



Civil Resolution Tribunal

Date Issued: September 8, 2022

File: ST-2021-007896

Type: Strata

Civil Resolution Tribunal

Indexed as: *Morrissey v. The Owners, Strata Plan K400*, 2022 BCCRT 994

B E T W E E N :

PAUL MORRISSEY

APPLICANT

A N D :

The Owners, Strata Plan K400

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about a strata corporation's alleged failure to hold a hearing and provide requested records. The applicant, Paul Morrissey, formerly co-owned a strata lot in the respondent strata corporation, The Owners, Strata Plan K400 (strata). Mr. Morrissey says that when he was an owner, he requested a strata council hearing and decision about certain matters, but the strata did not hold a hearing. He says the

strata failed to provide requested copies of strata records on time or at all. Mr. Morrissey also says the strata delayed in providing an information certificate and other information, which caused an anticipated sale of his strata lot to fall through.

2. Mr. Morrissey requests an order that the strata always hold a hearing when required by law, and that the strata supply copies of specific requested correspondence. Mr. Morrissey also claims \$1,468 in damages for extra costs allegedly incurred because the anticipated strata lot sale failed.
3. The strata generally denies Mr. Morrissey's claims. However, beyond this general denial, the strata did provide any submissions or evidence.
4. Mr. Morrissey is self-represented in this dispute. The strata is represented by a strata council member.
5. For the reasons set out below, I allow Mr. Morrissey's claim for the requested correspondence, and I dismiss his other claims.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.

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 respondent as The Owners, Strata Plan KAS 400. Based on section 2 of the *Strata Property Act* (SPA), the correct legal name of the strata is The Owners, Strata Plan K400. Given that 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.
12. The strata advised the CRT that it did not agree with the CRT accepting this dispute, but provided no further explanation. I find the subject matter of this dispute falls within CRTA section 121 strata property jurisdiction, and the evidence does not show a sufficient basis for rejecting it. So, I find the dispute is properly before the CRT.
13. Mr. Morrissey amended his Dispute Notice to withdraw one of his original claims and change the others. The strata did not amend its Dispute Response, despite being given an opportunity to do so.

ISSUES

14. The issues in this dispute are:

- a. Should I order the strata to hold hearings when required by law?
- b. Is Mr. Morrissey entitled to the requested copies of correspondence?
- c. Is the strata responsible for the alleged failure of Mr. Morrissey's strata lot sale, and if so, does the strata owe \$1,468 for resulting expenses?

EVIDENCE AND ANALYSIS

15. In a civil proceeding like this one, as the applicant, Mr. Morrissey must prove his claims on a balance of probabilities (meaning "more likely than not"). I note that Mr. Morrissey describes several long-standing complaints with the strata council and its members about their stewardship of the strata. Many of his complaints appear to have been the subject of a previous CRT decision, *Morrissey v. The Owners, Strata Plan K400*, 2020 BCCRT 592. Further, I find several of the complaints Mr. Morrissey describes are not relevant to the relief he requests in this CRT dispute, so it is not necessary to address them in this decision. I have read and weighed all of the evidence and submissions, but I refer only to that which I find necessary to explain my decision.
16. The strata was created in 1981 and presently exists under the SPA. It consists of 16 townhouse style residential strata lots. The strata repealed and replaced its bylaws in a bylaw amendment filed at the Land Title Office on November 30, 2001. The strata also filed later bylaw amendments, but I find none of them are relevant to this dispute.
17. Land title search documents in evidence confirm that Mr. Morrissey co-owned a strata lot in the strata until early November 2021, when it was sold. SPA section 189.1(1) says that an owner may make a request to the CRT to resolve a strata property dispute. *Downing v Strata Plan VR2356*, 2019 BCSC 1745 confirmed that an "owner" includes a former owner. So, I find Mr. Morrissey has standing to bring this CRT dispute about claims that arose in relation to his strata lot ownership. Further, given that Mr. Morrissey is no longer an owner and he claims that the strata council refused to hold a requested hearing, I direct that the SPA section 189.1(2)(a) requirement to request a council hearing before requesting CRT dispute resolution does not apply.

Should I Order the Strata to Hold Hearings When Required By Law?

18. Strata bylaw 15 says an owner or tenant may request in writing a hearing at a strata council meeting. The strata must hold a requested hearing within 1 month of the request, and must issue any requested decision in writing within 1 week of the hearing. Bylaw 15 largely mirrors the language of SPA section 34.1.
19. Correspondence in evidence shows Mr. Morrissey requested a strata council hearing on June 10, 2021. A June 21, 2021 email shows Mr. Morrissey requested the hearing to discuss his complaints that other owners, including strata council members, had violated strata bylaws, and that the strata had not enforced those bylaws against the owners.
20. Mr. Morrissey says the strata never held the requested hearing. As noted, the strata provided no submissions or evidence beyond a general denial of Mr. Morrissey's claims. Given that the strata does not directly deny that it failed to hold a hearing as required by strata bylaw 15 and SPA section 34.1, I find that the strata failed to hold Mr. Morrissey's requested hearing, which was a breach of those requirements.
21. As noted, Mr. Morrissey requests an order that the strata "must always have a hearing as required by the law." I find his requested remedy would not address or correct any potential harm or prejudice resulting from not having the hearing requested on June 10, 2021, which as noted was about alleged failures and bylaw contraventions of other persons, not himself. Mr. Morrissey also does not directly explain why he is entitled to an order governing the strata's future behaviour, given that he is no longer an owner.
22. I find the strata council is already required to hold hearings under bylaw 15 and SPA section 34.1, and is not permitted to refuse a hearing because it disagrees with the reasons for the request, or on any other basis. On the evidence before me, I find Mr. Morrissey has not proven a clear pattern of strata council failures or refusals to hold required hearings, beyond the single hearing he requested on June 10, 2021. Further, practically speaking, Mr. Morrissey's requested order would not provide him with any

real remedy as a non-owner. So, I find an order for the strata to hold council hearings when required would serve no useful purpose.

23. I dismiss Mr. Morrissey's request for an order that the strata must hold a hearing when required by law.

Is Mr. Morrissey Entitled to the Requested Copies of Correspondence?

24. SPA section 35 sets out certain types of records that the strata must prepare or retain copies of. Section 35(2)(k) says these records include correspondence sent or received by the strata corporation and council. SPA section 36(1) says that on request, the strata must make section 35 records available to a strata lot owner or a person authorized in writing by the owner. SPA section 36(1.1) says the strata must also make requested section 35 records available to a former owner or person authorized in writing by the former owner, where the records relate to the period when the former owner was an owner.
25. In a September 28, 2021 email to a strata council member, DS, Mr. Morrissey asked the strata to email him all correspondence with representatives of CHOA regarding owners selling their strata lots, including any related to realtor requests for information under SPA section 59. I infer that CHOA is the Condominium Home Owners Association of BC. DS replied that they resigned from council that same day. However, the strata does not deny that the strata council received Mr. Morrissey's request, so I find that it did.
26. Based on SPA section 35(2)(k), I find that the requested correspondence with CHOA representatives is a type of record that the strata must retain and provide requested copies of. Under SPA section 36, I find Mr. Morrissey, as a non-owner, is entitled to copies of that CHOA correspondence that relates to the time period when he was an owner. Mr. Morrissey says the strata did not provide those records as requested, which the strata does not directly refute. Further, I find the evidence does not show that the strata provided the requested CHOA correspondence to Mr. Morrissey, or that no such correspondence exists.

27. Having weighed the evidence and submissions, I find the strata did not provide the requested CHOA correspondence to Mr. Morrissey within 2 weeks as required under SPA section 36(3).
28. As noted, Mr. Morrissey requests an order that the strata supply copies of any and all correspondence between CHOA and the strata council, and particularly DS, relating to “Claim #2” and Mr. Morrissey’s strata lot sale. As described in his submissions and discussed below, Mr. Morrissey’s claim #2 is that the strata failed to provide him with complete and timely information about the strata, which allegedly caused a sale of his strata lot to fail. So, I find Mr. Morrissey’s request in this dispute is for CHOA correspondence related to his strata lot sale attempts in 2021. I note that this request’s scope is narrower than his original September 28, 2021 records request.
29. I order the strata to provide Mr. Morrissey with copies of any correspondence between the strata, including the strata council, and the CHOA that relates to his strata lot sale attempts in 2021. I order the strata not to charge Mr. Morrissey a fee for those copies under SPA section 36(4).

Is the Strata Responsible for the Allegedly Failed Strata Lot Sale?

30. SPA section 59 says that within 1 week of request by an owner or a person authorized by an owner, the strata must give the requestor an Information Certificate containing certain information. The certificate is defined in the *Strata Property Regulation* as a “Form B”.
31. In an August 31, 2021 email, Mr. Morrissey’s realtor requested a Form B from the strata, as well as insurance coverage information, meeting minutes, certain resolutions, the strata plan, and strata bylaws, among other information. The strata responded on September 1, 2021 that it would provide the information.
32. Mr. Morrissey says the strata provided a package of information including the Form B on September 9, 2021, but that there were errors and omissions. Specifically, Mr. Morrissey says some meeting minutes and financial information was missing, some

budget line items were incorrect, a CRT order was not mentioned, and insurance information was not provided until September 22, 2021.

33. Mr. Morrissey says that he needed the requested information for a potential sale of his strata lot, and that he had already rented an apartment elsewhere in anticipation of moving after a “quick sale”. He says that the potential sale fell through on September 12, 2021 because the buyer “got fed up waiting” for the requested information. Mr. Morrissey says he was unable to sell the strata lot until 2 months later, and during that time he continued to pay monthly expenses for the strata lot, which he calculates as totalling \$1,468. Mr. Morrissey claims that amount in this dispute, because he says the strata lot sale was delayed by the strata council members’ “deliberate negligence” in failing to provide the requested information by the 1 week deadline or at all. Given that no strata council members are named as parties to this dispute, I find Mr. Morrissey claims that the strata failed to provide the information as required.
34. I find it is not necessary to determine whether the Form B or other requested information was incomplete, inaccurate, or late, and violated the SPA. This is because even if the Form B or other information was deficient or late, I find Mr. Morrissey has not met his burden of proving that this caused the alleged potential sale to fall through, for the following reasons.
35. There is no draft or signed contract of purchase and sale for the strata lot in evidence. There are no witness statements in evidence from Mr. Morrissey’s realtor or the alleged potential buyer, including any evidence about why the alleged potential sale fell through. Other than Mr. Morrissey’s unsupported allegations, I find there is no evidence showing that a potential buyer agreed to purchase the strata lot in late August or early September 2021 and then backed out of the sale. I also find there is no evidence showing that the unnamed buyer would have purchased the strata lot if they had received the allegedly deficient or late information within the 1 week deadline set out in SPA section 59.

36. So, on the evidence before me, I find the strata's alleged failure to provide complete, accurate, and timely information to Mr. Morrissey did not cause the unproven potential strata lot sale to fall through, and did not delay the strata lot's actual sale by 2 months. I find this means the strata is not responsible for 2 months of alleged additional strata lot expenses. I dismiss Mr. Morrissey's claim for \$1,468 in "extra costs."

CRT Fees and Expenses

37. 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. Mr. Morrissey was partly successful in this dispute, so I find he is entitled to reimbursement of half his paid CRT fees, which equals \$112.50. The strata paid no CRT fees, and neither party claimed CRT dispute-related expenses, so I order no further reimbursements.

ORDERS

38. I order that, within 15 days of the date of this decision, the strata provide Mr. Morrissey with copies of any correspondence between a) the strata, including the strata council, and b) the CHOA, which relates to Mr. Morrissey's strata lot sale attempts in 2021. I order the strata not to charge Mr. Morrissey a fee for those copies under SPA section 36(4).

39. I order that, within 30 days of the date of this decision, the strata pay Mr. Morrissey \$112.50 in CRT fees.

40. Mr. Morrissey is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

41. I dismiss Mr. Morrissey's remaining claims.

42. 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.

Chad McCarthy, Tribunal Member