



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Wong's Insurance Services Ltd. v. The Owners, Strata Plan LMS 3259*,
2022 BCCRT 831

B E T W E E N :

WONG'S INSURANCE SERVICES LTD.

APPLICANT

A N D :

The Owners, Strata Plan LMS 3259

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. The applicant, Wong's Insurance Services Ltd. (WIS), owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 3259 (strata). This dispute centres around WIS's director, John Wong's, removal from the strata council. WIS says Mr. Wong was wrongly removed from the strata council after a majority vote

resolution at the strata's July 30, 2021 special general meeting (July SGM). It says the strata council incorrectly told the owners that Mr. Wong had a conflict of interest due to his alleged involvement in the sale of parking stall #234 at the strata. WIS seeks the following remedies:

- a. A determination that the July SGM's results are invalid.
 - b. An order to reinstate Mr. Wong's council membership.
 - c. A determination that Mr. Wong and WIS did not have a conflict of interest with respect to parking stall #234's purchase and Mr. Wong's position on the strata council as WIS's corporate representative.
 - d. An order that the strata provide WIS with video and voice recordings from the July SGM and the June 25, 2021 council meeting (June meeting).
 - e. An order that the strata provide it with requested records.
 - f. Reimbursement of \$1,520.45 in legal fees incurred before filing this dispute.
2. The strata says that it acted reasonably in its dealing with WIS and Mr. Wong and WIS's claims should be dismissed. It says that Mr. Wong was removed from the strata council in accordance with the *Strata Property Act* (SPA) and the strata's bylaws. Further, the strata says WIS is essentially seeking a declaration that it and Mr. Wong did not have a conflict of interest and the Civil Resolution Tribunal (CRT) does not have jurisdiction to make declaratory orders. With respect to the requested video and voice recordings, the strata says it does not have any in its possession. For the remaining records' requests, the strata says that the specific records either do not exist, WIS's request is too vague, or that WIS is not entitled to them. Lastly, the strata denies that it is liable to reimburse WIS for its claimed legal expenses.
 3. Mr. Wong represents WIS in this dispute. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the 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.
5. 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.
6. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.
7. 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.
8. 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.
9. In its Dispute Notice, WIS alleged that the strata council refused its August 25, 2021 hearing request. However, WIS does not seek any remedy for this allegation, so I do not address it further in this decision.

ISSUES

10. The issues in this dispute are:

- a. Was the strata significantly unfair to WIS such that I should invalidate the July SGM's results and reinstate Mr. Wong's council membership?
- b. Can I issue a declaration that Mr. Wong and WIS did not have a conflict of interest involving parking stall #234's purchase?
- c. Should I order the strata to produce the requested video and voice recordings?
- d. Should I order the strata to provide WIS with the requested records?
- e. Should the strata reimburse WIS for its claimed legal expenses?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant, WIS must prove its claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submitted evidence and argument but refer only to what I find relevant to provide context for my decision.

Was the strata significantly unfair to WIS?

12. As mentioned, WIS seeks an order invalidating the July SGM's results and reinstating Mr. Wong as a strata council member. It is undisputed that Mr. Wong was elected to the strata's council as WIS's corporate representative at the strata's February 26, 2021 annual general meeting. It is also undisputed that Mr. Wong was removed from the strata council at the July SGM by a majority vote.

13. WIS does not argue, nor does the evidence show, that the strata council failed to follow the proper procedures set out in the strata's bylaws and the SPA for removing Mr. Wong as a council member. Rather, WIS says the July SGM's results are invalid because the strata council incorrectly informed the owners that Mr. Wong had a conflict of interest involving parking stall #234's court ordered sale. WIS also says

that the strata breached SPA section 36 by refusing to provide WIS with a list of strata lot owners and their mailing addresses (list of owners). It says that because of the strata's breach, it was unable to contact the owners ahead of the July SGM to explain why Mr. Wong should not be removed from the council. Though it does not use these exact words, I find WIS essentially argues that these actions by the strata were significantly unfair to it and contributed to Mr. Wong's ultimate removal from the strata council.

14. SPA section 164 sets out the BC Supreme Court's authority to remedy significantly unfair actions. The CRT has jurisdiction over significantly unfair actions under CRTA section 123(2), which has the same legal test as cases under SPA section 164: *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164. The test, established in *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, is as follows:
 - a. What is or was the expectation of the affected owner?
 - b. Was that expectation on the part of the owner objectively reasonable?
 - c. If so, was the expectation violated by an action that was significantly unfair?
15. In *Reid v. The Owners, Strata Plan LMS 2503*, 2001 BCSC 1578, the court defined a significantly unfair action as one that is "burdensome, harsh, wrongful, lacking in probity or fair dealing, or has been done in bad faith".
16. If I find that the strata's actions were significantly unfair to WIS, SPA section 123(2) entitles me to remedy the unfair actions. This can include invalidating the results from the July SGM and reinstating Mr. Wong's council membership, if I find those to be appropriate remedies.

Alleged Conflict of Interest

17. SPA section 32 deals with strata council members' conflict of interests. It says that a conflict of interest may arise in two situations. The first is where a council member has an interest in a contract or transaction with the strata. The other is where a council member has an interest in a matter that is the subject of consideration by council and

the council member's interest in that matter could result in a duty or interest that materially conflicts with that person's duty or interest as a council member. In both situations, a council member must disclose and describe the conflict to the strata council, abstain from voting on the matter, and leave a council meeting when the matter is being discussed or voted on.

18. WIS says that the strata disseminated false information before and during the July SGM when it told the owners that WIS and Mr. Wong had a conflict of interest relating to parking stall #234's purchase. WIS says that Mr. Wong's wife, not WIS or Mr. Wong, was the successful bidder in the court ordered sale of parking stall #234, so there was no conflict of interest. WIS further says that the council's assertion of a conflict of interest is misguided because SPA section 32 does not apply to court ordered sales, and WIS and Mr. Wong were not involved in the purchase in any event. WIS also says that the strata ignored its legal counsel's advice that Mr. Wong was not in a conflict of interest and used the alleged conflict of interest as a reason to remove Mr. Wong from the council.
19. As mentioned, the strata says that Mr. Wong's removal from the strata council was done in accordance with the SPA and the strata's bylaws and is thus valid. It further says that WIS has failed to prove that it and Mr. Wong did not have a conflict of interest.
20. Based on the *Dollan* test mentioned above, I find that WIS had a reasonable expectation that the reasons the strata council provided to the owners for wanting to remove Mr. Wong from the strata council would be based on true facts. Next, I consider whether this expectation was violated by a significantly unfair action by the strata. For the reasons that follow, I find that it was not.
21. The evidence before me includes the July SGM's minutes. The minutes detail the procedures the strata followed in carrying through the vote to remove Mr. Wong from the council. The minutes contain no details about the reasons the strata council gave to the owners for wanting Mr. Wong removed.

22. WIS's evidence includes an April 2, 2022 signed but unsworn affidavit of SC, a former council member. In this affidavit, SC said that the strata council's reason for wanting Mr. Wong removed from the council was related to a legal letter Mr. Wong sent to the other council members. SC's evidence also says that the chairman at the July SGM told the owners that the council members never said Mr. Wong had a conflict of interest, but that he had an "indirect interest". SC goes on to suggest that the strata council had said in their emails and the June meeting minutes that Mr. Wong had either a direct or indirect conflict of interest due to his involvement in parking stall #234's purchase.
23. The June meeting minutes refer to Mr. Wong having a direct or indirect interest in unit #1000, which is the strata lot owned by WIS. The minutes do not show that the strata council stated Mr. Wong had a conflict of interest relating to parking stall #234. The evidence includes June 5, 2021 emails between the council members where they discussed parking stall #234's court ordered sale. It is clear from these emails that some of the council members believed Mr. Wong had bought the parking stall and had a conflict of interest due to his council membership. Mr. Wong clarified in these emails that it was his wife who purchased parking stall #234. I find these emails and the remainder of the evidence do not establish that the strata council told the owners that this alleged conflict of interest was the reason why they wanted Mr. Wong removed from the council.
24. At most, the evidence establishes that the council members told the owners that Mr. Wong had an indirect interest. However, I find SC's affidavit does not specify with sufficient clarity what this indirect interest was in relation to. In any event, even if the strata council had told the owners that Mr. Wong had an indirect interest in parking stall #234's purchase by his wife, I find that WIS has not proven that such an indirect interest did not exist.
25. So, I find the evidence does not prove that the strata council gave the owners untruthful reasons at the July SGM for wanting Mr. Wong removed from council. As a result, I find the strata did not violate WIS's reasonable expectation that the strata council's reasons for wanting Mr. Wong removed would be based on true facts.

Alleged Breach of SPA Section 36

26. As mentioned above, WIS also alleges that the strata failed to provide WIS with the list of owners in breach of SPA section 36. The evidence includes WIS's July 2, 2021 letter to the strata council where WIS requested the full names and mailing addresses of all strata lot owners. The letter did not state that the request was made under any specific SPA provisions. The evidence also includes emails from July 15, 2021 between strata council members discussing WIS's request. In these emails, the council members decided to deny WIS's request unless WIS had a court order in order to protect the owners' personal information.
27. It is undisputed that the strata eventually provided WIS with the list of owners on September 15, 2021, after receiving an August 30, 2021 letter from EC, Mr. Wong's lawyer. As mentioned, WIS says that since the strata council failed to provide the list of owners after its original request, Mr. Wong was unable to contact the owners, especially those who voted by proxy, before the July SGM and explain why he should not be removed from the council. The July SGM's minutes noted there were a total of 126 votes present at the meeting, but the minutes do not specify how many of these votes were by proxy. Of those 126 votes, 99 voted in favour of Mr. Wong's removal from council.
28. The requested list of owners is a record the strata was required to prepare and retain under SPA section 35. SPA section 36 says that if an owner requests a document or record that the strata is obliged to prepare and retain under section 35, the strata must provide that document or record within 2 weeks of the owner's request. I find that the strata breached SPA section 36 by failing to provide WIS with the list of owners within 2 weeks of WIS's July 2, 2021 request. However, I find this breach was not significantly unfair to WIS as it was a technical breach of the SPA.
29. As noted above, the evidence shows that the strata council members denied WIS the list of owners because they believed providing such information could violate the other owners' privacy rights. The evidence does not prove that the strata's refusal to provide the list of owners was done in bad faith. The strata relies on *Mitchell v. The Owners, Strata Plan KAS 1202*, 2015 BCSC 2153 where the court found that strata

councils consist of volunteers who will make mistakes, and within reason, some latitude is justified when scrutinizing their conduct. Though the strata council was wrong to reject WIS's request for the list of owners without a court order, I agree that the council members are entitled to some latitude as found in *Mitchell*.

30. In any event, even if I had found it was significantly unfair for the strata to refuse to provide the list of owners to WIS, I find the proper remedy would be to order the strata to provide the list, which it has already done.
31. For those reasons, I find that the evidence does not establish that there was a significantly unfair action that would warrant the remedy sought by WIS, invalidating the July SGM's results. Even if I had found that the July SGM's results should be invalidated, I would not have ordered Mr. Wong's reinstatement because his term on the council would have ended following the strata's election of a new council at its April 29, 2022 annual general meeting. It is undisputed that Mr. Wong ran for strata council at this meeting and was not elected by the owners. For those reasons, I decline to order Mr. Wong's reinstatement as a strata council member.

Can I issue a declaration that Mr. Wong and WIS did not have a conflict of interest involving parking stall #234's purchase?

32. As mentioned, WIS seeks a determination that WIS and Mr. Wong did not have a conflict of interest with respect to Mr. Wong's wife's purchase of parking stall #234. The strata submits that the CRT has no jurisdiction to make this order because WIS seeks what is known as a declaratory order (an order declaring something) which the CRT cannot make.
33. I find the order sought by WIS is an order for declaratory relief. There is no such power in CRTA section 123, which sets out the specific remedial powers of the CRT in a strata property dispute. As explained in *Fisher v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379, the CRT can only make a declaratory order if it is incidental to a claim for relief over which the CRT has jurisdiction. Had I found above that the strata acted significantly unfairly by incorrectly telling the owners that Mr. Wong and WIS had a conflict of interest, I could have considered making the

requested declaration. However, given my findings above, I find WIS's request for a declaratory order is not incidental to any of its claims in this dispute and is thus outside of the CRT's jurisdiction.

34. CRTA section 10(1) says the CRT must refuse to resolve a claim over which it does not have jurisdiction. I find the CRT has no jurisdiction to make the requested declaratory order. As such, I refuse to resolve that claim.

Should I order the strata to provide WIS with the requested video and voice recordings?

35. As mentioned, WIS requests an order that the strata produce video and voice recordings from the June meeting as well as the July SGM. SPA section 35 does not list video or voice recordings from strata meetings as one of the records strata corporations are obliged to prepare and keep. So, I find there was no statutory obligation for the strata to provide the requested recordings to WIS. WIS admits this. However, it says that the strata specifically agreed at the July SGM to give WIS the requested recordings but has since refused to provide them.
36. The evidence shows that WIS requested the July SGM and June meeting's video and voice recordings in its August 3, 2021 and August 10, 2021 letters, respectively. In its August 24, 2021 letter, the strata's management company replied and said there were no such recordings from the June meeting. The evidence before me does not include the strata's response to WIS's request for the July SGM recordings. However, the strata says that it is not aware of any recordings from this meeting in its possession. In its Dispute Notice, WIS says the strata council claimed the video had been deleted.
37. WIS says that the July SGM's minutes note that the owners voted to allow the strata's office staff to record the meeting. I have reviewed the July SGM's minutes and find that the owners voted not to allow any cameras or recording devices, except the video recorder and voice recorder controlled and operated by the strata's office staff. The minutes do not prove that recordings were made, only that the strata's office staff were allowed their recording devices.

38. In their affidavit, SC said that the July SGM was recorded in whole by the strata's office staff. Though SC does not specifically say that they attended the July SGM, I infer that they did based on the remainder of SC's evidence. Based on SC's evidence, I find that WIS has proven, on balance, that there was some sort of recording made at the July SGM. As mentioned, the strata says that it does not have the requested recordings in its possession. It is unclear whether this means that the recordings have been deleted, or that they are in the possession of some other person or entity.
39. For the reasons that follow, I decline to order the strata to produce the requested video and voice recordings. First, I find WIS has failed to prove that the strata agreed to provide it with any video or voice recordings. This is because there is no evidence of such an agreement before me. The minutes from the July SGM make no note of the alleged agreement, nor does the remainder of the evidence. Second, even if there was evidence that the strata had agreed to provide the requested recordings, I would not order the strata to provide them based on the BC Supreme Court's decision in *The Owners, Strata Plan NWS 1018 v. Hamilton*, 2019 BCSC 863. This was an appeal by a strata corporation of a CRT decision. In *Hamilton*, the court found at paragraph 27 that the CRT's decision to order production of documents not covered by SPA section 35 was inconsistent with existing case law that said owners are not entitled to documents beyond those listed in section 35 (see *Kayne v. The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610). So, I find I cannot order the strata to produce records that it is not required to provide under SPA section 35. As a result, I dismiss WIS's claim for the video and voice recordings.

Should I order the strata to provide WIS with the requested records?

40. WIS says that the strata has refused to provide it with various requested records, in breach of its statutory obligations under SPA sections 35 and 36. In particular, WIS says that the strata has refused to provide it with a copy of the strata's contract with City Base Management Ltd (City Base), the strata's contract with Thomas Tong & Co. Inc. (Tong), and information about the costs incurred by the strata for the July SGM. I discuss each of these requests in more detail below.

City Base and Tong Contracts

41. The evidence shows that on September 24, 2021, WIS wrote to the strata and requested a copy of the strata's contracts with City Base and Tong. The evidence does not include the strata's response to these requests but, in its submissions, the strata says that WIS's request for the City Base contract was too vague. It also says that there is no written contract with Tong.
42. SPA section 35(2)(g) says that the strata must retain copies of all written contracts that the strata is party to. So, to the extent the requested contracts exist, WIS is entitled to them under SPA section 36. The strata relies on the CRT's decision in *Tenten v. The Owners, Strata Plan VR 113*, 2019 BCCRT 1427 in support of its position that WIS's request for the City Base contract was too vague. I do not agree. In *Tenten*, the Vice Chair found the owner's request for "all correspondence including photographs and emails with all parties involved" was too vague. Here, WIS's request was narrower as it specifically named the City Base contract. The strata has not provided any evidence to show that the strata had multiple contracts with City Base at the time of WIS's request, or otherwise explained why it believes WIS's request is too vague. So, I find that WIS's request for the City Base contract was not too vague and the strata unreasonably breached SPA section 36 by failing to provide it to WIS. Even if there are multiple contracts between the strata and City Base, I find it would not be onerous for the strata to provide WIS with all of them. So, I order the strata to provide WIS with copies of all of its contracts with City Base.
43. As mentioned, the strata says that it has no written contract with Tong. The August 27, 2021 council meeting minutes noted that Thomas Tong, chartered accountant, had been appointed as the strata's external accountant and to audit the strata's financial statements. However, there is no evidence before me that a written contract between the strata and Tong exists. So, I decline to order the strata to provide a Tong contract to WIS.
44. A strata corporation is normally allowed to charge up to 25 cents per page for records provided to an owner. However, since the strata has breached SPA section 36 by

refusing to provide the City Base contracts to WIS, I find it is appropriate to order the strata not to charge for any documents it provides as a result of this dispute.

Information about costs incurred for the July SGM

45. On September 27, 2021, WIS made a written request to the strata for information about all costs incurred by the strata in convening the July SGM. The strata says that this is not a request for records under SPA section 36 but rather an interrogatory, that is, a question that WIS requests the strata to answer. The strata says that there is no obligation on it under the SPA or the bylaws to provide WIS with the requested information.
46. As noted in *Tenten* at paragraph 34, the SPA and the *Strata Property Regulation* set out a comprehensive process by which the strata must govern itself, including how the strata council must function, how decisions must be made, and how spending must be executed and reported. The strata must comply with these SPA requirements but does not have to go beyond them unless a bylaw specifies otherwise. I find that there is no SPA provision or applicable bylaw that requires the strata to answer WIS's questions about the costs incurred for the July SGM.
47. Further, as mentioned above, in *Kayne* the BC Supreme Court said that owners are not entitled to documents beyond those listed in SPA section 35. Following the reasoning in *Kayne*, I find the strata is not required to provide the information sought by WIS about the costs incurred for the July SGM and I decline to make the order WIS seeks.

Should the strata reimburse WIS for the claimed legal expenses?

48. As mentioned, WIS claims reimbursement from the strata for \$1,520.45 in legal fees it incurred prior to this dispute. WIS says that because the strata refused to provide WIS with the list of owners, it had to hire a lawyer to get this list from the strata. I have already found above that the strata breached SPA section 36 by failing to provide WIS with the list of owners within 2 weeks of its July 2, 2021 request. I now consider whether the strata's section 36 breach entitles WIS to reimbursement of its claimed legal fees.

49. CRT rule 9.5(3) says the CRT will not order reimbursement of lawyer's fees in a strata dispute unless there are extraordinary circumstances. WIS's claim is for pre-dispute expenses, and not for dispute-related fees, so I assess it on that basis. There is nothing in the SPA or bylaws that makes the strata responsible for WIS's legal fees. However, as noted above, the CRT has jurisdiction to make orders directed at a strata corporation if it is necessary to prevent or remedy a significantly unfair action or decision. I have already found that the strata's breach of SPA section 36 for failing to provide the list of owners was a technical breach and not significantly unfair to WIS. So, I decline to award WIS the claimed legal fees as damages for significant unfairness. Further, legal fees are not generally recoverable as damages: see *Voyer v. C.I.B.C.*, 1986 CanLII 1226 (BCSC). So, I find WIS is not entitled to recover its legal fees.
50. Even if had found WIS was entitled to reimbursement, I would not have ordered the strata to pay WIS the claimed \$1,520.45 in any event because I find WIS has failed to prove that it paid this, or any amount at all, for legal fees. There is no evidence before me that shows how much WIS paid for the legal services it obtained due to the strata's failure to provide the list of owners. I also note that the lawyer's letters in evidence said that the lawyer was acting for Mr. Wong, not WIS. So, there is no evidence that WIS itself had retained a lawyer. For these reasons, I dismiss WIS's reimbursement claim for the legal fees.

CRT FEES AND EXPENSES

51. 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. I see no reason in this case not to follow that general rule. Since WIS was partially successful, I order the strata to reimburse WIS \$125 for a portion of its paid CRT fees. WIS did not claim any dispute-related expenses so I order none.
52. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against WIS.

ORDERS

53. I order that within 14 days of the date of this decision, the strata must:
- a. provide WIS with a copy of all of its written contracts with City Base, and
 - b. pay WIS \$125 for CRT fees.
54. The strata must not charge WIS for documents provided under this order.
55. WIS is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
56. Under CRTA section 10(1), I refuse to resolve WIS's claim for a declaration that WIS and Mr. Wong did not have a conflict of interest. The remainder of WIS's claims are dismissed.
57. 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.

Nav Shukla, Tribunal Member