



Civil Resolution Tribunal

Date Issued: January 12, 2023

File: ST-2022-009105

Type: Strata

Civil Resolution Tribunal

Indexed as: *Ferrel v. The Owners, Strata Plan 46*, 2023 BCCRT 32

BETWEEN:

DELORES ALOYSIA FERREL

APPLICANT

AND:

The Owners, Strata Plan 46

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about a strata corporation's depreciation report and contingency reserve fund (CRF).
2. The applicant, Delores Aloysia Ferrel, owns a strata lot (SL11) in the respondent strata corporation, The Owners, Strata Plan 46 (strata). Ms. Ferrel alleges the strata

council has failed to use depreciation reports to make recommendations at general meetings about the amount of annual CRF contributions, contrary to strata bylaw 24 and section 31 of the *Strata Property Act* (SPA).

3. Ms. Ferrel asks for an order that the strata abide by bylaw 24, and an order that the strata hold a special general meeting to address:
 - a. Proposed balcony resolutions and delay costs,
 - b. "Maintenance/cost" of siding and windows, and
 - c. A maintenance plan for all other items in the depreciation report.
4. The strata says Ms. Ferrel's claims are without merit. The strata says it has not acted contrary to bylaw 24 or the SPA. The strata also says Ms. Ferrel has sold SL11 and no longer resides in the strata, and as a result she should not have any say in how the strata operates.
5. Ms. Ferrel is represented by her spouse, PS. The strata is represented by a strata council member.

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. CRT documents incorrectly show the name of the respondent as The Owners, Strata Plan, VIS 46. Based on SPA section 2, the correct legal name of the strata is The Owners, Strata Plan 46. Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, I have exercised my discretion under CRTA section 61 to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the strata's name above.

SPA section 31 claim

11. As noted, Ms. Ferrel 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. Therefore, I dismiss Ms. Ferrel's section 31 claims as set out above.

ISSUES

14. The remaining issues in this dispute are:
 - a. Is Ms. Ferrel's claim moot?
 - b. If Ms. Ferrel's claim is not moot, did the strata fail to comply with bylaw 24 and the SPA when determining CRF contributions?
 - c. What remedies are appropriate, if any?

EVIDENCE AND ANALYSIS

15. In a civil proceeding such as this one, as the applicant Ms. Ferrel must prove her 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.
16. The strata filed a complete set of bylaws in the Land Title Office (LTO) on April 8, 2002, that repealed and replaced all previous bylaws, including the standard bylaws under the SPA. Several other bylaws amendments have been filed with the LTO since April 2002, but none are relevant to this dispute.
17. Bylaw 24 says "the strata council may prepare a depreciation report in accordance with the guidelines set out in the *Strata Property Regulations* and shall use this report to make recommendations to the general meeting about the amount that should be contributed annually to the CRF. Notwithstanding the report, the actual amount to be contributed annually to the CRF shall in all cases be determined by the owners at each annual general meeting".

Are Ms. Ferrel's claims moot?

18. The strata says Ms. Ferrel has sold SL11, and should not have any say in how the strata operates. I find the strata is essentially arguing that Ms. Ferrel's claim is moot because she no longer owns SL11.
19. A letter from the strata in evidence says Ms. Ferrel sold SL11 in September 2022 and no longer lives in the strata. Ms. Ferrel did not dispute this. A 2022 title search for SL11 confirms that a third party has owned SL11 since September 2, 2022. Neither Ms. Ferrel nor her spouse, PS, are currently listed as SL11's registered owner. Based on the evidence, I find Ms. Ferrel no longer owns a strata lot in the respondent strata.
20. The first issue this raises is whether Ms. Ferrel has standing, or the legal right, to continue this CRT dispute. On this point, I agree with the previous CRT decision *Gill v. The Owners, Strata Plan EPS 4403*, 2020 BCCRT 725, at paragraphs 19 to 24, that former owners have standing to bring or continue CRT disputes.
21. The second issue is mootness. A claim is "moot" when there is no longer a live controversy between the parties. While the CRT will generally dismiss a moot claim, the CRT has discretion to decide the dispute if doing so will have a practical impact and potentially help avoid future disputes. See *Binnerley v. BCSPCA*, 2016 BCCA 259.
22. In her application for dispute resolution, Ms. Ferrel alleges that the strata has not used the depreciation report to make recommendations at a general meeting about the amount of annual CRF contributions, contrary to bylaw 24 and the SPA. As noted, Ms. Ferrel requests two remedies for her claim. First, an order that the strata follow bylaw 24. Second, an order that the strata hold a general meeting to address proposed balcony resolutions and delay costs, "maintenance/cost" of siding and windows, and a maintenance plan for all other items in the depreciation report.
23. Since Ms. Ferrel is no longer an owner, I find that there is no live issue between the parties about how the strata uses depreciation reports or determines CRF expenditures. I decline to exercise my discretion to consider this moot issue because

Ms. Ferrel is not affected by how the strata uses the depreciation report or determines CRF expenditures. I see no reason why ordering the strata to follow bylaw 24 or conduct a general meeting to address maintenance items identified in a depreciation report would help the parties in any way. I therefore dismiss Ms. Ferrel's claim as moot.

CRT FEES AND EXPENSES

24. 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 Ms. Ferrel was unsuccessful in this dispute, I dismiss her fee claim. The strata did not pay any CRT fees and neither party claimed any dispute-related expenses, so I award none.
25. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Ms. Ferrel.

ORDER

26. I dismiss Ms. Ferrel's claims and this dispute.

Leah Volkers, Tribunal Member