



# Civil Resolution Tribunal

Date Issued: June 15, 2023

File: ST-2022-005966

Type: Strata

Civil Resolution Tribunal

Indexed as: *Simek v. The Owners, Strata Plan VIS 3918*, 2023 BCCRT 507

**B E T W E E N :**

PAMELA SIMEK

**APPLICANT**

**A N D :**

The Owners, Strata Plan VIS 3918

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Leah Volkers

### **INTRODUCTION**

1. This dispute is about strata governance. The applicant, Pamela Simek, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan VIS 3918 (strata).
2. Ms. Simek says the current strata council has demonstrated “severe errors and incompetence” and cannot perform the duties required to properly run the strata. Ms.

Simek says that the strata council has demonstrated 12 “flagrancies” in holding an annual general meeting (AGM), as discussed in a previous CRT dispute, ST-2022-005292, involving the same parties. Ms. Simek says the strata council is unprofessional, lacks transparency and is grossly biased, and she raises various issues with the strata council’s conduct. Ms. Simek also says the strata reimbursed strata council members for unauthorized common property repair expenses. Finally, she says the strata council has been including non-owners on strata correspondence.

3. Ms. Simek asks for the following remedies:
  - a. An order that a professional property management company oversee and manage all aspects of the strata,
  - b. An order that the property management company stop including non-owners on strata correspondence and be ban non-owners from attending strata council meetings,
  - c. An order that the benefitting strata council members pay for the unauthorized repairs and renovations on “strata council members’ common property and limited common property” that were completed without a  $\frac{3}{4}$  vote, and pay such amounts back into the strata’s operating fund. Ms. Simek estimated \$6,000 as the amount for this requested remedy.
4. The strata disputes Ms. Simek’s claims. The strata says the 2022 AGM issues were already addressed in ST-2022-005292. The strata also says it has considered hiring a strata manager, but decided against incurring the expense.
5. Ms. Simek is self-represented in this dispute. 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.

### ***Claims against strata council members***

10. Ms. Simek says that a number of unauthorized repairs and renovations were made "on strata council members' common property and limited common property", and says strata council members benefited directly from the improvements. As noted, Ms. Simek's only requested remedy for these alleged unauthorized expenditures is an order that the "benefitting" strata council members pay for the unauthorized repairs and renovations, and pay such amounts back into the strata's operating fund.
11. The individual strata council members are not parties to this dispute, and I cannot make orders against non-parties. Given this, it is unnecessary to determine whether the expenditures were unauthorized because even if they were, I cannot grant Ms.

Simek's requested remedy. So, I dismiss Ms. Simek's claim that the strata council members personally reimburse the strata for any repair expenses.

### ***Additional evidence***

12. After both parties had the opportunity to provide evidence and submissions and the Tribunal Decision Plan phase had ended, Ms. Simek asked to submit further evidence that she said was significant to her claims. I asked Ms. Simek to provide the additional evidence, which consisted of one email from Ms. Simek with further submissions and details about the alleged unauthorized expenditures made by certain strata council members, discussed above. I have dismissed her claim for strata council members to repay the alleged unauthorized expenditures. The additional evidence is not relevant to the remaining issues in this dispute. So, ultimately I find nothing turns on this additional evidence. Therefore, I decided not to provide the strata with the additional evidence nor ask for its submissions on this evidence, and I have not considered it in this dispute.

## **ISSUES**

13. The remaining issues in this dispute are:

- a. Should the CRT order the strata to retain a strata manager?
- b. If yes, should the CRT order the appointed strata manager to exclude non-owners in strata correspondence and ban non-owners from attending strata council meetings?

## **EVIDENCE AND ANALYSIS**

14. In a civil claim like this one, Ms. Simek, as the applicant, 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 is necessary to explain my decision.

15. The strata was created in 1996 and includes 7 strata lots in a single building. The strata's bylaws are the Standard Bylaws in the *Strata Property Act* (SPA), plus one amendment dealing with parking stalls, which is not relevant to this dispute.

***Should the CRT order the strata to retain a strata manager?***

16. As noted, Ms. Simek requests an order that a professional property management company oversee and manage all aspects of the strata, including hiring contractors, performing "fiscal duties" and leading all meetings and correspondence. For its part, the strata says it has looked into hiring a strata manager in the past but decided against incurring the expense. Ms. Simek does not dispute this.

17. In another CRT dispute, *Chipkin v. Lin et al*, 2019 BCCRT 419, a vice chair found the CRT has authority to order the strata to retain a strata manager under CRTA section 123(1). In *Chipkin*, both owners in the 2 strata lot strata corporation sought to appoint a strata manager, but could not agree on the particular strata manager. On that basis, the vice chair ordered the strata to hire a strata manager to oversee specific projects. Unlike in *Chipkin*, here the parties do not agree that the strata should retain a strata manager. So, the question is whether it is appropriate to order the strata to do so.

18. Ms. Simek says the current strata council is unable to properly manage the strata. Ms. Simek provided a detailed outline of her concerns with how the strata council has improperly managed the strata. As noted, these include issues with the 2022 AGM, including an unenforceable camera rule, that were raised and discussed in the previous CRT dispute, ST-2022-005292. In ST-2022-005292, Ms. Simek asked for an order that the 2022 AGM be nullified. A CRT vice chair found the strata had not complied with the SPA requirements when holding the 2022 AGM, and ordered the strata to comply with the SPA when holding future general meetings, and not enforce the camera rule. I find Ms. Simek relies in large part on the strata's previous non-compliance with the SPA when holding the 2022 AGM as the basis for her requested order that a professional strata management company oversee the strata. The strata says this issue was addressed in ST-2022-005292. So, I have considered whether the doctrine of *res judicata* (already decided) applies.

19. *Res judicata* exists to prevent a person from bringing multiple legal proceedings about the same issues. This is because duplicative litigation opens the door for potentially inconsistent results, undue costs, and inconclusive proceedings. See *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44, at paragraph 18. *Res judicata* can arise in two ways. The first is called cause of action estoppel, which prevents someone from pursuing a matter that was or should have been the subject of a previous process. The second is called issue estoppel, which stops someone from raising an issue that has already been decided in another process. See *Erschbamer v. Wallster*, 2013 BCCA 76.
20. As noted, I find Ms. Simek largely relies on the strata failing to comply with the SPA when holding the 2022 AGM as the basis for her requested remedy in this dispute. As the 2022 AGM was the subject of the previous dispute with the same parties, I find Ms. Simek's current requested order for a strata manager to manage the strata based on the 2022 AGM issues should have been raised in the previous dispute. So, I find that cause of action estoppel applies. This means I will not consider the 2022 AGM when deciding whether it is appropriate to grant Ms. Simek's requested remedy in this dispute.
21. Ms. Simek also alleges various other issues with how the strata council has improperly managed the strata and conducted itself. As noted, Ms. Simek alleges that the strata council is unprofessional, lacks transparency and is biased. She also says the strata council failed to inform owners of other CRT disputes, ignored her request to remove bikes stored in a fire exit and sports gear in the electrical room, included non-owners on strata correspondence, and is "moving forward" with unauthorized changes to common property, which involves painting an external wall. Ms. Simek says these issues show the strata council cannot perform all the duties required to run the strata properly.
22. For its part, the strata says the bikes do not block a fire exit, the sports equipment has been removed, the two non-owners included on strata correspondence are the spouses of owners, and the common property repairs are listed in an approved depreciation report. I find I do not need to address all of Ms. Simek's alleged issues

in detail because even if they establish that the strata failed to comply with the SPA, I find these alleged issues do not show the strata is overall incapable of managing itself without a strata manager. Further, apart from Ms. Simek's requested order that a property management company manage the strata, Ms. Simek did not claim any further remedies to resolve any of the specific alleged issues with the strata council.

23. I find Ms. Simek's disagreement lies primarily with the strata council's conduct and how it has responded to her various complaints and issues. As discussed in *Kornylo v. The Owners, Strata Plan VR 2628*, 2018 BCCRT 599, strata management companies provide advice and guidance to strata councils but are ultimately instructed by strata councils. Here, I am not satisfied that ordering the strata to retain a strata management company would address Ms. Simek's concerns, as the strata manager would still ultimately be instructed by the strata council. Finally, in *Lum v. Strata Plan VR519 (Owners of)*, 2001 BCSC 493 at paragraph 12, the court said it should only interfere with or override a strata's democratic governance when absolutely necessary. As noted, the strata says that it has considered a strata manager but decided against the expense. Ms. Simek did not dispute this. I find that ordering the strata to retain a strata manager, which would involve some expense to the owners, unnecessarily interferes with the strata's democratic governance.
24. Given all the above, I decline to order the strata to retain a strata management company to manage the strata. Therefore, I also decline to grant Ms. Simek's requested order that the strata management company exclude non-owners in strata correspondence and ban non-owners from attending strata council meetings. However, the strata council is still required to follow the SPA in managing its affairs.
25. I note that although Ms. Simek asks for a "professional property management company" to oversee the strata, based on her submissions her requested remedy could arguably be interpreted as a request for the appointment of an administrator to control the strata. However, CRTA section 122(1)(i) says that the CRT does not have the authority to order the appointment of a strata administrator under SPA section 174. So, even if Ms. Simek actually seeks the appointment of an administrator, I

would refuse to resolve this aspect of her claim because the CRT does not have jurisdiction to grant such an order.

***CRT fees and expenses***

26. 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. Simek 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.

27. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Ms. Simek.

**ORDER**

28. I dismiss Ms. Simek's claims and this dispute.

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Leah Volkens, Tribunal Member