



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Buonassisi v. The Owners, Strata Plan NW 1799*, 2022 BCCRT 944

B E T W E E N :

LEONARDO PETER BUONASSISI

APPLICANT

A N D :

The Owners, Strata Plan NW 1799

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. The applicant, Leonardo Peter Buonassisi, co-owns a strata lot in the respondent strata corporation, The Owners, Strata Plan NW 1799 (strata). Mr. Buonassisi says that the strata removed and discarded his personal belongings from 2 common property storage rooms (CP storage rooms) at the strata. He claims \$4,205 for the allegedly discarded items.

2. The strata says that the CP storage rooms are not for strata residents' personal use. It further says that the strata council did not know which items in the CP storage rooms belonged to Mr. Buonassisi. The strata says Mr. Buonassisi failed to claim his alleged belongings and all unclaimed belongings were discarded.
3. Mr. Buonassisi is self-represented in this dispute. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

4. 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 *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. 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.
7. 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

8. The issue in this dispute is whether the strata owes Mr. Buonassisi the claimed \$4,205 for allegedly discarding his belongings.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant, Mr. Buonassisi must prove his claims on a balance of probabilities (meaning “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.
10. In December 2017, the strata filed a complete set of amended bylaws with the Land Title Office. The strata has filed subsequent amendments to the bylaws since 2017, but I find none of those amendments are relevant here. I discuss the relevant bylaws below.
11. It is undisputed that the 2 CP storage rooms are common property. Contrary to the strata’s submission that the CP storage rooms are not for the strata residents’ personal use, Mr. Buonassisi says the CP storage rooms have been used by strata lot owners since before 1995. Mr. Buonassisi provided various photographs that he says show other strata residents’ belongings in the CP storage rooms. The strata does not dispute that other strata lot owners and residents, in addition to Mr. Buonassisi, stored items in the CP storage rooms.
12. Bylaw 36(4)(e) says that an owner, tenant or occupant shall not use any part of the common property (other than established storage rooms or lockers) for storage, without the written consent of the council. Bylaw 36(1) says that bicycles must be stored in an owner’s designated storage locker, common bike room, or other area as prescribed by the council.
13. The strata plan in evidence labels the CP storage rooms as “manager storage rooms”. Based on the strata plan, I find that the CP storage rooms are “established storage rooms” for the purpose of bylaw 36(4)(e). Since bylaw 36(4)(e) says written consent

is not required for an owner to use an established storage room for storage, I find Mr. Buonassisi was entitled to store his personal belongings, other than bicycles, in the CP storage rooms.

14. I now consider whether the strata must pay Mr. Buonassisi \$4,205 for allegedly discarding his belongings.

Does the strata owe Mr. Buonassisi \$4,205 for allegedly discarding his belongings?

15. Mr. Buonassisi says that on August 20, 2020, the strata distributed a notice advising all strata owners and residents to claim their items from the CP storage rooms and that any unclaimed items would be removed after September 20, 2020. He says that the strata knew what items were his and removed most of his belongings from the CP storage rooms on August 17, 2020. Though not worded this way, I find that Mr. Buonassisi essentially argues that the strata acted significantly unfairly when it allegedly removed and discarded his personal belongings from the CP storage rooms before the September 20, 2020 deadline.
16. Under CRTA section 123(2), the CRT can make orders remedying significantly unfair actions by a strata corporation or a strata council (see *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164). Courts have found that a strata's actions are significantly unfair when they are burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, or are unjust or inequitable (see *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126 and *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44). *Dollan* also established a reasonable expectations test. According to paragraph 28 of *Watson*, the reasonable expectations test asks whether an objectively reasonable expectation by an owner or tenant was violated by a significantly unfair action.
17. I now turn to the evidence which includes an extract from the August 6, 2020 strata council meeting minutes. These minutes note that a final notice would be posted to give owners 1 month to remove items in the CP storage rooms before everything

would be removed. Though these minutes refer to a “final notice” there is no evidence before me of previous notices being issued.

18. The evidence includes the strata’s August 20, 2020 notice to all owners that said that any unclaimed items left in the CP storage rooms after September 20, 2020 would be removed. Based on this August 20, 2020 notice, I find that Mr. Buonassisi had a reasonable expectation that his personal belongings would not be removed from the CP storage rooms until after September 20, 2020.
19. Mr. Buonassisi’s evidence includes a list of 33 items (item list) he says he stored in the CP storage rooms. Some of the items on the item list include 4 bicycles, 2 bar fridges, paintings, chairs, suitcases, kitchenware, various collections of science fiction and fantasy books, lamps, toys, and vinyl records.
20. Mr. Buonassisi says that he went to the CP storage rooms on September 9, 2020 to start removing his belongings, but his items were no longer there. In a September 9, 2020 email, Mr. Buonassisi wrote to MR, the strata council president, and said that he went to the CP storage rooms that day and “pretty well everything” was gone. Mr. Buonassisi asked where his belongings were and when he could expect to receive them back. Mr. Buonassisi says he received a telephone call in response to this email, but that MR did not offer any clear explanation.
21. The strata says that everyone other than Mr. Buonassisi complied with the notice to remove their belongings from the CP storage rooms. However, the strata has not addressed Mr. Buonassisi’s allegation that his belongings were removed on August 17, 2020, before the August 20, 2020 notice was issued. Mr. Buonassisi also has not explained why he believes his belongings were removed on August 17, 2020.
22. The evidence includes undated photographs which Mr. Buonassisi says were taken by VB, the strata’s site manager, on August 17, 2020. One of these photos includes a junk removal truck full of items. I find these photographs do not establish that Mr. Buonassisi’s belongings were removed on August 17, 2020. However, since the strata does not deny that it removed items before September 20, 2020, and given Mr.

Buonassisi's September 9, 2020 email to MR, I find that it is more likely than not that the strata removed items from the CP storage rooms prior to September 20, 2020.

23. The strata says that Mr. Buonassisi has failed to prove that the items on the item list belonged to him. Mr. Buonassisi's evidence includes photographs that he says are of his belongings in the CP storage rooms. However, I find these photographs do not establish that he owned the items on the item list. As submitted by Mr. Buonassisi, the CP storage rooms were used by many strata lot owners, not just him. The items in the photographs are not labelled with Mr. Buonassisi's name or otherwise identified as belonging to him. Further, Mr. Buonassisi has not provided any supporting evidence, such as receipts or photographs of the items in his possession prior to them being put in storage to establish that the items are his.
24. In addition, based on the dates provided by Mr. Buonassisi, the majority of these photographs are from 2015, 2018, and 2019. Even if I were to accept that the photographed items belonged to Mr. Buonassisi, I find that photographs taken between 2015 and 2019 do not prove that the items were still in the CP storage rooms in August 2020 before the strata started removing and discarding items.
25. Mr. Buonassisi relies on a May 13, 2022 email from the strata's former janitor, KM, to say that the strata knew the items in the CP storage rooms were his. In this email, KM says that when she started working at the strata, she was told by J, the site manager at that time, that there were items in the CP storage rooms that belonged to Mr. Buonassisi. She went on to say that she did not recall too much and continued on to list some items she remembered seeing in the CP storage rooms. She ended the email by saying that she had not been in the CP storage rooms "in a while".
26. The strata says, in essence, that KM's email is not reliable evidence because it is an account of a conversation KM had with J many years ago. On balance, I find this email does not establish that Mr. Buonassisi owned the items he claims were in the CP storage rooms in August 2020. Rather, I find this email only establishes KM's recollection that she had been told there were items in the CP storage rooms that belonged to Mr. Buonassisi. KM's recollection of items she saw in the CP storage

rooms does not prove that the items belonged to Mr. Buonassisi since, as mentioned above, it is undisputed that other strata lot owners and residents also used the CP storage rooms.

27. Mr. Buonassisi also relies on a May 7, 2020 email chain between himself and EJ, the strata's community manager, to say that the strata knew the items in the CP storage rooms belonged to him. In this email chain, EJ sent Mr. Buonassisi photographs of items in the strata's various storage rooms after Mr. Buonassisi inquired about some missing items in February 2020. It is unclear if Mr. Buonassisi's \$4,205 claim in this dispute includes a claim for those items he said were missing in February 2020. In any event, I find this email chain does not prove that the strata knew what items in the CP storage rooms belonged to him. Rather, it establishes that Mr. Buonassisi told the strata some of the items in the photographs were his, without specifying which ones.
28. In short, I find the evidence does not establish on a balance of probabilities what items belonged to Mr. Buonassisi and were removed by the strata from the CP storage rooms prior to the September 20, 2020 deadline. So, I find that Mr. Buonassisi has failed to prove that the strata violated his expectation that it would not remove his personal belongings from the CP storage rooms before September 20, 2020. As a result, I find the strata was not significantly unfair to Mr. Buonassisi.
29. Even if I had found that the strata had been significantly unfair to Mr. Buonassisi, I would not have ordered the strata to pay Mr. Buonassisi the \$4,205 he claims. This is because Mr. Buonassisi's only evidence of his claimed damages is the item list where he provided a dollar figure for each item. I find the item list and the dollar values listed in it unreliable for the following reasons.
30. First, the items on this item list are vaguely described. For example, and as mentioned more generally above, the item list includes "misc. vintage toys", "kitchen ware", an "original painting", and "100 vinyl records". The listed items lack the details necessary for me to determine the items' value and Mr. Buonassisi's alleged loss.

31. Further, Mr. Buonassisi says that he obtained the dollar figure for each item online. However, he has not provided any supporting evidence for each individual item's alleged value. Given the lack of details about each claimed item, and the lack of supporting evidence of the items' value, I find that Mr. Buonassisi has failed to prove his alleged damages.

CRT FEES AND EXPENSES

32. 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 Mr. Buonassisi was ultimately unsuccessful, I find he is not entitled to any reimbursement. The strata did not pay any CRT fees or claim any dispute-related expenses, so I order none.

33. The strata must comply with section 189.4 of the *Strata Property Act*, which includes not charging dispute-related expenses against Mr. Buonassisi.

ORDER

34. I dismiss Mr. Buonassisi's claim and this dispute.

Nav Shukla, Tribunal Member