall because she had experienced vandalism and harassment. She later requested additional fobs for the same purpose.
18. On February 12, 2021, Ms. Simpson emailed the strata manager asking for the log for her fobs between January 8 and 20, 2021. The strata manager did not respond, and the records were later deleted as set out in bylaw 48.5.
19. On May 25, 2021, Ms. Simpson complained to the IPC about the strata's failure to respond. In a September 16, 2021 letter, an IPC investigator agreed that the strata had failed to respond within the timeframe set out in PIPA, but took no further action.

20. In her Dispute Notice, Ms. Simpson lists other times she says she emailed the strata with requests that the strata failed to respond to. However, she did not provide the emails in evidence, and they appear to be unrelated to the security fob records at issue in this dispute. She also did not explain how these emails relate to her damages claim, which is specifically about the strata's failure to provide the security fob records and the strata's decision to later delete them. I have therefore not considered these alleged emails in my decision.

ANALYSIS

Is this claim res judicata?

21. The strata argues that Ms. Simpson's claim is *res judicata* and therefore an abuse of process. The strata raises 2 arguments in support of this.

22. First, the strata says the claim is *res judicata* because Ms. Simpson should have raised this issue in the previous disputes. The strata relies on a category of *res judicata* called cause of action estoppel. Cause of action estoppel has 4 requirements.

- a. A court (or tribunal) of competent jurisdiction must have made a final decision in the prior legal proceeding,
- b. The parties in the 2 legal proceedings are the same,
- c. The 2 legal proceedings are not separate and distinct, and
- d. The basis of the current legal proceeding either was argued in the prior legal proceeding or could have been if the parties had exercised reasonable diligence.

See *Cliffs Over Maple Bay (Re)*, 2011 BCCA 180, at paragraph 28.

23. The strata argues that with reasonable diligence, Ms. Simpson also could have raised the document request at issue in this dispute because she raised several strata governance issues in the previous disputes. However, the only document request at

issue in the previous disputes was for a list of owners. There is nothing in the CRT's decision in the previous disputes that suggests that the security fob request was at issue. I find that the strata's interpretation of cause of action estoppel is too broad. The doctrine does not prevent people from bringing multiple legal proceedings against the same respondent about distinct issues, which is what I find happened here. I find that this claim is not *res judicata*.

24. The strata also says that the claim is *res judicata* because Ms. Simpson already made a complaint to the IPC about the destroyed fob records. Here, the strata relies on a different category of *res judicata* called issue estoppel. Issue estoppel has 3 requirements:

- a. The same question has been decided in the 2 legal proceedings,
- b. The previous decision was final, and
- c. The parties are the same.

See *Cliffs Over Maple Bay (Re)*, 2011 BCCA 180, at paragraph 31.

25. I find that the CRT and IPC did not decide the same question. The CRT and the IPC have different authority over a strata corporation's decisions about document retention and disclosure. The CRT may only assess a strata corporation's compliance with the SPA's document disclosure requirements or its bylaws while the IPC may only assess a strata corporation's compliance with PIPA. Therefore, even if the CRT and IPC both assess a strata corporation's handling of the same document disclosure request, they do so from different legal contexts with different potential remedies. The IPC considered the strata's compliance with PIPA's requirements when it failed to respond to Ms. Simpson. In this dispute, the CRT is only concerned with the strata's compliance with the SPA and its bylaws.

26. In summary, I find that Ms. Simpson's claim is not *res judicata* and therefore not an abuse of process.

Did the strata breach its bylaws or the SPA by failing to respond to Ms. Simpson's request for fob records?

27. Ms. Simpson's submissions are very brief. She says that the strata should have provided her with the fob information on request. She says that the strata has consistently failed to respond to her requests.
28. Section 35 of the SPA sets out a lengthy list of records that the strata must either create or retain. Section 36 of the SPA says that the strata must provide access to or copies of any section 35 records to an owner within 2 weeks of a request. In *The Owners, Strata Plan NWS 1018 v. Hamilton*, the court concluded that the CRT has no authority to order production of strata records other than those set out in section 35 of the SPA.
29. Security fob records are not listed in section 35 of the SPA. I therefore find that the SPA did not require the strata to provide Ms. Simpson with a copy of her security fob records on request. While previous CRT decisions are not binding on me, my conclusion is consistent with *Gauthier v. The Owners, Strata Plan LMS 2768*, 2018 BCCRT 6, and *The Owners, Strata Plan EPS 2409 v. Cao*, 2020 BCCRT 466.
30. As for the strata's bylaws, they say nothing about disclosing a resident's own security fob records on request. Rather, they govern how the strata may use the security fob records.
31. With that, I find that neither the SPA nor the strata's bylaws required the strata to provide Ms. Simpson with the security fob records. I dismiss Ms. Simpson's damages claim on this basis. Given my conclusion, I find it unnecessary to consider the strata's other arguments about why Ms. Simpson's claim should be dismissed.

TRIBUNAL FEES AND EXPENSES

32. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Ms. Simpson was unsuccessful, so I dismiss her claim for CRT fees and dispute-related expenses.

33. The strata claims reimbursement of its legal fees. The CRT's authority to order legal fees is limited to "extraordinary circumstances" under rule 9.5(3). CRT rule 9.5(4) says that the CRT may consider the complexity of the dispute, the lawyer's degree of involvement, and whether the other party caused unnecessary delay or expense. CRT rule 9.5(4)(d) says that the CRT may also consider any factor it considers appropriate. Several CRT decisions, such as *Kornylo v. The Owners, Strata Plan VR 2628*, 2019 BCCRT 1387, have noted that the CRT may apply the law of special costs in deciding whether to award legal fees.
34. The strata's only argument about why it should be awarded its legal fees is that the claim is an abuse of process. Above, I found that this claim was not an abuse of process. The strata does not identify any other reason why I should reimburse its legal fees. I find that this dispute was not extraordinary, and dismiss the strata's claim for legal fees.
35. The strata must comply with the provisions in section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Simpson.

DECISION AND ORDERS

36. I dismiss Ms. Simpson's claims, the strata's claim for legal fees, and this dispute.

Eric Regehr, Tribunal Member