



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Benitez v. The Owners, Strata Plan NWS3436*, 2022 BCCRT 853

B E T W E E N :

WAYNE A. BENITEZ

APPLICANT

A N D :

The Owners, Strata Plan NWS3436

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about bylaw fines and governance. The applicant, Wayne A. Benitez, co-owns strata lot 38 (SL38) in the respondent strata corporation, The Owners, Strata Plan NWS3436 (strata). Mr. Benitez says the strata enforces its bylaws against him in a biased manner. He seeks orders for the strata to cancel \$1,200 in levied fines and to enforce its bylaws fairly. He also seeks payment of \$5,000 as compensation

for unfair treatment. Mr. Benitez characterized this claim as a dispute-related expense.

2. The strata denies being biased or acting in an unfair manner. However, it says it is willing to cancel \$1,000 in fines from Mr. Benitez's strata lot account. The strata says these fines are out of time under the *Limitation Act*. The strata otherwise disagrees with Mr. Benitez's claims.
3. Mr. Benitez is self-represented. A strata council member represents the strata.
4. For the reasons that follow, I refuse to resolve Mr. Benitez's claims under section 10(1) of the *Civil Resolution Tribunal Act* (CRTA).

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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. I will discuss the CRT's jurisdiction further after outlining the background facts below.

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.

ISSUE

10. The first issue I must consider is whether I have jurisdiction over this dispute.

BACKGROUND AND EVIDENCE

11. In a civil proceeding like this one, the applicant Mr. Benitez must prove his claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
12. As shown in a Land Title Office (LTO) title search, Mr. Benitez has co-owned SL38 in the strata since 2014. The strata's bylaws are also registered in the LTO. It registered a complete set of bylaws in June 2002 and numerous amendments thereafter. The amendments are not relevant to this dispute.
13. Of note, bylaw 45.7 says in part that a resident or owner must not erect or display or permit to be erected or displayed any signs, fences, billboards, placards, advertising, notices or other fixtures of any kind on the common property or in a strata lot, unless authorized by the strata council. Bylaw 28.1 says that the strata may fine an owner or tenant \$200 for each contravention of a bylaw. Bylaw 29.1 says the strata may levy a fine of \$200 for continuing contraventions of a bylaw every 7 days.
14. The strata provided a copy of SL38's account history and a selection of its correspondence with various strata lot owners from 2017 onwards. This evidence

shows that from December 18, 2018 to May 2, 2019, the strata levied 5 separate fines on SL38's account for a prohibited wooden balcony divider. Each fine was for \$200, for a total of \$1,000. The correspondence shows the fines were for breaches of bylaw 45.7, cited above.

15. On August 31, 2021, the strata manager wrote a letter to SL38's owners. The strata manager wrote that the strata council had received a complaint that the owners were displaying political signs on their balcony in contravention of the bylaws. The strata manager warned the owners that the strata could levy a fine of \$200 for the contravention. The strata provided the owners an opportunity to respond within 14 days in writing or by requesting a hearing.
16. An attached, undated photo shows what appears to be 2 election campaign signs displayed over a balcony. The strata plan indicates the corresponding balconies, labelled decks, are limited common property for SL38's exclusive use.
17. SL38's account history shows the strata subsequently levied a fine for the signs on September 8 but reversed it on October 12, 2021. Around this time, the parties exchanged further correspondence and the owners requested a hearing, which the strata held on November 8, 2021. There is no indication in the evidence before me that the strata ever levied another fine in connection with the political signs.

Does the CRT have jurisdiction over this dispute?

18. Mr. Benitez says the strata's president and other council members enforce bylaws in a biased manner. In particular, Mr. Benitez says the council ignores numerous bylaw contraventions by other owners and unfairly targets him for enforcement.
19. I turn to the relevant sections of the *Strata Property Act* (SPA). Section 31 sets out the standard that strata council members must meet in performing their duties. It says that each council member must act honestly and in good faith, with a view to the best interests of the strata, and exercise the care, diligence, and skill of a reasonably prudent person in comparable circumstances.

20. In the non-binding decision of *Ferreira v. The Owners, Strata Plan EPS867*, 2020 BCCRT 239, the CRT Vice Chair considered an owner's allegations against the strata council. The owner alleged that the strata council, among other things, was biased and acted in bad faith. The CRT Vice Chair found that the allegations about the strata council arose under SPA section 31.
21. As Mr. Benitez explicitly alleges bias on the part of strata council members, I find the reasoning in *Ferreira* applies. So, I find his allegations should also be considered under SPA section 31.
22. In *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 at paragraph 267, the BC Supreme Court said that the duties of strata council members under section 31 of the SPA are owed to the strata corporation, and not to individual strata lot owners. This means that a strata lot owner cannot be successful in a claim against a strata corporation for duties owed by its strata council members and that an owner cannot be successful in a claim against council members under section 31.
23. Further, in *Wong v. AA Property Management Ltd*, 2013 BCSC 1551, the BC Supreme Court considered a claim brought by an owner against the property management company, individual council members, and the strata corporation. The owner alleged that the defendants had acted improperly in the management of the strata's affairs. The court concluded that the only time a strata lot owner can sue an individual strata council member is for a breach of the conflict of interest disclosure requirement under section 32 of the SPA (at paragraph 36). Remedies for breaches of SPA section 32 are specifically excluded from the CRT's jurisdiction, as set out in CRTA section 122(1)(a). Thus, the CRT does not have jurisdiction over claims brought by an owner against an individual strata council member.
24. In *Ferreira*, the applicant owner alleged that the strata council was biased, used its own set of rules to apply fines, and did not act in the best interests of the owners. Although individual strata council members were not named as parties, the Vice Chair held that these claims arose under SPA section 31 and *Wong* and *Sze Hang* applied. As such, the CRT had no jurisdiction to decide the owner's section 31 claims.

25. I find the same considerations apply to this dispute. I find that under the binding decisions of *Wong* and *Sze Hang* I have no jurisdiction to decide Mr. Benitez's section 31 claims, as set out above. I therefore must refuse to resolve them under section 10(1) of the CRTA.
26. Mr. Benitez also alleged that the strata breached the *Canadian Charter of Rights and Freedoms*, Part 1 of the Constitution Act, 1982 (Charter) by prohibiting him from displaying political signs. As noted in *Ferreira* at paragraph 13, the *Charter* applies to government and not strata corporations. In any event, Mr. Benitez did not include allegations about breaches of the *Charter* in his application for dispute resolution, so I need not consider them in my decision.
27. For all those reasons, I find that I must refuse to resolve this dispute under section 10(1).

CRT FEES AND EXPENSES

28. 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. As Mr. Benitez was unsuccessful, I find he is not entitled to any reimbursement. The parties did not claim for any specific dispute-related expenses.
29. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Benitez.

ORDER

30. I refuse to resolve this dispute under CRTA section 10(1).

David Jiang, Tribunal Member