Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

TRINDEN ENTERPRISES LTD.

APPLICANT

A N D :

The Owners, Strata Plan NW2406

RESPONDENT

REASONS FOR DECISION

Tribunal Member: David Jiang

INTRODUCTION

1. This dispute is about a limited common property (LCP) storage room (LCP room). The applicant, Trinden Enterprises Ltd. (Trinden), owns strata lots 26 (SL26) and 32 (SL32) in the respondent strata corporation, The Owners, Strata Plan NW2406 (strata). The LCP room is designated on the strata plan for the exclusive use of SL26

and SL32. Trinden says the strata rented out the LCP room to third parties without its permission. It seeks $26,100 as compensation for 5 years' worth of market rent and an order that the strata immediately return the LCP to Trinden's use.

2. The strata disagrees. It says, among other things, that it was justified to rent the storage room out to Telus Corporation (Telus) because the rent benefitted all owners in the strata. It also says the owners in the strata approved the lease, so it acted properly. It says it will "return" the LCP room to Trinden in February 2023.

3. One of Trinden's directors, Gabriele Cocco, represents it. A strata council member represents the strata.

4. For the reasons that follow, I find Trinden has partially proven its claims.

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.

9. Trinden claims compensation of $26,100, which is says is equal to 5 years' worth of rent at a monthly rate of $435. Given this time period, I asked the parties to provide submissions on whether any part of Trinden's claims are out of time under the *Limitation Act*, and they did so. I discuss this as an issue below.

The Strata's Requested Order

10. In submissions, the strata says that I should order the strata to set a date and time for an annual general meeting (AGM) or special general meeting (SGM) to vote on a new resolution relating to the sharing of the telecommunication rental revenue. I find the strata's request is, in substance, a counterclaim. However, the strata did not properly make a counterclaim or pay the fee to do so under CRT rule 3.2. So, I have not considered the strata's request in this dispute.

Trinden's Additional Submissions

11. Trinden provided additional submissions after the time to do so had passed. The strata objected. I provided the strata an opportunity to respond, and it did so.

12. Trinden's additional submissions consist of 8 separate points about a variety of topics. Ultimately, I find nothing turns these submissions. So, while I have considered them, my decision does not turn on the submissions.

ISSUES

13. The issues in this dispute are as follows:

    a. Is any part of Trinden's claims out of time?

b. Did the strata breach a legal obligation in connection with the LCP room?

c. Are any remedies appropriate?

BACKGROUND, EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, Trinden as the applicant must prove its claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.

15. As referenced above, title searches show that Trinden became the owner of SL26 and SL32 in April 2005. The strata plans shows the following. The strata consists of 4 buildings. SL26 spans the plaza and second level of 1 building. SL32 likewise spans the plaza and second level of another separate building. Across from SL32, and in the same building at the plaza level, is the LCP room. It is designated as LCP for the exclusive use of SL26 and SL32 and has a total square footage of 59.2 square meters.

16. The strata say the room is 59.53 square meters based on another drawing, but I find the strata plan is likely correct given its status as a document registered in the Land Title Office. Ultimately, nothing turns on this.

17. The strata filed a complete set of bylaws, repealing and replacing previous ones, in June 2003. It filed numerous amendments after this, most of which are not relevant to this dispute. In November 2007, the strata added bylaw 2.4. It created the 1) apartment section comprised of strata lots 33 through 128, 2) the townhouse section comprised of strata lots 1 through 25, and 3) the commercial section comprised of SL26 and SL32.

18. I turn to the chronology. In 1989, the strata entered into an agreement with BC Tel, now known as Telus. The agreement is not in evidence. However, BC Tel's March 15, 1999 letter shows that it included renting the apartment rooftop for cellular and microwave antennas. The strata's undisputed submission is that the rent also

included using the LCP room to house telecommunications equipment in connection with the antennas.

19. The parties provided lengthy submissions and evidence about other leases the strata signed with Clearnet Inc. and Terago Networks. While they provide some background, I find nothing turns on them and find it unnecessary to summarize them.

20. As noted above, Trinden became an owner in the strata in April 2005. The April 2005 strata council meeting minutes show that Trinden's representative "confirmed that he will not demand the removal of the Telus Mobility equipment" from the LCP room. At the time, the strata was depositing the rent from Telus into its joint operating account. Trinden said it had "no objection" to "the present arrangement of the sharing of the revenue of the Telus Mobility lease". Based on these comments, the council decided it was unnecessary to contact Telus about relocating the equipment.

21. The parties agree that in 2017 the strata's rental agreement with Telus was nearing expiration. Trinden emailed a January 14, 2017 letter to the strata manager. Trinden said that it would not agree to extend the use of the LCP room. It said that it would be willing to agree on reasonable rent to house Telus' equipment.

22. Despite this, the November 20, 2017 strata council meeting minutes show that council members voted to extend the Telus lease for a further 5-year term. Trinden's representative was absent at the time. The November 22, 2018 AGM minutes show that the owners also passed a special resolution to enter into a lease with Telus for increased rent. I note that Trinden contests the validity of this AGM, but nothing turns on this for the purposes of this dispute.

23. From January 2018 onwards, Trinden repeatedly complained to the strata that it opposed extending the rental agreement with Telus, and that the strata or third parties could not use the LCP room without compensating Trinden for reasonable rent. These include letters dated December 13, 2018, February 12, March 31, April 3, 30, June 28, November 7, 2021, and July 15, 2022.

24. The evidence shows that the strata generally took no action. Notably, on July 11, 2020, the strata's lawyer emailed an opinion on whether the strata was liable for continuing to rent out the LCP without Trinden's consent. The lawyer wrote, "Trinden may have a claim against the strata corporation if there isn't some agreement for the strata corporation to use that area and collect all revenue from that space". The letter indicates that the Telus was working on moving equipment out of the room at the time. The lawyer reiterated their advice in a July 27, 2021 email, writing that if the strata was still permitting Telus to use the LCP, there "there is a risk, as previously discussed, that those owners may bring a claim for some of the revenue for the use of their storage lockers".

25. I note that a party's legal advice is normally privileged, but Trinden provided these emails as evidence and the strata did not object. In any event, I note these emails here for background purposes and I do not necessarily accept the lawyer's analysis, reasoning, or legal advice as fact, nor does my decision turn on the emails.

26. On October 3, 2022, the strata emailed Trinden. It advised that someone, presumably Telus, had removed the telecommunications equipment from the LCP room. The strata also said that someone, presumably the strata, had also removed a dividing wall that had been installed at some point. However, the strata did not agree to immediately return the room for Trinden's use. In this dispute, the strata says that Trinden may use the LCP room again after the strata signs a new agreement with Telus in February 2023, and registers it at the Land Title Office.

Issue #1. Are any claims out of time?

27. Section 6 of the *Limitation Act* says that the basic limitation period is 2 years, and that a claim may not be started more than 2 years after the day on which it is "discovered". Under section 8, a claim is "discovered" when the applicant knew or reasonably ought to have known they had a claim against the respondent and a court or tribunal proceeding was an appropriate means to seek a remedy. CRTA section 13.1 says the basic limitation period under the *Limitation Act* does not run after the applicant requests dispute resolution with the CRT and pays the applicable fee.

28. Trinden applied for dispute resolution on August 14, 2022. So, I find Trinden must have discovered its claim on or after August 14, 2020, in order for it to be in time.

29. I asked the parties for further submissions on when Trinden discovered its claim and if any part of its claims are out of time. Trinden said that it became aware of the strata's liability after it viewed the lawyer's July 11 and 27, 2021 emails, summarized above. In contrast, the strata says Trinden waited 15 years to request compensation for the LCP room. So, I infer it takes the position that Trinden discovered its claim around the time it became the owner of SL26 and SL32.

30. In *Brockman v. Valmont Industries Holland B.V.*, 2022 BCCA 80, the court found that in situations involving a continuing civil wrong, like trespass, nuisance, false imprisonment, and oppressive conduct, damages for a continuing injury are recoverable only for the period within the applicable limitation period. See also the non-binding decision of *Wu v. The Owners, Strata Plan LMS 474*, 2023 BCCRT 588, citing *Brockman*.

31. I find Trinden's claim is about a continuing civil wrong, similar to ongoing oppressive conduct. In particular, I find Trinden's claim is essentially for significant unfairness, as discussed below. I find the principles in *Brockman* apply here to the strata's alleged continuing failure to allow Trinden the exclusive use of the LCP room, causing loss of use and enjoyment of that property. As noted earlier, Trinden claims for 5 years' worth of damages. So, I find it claims for lost rent as far back as August 14, 2017. However, as I agree with the reasoning in the above-cited decisions, I find Trinden's claim is limited to the period after August 14, 2020.

32. I acknowledge Trinden's submission that it discovered its claim in July 2021. However, Trinden's numerous emails from 2017 onwards show that it knew or reasonably should have known it had a claim against the strata at the time for a continuing injury or loss, and a court or tribunal proceeding was an appropriate means to seek a remedy.

Issue #2. Did the strata breach a legal obligation in connection with the LCP room?

33. Under SPA section 73, CP may be designated as LCP on the strata plan. As noted above, the strata plan shows the LCP room is designated as LCP for the exclusive use of the 2 strata lots owned by Trinden.

34. Trinden alleges that the strata rented out the LCP room without its permission. I find that Trinden's legal basis is that the strata acted in a signficantly unfair manner.

35. Section 123(2) of the CRTA gives the CRT the power to make an order directed at the strata, if the order is necessary to prevent or remedy a significantly unfair action, decision or exercise of voting rights.

36. Significantly unfair conduct must be more than mere prejudice or trifling unfairness. See *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44. Significantly unfair means conduct that is oppressive or unfairly prejudicial. Oppressive is conduct that is burdensome, harsh, wrongful, lacking fair dealing or done in bad faith, while prejudicial means conduct that is unjust and unequitable. See *Reid v. Strata Plan LMS 2503*, 2001 BCSC 1578, aff'd 2003 BCCA 126.

37. In *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342, the BC Court of Appeal confirmed that an owner's reasonable expectations continue to be relevant to determining whether the strata's actions were significantly unfair.

38. In considering an owner's reasonable expectations the courts have applied the following test from *Dollan*:
    a. What was the owner's expectation?
    b. Was the expectation objectively reasonable?
    c. Did the strata violate that expectation with a significantly unfair action or decision?

39. I find that Trinden reasonably expected to use and enjoy the LCP room given that it legally has a right to exclusively use it under the SPA. I find that this objectively

reasonable expectation was violated by a signficantly unfair action. This is because the strata denied Trinden the use of the LCP room. In particular, the strata allowed Telus to place equipment in the LCP room and allowed either its contractor or Telus' contractor to place a partition wall in it. So, I find the strata essentially rendered the LCP room unusable for Trinden. It did so even though Trinden, over the course of several years, repeatedly told the strata that it objected to the strata's actions.

40. I find my conclusion supported by the court's comments in *Moure v. The Owners,* Strata Plan NW2099, 2003 BCSC 1364 at paragraph 22. The court held that LCP must be seen as a special category of property over which the strata lot owner has a substantial degree of control and something approaching a beneficial interest.

41. The strata says that Trinden benefitted from the strata's arrangement with Telus to keep strata fees low. I accept this was likely the case. However, there is no law that allows the strata to use such benefits as justification to entirely deny an owner the use of LCP it is entitled to exclusively use under the SPA. The chronology makes it clear that the strata knew Trinden objected to renewing lease with Telus, both before and after the strata entered into the agreement. So, despite any benefit that accrued to Trinden, I find the strata's action was signficantly unfair.

42. Although not necessary for my decision, I note as well that the strata ignored its own lawyer's warnings that Trinden had exclusive use of the LCP room. I find this consistent with a finding that the strata acted in a signficantly unfair manner.

43. I next turn to the appropriate remedy. Trinden claims damages equal to monthly rent of $435. In submissions Trinden also requested a slightly higher amount of $477 per month instead. It says this is based on "current market storage renal costs". As evidence, it provided an ad from a Public Storage company. However, the ad does not explain its pricing, which varies signficantly by location and size. The sizes listed are small, medium and large, without any description of square footage. So, I put little weight on the ad.

44. The telecommunications agreements do not provide any breakdown about how much of the rent is for the LCP room. So, I find this is also not available as a measure of damages.

45. From my review, I find that there are no rental restriction bylaws that apply to the LCP room. That said, I find it speculative that anyone would seek to rent the LCP room for the amount Trinden seeks. Notably, Telus moved its equipment from the LCP room in October 2022. There is no indication it sought to negotiate with Trinden about storing its goods in the LCP room. So, I find it unproven that even Telus would have paid the claimed rent to keep its equipment there.

46. Finally, there is no indication that Trinden spent any money to store its items elsewhere, or that is suffered any out-of-pocket loss.

47. Given the above, I find that the most appropriate measure of damages is an award for loss of use and enjoyment of the storage room. From my review I did not find any specific cases that awarded damages for loss of use of a storage room or locker. There are several cases about loss of use or enjoyment of a strata lot, but I find those disputes are inapplicable as they are about living quarters.

48. In *Hestvik v. The Owners, Strata Plan EPS7152*, 2022 BCCRT 1066, an owner was awarded $2,000 for loss of use of their backyard for one year due to a drainage problem. In *Hestvik,* the tribunal member relied on *Zhang v. Davies*, 2021 BCCA 196, to award damages that included compensation for future harm when the harm from a past event will likely remain ongoing for a specified period.

49. CRT decisions are not binding, and I acknowledge that treating the LCP room as the "backyard" for Trinden's 2 strata lots is an imperfect analogy at best. However, I nonetheless find the reasoning in *Hestvik* helpful to obtain a measure of damages. Trinden lost the use of its storage room for the 2 years prior to starting its claim, plus at least another 6 months as the strata continued to deny access as of February 2023. So, on a judgment basis, I order the strata to pay Trinden $5,000 as damages.

50. As noted above, it is unclear when or if the strata finally allowed Trinden to use the LCP room. So, I order the strata to, if it has not done so already, immediately comply with its obligation under the SPA to allow Trinden to exclusively use the LCP room designated for the exclusive use of SL26 and SL32.

CRT FEES, EXPENSES AND INTEREST

51. 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. While Trinden proved only a small portion of its monetary claim, I still find it was the successful party as I find it was necessary to order the strata to allow Trinden to use the LCP room. I therefore order the strata to reimburse Trinden for CRT fees of $225.

52. Trinden claimed as a dispute-related expense $103.95 for "technical support service". I find it unproven that this expense was reasonable or necessary as it is unsupported by evidence or an explanation. So, I dismiss this claim for reimbursement. The strata did not claim any specific dispute-related expenses.

53. The *Court Order Interest Act* applies to the CRT. I find that Trinden is entitled to interest on $5,000, calculated as of August 14, 2020, the earliest date Trinden's cause of action arose while still being in time, to the date of this decision. This equals $214.46.

54. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Trinden.

ORDERS

55. Within 30 days of the date of this order, I order the strata to pay Trinden a total of $5,439.46 broken down as follows:
    a. $5,000 as damages for significant unfairness,
    b. $214.46 in pre-judgment interest under the *Court Order Interest Act*, and

c. $225 in CRT fees.

56. I order the strata to, if it has not done so already, immediately comply with its obligation under the SPA to allow Trinden to exclusively use the LCP room designated for the exclusive use of SL26 and SL32.

57. Trinden is entitled to post-judgment interest under the *Court Order Interest Act*.

58. 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.

David Jiang, Tribunal Member