



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Dumitrescu v. The Owners, Strata Plan NES2518*, 2022 BCCRT 1226

B E T W E E N :

GEORGE DUMITRESCU and IULIANA CIOBANU

APPLICANTS

A N D :

The Owners, Strata Plan NES2518

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about alleged significantly unfair treatment of the applicants, George Dumitrescu and Iuliana Ciobanu, by the respondent strata corporation, The Owners, Strata Plan NES2518 (strata). The applicants co-own strata lot 13, known as unit 113, and another person undisputedly owns the strata lot known as unit 128. The applicants say they managed short-term rentals of both unit 113 and 128.

2. The applicants say that numerous strata actions and decisions since 2018 have been significantly unfair to them, involving bylaw fines, strata council hearings, allegedly incorrect public statements, records requests, and others. The applicants claim \$5,000 for “personal damages and humiliation suffered,” without further breakdown. They also claim \$7,218.98 in legal expenses as a “damage-like award” to remedy the strata’s alleged significant unfairness, which they say caused them to need those legal services. The strata says it did not treat the applicants unfairly and owes nothing.
3. Mr. Dumitrescu represents the applicants in this dispute. A strata council member represents the strata.
4. For the following reasons, I dismiss the applicants’ claims.

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. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Although the parties’ submissions each call into question the credibility of the other party to some extent, I find I can properly assess and weigh the written evidence and submissions before me, and that an oral hearing is not necessary in the interests of justice. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always needed where credibility is in issue. Keeping in mind that the CRT’s mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.

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. The CRT granted the applicants an extended deadline to upload evidence and submissions. 4 days before the extended deadline, the CRT alerted the applicants that some of their evidence did not upload correctly. The CRT provided instructions and suggestions about how to check whether the evidence had uploaded correctly. The applicants did not reach out to the CRT with any concerns about evidence uploads, yet some of their evidence remains unreadable. I find the applicants had an adequate opportunity to verify their uploaded evidence and bring any concerns to the CRT, and did not. So, I find the applicants likely chose to proceed knowing that some of their evidence was, or might be, unreadable. Given that the CRT's mandate includes speed and fairness, I found it was not necessary at this late stage to provide additional time to verify and correctly upload evidence. My decision is based on the evidence before me.

Allegations Against Strata Council Members

10. Individual strata council members are not named as parties in this dispute. However, I find that the applicants allege significant unfairness related to alleged bias and bad faith behaviour by present or former strata council members, as discussed below.
11. Section 31 of the *Strata Property Act* (SPA) says that strata council members 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. To the extent that the applicants' claim is about council members' alleged bias, I find that is a claim that those members breached SPA section 31. See

for example the non-binding but persuasive decision *Ferreira v. The Owners, Strata Plan EPS867*, 2020 BCCRT 239.

12. In *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32, the court said at paragraph 267 that strata council members' section 31 duties are owed to the strata corporation, and not to individual strata lot owners. This means an owner cannot successfully claim against a strata corporation for duties owed by its strata council members, and cannot successfully claim against council members under section 31. Further, in *Wong v. AA Property Management Ltd.*, 2013 BCSC 1551, the court concluded that a strata lot owner may only sue an individual strata council member for breaching the SPA section 32 conflict of interest disclosure requirements. CRTA section 122(1)(a) specifically excludes from the CRT's jurisdiction remedies for breaches of SPA section 32, set out in section 33. So, the CRT does not have jurisdiction over owner claims against individual strata council members.
13. Under the binding authority of *Sze Hang* and *Wong*, I find I have no jurisdiction to decide the applicants' section 31 allegations about biased behaviour of one or more individual strata council members. So, I refuse to resolve those aspects of the applicants' claim, under section 10(1) of the CRTA. However, as explained below, my decision will consider whether the strata, including through its strata council, made any significantly unfair decisions or actions as the applicants allege.

ISSUES

14. The issues in this dispute are:
 - a. Whether the strata acted significantly unfairly toward the applicants.
 - b. If so, whether the strata owes \$5,000 for "personal damages and humiliation suffered," and \$7,218.98 for legal expenses as a "damage-like award."

EVIDENCE AND ANALYSIS

15. In a civil proceeding like this one, the applicants must prove their claim 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.
16. The strata consists of townhouse-style residences. A land title document in evidence confirms that the applicants owned unit 113. I find there is no evidence that the applicants were owners, tenants, or occupants of unit 128. Unit 128’s owners are not named as parties to this dispute. Although the applicants say they managed short term rentals at unit 128, I find nothing before me shows that they were responsible for that strata lot, or authorized to represent its owners. So, to the extent that the applicants’ claim involves unit 128, I decline to consider those aspects of the claim because I find the applicants lack standing.
17. As further explained below, based on the applicants’ claim and submissions, I find that they claim damages exclusively for remedying alleged significant unfairness.
18. Under CRTA section 123(1), the CRT can order a party to pay money, which is what the applicants claim in this dispute, or to do or not do something. I find CRTA section 123(2) clarifies how the CRT may make orders addressing significant unfairness. Specifically, CRTA section 123(2) says the CRT may make an order directed at the strata or its council if the order is “necessary to prevent or remedy a significantly unfair action, decision, or exercise of voting rights.”
19. So, given CRTA section 123, I find I have jurisdiction to award monetary damages for significant unfairness where the applicants prove that there is a legal basis for doing so. However, in the circumstances of this dispute, I also find the applicants must show that the claimed damages are necessary to prevent or remedy a significantly unfair strata action or decision. More on that below.

20. In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, the BC Court of Appeal found that a significantly unfair action is one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable.
21. In *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342, the court said that a reasonable expectations test, as described in *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, can form part of a significant unfairness inquiry involving allegedly oppressive conduct. The *Dollan* reasonable expectations test asks: what is the expectation of the affected owner or tenant, was the expectation objectively reasonable, and was it violated by a significantly unfair action? *Dollan* also noted that if a strata decision is made in good faith and on reasonable grounds, there is little room for a finding of significant unfairness merely because the decision adversely affects some owners to the benefit of others.

The Applicants' Claim

22. I find the applicants' submissions clarify that they claim \$5,000 as general compensation for numerous instances of alleged significant unfairness by the strata since 2018, when the applicants began managing short-term strata lot rentals. I address the specific significant unfairness allegations in more detail below. But in this section, I will address the applicants' requested relief more generally.
23. The applicants do not explain how they arrived at the \$5,000 claimed, or how much of that amount is for each, or any, of the alleged instances of significant unfairness. The applicants also say the CRT "must" award the "highest damages possible" without indicating why, or how that amount equals \$5,000. As noted, the applicants also claim \$7,218.98 in legal expenses as a "damage-like award" specifically to remedy alleged significant unfairness.
24. I find the applicants do not claim damages for preventing unfair strata actions or decisions. So, I must consider whether the applicants' claim for damages is necessary to remedy a significantly unfair strata action or decision, under CRTA section 123(2).

25. Although the applicants say the strata behaved incorrectly or improperly, which they say was significantly unfair, I find they do not request a direct remedy for any of those strata actions or decisions. For example, the applicants do not request a refund of strata bylaw fines paid, copies of requested strata records, payment of specific out-of-pocket losses or expenses beyond legal expenses, or other particular significant unfairness remedies. The applicants do not explain why they requested no remedies that would directly cure the particular significant unfairness they allege, other than the legal expense remedy. The applicants do not explain how the claimed \$5,000 lump sum damages would remedy any alleged unfairness at all.
26. I note that the CRT has awarded general monetary damages for significant unfairness in at least one decision. In *Lozjanin v. The Owners, Strata Plan BCS 3577*, 2019 BCCRT 481, a CRT Vice Chair ordered a strata corporation to pay an owner \$1,000 in damages for refusing to hold a hearing that was mandatory under the SPA. Significantly delayed construction activities on that owner's patio had resulted in longstanding and unresolved disruptions in her use of her strata lot, which the owner had repeatedly raised with the strata. The Vice Chair found the strata's lack of communication, and refusing a hearing about those disruptions, was unreasonable and significantly unfair.
27. However, in the later decision *Meybodi v. The Owners, Strata Plan EPS869*, 2021 BCCRT 89, the Vice Chair found that the case was distinguishable from *Lozjanin*. This was because there was no evidence of an ongoing problem impacting the use of the applicant's strata lot, and the strata's communications were reasonable.
28. Although neither decision is binding on me, as in *Meybodi*, I find this dispute is distinguishable from *Lozjanin*. As further explained below, I find the evidence before me does not show an ongoing problem impacting the applicants' use of their strata lot, unreasonable strata communications, or any other continuing interference with the applicants' rights of ownership. Overall, I find that the evidence and submissions fail to prove that the requested \$5,000 in damages is necessary to remedy any alleged significant unfairness, or is capable of doing so at all.

29. However, I find the requested \$7,218.98 for particular out-of-pocket legal expenses, addressed below, might be necessary to compensate the applicants for proven significant unfairness. I find the applicants say they incurred those expenses because the strata council did not comply with the SPA with respect to scheduling a hearing, providing records, enforcing bylaws, and assessing fines, among other reasons. I find that the applicants' submissions do not fully particularize those allegations, and appear to assume that the particulars are obvious from the submitted evidence. I find the particulars of those allegations are neither entirely clear nor obvious.
30. Despite the imperfect clarity and particulars about the damages sought and the significant unfairness alleged, I consider below whether the applicants' submissions and evidence prove that any alleged significant unfairness occurred. This is because that will determine whether the claimed legal expense damages should be awarded. Further, I note that significant unfairness underpins all of the applicants' claims. For the following reasons, I find the applicants have not proven any significant unfairness.

2020 Annual General Meeting (AGM)

31. The applicants' primary concern appears to be about comments made at the strata's 2020 AGM. The applicants say a person, who was a strata council member at the time but no longer is, made incorrect statements about the applicants' short-term rentals. I find a submitted audio recording shows that those statements expressed concerns about the behaviour of short-term renters. In particular, the person said that from outside a strata lot, they witnessed renters engaged in certain private, personal activities inside the strata lot. I find it is unclear from the audio recording which strata lot the council member observed. The applicants also say another strata lot owner at the AGM incorrectly stated that the applicants' renters had acted unreasonably and noisily near that owner's strata lot.
32. I find that claims of libel or slander are not claims "in respect of the SPA" and so are not within the CRT's strata property jurisdiction. Those claims are also excluded from the CRT's small claims jurisdiction under CRTA section 119. So, to the extent the applicants claim that their reputations were damaged by untrue "humiliating"

statements made at the 2020 AGM, I decline to consider those allegations for lack of jurisdiction.

33. Further, the statements at issue were about the alleged activities of short-term renters, and not the applicants. Although I find the statements may have suggested that the applicants had not adequately monitored their renters' behaviour, I find the applicants do not adequately explain how this resulted in the applicants' "humiliation."
34. Neither the other owner nor the strata council member who made the statements are named as parties in this dispute. As noted, claims of bias against individual strata council members are outside of the CRT's jurisdiction. Further, nothing before me suggests that the strata is responsible for an owner's statements.
35. The applicants say that it was significantly unfair for the strata not to denounce and distance itself from the allegedly incorrect statements. I find nothing before me shows that the SPA, strata bylaws, or anything else required the strata to denounce and distance itself from those statements. Further, contrary to the applicants' assertion, I find the evidence does not show that the strata's lack of denunciation was "tacit approval" of the statements. The applicants also say that the strata council member was speaking on behalf of the strata council when making the disputed statement. I find the evidence before me does not support that, and I find that the member's statement was not a decision or action of the strata.
36. So, I find it was not reasonable for the applicants to expect the strata to denounce the 2020 AGM statements at issue, even if they were untrue, which I make no findings about. I find the strata did not act significantly unfairly in the circumstances.

Parking Bylaw Fines

37. The applicants allege they were unfairly targeted with fines for violating the strata's parking bylaws, while the strata did not enforce those bylaws against others. However, the applicants do not deny, and I find submitted strata correspondence confirms, that the strata cancelled all bylaw fines against the applicants except for a single parking violation fine. I find there is no evidence showing that this single parking

violation did not occur. I note that the applicants have the burden of proof in this dispute.

38. The applicants submitted several photos of vehicles parked on strata roadways, allegedly in violation of the strata's parking bylaws. The applicants do not refute the strata's submission that its parking enforcement is complaint-driven, so I accept that as true. I find the evidence before me does not show that anyone specifically complained to the strata and requested timely parking enforcement for the violations allegedly shown in the submitted photos, save for a single complaint by the applicants in late September 2020. Further, the applicants do not directly dispute the strata's submitted list of bylaw infraction letters. I find that list shows many strata bylaw enforcement activities against other strata lot owners from 2018 onward, including for parking bylaw infractions.
39. For the above reasons, I find the applicants have not proven that the strata failed to adequately respond to other parking complaints, or that its parking enforcement was significantly unfair to the applicants.

Hearings, Council Membership, Furnace Alteration, Records

40. The applicants say the strata failed to properly document decisions made at strata council meetings, and did not conduct them correctly under the SPA and strata bylaws. I find the applicants' submissions do not adequately or clearly describe how and when the strata allegedly failed to comply with the SPA and bylaws regarding hearings and council meetings, or how those actions were unfair to the applicants.
41. The strata undisputedly held at least 3 hearings with the applicants about subject matter raised in this CRT dispute. I find correspondence from the applicants' lawyer describes some concerns relating to a hearing held in 2018. However, given that the applicants did not apply for CRT dispute resolution until June 18, 2021, I find this specific issue is likely outside of the 2-year limitation period under the *Limitation Act*. In any event, I find the applicants have not proven with adequate evidence any particular uncured deficiency in any strata council hearings or meetings, or any resulting significant unfairness to the applicants.

42. The applicants also say that when Mr. Dumitrescu was a strata council member, the council removed him from that role in violation of the SPA. I find submitted correspondence shows the strata gave Mr. Dumitrescu the option of resigning, failing which the strata would consider calling a Special General Meeting to vote on his removal. However, I find further correspondence shows the strata reconsidered and never called an ownership vote to remove Mr. Dumitrescu when he did not resign. I find there was no significant unfairness because the evidence does not show that the strata removed Mr. Dumitrescu from the council as alleged. Further, I note that this council membership dispute occurred in 2018, so the applicants were likely out of time to raise those concerns in this CRT dispute in any event.
43. The applicants say that they received bylaw violation fines for allegedly unapproved common property alterations resulting from their furnace replacement. They say the alterations should have been approved, and were of adequate quality. However, as noted above, the strata cancelled all of those fines. I find the evidence does not show there is any ongoing dispute about the furnace alterations, or that the strata acted unreasonably or unfairly in investigating whether to approve the alterations. So, I find there was no proven significant unfairness involving those alterations.
44. The applicants say that the strata did not provide requested records as required under SPA section 36. However, I find submitted correspondence shows the strata sent copies of various requested records to the applicants. The applicants do not say that any specific records requests remain outstanding. I find the evidence does not show that the applicants suffered damage or loss because of any delays in receiving those records. So, I find the strata did not act significantly unfairly with respect to the applicants' records requests.

Treatment of Applicants and Renters

45. The applicants say there has been a pattern of strata council members "harassing" their short-term renters. On the submitted evidence, I find the applicants take issue with certain strata council members' direct interactions with renters over noise, parking, and other issues. As noted, the CRT has no jurisdiction to decide complaints about the actions of individual strata council members. Further, I find the evidence

does not show that strata council members acted on behalf of the strata or council when directly addressing the renters. There is also no evidence showing that the strata was responsible for regulating those interactions, or that the applicants lost any rental income or experienced any other alleged loss or damage as a result of those interactions. So, I find there was no significant unfairness to the applicants.

46. In summary, having considered all of the evidence and arguments, I find the strata did not act significantly unfairly toward the applicants. I dismiss their \$5,000 claim.

Legal Expenses

47. As noted, the applicants claim legal expenses as damages to remedy significant unfairness. Given that I found there was no significant unfairness, I find the applicants are not entitled to those damages. Further, even if I found that the legal expense remedy was a reimbursement request for CRT dispute-related expenses, the lawyer statements of account in evidence are all dated before the applicants applied for CRT dispute resolution on June 18, 2021. So, I find those expenses are not CRT dispute-related expenses, and the unsuccessful applicants are not entitled to expense reimbursement regardless. I dismiss the applicants' claim for \$7,218.98 in legal expenses.

CRT Fees and Expenses

48. 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. The applicants were unsuccessful in this dispute, but the strata paid no CRT fees and claimed no CRT dispute-related expenses. So, I order no reimbursements.

ORDER

49. I dismiss the applicants' claims, and this dispute.

Chad McCarthy, Tribunal Member