



# Civil Resolution Tribunal

Date Issued: November 15, 2022

File: ST-2021-009068 and

ST-2022-000222

Type: Strata

Civil Resolution Tribunal

Indexed as: *Trinden Enterprises Ltd. v. The Owners, Strata Plan NW 2406,*

2022 BCCRT 1238

B E T W E E N :

TRINDEN ENTERPRISES LTD.

**APPLICANT**

A N D :

The Owners, Strata Plan NW 2406

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## INTRODUCTION

1. These 2 strata property disputes relate to document disclosure. They involve the same

parties, so I find I can issue a single decision for both disputes.

2. The applicant in both disputes, Trinden Enterprises Ltd. (Trinden) owns strata lots 26 (SL26) and 32 (SL32) in the respondent strata corporation, The Owners, Strata Plan NW 2406 (strata). Trinden is represented by its owner, Gabe Cocco. The strata is represented by a strata council member.
3. The strata is comprised of 3 separate sections as defined under the *Strata Property Act* (SPA). SLs 26 and 32 are the only non-residential strata lots in the strata and together form Section 3 of The Owners, Strata Plan NW 2406 (commercial section). The remaining 2 sections, Section 1 and Section 2, contain only residential strata lots and are not parties to these disputes.
4. In dispute ST-2021-009068, Trinden says the strata failed to allow its representative access to view strata documents, contrary to the SPA. Trinden seeks an order that the strata produce, “all emails between council members and the strata manager for the period between September 2019 and November 29, 2021”.
5. The strata says a representative of Trinden had access to the emails it requested because the representative’s son, Mr. Chris Cocco, was a member of the strata council during the relevant time. The strata also says it never denied access to the emails and the only issue was who would pay for copies of them. I infer the strata asks that Trinden’s claims be dismissed.
6. In Dispute ST-2022-000222, Trinden says the strata has paid for legal advice “to advance and to further suppress the rights of [the commercial section]”. Trinden says it has been charged for the legal expense but denied “any and all advice received from these services”. Trinden asks for an order that the strata produce for inspection “all invoices communication/email to/from Clark Wilson LLP and other law firms” from September 2019 to December 31, 2021.
7. The strata says there is nothing in the SPA that permits a section of a strata corporation, such as the commercial section, to request documents. The strata also says Trinden “is on a phishing expedition to discredit past and present property

[managers] and council members”. I infer the strata asks that Trinden’s claims be dismissed.

8. Given Trinden’s representative and his son have the same last name, I will refer to the representative as such, and his son as Mr. Cocco.
9. As explained below, I order the strata to permit Trinden’s inspection of emails and correspondence but not of invoices.

## **JURISDICTION AND PROCEDURE**

10. These are the formal written reasons of the 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.
11. CRTA section 10 says 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.
12. 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.
13. 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.

14. Under section 123 of the CRTA and the CRT rules, 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.

### ***Preliminary Issues***

#### *Amended Dispute Notice*

15. In dispute ST-2022-000222, the original named applicant was the commercial section. The Dispute notice was amended on March 24, 2022 to change the name of the applicant from the commercial section to Trinden. The Dispute notice was further amended on March 29, 2022 to clarify Trinden's claim and to withdraw a requested remedy. CRT staff advised me that the strata was given an opportunity to amend its Dispute Response but chose not to do so. I find no procedural fairness issues arise from this process.

#### *Late Evidence*

16. Trinden submitted email evidence past the deadline given by CRT staff. The same late evidence was submitted for both disputes. CRT staff advise me that the strata was given an opportunity to comment on the late evidence in its submissions, which it did.
17. The strata does not object to the late evidence in ST-2021-009068. In ST-2022-000222 the strata objected to the late evidence stating it was not relevant to the claim. Given the late evidence is the same for both disputes, and the strata's only objection is that the email evidence was not relevant to ST-2022-000222, I have allowed it and discuss what weight I give it below.

#### *Additional Remedies*

18. Trinden has added additional requested remedies in it submissions for both disputes.
19. Although not entirely clear, in ST-2021-009068, I infer Trinden asks that all legal expenses paid by from the strata's operating fund that involve advice relating to the commercial section be returned directly to SL26 and SL32. In ST-2022-000222, Trinden requests a similar additional remedy.

20. The purpose of the Dispute Notice is to define the issues and provide fair notice to the respondent. Procedural fairness requires that a party be notified of claims against it and have a fair opportunity to respond. Given Trinden requested amendments to the Dispute Notice in ST-2022-000222, I find Trinden had the opportunity at that time to add remedies but chose not to do so.
21. Trinden also had the opportunity to amend the Dispute Notice in ST-2021-009068 to add an additional remedy but did not do so. CRT Rule 1.17 says that a Dispute Notice will only be amended during the CRT decision process in exceptional circumstances. I find that there are no exceptional circumstances to justify amending the Dispute Notice for either dispute at this late stage, either by amending existing claims or adding new requested remedies.
22. I find that the strata did not receive sufficient notice of any of these new or amended requested remedies, so I find they are not properly before me. Therefore, I decline to address Trinden's additional requested remedies that were not included in the March 29, 2022 Amended Dispute Notice for ST-2022-000222 or the December 3, 2021 Dispute Notice for ST-2021-009068.

## **.ISSUES**

23. The issues in these disputes are:
  - a. Must the strata make available for inspection by Trinden's representative all email communication between the strata and strata council members, and the strata manager, for the period September 1, 2019 to November 29, 2021?
  - b. Must the strata make available for inspection by Trinden's representative all invoices and correspondence with Clark Wilson LLP and other law firms for the period September 1, 2019 to December 31, 2021?

## **BACKGROUND, REASONS AND ANALYSIS**

24. As the applicant in civil proceedings such as these, Trinden must prove its claims on a balance of probabilities, meaning “more likely than not”. I have reviewed all the submissions and evidence provided by the parties, but I refer only to information I find relevant to give context for my decision. As noted, Trinden only provided late evidence consisting of a few emails which was the same for both disputes. I also note that the strata did not provide any evidence even though it was given the opportunity to do so.
25. The strata was created in June 1986 under the *Condominium Act (CA)* and continues to exist under the SPA. It consists of 128 strata lots in 3 buildings.
26. On June 9, 2003, the strata filed bylaws at the Land Title Office (LTO) that repealed and replaced all previous bylaws, including bylaws under Part 5 of the CA. I infer the Standard Bylaws under the SPA do not apply. The June 2003 bylaws identify the 3 separate sections I have noted above. On November 16, 2007, the strata filed bylaw amendments that identified the strata lots in each of the 3 sections and confirms SL26 and SL32 form the commercial section.
27. I find the bylaws applicable to these disputes are those filed June 2003 and November 16, 2007. Other bylaw amendments have been filed at the LTO, but I find they are not relevant here. However, I find there are no bylaws that address how requests for documents must be handled, so I find there are no bylaws applicable to these disputes.

### ***SPA requirements***

28. SPA sections 35 and 36 address document disclosure and refer to the *Strata Property Regulation* (Regulation). Put broadly, section 35 of the SPA and section 4.1 of the Regulation set out what documents and records the strata must prepare and retain, and the length of time the strata must retain them. Section 36 of the SPA and section 4.2 of the Regulation address what documents can be requested, who can request them, and how much a strata corporation may charge to provide copies.
29. Regulation 4.2 sets the maximum a strata corporation can charge for copies of documents at \$0.25 per page. It also says the strata may **not** charge an owner, tenant,

or person authorized by an owner or tenant to inspect a record or document under SPA section 36.

30. SPA section 35(2)(h) requires the strata to keep copies of legal opinions obtained by the strata corporation. Regulation 4.1(2) requires the strata to permanently retain copies of legal opinions.
31. SPA section 35(2)(k) requires the strata to keep copies of “correspondence sent or received by the strata corporation and council”. I find this includes emails. Regulation 4.1(5) requires the strata to keep such correspondence for at “least 2 years”. By the Regulation’s use of the words “at least”, I find the strata has discretion to retain copies of correspondence for more than 2 years.
32. The courts have found that a strata corporation is only required to provide access to or copies of documents that are listed in SPA section 35. It is not required to disclose or provide any other documents. See for example, *The Owners, Strata Plan NWS 1018 v. Hamilton*, 2019 BCSC 863 at paragraph 3.
33. Further, in *Kayne v. The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610, the BC Supreme Court found that the SPA does “not require the production of every bill or receipt” that may be reflected in the strata’s books of account. This means that the strata is not required to disclose copies of invoices. The court also found that correspondence between strata council members is not captured under SPA section 35, so such correspondence, including emails, is not required to be disclosed.
34. In summary, the strata is required to permanently retain legal opinions it obtains. It is also required to retain correspondence between the strata or its council, and its lawyer and strata manager, for at least 2 years. The strata is not required to keep or disclose copies of correspondence between strata council members.
35. With that in mind, I turn to Trinden’s claims to inspect the strata’s records and documents.

***ST-2021-009068 Email communication between the strata council and strata manager***

36. For the reasons that follow, I find the strata must permit a representative of Trinden to inspect emails between the strata council and the strata manager for about a 2-year period discussed below.
37. In its submissions, Trinden states it requested of the strata manager to view “correspondence between the strata council, individual council members and [the strata manager]” from September 2019 to November 29, 2021. It says it made this request on October 21, 2021 and again on November 24, 2021 after receiving no response to its October request. Trinden also says the strata manager replied before December 1, 2021 stating the strata council would not allow it to view the requested records.
38. Trinden’s written requests and the strata manager response are not before me, but I accept they were made as submitted given the strata did not dispute this. As mentioned, the strata says the issue was not about allowing Trinden access to the requested emails but rather who should pay for copies of them. I cannot agree with the strata on this point, since it provided no evidence to support its position, such as emails sent to Trinden. Overall, I find Trinden’s request was to view the requested emails, rather request copies of them.
39. Also as mentioned, the strata provided no evidence. The strata’s submissions are that Mr. Cocco has already received the requested emails as a member of the strata council.
40. The only evidence before me is a single document containing 3 email chains dated in November 2021. Trinden says the email chains prove its representative or Mr. Cocco were not copied on all strata council emails, while the strata submits the opposite. Based on my review of the email chains, I agree with Trinden and find that an email chain dated November 26, 2021 does not include Trinden. This suggests Trinden was not copied on strata council emails and weighs against the strata.



41. The requirements of SPA sections 35 and 36 are mandatory (see *Kayne* at paragraph 7). Other tribunal members have determined that records requests must be reasonable and must not be vague or overly broad (see *McDowell v. The Owners, Strata Plan 1875*, 2018 BCCRT 11 and *Bowie v. The Owners, Strata Plan VIS 5766*, 2020 BCCRT 733). I agree with and adopt that reasoning. Here, I find Trinden's request to inspect specific email records for a period of about 2 years is not vague or overly broad. I also find the request is in line with records the strata must retain under SPA section 35, except to the extent Trinden's request includes emails between strata council members, which *Kayne* determined to be outside section 35 requirements.
42. Based on the SPA sections and case law noted above, I find Trinden is entitled to inspect the requested emails exchanged between the strata and strata council and its strata manager. As mentioned, the strata is required to keep copies of correspondence for a period of at least 2 years under Regulation 4.1(5). The language used in the regulation is not mandatory, so I find the strata may keep its correspondence for longer than that. Given Trinden's initial request was made on October 21, 2021, I find the strata is not required to provide Trinden the ability to inspect emails before October 21, 2019 unless it has retained emails dated before that. If it has retained earlier emails from September 1, 2019 then it must permit Trinden inspection of those earlier emails.
43. Therefore, my order is that the strata permit a representative of Trinden to inspect all emails between the strata and its strata council, and the strata manager for the period September 1, 2019 through November 29, 2021 if it has retained all of those records. If it has not retained emails from September 1 to October 21, 2019, then my order is for the strata to permit inspection of emails between the strata and its strata council, and the strata manager for the period October 21, 2019 through November 29, 2021.
44. I order the strata permit Trinden to inspect the emails within 2 weeks of the date of this decision in keeping with SPA section 36 requirements, unless the parties mutually agree to a different date. The strata cannot charge Trinden to inspect the emails, but may charge Trinden for any copies it requests.

***ST-2022-000222 Invoices and correspondence between the strata council and law firms***

45. In this dispute, Trinden submits the residential strata lot owners control the strata council based on the number of residential lot votes in the strata compared to the lesser number of votes held by Trinden as the only non-residential strata lot owner. It says at the December 13, 2021 annual general meeting (AGM), Trinden was denied representation on the strata council. Trinden also makes submissions about how the 2 other sections in the strata have “taken every opportunity to oppress the rights of SL26 and SL32”.
46. I find Trinden has made these submissions only to provide background information to its claim. I say this because Trinden’s only claim is to view copies of invoices and correspondence between the strata and any law firms, including Clark Wilson LLP for about a 2-year period.
47. Again I note that the strata did not provide any evidence in this dispute despite it being given the opportunity to do so. The only evidence before me is the same single document of 2 email chains that Trinden provided in ST-2021-009068 discussed above. Given the emails in the document did not include discussion the issues in this dispute, I find the evidence is not relevant and I put no weight on it.
48. Accordingly, I focus my analysis on Trinden’s claim it has been denied the opportunity to inspect invoices and correspondence, including emails, between the strata council and law firms between September 2019 and December 31, 2021.
49. Although there is no documentary evidence that Trinden asked to view the invoices and correspondence, I accept that Trinden made such requests based on the strata’s only submission that Trinden is “on phishing expedition”. Specifically, the strata did not deny the requests were made and made no other arguments.
50. I note that SPA section 169(1)(b) says that any owner who sues the strata does not have a right to information or documents relating to an existing lawsuit or dispute, including legal opinions kept under section 35(2)(h). However, there is no evidence

such a lawsuit exists, so I find section 169(1)(b) does not apply.

51. I also note that SPA section 169(1)(b) does not replace common law solicitor-client privilege (see *Azura Management (Kelowna) Corp. v. Strata Plan KAS 2428*, 2009 BCSC 506, varied on another point in 2010 BCCA 474, and *Pritchard v. The Owners, Strata Plan VIS3743*, 2017 BCCRT 69). Solicitor-client privilege covers legal advice and communications between a lawyer and client that are made in confidence, for the purpose of obtaining the legal advice: *Descôteaux v. Mierzewski*, [1982] 1 S.C.R. 860. However, the strata did not claim solicitor-client privilege over the requested documents so I find it does not apply.
52. I am then left with considering Trinden's claim to inspect invoices and correspondence.
53. As for inspecting correspondence, I find the same reasoning applies here as it did in ST-2021-009068 above. So I make a similar order.
54. However, I note there were no dates provided for Trinden's initial request. Trinden's submitted its application for this dispute on January 11, 2022. Given the strata is required to keep emails for 2 years, I order the strata to permit a representative of Trinden to inspect all emails between the strata council and any law firms, including Clark Wilson LLP, for the period September 1, 2019 through December 31, 2021 if it has retained all of those records. If it has not retained emails from September 1, 2019 to January 11, 2020, then my order is for the strata to permit inspection of emails between the strata council and any law firms, including Clark Wilson LLP, for the period January 11, 2020 through November 29, 2021.
55. I order the strata permit Trinden to inspect the emails within 2 weeks of the date of this decision in keeping with SPA section 36 requirements, unless the parties mutually agree to a different date. The strata cannot charge Trinden to inspect the emails, but may charge Trinden for any copies it requests.
56. As for providing Trinden with copies of invoices, I dismiss this part of Trinden's claim following the court's decision in *Kayne* where the court found strata corporations are not required disclose copies of invoices.

## **CRT FEES AND EXPENSES**

57. 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 not to follow this general rule in these disputes. Trinden was the successful party, so I order the strata to reimburse it \$550.00 CRT fees for the 2 disputes. Neither party claimed dispute-related expenses so I order none.
58. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Trinden.

## **ORDERS**

59. I order the strata, within 30 days of this decision unless the parties mutually agree to a different date, to:
- a. Permit a representative of Trinden to inspect all emails between the strata and its strata council, and the strata manager for the period September 1, 2019 through November 29, 2021 if it has retained all of those records. If it has not retained emails from September 1 to October 21, 2019, then my order is for the strata to permit inspection of emails between the strata and its strata council, and the strata manager for the period October 21, 2019 through November 29, 2021, and
  - b. Permit a representative of Trinden to inspect all emails between the strata council and any law firms, including Clark Wilson LLP, for the period September 1, 2019 through December 31, 2021 if it has retained all of those records. If it has not retained emails from September 1, 2019 to January 11, 2020, then my order is for the strata to permit inspection of emails between the strata council and any law firms, including Clark Wilson LLP, for the period January 11, 2020 through November 29, 2021.

- c. The strata cannot charge Trinden to inspect the emails, but may charge Trinden for any copies it requests.
- d. Reimburse Trinden \$550.00 for CRT fees.

60. I dismiss Trinden's remaining claims.

61. Trinden is entitled to post-judgement interest under the *Court Order Interest Act*.

62. 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.

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J. Garth Cambrey, Vice Chair