



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *BBR Management Inc. v. The Owners, Strata Plan KAS 3359*,
2022 BCCRT 1255

B E T W E E N :

BBR MANAGEMENT INC.

APPLICANT

A N D :

The Owners, Strata Plan KAS 3359

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about ownership resolutions and actions of the respondent strata corporation, The Owners, Strata Plan KAS 3359 (strata). Much of this dispute relates to other litigation between the strata and the applicant, BBR Management Inc. (BBR). BBR owns a strata lot in the strata. BBR says the strata pursued the other litigation

and incurred litigation expenses without proper ownership approval, and did not provide all of the strata records BBR requested.

2. BBR requests 8 separate orders:
 - a. For the strata to cease litigation against BBR,
 - b. For the strata's legal counsel to stop providing legal services to the strata,
 - c. Declaring that the strata is not responsible for paying certain legal bills.
 - d. For the strata to cease certain communications with owners,
 - e. To set aside anticipated strata ownership resolutions,
 - f. For the strata to stop incurring unauthorized legal expenses and prove that its past legal spending was authorized,
 - g. For the strata to provide "full disclosure" of requested strata records, and
 - h. For the strata to start keeping "proper" meeting minutes and to amend previous minutes.
3. The strata says many of the requested remedies are inappropriate or are collateral attacks on the other litigation between the parties. The strata says that in any event, its actions have been consistent with the *Strata Property Act* (SPA), and it opposes BBR's claims.
4. BBR is represented by an owner. A strata council member represents the strata.
5. For the following reasons, I dismiss BBR's 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. BBR commenced another CRT strata property dispute, number ST-2022-001629, at approximately the same time as this dispute. Both CRT disputes are about whether the strata ownership properly authorized the strata to do certain things. These things included pursuing and funding a May 31, 2022 civil claim by the strata and others against BBR and others, in the Supreme Court of British Columbia (BCSC), No. S-224443, Vancouver Registry (BCSC proceeding). These things also included pursuing and funding an arbitration commenced on May 31, 2022 by the strata and others against BBR and others in the Vancouver International Arbitration Centre (VIAC) (arbitration). Each CRT dispute involves different parties, different evidence, and different submissions. So, I found it was necessary to issue separate decisions for each CRT dispute, although portions of each decision are similar.
11. The CRT alerted BBR that some of its evidence did not upload correctly. The CRT provided instructions and suggestions about how to check whether the evidence had

uploaded correctly and how to upload evidence, along with time to do so. BBR did not reach out to the CRT with any concerns about evidence uploads, yet some of its evidence remains unreadable. I find BBR had an adequate opportunity to verify its uploaded evidence and bring any concerns to the CRT, and did not. So, I find BBR likely chose to proceed knowing that some of its 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.

ISSUES

12. The 8 issues in this dispute are:

- a. Whether the strata council should discontinue any litigation against BBR until another unspecified lawyer advises the strata that it has a claim within the scope of SPA section 171.
- b. Whether the strata's current legal counsel should stop performing any services related to claims against BBR.
- c. Whether the strata is responsible for paying legal bills, either "paid to date" or overdue, that were not authorized by the strata ownership.
- d. Whether the strata council should cease communicating with owners about contracts or legal relationships that the council is not a party to.
- e. If the strata proposes certain resolutions, whether those resolutions should be set aside for not complying with the SPA.
- f. Whether the strata must stop incurring unauthorized legal expenses and prove to owners that its legal spending to date was authorized by the ownership.
- g. Whether the strata must provide full disclosure of strata records requested in January 2022, including legal documents, fees, and any redacted expenditures, despite the ongoing BCSC proceeding and arbitration.

- h. Whether the strata council must start keeping proper meeting minutes, and provide July 6, 2021 special general meeting (SGM) minutes with a proper description of “the events” and a record of spending related to a special levy that the strata council allegedly approved at that SGM.

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, BBR, as the applicant, must prove its 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.
14. In its submissions, BBR requests several remedies that it did not formally claim in its Dispute Notice. BBR did not request that the CRT amend the Dispute Notice to add those additional remedy requests. I find those additional requested remedies are not properly before me, so I make no findings about them. My decision addresses only the remedies requested in the Dispute Notice.

Discontinuing Other Litigation

15. A Notice of Civil Claim in evidence shows that the BCSC dispute is about strata construction defects, strata governance, and other claims by the strata and numerous strata lot owners, against several parties including BBR and the strata’s owner developer. Similarly, a Notice To Arbitrate in evidence shows that the arbitration is about recreational facility and resort management services contracts, including user fee claims, by the strata and many of its owners against BBR, the strata’s owner developer, and several other parties.
16. SPA section 170 says the strata may sue an owner. Section 171 says the strata may sue as representative of all owners except any who are being sued, about any matter affecting the strata corporation. The suit must be authorized by a resolution passed by a $\frac{3}{4}$ vote at an annual or special general meeting, although a person being sued is not an eligible voter. Under SPA section 173.1, the strata’s failure to obtain owner authorization for a lawsuit or arbitration does not invalidate a lawsuit or arbitration that

is otherwise undertaken in accordance with the SPA. Under SPA sections 171(5) and (6), an owner who is being sued is not required to contribute to the strata's expense of suing.

17. BBR suggests that the strata does not have a valid claim against BBR under section 171. BBR requests that I order the strata not to continue any litigation against BBR until "another" unspecified lawyer advises that there is a valid claim.
18. Even if I had jurisdiction to consider this issue and found it was appropriate to do so, the strata appears to have commenced the BCSC proceeding and arbitration on its own behalf and on behalf of all owners except those being sued, about matters affecting the strata corporation such as the use or enjoyment of strata lots and money owing. This is consistent with SPA sections 170 and 171.
19. Further, given the evidence that the BCSC proceeding and arbitration are underway and have not concluded, I find the issues of whether the strata properly brought its BCSC claims and VIAC claims are more appropriate for those legally binding or dispute resolution processes, under CRTA section 11(1)(a)(i). This is because I find those bodies, and particularly the BCSC, have authority to govern their own proceedings, including issues of standing and jurisdiction. I also note that if I made a decision on this issue, it could be contrary to decisions made by those bodies on the same issue, regarding their own proceedings and procedures.
20. So, I decline to order the strata to cease litigation against BBR, including the BCSC proceeding and arbitration, because I find it is not appropriate for the CRT to do so in these circumstances.

Performance of Legal Services by the Strata's Legal Counsel

21. BBR requests an order for the strata's current legal counsel to stop performing any services related to claims against BBR. BBR says the legal counsel is in a significantly unfair conflict of interest because they represent both the strata and other applicants in that litigation. BBR also suggests that the strata ownership did not properly

authorize the retention and payment of legal counsel, which I address later in this decision.

22. No legal counsel is named as a party to this dispute. CRTA section 123 does not empower me to order a non-party to refrain from doing something. That is exactly what BBR requests here.
23. Even if I had jurisdiction to make such an order, I find it would be inappropriate in these circumstances. This is because the order would directly affect the strata's right to legal counsel in ongoing litigation in the BCSC and VIAC. That litigation, and its related procedures and rules about legal representation, is not before me in this CRT dispute. I find matters of legal representation before the BCSC and VIAC are questions for those bodies, and not the CRT.
24. I decline to make BBR's requested order for the strata's legal counsel to stop performing services related to claims against BBR.

Strata Responsibility for Legal Bills

25. BBR requests that if it is discovered that any strata legal bills "paid to date or overdue" were not properly authorized, the strata should not be responsible for paying those bills. BBR admits that it does not know whether the strata has already overspent on legal expenses, but it questions whether amounts the strata is allegedly trying to collect from owners for outstanding legal bills were properly authorized by the ownership.
26. On the evidence before me, I find that BBR's request addresses legal expenses related to the BCSC proceeding and arbitration only. As noted, under SPA section 171(5) and (6), BBR is not required to contribute to the expense of the BCSC proceeding or arbitration. BBR does not claim to represent any other owners. So, I find the basis of BBR's complaint about the strata paying legal bills without authorization is unclear, given that BBR is not required to fund those payments.
27. Further, as noted BBR bears the burden of proof in this dispute, including that the strata paid specific legal bills without required ownership authorization. As explained

below, I find the evidence fails to show the strata pursued and funded the other litigation without required ownership authorization.

28. In addition, given the wording of BBR's request and submissions, I find its requested remedy is for a declaration that BBR is not responsible for paying its non-party legal advisors for their work in the absence of proper ownership authorization. The CRT has no authority to make such declaratory orders. For example, see the non-binding but persuasive decision *Fisher v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379 at paragraphs 62 to 69.
29. For the above reasons, I decline to make the requested order declaring that the strata is not responsible for paying certain legal bills.

Strata Communications with Owners

30. BBR requests an order that the strata not communicate with owners about contracts or legal relationships that the council is not a party to. I find nothing in the SPA or bylaws limits the subject matter of communications between the strata and owners. Further, as noted the subject matter of the BCSC proceeding and arbitration includes matters affecting the strata and its ownership. I find the evidence does not show that the strata was not entitled to communicate with the owners about those matters.
31. I also note that the BCSC proceeding and arbitration involve alleged contractual relations between BBR and the other owners, which are not before me here. So, I find BBR's allegations, that the strata intentionally interfered with those contractual relations through its owner communications, are more appropriately addressed in the context of that other litigation.
32. I dismiss BBR's request for an order that the strata council not communicate with owners about certain subject matter.

Setting Aside Anticipated Strata Resolutions

33. The strata undisputedly intended to hold an ownership vote at the strata's March 8, 2022 SGM, on resolutions to approve the BCSC proceeding and arbitration, and to

approve special levies to fund that litigation. The strata did not hold those votes on that date. In its March 15, 2022 Dispute Notice, BBR requested that if the strata proposed the same resolutions at a future meeting, the CRT should order those resolutions “set aside” because they violate the SPA.

34. When BBR requested this remedy in its March 15, 2022 Dispute Notice, there had not yet been an ownership vote on the same resolutions previously proposed for March 8, 2022. Unredacted copies of minutes in evidence show that later, at an April 25, 2022 SGM, owners voted to approve resolutions authorizing the BCSC proceeding and arbitration, and funding that litigation with special levies. The minutes do not appear to contain the complete text of the resolutions. However, BBR does not identify any evidence refuting the content of the resolutions or the vote outcome. So, I accept that the ownership approved those resolutions on April 25, 2022.
35. I found above that the strata was apparently entitled to pursue the BCSC proceeding and arbitration in its own name and on behalf of the other owners under SPA sections 170 and 171, as that litigation involved strata-related matters. I find this could include passing special resolutions authorizing that litigation and funding litigation expenses, which as noted BBR is not required to fund. I find nothing about such resolutions is significantly unfair to BBR. Having considered the evidence and submissions, I find BBR has not proven its allegations that April 25, 2022 special resolutions approving litigation and special levies to pay for it are contrary to the SPA. For the above reasons, I dismiss BBR’s request to “set aside” any such resolutions.

Authorization for Strata Legal Expenses

36. BBR requests an order that the strata stop incurring any more unauthorized legal expenses, and prove to owners that its legal spending to date was authorized. First, given my finding that the April 25, 2022 resolutions approved payment of such expenses, I find there is no reason to order the strata to stop incurring those expenses. Second, the parties agree that BBR was not required to contribute to the legal expenses approved on April 25, 2022, which is consistent with SPA sections 171(5) and (6). So, I find BBR lacks a sufficient basis for its complaints about the

strata's legal expenses, not only because the ownership approved payment of those expenses, but also because BBR is not responsible for funding them.

37. Further, I find nothing in the SPA or bylaws requires the strata to directly prove to all owners that its legal spending was authorized. I address BBR's access to strata records about the other litigation, which includes records of legal spending, in the following section.
38. For the above reasons, I dismiss BBR's request for an order for the strata to stop incurring unauthorized legal expenses and to prove that its legal spending was authorized.

Disclosure of Strata Records

39. BBR requests that I order full disclosure of the documents it requested from the strata in January 2022 under SPA sections 35 and 36, including legal documents, fees, and redacted expenditures. The strata says that it provided BBR with most of the requested documents, which I find is supported by submitted correspondence. The strata says it did not provide documents that the owner developer and BBR failed to provide to the strata, or that did not exist, which I accept because BBR does not directly dispute that. The strata also says it did not provide records related to the BCSC proceeding or arbitration because they are covered by solicitor-client privilege.
40. Solicitor-client privilege keeps confidential communications between a lawyer and client for the purpose of obtaining legal advice (see *Descôteaux v. Mierzwinski*, 1982 CanLII 22 (SCC)). Further, litigation privilege applies to documents prepared for the dominant purpose of obtaining legal advice or to conduct or aid in the conduct of litigation (see *Canning v. Mann*, 2019 BCSC 841). SPA sections 169(1)(b) and (c) say that an owner does not have a right to information or documents relating to a suit, including legal opinions kept under section 35(2)(h), or a right to attend portions of ownership or council meetings at which the suit is dealt with or discussed. *Azura Management (Kelowna) Corp. v. The Owners, Strata Plan KAS 2428*, 2009 BCSC 506, varied for other reasons in 2010 BCCA 474, confirmed at paragraph 66 that section 169(1)(b) prohibits the provision of strata legal opinions to an owner only

where there is actual litigation between a strata corporation and that owner. I find that is the situation between the strata and BBR.

41. Although BBR says it identified several documents, and redacted portions of them, that are not privileged, I find it does not adequately identify those passages or documents in its submissions. BBR appears to have annotated some of the redacted documents in evidence, but I find it is not clear what requested records the strata has allegedly not provided, or how BBR is allegedly entitled to them in the context of the other litigation.
42. Further, given the ongoing BCSC proceeding and arbitration, I find that issues of whether SPA section 169(1)(b) and legal privilege prevent BBR from accessing litigation-related strata information and documents are likely better addressed by the BCSC and VIAC, and not in this separate CRT proceeding. I agree with the strata that BBR's request appears to be a collateral attack on that other litigation, because it likely invokes questions of discovery, disclosure, and privilege in that other litigation. I note that a collateral attack is an abuse of process, which the CRT may refuse to resolve under CRTA section 11(1)(b).
43. BBR says that it contributed to the initial expense of retaining the strata's lawyer in July 2021, which the strata denies. BBR says that because it paid money toward the lawyer, it deserves to know how that money was spent, including by accessing the requested strata records. Even if BBR paid money toward those legal expenses, I find that does not necessarily mean that legal privilege or SPA section 169(1)(b) does not apply to the strata's legal expense payment records. I note that although BBR is not required to contribute to the legal expenses of the BCSC proceeding or arbitration under SPA sections 171(5) and (6), it does not claim a refund of any legal expense payments in this CRT dispute. Further, I find the evidence does not support a finding that any of the strata's legal expenses involved matters unrelated to the BCSC proceeding and arbitration.
44. So, even if it was within my jurisdiction to consider this issue and I found it appropriate to do so, I would have found BBR has not met its burden of proving that it is entitled

to further information about legal documents, fees, and redacted expenditures. I decline to order the strata to provide further strata documents and information.

Content of Strata Meeting Minutes

45. BBR requests an order for the strata to start keeping proper meeting minutes, and to provide July 6, 2021 SGM minutes featuring a proper description of “the events” and a record of spending related to the special levy that “council approved” at that SGM.
46. SPA section 35(1) requires minutes to be taken at annual or special general meetings, and says they must include the results of any votes. There are otherwise no specific requirements for those minutes. Further, *Wong v. AA Property Management Ltd.*, 2013 BCSC 1551 says at paragraph 53 that the preparation of strata meeting minutes does not give rise to a cause of action.
47. Although BBR requests an order for the strata to amend the July 6, 2021 SGM minutes to include a proper description of “the events,” I find BBR does not adequately explain those events, or explain how the present description in the minutes is improper or inconsistent with the SPA. Further, above I declined to order the strata to provide legal spending information related to the BCSC proceeding and arbitration. I find BBR does not adequately identify any other types of special levy-related spending records that the strata allegedly failed to provide upon request. I also note that the evidence does not support BBR’s assertion that the strata council, and not the strata ownership, approved a July 6, 2021 special levy that BBR requests spending information about. So, I dismiss BBR’s requested order to amend the July 6, 2021 SGM minutes, to start keeping proper meeting minutes, and to provide additional spending records.
48. For all of the above reasons, I dismiss BBR’s claims.

CRT Fees and Expenses

49. 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.

BBR was unsuccessful in this dispute, but the strata paid no CRT fees and claimed no CRT dispute-related expenses. So, I order no reimbursements.

ORDER

50. I dismiss BBR's claims, and this dispute.

Chad McCarthy, Tribunal Member