



Civil Resolution Tribunal

Date Issued: November 4, 2022

File: ST-2022-001858

Type: Strata

Civil Resolution Tribunal

Indexed as: *Kirsch v. The Owners, Strata Plan VR320*, 2022 BCCRT 1213

B E T W E E N :

EDUARD KIRSCH

APPLICANT

A N D :

The Owners, Strata Plan VR320

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. The applicant, Edward Kirsch, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan VR320 (strata).
2. Mr. Kirsch says the owners were not given the true facts and options when voting on a resolution to replace the air circulation system at the July 15, 2021 annual general

meeting (AGM). Mr. Kirsch says the strata has not complied with their requests to withdraw false information from the October 12, 2021 strata council meeting minutes and “reprint the facts” about the air circulation system replacement.

3. Mr. Kirsch also says that the strata denied their request for “copies of expenditures and the reasons for”, contrary to *Strata Property Act* (SPA) section 35. Mr. Kirsch alleges the strata council did not act in the best interests of the strata by doing these things.
4. Mr. Kirsch requests orders that the strata:
 - a. Stop reporting false information in the minutes,
 - b. Correct the false information in the October 12, 2021 strata council meeting minutes, and
 - c. Provide Mr. Kirsch and any other owner with “copies of expenditures” and “the reasons for the expenses”.
5. The strata disputes Mr. Kirsch’s claims and asks that they be dismissed.
6. Mr. Kirsch is self-represented. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

7. 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.
8. 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.

9. 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.
10. 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.

SPA section 31 claim

11. As noted, Mr. Kirsch says the strata council has not acted in the best interests of the owners, as required by SPA section 31.
12. 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.
13. In *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 at paragraph 267, the B.C. Supreme Court (BCSC) found that the duties of strata council members under section 31 are owed to the strata corporation, and not to individual strata lot owners. More recently in *Rochette v. Bradburn*, 2021 BCSC 1752 at paragraph 82, the BCSC confirmed that the SPA does not allow a strata owner to sue for violations of section 31. This means that a strata lot owner cannot bring a claim against a strata corporation for duties owed by its strata council members under section 31.
14. The court decisions in *Sze Hang* and *Rochette* are binding precedent. So, following *Sze Hang* and *Rochette*, I find the CRT has no jurisdiction to decide Mr. Kirsch's section 31 claims, as set out above.

15. The CRT's lack of jurisdiction over SPA section 31 claims was specifically addressed in a previous CRT dispute involving the same parties. See *Kirsch v. The Owners, Strata Plan VR 320*, 2019 BCCRT 1403 (ST-2019-003292). In that dispute, a CRT vice chair refused to resolve Mr. Kirsch's dispute to the extent that Mr. Kirsch alleged the strata council had not acted in the best interests of the owners.
16. 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. So, to the extent Mr. Kirsch's claims are based on any strata council members' alleged breaches of SPA section 31, I refuse to resolve it.

Air circulation system

17. As noted, Mr. Kirsch alleges that owners were not given all the information when voting on a resolution to replace the air circulation system at the July 2021 AGM. Mr. Kirsch also made various other allegations about the strata's conduct in dealing with the air circulation system repairs and maintenance in their submissions and evidence, and much of Mr. Kirsch's submissions related to these issues. I also note that many of the allegations mirror the types of allegations Mr. Kirsch advanced against the strata in ST-2019-003292, which related to the replacement of the strata building's fire pump and emergency generator.
18. However, in this current dispute, apart from the requested remedies related to the October 12, 2021 meeting minutes and document requests, Mr. Kirsch did not request any other remedies related to the air circulation system. Therefore, I find none of the other allegations related to the air circulation system are properly before me in this dispute, and I have not addressed them.

\$30,000 claim

19. In their application for dispute resolution, Mr. Kirsch listed \$30,000 in the "amount" field for his requested resolution. However, in their submissions, Mr. Kirsch confirmed

that they are not seeking a \$30,000 monetary award. Therefore, I have not addressed it.

ISSUES

20. The issues in this dispute are:

- a. Should I order the strata to correct the October 12, 2021 strata council meeting minutes and to stop reporting “false information” in meeting minutes?
- b. Did the strata fail to provide requested records and documents to Mr. Kirsch as required by SPA section 35 and 36, and if so, what remedies are appropriate?

EVIDENCE AND ANALYSIS

21. In a civil proceeding such as this one, Mr. Kirsch, as the applicant, must prove their claims on a balance of probabilities (meaning more likely than not). I have reviewed all the parties’ submissions and evidence, but I only refer to what I find relevant to provide context for my decision.

Meeting Minutes

22. Mr. Kirsch says the strata’s October 12, 2021 meeting minutes contain false information about Mr. Kirsch’s efforts to find a repair option that did not involve replacing the entire air circulation system. Mr. Kirsch seeks orders that the strata correct the October 12, 2021 minutes to reflect what Mr. Kirsch alleges was actually done to assess repair options, and stop reporting false information in meeting minutes.

23. SPA section 35(1) requires that minutes be taken at every council meeting, including the results of any votes. Other than that, there are no specific requirements for the minutes. See *Kayne v. The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610 at paragraphs 8 and 23. I find any discussions recorded in the minutes represent the minute-taker’s summary of the discussion and views expressed in a meeting. The October 12, 2021 minutes document the council’s view at that time, rightly or wrongly

held. I therefore find an order to correct the minutes would serve no useful purpose. In any event, the BC Supreme Court has found that preparation of council meeting minutes is a duty within the purview of the council and errors in the minutes do not give rise to a cause of action. See *Wong v. AA Property Management Ltd.*, 2013 BCSC 1551, paragraph 53. I therefore decline to order the strata to correct the October 12, 2021 minutes.

24. Mr. Kirsch also requests an order that the strata stop reporting false information in the meeting minutes. As noted, the CRT has jurisdiction to order parties to stop doing something. Orders of this nature are called injunctions. Given that errors in the minutes do not give rise to a cause of action, I find that alleged “false information” in minutes is not a valid basis for granting Mr. Kirsch’s requested injunctive relief.
25. Further, in *Nova Scotia v. Doucet-Boudreau*, 2003 SCC 62, the Supreme Court of Canada said that an injunction must give the parties proper notice of the obligation imposed on them and clearly define the standard of compliance. This is because injunctions can be enforced by the court in contempt proceedings.
26. I find that different parties may have differing views on what is, or is not, “false information” in meeting minutes. Therefore, I find an order requiring the strata to stop reporting “false information” in meeting minutes lacks the required precision required for an injunction. Given all the above, I decline to order the strata to stop reporting false information in meeting minutes.

Did the strata fail to provide requested records and documents to Mr. Kirsch as required by SPA section 35 and 36?

27. Mr. Kirsch says the strata failed to provide them with requested documents. Specifically, Mr. Kirsch says the strata did not comply with Mr. Kirsch’s request for “financial information, money spent, and “reasons for/invoices” for the strata’s maintenance contractor’s 6 hour visit to the strata building on September 23, 2021. Mr. Kirsch seeks orders that the strata provide him “or any other owner” with copies of “expenditures and the reasons for the expenses”.

28. The evidence shows Mr. Kirsch requested a September 23, 2021 invoice from the strata's maintenance contractor on October 6, 2021. The same day, the strata emailed Mr. Kirsch to advise it had not received the invoice yet, but would provide the invoice in response to Mr. Kirsch's request once it was received. On October 15, 2021, the strata emailed Mr. Kirsch and advised that it was not required to provide invoices, among other records, under SPA sections 35 and 36. The strata advised Mr. Kirsch that effective immediately, it would no longer be producing those records and denied Mr. Kirsch's request for a copy of its maintenance contractor's September 2021 invoice. The strata maintained this decision in a written response following Mr. Kirsch's February 15, 2022 hearing, and also advised Mr. Kirsch that they were free to request the books of account or payment or monthly ledgers for any month. The evidence does not show that Mr. Kirsch requested the strata's books of account or payment or monthly ledgers.
29. Mr. Kirsch says the strata provided previous invoices, so the strata should continue to provide Mr. Kirsch with invoices. However, the fact that the strata has previously provided some invoices does not mean the strata is required to do so, or must continue doing so, under the SPA.
30. The strata's obligation to disclose records and documents is set out in SPA sections 35 and 36. These sections set out what records and documents must be prepared and kept by the strata, and how and by whom this information can be obtained. In *Kayne v. The Owners Strata Plan LMS 2374*, 2007 BCSC 1610, the BC Supreme Court found that a record or document that is not set out in SPA section 35 or 36 is generally not available to an owner.
31. Under SPA section 35(2)(i) the strata must retain the budget and financial statements for the current year and for previous years. In *Kayne*, the court held that an owner was entitled to review books of account and financial statements, but not underlying bills, invoices or receipts reflected in the financial statements. This is because the SPA did not require the strata to retain or produce them.

32. Apart from the September 2021 invoice from the strata's maintenance contractor discussed above, Mr. Kirsch did not identify any specific documents that the strata failed to provide. Based on *Kayne*, I find Mr. Kirsch is not entitled to the September 2021 invoice and I dismiss this part of their claims.
33. Mr. Kirsch also asks the strata to provide the "reasons for the expense". SPA section 35(2)(a) requires the strata to retain the strata's books of accounts showing money received and spent and the reason for the receipt or expenditure. However, I find Mr. Kirsch did not request the strata's books of account. I find SPA section 35(2)(a) requires the strata to record the reasons for any expenditures in its books of accounts. However, apart from the SPA section 35(2)(a) requirement, I find the strata is not required to disclose additional reasons for an invoice under SPA section 35 or 36. Therefore, I find Mr. Kirsch is not entitled to "reasons for the expense", and I dismiss this part of their claims.
34. Part of Mr. Kirsch's requested remedy is for an order that the strata also provide copies of the expenditures and reasons for the expenses to "any other owner". However, Mr. Kirsch is the only applicant in this dispute. Therefore, I decline to order the strata to provide any documents to owners who are not named parties to this dispute.

CRT FEES AND EXPENSES

35. 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. As Mr. Kirsch was unsuccessful, I dismiss their fee claim. The strata did not pay any CRT fees or claim any dispute-related expenses, so I award none.
36. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Mr. Kirsch.

ORDERS

37. I refuse to resolve Mr. Kirsch's SPA section 31 claims under CRTA section 10(1).

38. I dismiss Mr. Kirsch's remaining claims.

Leah Volkers, Tribunal Member