



Civil Resolution Tribunal

Date Issued: October 4, 2022

File: ST-2022-002397

Type: Strata

Civil Resolution Tribunal

Indexed as: *Marisco v. The Owners, Strata Plan Vr204*, 2022 BCCRT 1091

B E T W E E N :

FRANCIS ROBERT MARISCO

APPLICANT

A N D :

The Owners, Strata Plan Vr204

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about bylaw violation fines. The applicant is Francis Robert Marisco. He co-owns strata lot 30 (SL30) in the respondent strata corporation, The Owners, Strata Plan Vr204 (strata). Mr. Marisco's son, CM, was the strata lot's tenant.

2. The strata imposed 2 strata bylaw fines for CM's alleged violations of the strata's noise bylaws. Mr. Marisco says the strata imposed the fines on Mr. Marisco. Mr. Marisco says the strata denied CM "due process" and applied the maximum fine amount without warnings or lesser fines. Mr. Marisco requests an order for the strata to "rescind" the fines, which total \$400. The strata says it properly imposed the fines for CM's bylaw violations, and no one has paid them.
3. Mr. Marisco is self-represented in this dispute. A strata council member represents the strata.
4. For the following reasons, I dismiss Mr. Marisco's claim for lack of standing. In other words, I find he lacks the required authority to file this dispute.

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 *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. 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. Under 189.1(1) of the *Strata Property Act* (SPA), a strata lot owner may request CRT dispute resolution under CRTA section 4 of any strata property matter within the CRT's jurisdiction. CRTA section 4(1) says that a person "who has a claim" may request that the CRT resolve the claim. I found it necessary to address below whether Mr. Marisco is a person "who has a claim" about the disputed issues. This determines whether he has standing to bring this CRT dispute. I find both parties had an opportunity to address whom the strata fined and who needed to pay the fines. So, I find it was not necessary to request further comments from the parties on those topics.

ISSUES

10. The issues in this dispute are:
 - a. Whether Mr. Marisco has standing to bring his claim.
 - b. If so, whether the strata properly imposed the 2 bylaw fines that totalled \$400.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Mr. Marisco, as the applicant, must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read and weighed the parties' evidence and submissions, but I refer only to that which I find necessary to explain my decision.

Does Mr. Marisco Have Standing to Bring His Claim?

12. The strata has existed since 1974, most recently under the SPA. The strata plan shows the strata features a 3-storey building with 36 residential strata lots.

13. First, I will review the history of the noise complaints and related bylaw fines. The strata addressed an October 7, 2021 strata bylaw infraction letter to CM alone. The letter indicated that the strata sent copies to the strata council president and to the SL30 owners. The letter said that noise came from SL30 on 2 occasions, in violation of strata bylaw 3. The strata said it would consider applying bylaw fines. CM was undisputedly SL30's tenant when the noise violations allegedly occurred.
14. I find that bylaw 3(1) prohibits a tenant from causing a nuisance or hazard, causing unreasonable noise, or unreasonably interfering with others' use and enjoyment of a strata lot or common property. I find that bylaw 3(3) requires a tenant to make every reasonable effort not to interfere with others' quiet enjoyment while using strata lots during overnight quiet hours. The infraction letter accused CM of violating each of those bylaw provisions.
15. The infraction letter said that CM could respond to the 2 noise complaints in writing by October 21, 2021. It also said that CM could request a strata council hearing about those complaints by that date. CM admitted in an October 13, 2021 letter that he was listening to music on the dates alleged in the infraction letter. CM said that although he did not think it was too loud, he would have turned it down if asked. I find CM did not request a hearing or deny making noise. Mr. Marisco says CM did not send the letter to the strata council until much later, but I find nothing turns on that.
16. The strata addressed a November 24, 2021 bylaw fine letter to CM alone. The letter indicated that copies were sent to the strata council president, SL30 owners, and "Accounting". The letter said the strata council assessed fines of \$200 for each complaint outlined in the October 7, 2021 infraction letter.
17. Mr. Marisco says a November 24, 2021 strata council letter fined Mr. Marisco \$400 for the 2 bylaw violations. I find there is no such letter in evidence. I find the only letter imposing bylaw fines was the November 24, 2021 strata letter addressed to CM. I find that letter imposed \$400 in bylaw fines against CM alone, and requested payment from CM alone. Further, in a November 28, 2021 letter to the strata council, Mr. Marisco said that the strata fined a person who broke a bylaw. CM was the only

person who allegedly broke strata bylaws. So, I find the letter acknowledges that the strata fined CM, and not Mr. Marisco.

18. Under SPA section 131, if a strata corporation fines a tenant, it may collect the fine from the tenant, the tenant's landlord, or the owner. If the landlord or owner pays the fine, the tenant owes the landlord or owner the amount paid. However, I find none of the evidence or submissions show that the strata requested payment from Mr. Marisco. I also find the evidence does not show that the strata charged the fines to the SL30 strata lot account.
19. In its submissions, the strata says that it wants the "2 fines of \$200 each paid." However, I find the strata does not say who should pay those fines. The submitted evidence shows the strata only requested payment from CM, and no one else. Further, the strata does not counterclaim against Mr. Marisco for payment of the fines.
20. I note that CM is not named as a party to this CRT dispute. I find there is no evidence showing that CM authorized Mr. Marisco to bring this CRT dispute on his behalf, as his agent. There is also no evidence that CM authorized Mr. Marisco to represent CM.
21. For the above reasons, I find the evidence does not show that Mr. Marisco is presently responsible for paying the disputed fines. So, I find Mr. Marisco is not a person "who has a claim" within the meaning of CRTA section 4(1) and SPA section 189.1(1). As a result, I find Mr. Marisco does not have standing to request CRT dispute resolution of this claim in his own name as the sole applicant. I dismiss Mr. Marisco's claim for lack of standing.

CRT Fees and Expenses

22. Under section 49 of the CRTA and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party's CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule.
23. Mr. Marisco made his claim despite the evidence showing that he lacked standing to bring it. I dismissed his claim. I find that means he was unsuccessful in this dispute.

However, the strata paid no CRT fees. Neither party claimed CRT dispute-related expenses. So, I order no reimbursements.

ORDER

24. I dismiss Mr. Marisco's claim, and this dispute.

Chad McCarthy, Tribunal Member