



Civil Resolution Tribunal

Date Issued: August 5, 2022

File: ST-2021-006131

Type: Strata

Civil Resolution Tribunal

Indexed as: *Li v. The Owners, Strata Plan 1601*, 2022 BCCRT 889

B E T W E E N :

HONGXIA LI

APPLICANT

A N D :

The Owners, Strata Plan 1601

RESPONDENT

REASONS FOR SUMMARY DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This is a summary decision of the Civil Resolution Tribunal (CRT) refusing to resolve a dispute due to lack of jurisdiction.
2. The applicant, Hongxia Li, operated a café from strata lot 61 which is owned by the respondent strata corporation, The Owners, Strata Plan 1601 (strata). Mrs. Li says

that the strata refused to allow her to sell the café to a prospective purchaser, YZ . She seeks an order that the strata allow her to sell the café to YZ and \$40,000 in damages.

3. The strata says that Mrs. Li's claims are not in respect of the *Strata Property Act* (SPA) and also do not fall within the CRT's small claims jurisdiction.
4. Mrs. Li is represented by her husband, RD, in this dispute. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

5. 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.
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.
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. Under CRTA section 61, the CRT may make any order or give any direction in relation to a CRT proceeding it thinks necessary to achieve the objects of the CRT in accordance with its mandate. The CRT may make such an order on its own initiative, on request by a party, or on recommendation by a case manager.
11. CRT documents incorrectly show the name of the strata as The Owners, Strata Plan, VIS 1601. Based on section 2 of the SPA, the correct legal name of the strata is The Owners, Strata Plan 1601. 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 to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the strata's name above.

ISSUE

12. The issue in this summary decision is whether Mrs. Li's claims fall within the CRT's jurisdiction.

ANALYSIS

13. In a civil claim like this one, the applicant, Mrs. Li must prove her claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision.

Background

14. The following facts are undisputed. Mrs. Li operated a café known as Arbutus Summit Café from SL61. As mentioned, SL61 is owned by the strata. In June 2018, the previous owner of SL61, CLC, entered into a commercial lease agreement with 1138329 B.C. Ltd (113). Sometime after June 2018, the strata purchased SL61 from CLC and became 113's landlord under the lease.

15. The parties have not addressed the relationship between 113 and Mrs. Li. However, based on the parties' submissions, I infer Mrs. Li is an owner or principal of 113. 113 is not a named party in this dispute. Below, I find that Mrs. Li's claims are breach of contract claims against the strata under the lease. The parties to the lease are the strata and 113, not Mrs. Li. However, since I ultimately refuse to resolve Mrs. Li's claims as they are outside the CRT's jurisdiction, I find Mrs. Li's failure to name 113 as an applicant is inconsequential.
16. Clause 4.01 of the lease says, in part, that 113 will not assign the lease without the strata's prior written consent, which consent should not be unreasonably withheld. I find Mrs. Li alleges, in essence, that the strata has unreasonably refused to allow her to assign the lease to YZ, keeping her from selling the café business. Though Mrs. Li claims \$40,000 in damages in her Dispute Notice, in her reply submissions, Mrs. Li says that she has incurred a direct economic loss of over \$60,000 due to the strata's actions.
17. The strata submits that Mrs. Li essentially seeks an order for specific performance under the lease, which is not within the CRT's strata property or small claims jurisdictions. The strata also denies that it breached the lease's terms in any event.
18. The strata further says that Mrs. Li's requested order that the strata allow her to sell the café to YZ is moot since Mrs. Li says in her submissions that YZ has "given up and moved on". A claim is said to be moot if, after a party initiates a claim or proceeding, events occur that affect the parties' relationship so that no "present live controversy" exists (see *Binnarsley v. BCSPCA*, 2016 BCCA 259 at paragraph 22 citing *Borowski v. Canada (Attorney General)*, 1989 CanLII 123 (SCC)). Since I find below that Mrs. Li's claims are outside the CRT's jurisdiction, I find I do not need to decide whether this requested remedy is moot.
19. I now consider whether Mrs. Li's claims are within the CRT's jurisdiction.

CRT's Jurisdiction

20. CRTA section 121(1) sets out the CRT's strata property jurisdiction. It says the CRT has jurisdiction over a claim "in respect of" the SPA. In *Alameer v. Zhang*, 2021 BCCRT 435, the Vice Chair found that a claim "in respect of" the SPA is one that could only proceed by relying on the SPA. Just because a dispute involves strata property, it does not mean that it is a strata property dispute under the CRTA (*Alameer* at paragraph 16). Though the decision is not binding on me, I agree with the Vice Chair's findings in *Alameer*.
21. Mrs. Li did not refer to any SPA provisions or any specific strata bylaws in her Dispute Notice or in her written submissions. As mentioned above, the remedies Mrs. Li seeks in her dispute notice are an order that the strata allow her to sell the café business to YZ and \$40,000 in damages. I find these claims are not claims in respect of the SPA. Rather, I find these are claims based on the strata's alleged breach of the lease's terms, specifically clause 4.01 mentioned above.
22. So, I find Mrs. Li's claims do not fall within the CRT's strata property jurisdiction set out in CRTA section 121(1) because they are not "in respect of" the SPA.
23. Although Mrs. Li started this dispute under the CRT's strata property jurisdiction, I also consider whether her claims fall within the CRT's small claims jurisdiction. The CRT's small claims jurisdiction is set out in CRTA section 118. It includes claims for damages up to a maximum of \$5,000 (see section 3 of the *Tribunal Small Claims Regulation*). Since Mrs. Li's damages claim is over \$5,000, I find it is outside the CRT's small claims jurisdiction.
24. With respect to Mrs. Li's requested order that the strata allow her to sell the café to YZ, I find this is an order seeking specific performance of the commercial lease agreement. Specifically, although the requested remedy is not worded this way, I find Mrs. Li is essentially seeking specific performance of clause 4.01 under the lease to have the strata consent to 113 assigning the lease to YZ.

25. CRTA section 118(1)(c) says that the CRT's small claims jurisdiction includes claims about specific performance of an agreement relating to personal property or services. I find the commercial lease is not an agreement relating to personal property or services. Rather, it is an agreement about real property and control of a business. So, I find Mrs. Li's claim for an order that the strata allow her to sell the café is also outside the CRT's small claims jurisdiction.
26. CRTA section 10(1) says the CRT must refuse to resolve a claim that it considers not within its jurisdiction. Based on that provision, I refuse to resolve Mrs. Li's claims and this dispute.

CRT FEES AND EXPENSES

27. Mrs. Li claims reimbursement for \$225 in CRT fees. Under CRTA section 49 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. Since Mrs. Li was unsuccessful in this dispute, I do not order any reimbursement.

ORDER

28. I refuse to resolve Mrs. Li's claims, and this dispute, under CRTA section 10(1).

Nav Shukla, Tribunal Member