



# Civil Resolution Tribunal

Date Issued: December 6, 2023

File: ST-2023-004041

Type: Strata

Civil Resolution Tribunal

Indexed as: *Kabos v. The Owners, Strata Plan KAS977*, 2023 BCCRT 1068

B E T W E E N :

ERIK ROBERT KABOS

**APPLICANT**

A N D :

The Owners, Strata Plan KAS977

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. The applicant, Erik Robert Kabos, co-owns strata lot 27 (SL27) in the respondent strata corporation, The Owners, Strata Plan KAS977 (strata). Mr. Kabos seeks orders for the strata to obtain a depreciation report, to provide requested documents, and for strata council members to return \$1,000 “gifted” to another owner.

2. The strata disagrees that any orders are necessary. It says it obtained the depreciation report in July 2023. It says provided the requested documents save for those that do not exist. It also says the \$1,000 payment was appropriately made to settle a claim by the owner.
3. Mr. Kabos is self-represented. A strata council member represents the strata.
4. For the reasons that follow, I refuse to resolve Mr. Kabos's claim about the \$1,000 payment. I find Mr. Kabos has partially proven their remaining 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.
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.

### ***Allegations of Breaches of Section 31 of the Strata Property Act***

9. As noted above, Mr. Kabos says that the strata council should return \$1,000 allegedly gifted inappropriately to another owner. In submissions, Mr. Kabos alleges that 3 strata council members breached the standard of care set out under section 31 of the *Strata Property Act* (SPA). These individuals are not parties to this dispute. Mr. Kabos says they should return the money to the strata.
10. The CRT has no jurisdiction to decide claims about a council member's alleged failure to meet their duty of care outlined under SPA section 31. See *Williams v The Owners, Strata Plan NW 1340*, 2021 BCSC 2058 at paragraph 66. Also, individual strata lot owners, like Mr. Kabos, do not have standing, or legal authority, to make claims for such breaches. This is because the strata council members' duties are owed to the strata corporation rather than individual owners. See *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 at paragraph 267.
11. Mr. Kabos also said there was "possibly" a breach of SPA section 92 in connection with the payment. This was not the core of their claim, and their arguments did not focus on it.
12. Given Mr. Kabos's clear submissions about the nature of this claim, I find it unnecessary to return to the parties for further arguments on this issue. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. I refuse to resolve their claims about alleged strata council negligence and failure to meet the duty of care in connection with the \$1,000 payment.

### ***The Documents at Issue***

13. Mr. Kabos did not outline the specific documents they required in the Dispute Notice. The strata did not object to this in the Dispute Response, but it asked Mr. Kabos to clarify what documents they required. Mr. Kabos did so in submissions, and the strata responded as discussed below.

14. I will consider Mr. Kabos's claim for documents they outlined in their initial submissions, even though the Dispute Notice was vague. I find it would be consistent with the CRT's mandate to do so. This includes providing dispute resolution services in a manner that is speedy, economical, informal, and flexible. I also find the prejudice to the strata would be minimal in the circumstances. This is because these requested documents are essentially the same ones referred to in Mr. Kabos's July 2022 correspondence with the strata, noted below, and because the strata asked for clarification and received it.
15. I reach a different conclusion on another set of documents Mr. Kabos requested in final reply submissions. Mr. Kabos did not outline them before the strata provided a response. So, the strata had no opportunity to address them. I find it would be procedurally unfair to decide or make any orders about them.

## **ISSUES**

16. The remaining issues in this dispute are as follows:
- a. Must I order the strata to obtain a depreciation report?
  - b. Must I order the strata to provide Mr. Kabos their requested documents?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

17. In a civil proceeding like this one, Mr. Kabos as the applicant must prove his 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.
18. Mr. Kabos became a co-owner of SL27 in January 2011. The parties were in previous disputes, including those indexed as *The Owners, Strata Plan KAS977 v. Kabos*, 2019 BCCRT 982, *Kabos v. The Owners, Strata Plan KAS977*, 2020 BCCRT 1391, and *Kabos v. The Owners, Strata Plan KAS 977*, 2021 BCCRT 1238. From my review, I find these decisions are not directly relevant to this dispute's issues.

19. The strata's bylaws are registered in the Land Title Office. The parties did not cite the bylaws and I find this dispute does not turn on them.

***Issue #1. Must I order the strata to obtain a depreciation report?***

20. Mr. Kabos says the strata breached its obligation to obtain a depreciation report. Under SPA section 94 and *Strata Property Regulation* 6.2(7), the strata must obtain a depreciation report every 3 years after obtaining its first depreciation report. The owners may vote to waive this requirement, but if they do so, the strata must obtain a report within 18 months of the vote. Here, there is no suggestion the owners voted to waive the strata's obligations under the SPA for depreciation reports.
21. I turn to the relevant background. The strata obtained a November 26, 2019 depreciation report. At some point in 2021, the owners approved obtaining an updated report. This is referenced in the July 29, 2022 annual general meeting (AGM) minutes. The October 5, 2022 and March 6, 2023 strata council meeting minutes show the strata council tried to get quotes without success.
22. Mr. Kabos requested a hearing about the lack of progress on updating the depreciation report. The strata held the hearing on April 5, 2023, and wrote in an April 12, 2023 letter that it was still reviewing a quote for the work. Mr. Kabos applied for dispute resolution later that month. The strata obtained a depreciation report after this. The strata manager emailed the new depreciation report to the strata on July 14, 2023. A copy is in evidence.
23. With that background, I find this issue is now moot. My reasons follow.
24. An issue is moot if 1) the live issue disappeared, leaving any remaining issues theoretical or academic, and 2) the CRT declines to exercise its discretion to hear the issue anyway. See *Bimmersley v. BCSPCA*, 2016 BCCA 259.
25. I find the depreciation report claim is moot because the strata obtained and provided a copy as evidence. The live controversy is gone. I see no compelling reason to otherwise resolve this issue as Mr. Kabos has obtained the claimed remedy. So, I dismiss this claim.

***Issue #2. Must I order the strata to provide Mr. Kabos their requested documents?***

26. As background, strata lots 20 (SL20) and 22 (SL22) have concrete patio slabs. The strata says that at some point, it received a verbal request from an owner to replace the slabs. The strata obtained a June 27, 2022 quote for removing each patio slab and to replace it with paver stones. Minutes show that at the July 2022 AGM, the owners voted by a narrow margin to approve a \$15,000 budget for this work.
27. Mr. Kabos emailed the strata on July 8, 2022, for further information about this project. They requested the following documents, which I find mostly match their requests in this dispute: 1) correspondence from SL20 and SL22 asking the council about patio repairs or replacement, 2) copies of all contractors' estimates or inspections about the patio work, 3) any independent, qualified written opinions or assessments of the 2 allegedly faulty slabs, and 4) the original written correspondence from the SL20 and SL22 owners which indicated the time frame of the discovery of potential slab issues. Mr. Kabos also requested in this dispute 5) the alteration agreements for the completed 2022 renovations in the patio areas of strata lots 20 and 22. I will refer to this same numbering below for ease of reference.
28. The strata says it disclosed what it had, and the other requested documents do not exist.
29. I turn to the relevant law. SPA section 35 and section 4.1 of the *Strata Property Regulation* set out the records that a strata corporation must prepare and retain. SPA section 36(1)(a) says that on receiving a request, the strata corporation must make the records and documents referred to in section 35 available for inspection by, and provide copies of them to, an owner. SPA section 36(3) says the strata corporation must do so within 2 weeks. The CRT cannot order the strata to produce records or documents that the strata is not required to provide under SPA section 35. See *The Owners, Strata Plan NWS 1018 v. Hamilton*, 2019 BCSC 863 at paragraph 27.
30. Under SPA section 35(2)(k), the strata must keep correspondence sent or received by the strata corporation and council. I find categories 1 and 4 fit under this provision.

The strata says documents for these categories do not exist. It says this is because the SL20 and SL22 owners verbally requested patio slab repairs. After this, a strata council member visited and verified the work was necessary.

31. Mr. Kabos points out that the June 28, 2022 strata council meeting minutes have a correspondence section. In that section, it says that SL20's owner asked the strata to replace the patio and add a patio cover. So, I find that relevant correspondence may be in the strata's possession. I order the strata to produce any correspondence it may have from the SL20 and SL22 owners asking the strata council about patio repairs or replacement.
32. I next turn to category 2, which consists of estimates and inspections. In the non-binding decision of *Sleeman et al v. The Owners, Strata Plan VR 2027*, 2019 BCCRT 1162, the CRT held that the strata must disclose a quotation received as correspondence under SPA section 35(2)(k), mentioned above. The strata provided the June 2022 quote mentioned earlier. It quoted \$5,392.07 for each patio. There is no indication the strata sought or received other quotes, so I decline to make any orders about documents in category 2.
33. I next turn to category 3, which concerns opinions or assessments. SPA section 35(2)(n.2) says the strata must keep any reports obtained by the strata corporation respecting repair or maintenance of major items in the strata corporation. The strata says documents of these type for the patios do not exist. I find it unproven that the strata's submission is false or incorrect. I say this in part because the strata provided the quote, mentioned earlier. I accept the strata's submission that it proceeded on the basis of the quote without obtaining other reports or opinions. So, I decline to order the strata to produce documents in category 3.
34. This leaves category 5. Under SPA section 35(2)(g), the strata must keep copies of agreements it is a party to. So, I find the strata must disclose any alteration agreements under category 5.
35. The strata did not address whether the SL20 or SL22 owners signed any alteration agreements about the patio replacement work. It did not refute Mr. Kabos' claim that

it had such agreements. So, I find it appropriate to order the strata to disclose any alteration agreements it may have for the completed 2022 renovations in the patio areas of SL20 and SL22.

## **CRT FEES AND EXPENSES**

36. 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.
37. I find have found that Mr. Kabos proved part of their claims. So, I find them partially successful. I order the strata to partially reimburse them \$112.50 for CRT fees. Mr. Kabos also claimed \$11.60 for registered mail expenses shown in a June 16, 2023 receipt. So, I also allow partial reimbursement of that sum for \$5.80.
38. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owner, Mr. Kabos.

## **ORDERS AND DECISION**

39. I order that within 30 days of this decision, the strata
- a. provide to Mr. Kabos copies of any correspondence it may have from the SL20 and SL22 owners asking the strata council about patio repairs or replacement,
  - b. provide to Mr. Kabos any alteration agreements it may have for the completed 2022 renovations in the patio areas of SL20 and SL22, and
  - c. reimburse Mr. Kabos \$118.30, for \$112.50 for CRT fees and \$5.80 for dispute-related expenses.
40. I order that the strata must not charge Mr. Kabos for any of these copies.
41. Mr. Kabos is entitled to post-judgment interest, as applicable.



42. I refuse to resolve Mr. Kabos' claims about alleged strata council negligence and failure to meet the duty of care in connection with the \$1,000 payment.
43. 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.

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David Jiang, Tribunal Member