



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Furdyk v. The Owners, Strata Plan LMS 962*, 2023 BCCRT 1090

B E T W E E N :

MICHAEL BRENT FURDYK

APPLICANT

A N D :

The Owners, Strata Plan 962

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about access to strata corporation records.
2. Michael Brent Furdyk co-owns a strata lot in the strata corporation, The Owners, Strata Plan 962 (strata).

3. Mr. Furdyk is self-represented in this dispute. The strata is represented by a lawyer, Benjamin Scheidegger.
4. Mr. Furdyk says the strata has refused to provide copies of records he requested, contrary to *Strata Property Act* (SPA) section 36. As remedy, he requests an order that the strata provide copies of the records listed in his April 13, 2022 letter. Mr. Furdyk also requests an order that the strata not require him to pay any portion of its legal costs incurred in this dispute.
5. The strata says it gave Mr. Furdyk those records it was required to provide under SPA section 36. The strata says some of the other documents Mr. Furdyk requested fell outside of SPA section 36, but it offered to provide them anyway if Mr. Furdyk agreed to pay for administrative and legal costs incurred in retrieving and reviewing those documents. The strata also says it has been involved in litigation at the BC Supreme Court (BCSC) since 2019, and some of the requested documents are privileged and cannot be disclosed.
6. The strata says Mr. Furdyk's claim is an abuse of process, and it requests an order that he reimburse \$8,197.75 in legal expenses.

JURISDICTION AND PROCEDURE

7. The Civil Resolution Tribunal (CRT) has jurisdiction (authority) over strata property claims under *Civil Resolution Tribunal Act* (CRTA) section 121. The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
8. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. I am satisfied I can fairly decide this dispute based on the evidence and submissions provided, without an oral hearing.
9. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.

ISSUES

10. The issues in this dispute are:

- a. What records, if any, must the strata provide to Mr. Furdyk?
- b. Must Mr. Furdyk reimburse the strata for legal expenses?

BACKGROUND

- 11. In a civil claim like this one, Mr. Furdyk, as applicant, must prove his claim on a balance of probabilities (meaning “more likely than not”). I have reviewed all the parties' evidence and submissions, but I only refer to what is necessary to explain my decision.
- 12. The strata consists of residential strata lots, the majority of which participate in a rental pool managed by a hotel company (VRH Hotel).
- 13. On September 20, 2019, 3 strata lot owners (not including the applicant) filed a BCSC petition against the strata and the 2019 strata council members. Those owners alleged, among other things, that the strata and named council members failed to act in the interests of all strata lot owners in setting up and managing the rental pool and strata custodial services with the VRH Hotel. This matter has not yet resolved.
- 14. On February 17, 2022, some strata lot owners (not including the applicant) filed a BCSC petition against the 2020 strata council members, on notice to the strata and the 2019 strata council members. The petition said the respondents renewed the VRH Hotel lease and agreements on behalf of the strata owners, despite the owners voting against it at a general meeting. The 2022 petition asks the court to set aside the renewed lease, among other things.
- 15. On March 20, 2023, Mr. Furdyk and 2 other strata lot owners filed a BCSC petition against the VRH Hotel and the 2020 strata council members, on notice to the strata and the 2019 strata council members. The 2023 petition also alleges that the strata

and named council members failed to act in the best interests of all owners and seeks to set aside the strata's contracts with the VRH Hotel, among other things.

REASONS AND ANALYSIS

Records Access

16. SPA section 35 sets out the records that a strata corporation must prepare and retain. *Strata Property Regulation* (SPR) section 4.1 sets out how long a strata corporation must keep each type of record.
17. SPA section 36(1)(a) says that on receiving an owner's request, the strata corporation must make the records referred to in section 35 available for inspection, and must provide copies upon payment of any applicable fee.
18. On April 13, 2022, Mr. Furdyk wrote to the strata, requesting copies of the following documents:
 1. Correspondence sent or received by the strata between September 1, 2019, and February 28, 2019, including copies of any correspondence provided to the strata's lawyer about the October 2019 SGM and if the owners agreed to sign a lease with the VRH Hotel.
 2. Correspondence sent or received by the strata council between September 1, 2019, and February 28, 2019.
 3. Any written contracts to which the strata is a party that were valid between September 1, 2019, and February 28, 2019.
 4. Bank statements, cancelled cheques, and certificates of deposit for the time period September 1, 2019, and February 28, 2019.
19. In a May 19, 2022 letter to Mr. Furdyk, the strata's lawyer agreed to provide the records listed in items 3 and 4 above. The lawyer provided an index listing what records the strata had that fit within those requests, and said the strata would send

copies at a cost of 25 cents per page. Since Mr. Furdyk does not dispute this, I make no order to disclose any documents listed in items 3 and 4.

20. The May 19, 2022 letter said the strata would not provide any of the records from items 1 and 2 of Mr. Furdyk's request, because they were no longer subject to production. The strata's lawyer cited SPR section 4.1(5), which says a strata corporation must retain correspondence "for at least 2 years."
21. The strata argues that since the correspondence Mr. Furdyk requested was all more than 2 years old when he requested it on April 13, 2022, the strata was not required under SPA section 36 to disclose it.
22. Mr. Furdyk disagrees with this position. He argues that SPR section 4.1(5) means the strata did not have to retain the correspondence beyond 2 years, but if it did, the correspondence must be disclosed under SPA section 36. Mr. Furdyk says that SPR section 4.1(5) does not address an owner's right to access records, but only addresses the minimum amount of time the strata must retain a record. He submits that if the SPA or SPR intended to restrict an owner's right to access under section 36 based on time period, then that restriction would be explicitly stated in the legislation.
23. Since the specific wording of the legislation is relevant, I have set it out below. SPA section 35(2)(k), read in its entirety, says:

The strata corporation must retain copies of all the following:

...

(k) correspondence sent or received by the strata corporation and council;

24. SPR section 4.1(5) says:

The strata corporation must retain the correspondence referred to in section 35(2)(k) of the Act for at least 2 years.

25. SPA section 36(1) says:

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...

26. So, the question is whether SPA section 36 requires the strata to disclose correspondence in its possession that is more than 2 years old.

27. Mr. Furdyk essentially argues that SPA section 35(2)(k) can be read separately, without reference to SPR section 4.1(5). I disagree. If SPR section 4.1(5) did not exist, the strata would have to retain its correspondence forever. However, the SPR specifically says the strata must only retain its correspondence 2 years.

28. In *Kayne v. The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610, the BCSC considered the scope of document production under SPA section 36. The court found that the scope should be interpreted narrowly, rather than broadly. For example, the court said that meeting minutes did not have to contain any details of discussions. Similarly, the court found that the section 36 requirement to disclose “books of account” did not include the strata’s general ledger, and the requirement to disclose “budget and financial statements” did not include underlying bills or receipts. In making these narrow interpretations, the court noted that the purpose of section 36 is to inform strata lot owners about decisions taken, and money spent (paragraph 8).

29. In *The Owners, Strata Plan NWS 1018 v. Hamilton*, 2019 BCSC 863, the BCSC also took a narrow approach to strata document production. In *Hamilton*, the court found that the CRT had erred by ordering disclosure of documents that were not strictly listed in SPA section 35, even though the vice chair had noted that the documents in question related to a “legitimate concern” by the requesting owner. In finding that the CRT had erred, the court cited the reasons in *Kayne*, including paragraph 8 about the narrow purpose of SPA section 36.

30. Applying this narrow interpretation of section 36 from *Kayne* and *Hamilton*, I find SPA section 36 requires disclosure only of correspondence sent or received within 2 years

of the disclosure request. *Kayne* and *Hamilton* establish that just because a strata corporation has a document does not mean it must be disclosed, even if one could broadly argue that it is contained under one of the section 35 categories (like the bills and receipts discussed in *Kayne*).

31. Mr. Furdyk also cites SPA section 36(1.1) in support of his argument that the strata must disclose correspondence that is more than 2 years old. SPA section 36(1.1) says (my bold emphasis added):

On receiving a request from a former owner, from a former tenant referred to in subsection (1) (b) or from a person authorized in writing by the former owner or former tenant, the strata corporation must, with respect to records and documents referred to in section 35 that, **whenever created**, relate to the period during which the former owner or former tenant was an owner or tenant, make those records and documents available for inspection by, and provide copies of them to, the former owner, former tenant or person authorized in writing, as the case may be.

32. Mr. Furdyk says that the phrase “whenever created” in section 36(1.1) means that SPA section 36(1) should be interpreted to mean the strata must give requesting owners all correspondence in its possession “whenever created.” However, section 36(1.1) does not apply to Mr. Furdyk, as it only applies to requests from former rather than current owners.
33. I find it significant that the phrase “whenever created” does not appear in section 36(1), but only 36(1.1). The plain meaning rule of statutory interpretation says that, if the meaning of a legislative text is plain or clear the court may not interpret it, but must simply apply it as written. Applying that rule, since “whenever created” appears in section 36(1.1) but not in section 36(1), I find this means that a strata corporation does not have to disclose correspondence to a current owner regardless of when it was created. Specifically, the legislature could have included the phrase “whenever created” in section 36(1), but it did not.

34. For these reasons, I find Mr. Furdyk is only entitled to copies of correspondence created within 2 years of his April 13, 2022 request. So, I dismiss his claim for disclosure.
35. For these reasons, I find it unnecessary to address the strata's arguments about records protected from disclosure due to legal privilege.
36. However, even if I found that Mr. Furdyk was entitled to correspondence beyond the 2-year period, I would not have ordered the requested disclosure because of SPA section 169(1)(b).
37. SPA section 169(1)(b) says that if an owner sues the strata, or if the strata sues an owner, that owner does not have a right to any information or documents relating the suit, including any legal opinions about that suit.
38. In his April 13, 2022 letter, Mr. Furdyk explained the reasons for his records request as follows:

I am aware of the current lawsuit started by three owners against [BB], [AR] and [MM]. My understanding is that one of the significant issues in that lawsuit is about the SGM that occurred in October 2019 and whether the owners agreed to sign a lease with the VRH Hotel or if the owners decided that a lease should not be signed until the owners had information about the rental charge and other details. I'm not sure whether the strata corporation agreed to a lease with the VRH Hotel on February 1, 2020 or at a different date.

I did not attend the October 2019 SGM and I want to know what happened afterwards.

I am an owner and I think it is important that the strata corporation resolves this conflict and moves forward.

39. So, Mr. Furdyk acknowledged that the requested records related specifically to the litigation with BB, AR, and MM. At the time, Mr. Furdyk was not party to any litigation with the strata. However, as noted above, on March 20, 2023, Mr. Furdyk and 2 others

filed a BCSC petition against the VRH Hotel and the 2020 strata council members. I acknowledge that SPA section 169(1)(b) may not strictly apply, since the strata corporation is not a named party. However, in the petition, Mr. Furdyk and the other petitioners specifically ask for orders on behalf of the strata corporation. In this circumstance, I find it would inappropriate to order disclosure of records that would otherwise be barred under SPA section 169(1)(b), just because the strata is not named as a party.

40. This decision is only about Mr. Furdyk's entitlement to records under the SPA. He may be entitled to disclosure of documents related to his petition under the *BC Supreme Court Civil Rules*, but I make no findings about that.

Legal Expenses

41. The strata submits that filing this dispute is an abuse of process, for various reasons. These reasons include the strata's allegations that Mr. Furdyk included documents in evidence that are covered by settlement privilege, and that Mr. Furdyk's submissions included unsupported allegations of misconduct against the strata and its lawyer. The strata says the CRT should order Mr. Furdyk to pay \$8,197.75 in special costs.
42. The CRT's authority to order legal fees is limited to "extraordinary circumstances" under rule 9.5(3). CRT rule 9.5(4) says that the CRT may consider the complexity of the dispute, the lawyer's degree of involvement, and whether the other party caused unnecessary delay or expense. CRT rule 9.5(4)(d) says that the CRT may also consider any factor it considers appropriate. Several CRT decisions, such as *Kornylo v. The Owners, Strata Plan VR 2628*, 2019 BCCRT 1387, have noted that the CRT may apply the law of special costs in deciding whether to award legal fees.
43. In *Garcia v. Crestbrook Forest Industries Ltd.*, 1994 CanLII 2470 (BC CA), the BC Court of Appeal said that special costs should be ordered against a party when their conduct in the litigation was reprehensible, in the sense of deserving of rebuke or blame. Based on the evidence and submissions, before me, I find Mr. Furdyk's alleged conduct does not rise to the level of reprehensibility. So, I dismiss the strata's claim for legal fee reimbursement.

CRT FEES AND EXPENSES

44. 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. The strata is the successful party. It paid no CRT fees. I have addressed the strata's claim for legal fee reimbursement above. I award no reimbursement.
45. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Furdyk.

ORDER

46. I dismiss Mr. Furdyk's claims, the strata's claim for legal fee reimbursement, and this dispute.

Kate Campbell, Tribunal Member