



Civil Resolution Tribunal

Date Issued: June 28, 2023

File: ST-2022-007161

Type: Strata

Civil Resolution Tribunal

Indexed as: *Canadian Regal Education Corporation v. The Owners, Strata Plan
EPS1069, 2023 BCCRT 543*

B E T W E E N :

CANADIAN REGAL EDUCATION CORPORATION

APPLICANT

A N D :

The Owners, Strata Plan EPS1069

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. Canadian Regal Education Corporation (CREC) is a tenant in the strata corporation, The Owners, Strata Plan EPS1069 (strata). Under its bylaws, the strata is divided into 3 sections, an office section, a retail section, and a food court section. CREC is a tenant in the office section.

2. CREC alleges that the strata incorrectly paid to replace a hot water tank and to clear a backed-up floor drain, both expenses CREC says should have been paid by the retail section. CREC asks for an order that the strata claim back all costs related to these expenses from the retail section. It also seeks an order that the strata comply with its bylaws 5.2 and 13 related to sectional expenses.
3. The strata disputes that CREC has standing (or the legal authority) to bring these claims because CREC is a tenant and not an owner. In any event, the strata says it properly authorized the disputed expenses.
4. CREC is represented by its president, Sheng Wang (whose preferred name is Sam Wang). Mr. Wang is also a CREC director. The strata is represented by its lawyer, David Liden.

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. 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.
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.

Preliminary Issue

9. In the Dispute Notice, CREC says the strata failed to respond to its August 10, 2022 hearing request. However, CREC does not seek any remedies with respect to this alleged breach of *Strata Property Act* (SPA) section 34.1, so I make no findings about this allegation.

ISSUES

10. The issues in this dispute are:
 - a. Does CREC have standing to bring claims about whether the strata incorrectly paid for the hot water tank replacement and floor drain clearing expenses?
 - b. If yes, has CREC proven its claims, and what remedies are appropriate?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, CREC as the applicant must prove its claims on a balance of probabilities (meaning more likely than not). I note neither party provided any documentary evidence in this dispute, and CREC also did not provide any final reply submissions, despite having the opportunity to do so.

Background

12. The strata was created in 2013. It is a commercial development consisting of 338 strata lots. The strata filed a complete set of bylaws with the Land Title Office on June 25, 2013. I discuss the bylaws relevant to this dispute below.

13. CREC says the strata incorrectly approved expenses relating to a hot water tank replacement and a backed-up floor drain at its July 28, 2022 council meeting. CREC's requested orders are all premised on its allegation that under the SPA and the strata's bylaws, the retail section is responsible for these expenses, not the strata. In particular, CREC refers to SPA sections 194 and 195 and bylaws 5.2, 13 and 13.1(5).
14. SPA section 194(2)(a) says that a section has the same powers and duties as a strata corporation with respect to matters that relate solely to the section, including to establish its own operating fund and contingency reserve for the section's common expenses. SPA section 195 says that subject to SPA section 100 and the regulations, strata expenses that relate solely to strata lots in the section are to be shared by the section strata lot owners based on a specific formula.
15. Bylaw 5.2 says that an owner or section that has the use of limited common property must repair and maintain it, except for repair and maintenance that is the strata's responsibility under the bylaws. Bylaw 13 contains only the heading "Repair and maintenance of property by each section" and bylaw 13.1(5) says that each separate section must pay all amounts "required to be paid on account of all services, supplies and assessments pertaining to, or for the benefit of, the separate sections".

Does CREC have standing to bring the claims in this dispute?

16. As mentioned above, the strata argues that since CREC is a tenant and not a strata lot owner, it does not have standing to bring the claims in this dispute. "Standing" refers to the right of a particular person to bring legal proceedings about a given issue. The strata raised an issue with CREC's standing in its Dispute Response. Despite this, CREC did not address in its submissions whether it has standing to bring these claims as a tenant. Since it is undisputed that CREC is a tenant and there is no evidence before me to suggest otherwise, I find CREC is a tenant, but not an owner, in the strata.
17. In *Canadian Regal Education Corporation v. The Owners, Strata Plan EPS1069*, 2023 BCCRT 228 (CREC 2023), a recent CRT decision about 4 strata disputes involving the same parties, a tribunal member considered CREC's standing to bring

those 4 disputes. The tribunal member considered whether SPA section 189.1(1) gives a party standing in a CRT strata dispute. This section allows a strata corporation, owner or tenant to bring a CRT dispute concerning any strata property matter over which the CRT has jurisdiction. At paragraphs 22 to 24, the tribunal member referred to the BC Supreme Court's decision in *Extra Gift Exchange Inc., et al. v. Ernest & Twins Ventures (PP) Ltd., et al*, 2007 BCSC 426 which also involved the issue of a tenant's standing in a strata dispute. In *Extra Gift Exchange*, the court considered SPA section 164 which says that a tenant can apply to the court for an order to prevent or remedy a significantly unfair action. At paragraphs 124 and 125, the court found that although section 164 provides a mechanism for tenants to bring court applications, the tenants must still have a legally recognized interest in the matter at issue to have standing.

18. In CREC 2023 at paragraph 25, the tribunal member applied the court's reasoning in *Extra Gift Exchange* about section 164 to section 189.1(1) and found that it similarly provides only a mechanism for tenants to apply to the CRT for dispute resolution but does not establish standing. I note this finding is in line with the court's statements in *Cheikes v. BM Clubhouse 40 Ltd.*, 2023 BCSC 14 at paragraph 21 that empowering a party with the procedural right to bring a claim, like section 189.1(1) does, does not give a party standing to advance a particular claim. Based on the court's findings in *Extra Gift Exchange* and *Cheikes*, I agree with the tribunal member's reasoning in CREC 2023 and find SPA section 189.1(1) does not give a tenant standing in a strata dispute.
19. The tribunal member in CREC 2023 went on to note that the court in *Extra Gift Exchange* made clear that tenants do not have a freestanding legal interest in the proper management of a strata corporation, financial or otherwise. Instead, the tribunal member found that tenants must show that they have a "specific, legally recognized interest in a particular claim" (see paragraph 25).
20. Applying the court's reasoning in *Extra Gift Exchange* to CREC's claims in the 4 disputes before him, the tribunal member in CREC 2023 found at paragraph 36 that CREC as a tenant had no obligation to pay strata fees, or otherwise contribute to the

strata's finances. So, the tribunal member concluded CREC did not have standing to bring claims about which section was responsible for certain expenses. While the tribunal member's reasoning in CREC 2023 is not binding on me, I find it persuasive and apply it to this dispute.

21. SPA section 92 only requires owners to contribute to the strata's finances by paying strata fees. While SPA section 147 allows an owner to assign some or all of the owner's powers and duties to a tenant, there is no evidence before me that CREC's landlord assigned its obligation to pay strata fees to CREC. So, I find CREC does not have any legal obligation to pay strata fees or otherwise contribute to the strata's finances. There is nothing before me to suggest that CREC itself has any legally recognized interest in the proper allocation of the hot water tank replacement expense and the floor drain clearing expense. So, I find CREC does not have standing to bring claims about whether the strata improperly paid for the disputed expenses. Since all of CREC's requested remedies in this dispute are based on the allegation that the strata should not have paid for these expenses, I dismiss this dispute for lack of standing.

CRT FEES AND EXPENSES

22. 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. Since CREC was unsuccessful, I dismiss its claims for reimbursement of its paid CRT fees and dispute-related expenses. The strata did not pay any CRT fees or claim any dispute-related expenses, so I award no reimbursement.
23. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against CREC.

ORDER

24. I dismiss CREC's claims and this dispute.

Nav Shukla, Tribunal Member