Civil Resolution Tribunal

Date Issued: January 8, 2024

File: ST-2023-003059

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wood-Rupp v. The Owners, Strata Plan VR 1409*, 2024 BCCRT 17

B E T W E E N :

JESSICA WOOD-RUPP and PETER RUPP

APPLICANTS

A N D :

The Owners, Strata Plan VR 1409

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Eric Regehr, Vice Chair

INTRODUCTION

1. Jessica Wood-Rupp and Peter Rupp own strata lot 1 (SL1) in the strata corporation The Owners, Strata Plan VR 1409. SL1 has a secondary suite. They essentially make 2 claims. The first (which they divide into 2 claims in the Dispute Notice) is about the applicants' purchase of SL1 in early 2021. They say the strata withheld information about a rental restriction rule. They ask for $200,000 in compensation, which they

say represents SL1's reduced market value. The other claim is about the strata's preparation of a Form B Information Certificate in March 2023 when the applicants tried to sell SL1. They say the strata "weaponized" the Form B to prevent the applicants from selling. They ask for a further $25,000 in compensation for this. Ms. Wood-Rupp represents both applicants.

2. With respect to the first claim, the strata denies withholding any documents or acting improperly when it passed the rental restriction rule. In any event, the strata says the rental restriction rule was invalid and so the applicants' claim is moot. The strata also says this claim is out of time under the *Limitation Act*. Finally, the strata says that any ongoing inability to rent SL1's suite is because it does not comply with municipal bylaws, not because of any strata bylaw or rule restricting rentals.

3. With respect to the second claim, the strata admits that its initial Form B included unnecessary information in error but says that it promptly corrected the error. So, they say there was no harm to the applicant's efforts to sell SL1.

4. With respect to both claims, the strata denies that the applicants have proved a financial loss. The strata is represented by a lawyer, Milan Milenkovic.

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). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.

6. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both sides to this dispute question the credibility, or truthfulness, of the other. However, in the circumstances of this dispute, it is not necessary for me to resolve the credibility issues that the parties raised. There is no

other compelling reason for an oral hearing, especially considering the CRT's mandate to provide proportional and speedy dispute resolution. I therefore decided to hear this dispute through written submissions.

7. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.

8. In submissions, the applicants ask to increase the value of their second claim from $25,000 to $50,000. The reason for the increase is that they want to claim damages for emotional distress. This claim was not in the Dispute Notice. The purpose of the Dispute Notice is to define the issues and provide fair notice to the other party of the claims against them. With that, it would be procedurally unfair for me to consider a new claim at this late stage. Adjudicating an entirely new claim also undermines the CRT's facilitation process. Finally, CRT rule 1.19(1) allows applicants to request amendments to a Dispute Notice. The applicants amended the Dispute Notice during facilitation, but they did not add a new claim for emotional distress. CRT rule 1.19(3) says that the CRT will not allow amendments at the tribunal decision phase except in extraordinary circumstances. I find no extraordinary circumstances exist here that would justify amending the Dispute Notice now. So, I have not considered the applicants' claim for emotional distress in this decision.

ISSUES

9. The applicants make several arguments in support of their claims. Likewise, the strata makes several arguments about why the applicants' claims should be dismissed. For the reasons set out below, I have concluded that the applicants failed to prove a financial loss for either claim. Because this is fatal to the applicants' claims, I will focus my analysis on that issue, and I will not address the parties' other arguments. In doing so, I will consider the following issues:

    a. Does the strata have a valid bylaw or rule restricting rentals?

    b. Did any strata action during the applicants' purchase reduce SL1's market value?

c. Did any strata action during the applicants' attempted sale of SL1 cause a financial loss?

BACKGROUND

10. In a civil claim such as this, the applicants must prove their claims on a balance of probabilities. This means more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

11. The strata consists of 4 residential strata lots in 2 buildings. Three strata lots are in a street-facing building and the fourth is in a laneway building. SL1 is in the main building. It is the only strata lot with a secondary suite.

ANALYSIS

The Rental Restriction Rule, the Form B, and the Applicant's Purchase of SL1

12. The strata's poor record-keeping make the background to this dispute somewhat confusing and difficult to explain. There was an AGM on December 5, 2020. There are 2 sets of minutes for that meeting: an original draft and one with amendments and comments on it. Both sets of minutes refer to the possibility of a future rule about rentals. The first version specifically mentions SL1 as the target of a rental rule, but the amended version does not. The amended version also says that the owners reached a "consensus" about restricting short-term rentals. Both versions also mention the possibility of passing bylaws. There is no indication in either version that the owners voted on any rules or bylaws.

13. There is also a document in evidence with the title "Rules agreed upon at 2020 Strata Meeting". Despite the date in the title, the owners were emailing drafts and discussing these rules in January 2021. So, they were not approved at the 2020 AGM. Instead, the strata says that the strata met and voted on the rules on February 5, 2021. There are no meeting minutes to confirm this.

14. This document included 2 rules about rentals. Rule 3.2 said that rentals of less than 3 months were not permitted. Rule 3.3 said that any rental suite had to be licensed and registered with the municipality. SL1's suite is undisputedly not licensed or registered, and the applicants say it would be impossible to bring it into compliance with municipal requirements. The applicants have never attempted to rent the suite as a market rental, as a family member lives there.

15. The applicants entered into a binding purchase agreement for SL1 on January 5, 2021. The strata prepared a Form B dated December 11, 2020, which the applicants received as part of the purchase process. The only question on the Form B that specifically related to rentals was how many strata lots were currently rented. The Form B said zero. The previous owner had tenants, but it is unclear whether they were still there on December 11, 2020, so it is unclear whether that statement was accurate. The Form B also said that there were no unfiled bylaw amendments and that the strata had not provided notice of any bylaw amendments that the owners had not yet voted on. Based on the minutes outlined above, these statements appear to have been accurate. The applicants did not receive any meeting minutes, which may have alerted them to the possibility of future rental restrictions. However, section 59 of the *Strata Property Act* (SPA), which sets out the information that must be in a Form B, does not require strata corporations to include meeting minutes.

16. The completion date was March 24, 2021. So, the strata voted on the rule restricting rentals after the applicants agreed to buy SL1 but before they completed the purchase. The applicants say that they found out about it only days before the closing date. The applicants allege that the strata intentionally withheld the fact that the owners were considering a rental restriction. They say that the rental suite was a central consideration in their purchase, and that the rental restriction rule considerably reduced SL1's market value.

17. I find it unnecessary to determine whether the strata had a legal obligation to disclose anything about the existence or possibility of a rental restriction rule or bylaw. I say this because there never was a valid bylaw or rule restricting rentals. Section 125 of the SPA allows a strata corporation to make rules about the use, safety, and condition

of common property and common assets. A strata corporation cannot make rules about the use of strata lots, such as by restricting rentals. Only a bylaw could do that. So, the rule restricting rentals was and is unenforceable. There is no suggestion that the strata ever passed a bylaw restricting rentals, and the Land Title Office index confirms that the strata has never filed a bylaw amendment. Even if it had, the SPA was amended in November 2022 to prohibit bylaws restricting rentals, so any such bylaw would now be unenforceable.

18. The basis for the applicants' claim is that they got something less valuable than what they paid for. They thought they were buying a strata lot with no rental restrictions, but later discovered the rental restriction rule. They, and the other owners, all believed it was valid and enforceable. Regardless of what the parties thought at the time, the applicants got what they paid for: a strata lot with no rental restrictions. They still own a strata lot with no rental restrictions. There is therefore no basis to claim compensation for lost market value.

19. My conclusion may have been different if the applicants had sold SL1 when the parties all believed that the rental restriction rule was enforceable. If the rental restriction rule had reduced the market value temporarily because of a shared understanding that it was enforceable, a sale would have crystallized a financial loss. However, the applicants did not sell SL1, and so the only possible financial loss they can claim now is that SL1 currently has less market value because of the rental restriction rule. The applicants do not explain why SL1 currently has less market value because of an unenforceable rule, and as a matter of common sense, I find that it does not.

20. The applicants also argue that SL1 has less market value because of the strata's current position that the applicants cannot rent out the suite because it does not comply with municipal bylaws. The applicants say that the market value of SL1 was higher when the strata tolerated the rental despite the suite's illegal status. The strata relies on Standard Bylaw 3(1)(d), which prohibits owners from using strata lots in a way that is illegal. I agree that this includes renting out an illegal suite. The strata also provided evidence from its insurer that an illegal secondary suite could impact the

strata's coverage. This is a valid reason to be concerned about allowing the rental of the suite, regardless of the strata's past practice.

21. The applicants say in submissions that they "acknowledge the inherent risks associated with purchasing a home with a non-registered suite". I do not agree with the applicants that the strata's insistence that the applicants legalize SL1's suite before renting it goes beyond these known risks. The possibility of the strata enforcing a bylaw against illegal use was a risk the applicants assumed by buying a strata lot with an illegal suite.

22. For these reasons, I dismiss the applicants' claim for $200,000.

The Applicants' Attempt to Sell SL1

23. The applicants' remaining claim is about an alleged $25,000 loss associated with their attempt to sell SL1 in early 2023. They allege that the strata effectively sabotaged their sale efforts by putting incorrect information in a Form B dated March 11, 2023. Specifically, the strata included a copy of the rules mentioned above, which include a rental restriction. The applicants say this was misleading. The strata also included notes that the applicants had threatened the strata with legal action. The applicants say the strata should not have said anything about potential litigation. The applicants also say that the strata included inaccurate information about the strata's budget, making it seem that the strata's expenses were higher than they were. The applicants say that the strata included these things maliciously to thwart a potential sale.

24. The strata provided a revised Form B on March 17 that removed any reference to potential litigation. The applicants started this dispute on March 21.

25. I note that the strata's position on the rules is inconsistent. In submissions, the strata says it never formally voted on the rules, so they are invalid. The evidence before me suggests that is true, and that the strata did not follow the necessary process to pass the rules set out in section 125 of the SPA. Despite the strata's seeming acknowledgement of this, it did not amend the Form B to indicate that the strata had

no rules, which it should have done. The applicants say this left the impression with potential buyers that there was a valid and enforceable rule restricting rentals.

26. In any event, the applicants' claim rests on the assertion that they gave the original Form B to prospective buyers. They provided no evidence to support this assertion. In fact, they provided no evidence at all about their sale efforts. There is no evidence of the listing, viewings, open houses, negotiations, or offers, let alone evidence that the original Form B dissuaded any potential buyers. There is no statement from the applicants' real estate agent or lawyer. There are no emails or other written communications between the applicants' real estate agent and any prospective buyers or other real estate agents. In the absence of any objective evidence, I find that the applicants have not proved that any prospective buyers received the original Form B. Even if they did, the applicants have also not proven that the Form B affected any prospective buyer's decision about how much to offer the applicants or whether to make an offer at all.

27. Given this lack of evidence, the most the applicants have proved is that the original Form B could have impacted their sale efforts. I acknowledge that it is a possibility, but the applicants must prove that it likely happened. They have not done so. It follows that they have not established an actual financial loss. For this reason, their $25,000 claim must be dismissed. To the extent they argue that the strata's ongoing refusal to formally "reverse" the rules continues to affect their sale prospects, this decision will make it clear that the 2020 rules are invalid.

TRIBUNAL FEES AND EXPENSES

28. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. The applicants were unsuccessful, so I dismiss their claim for CRT fees and dispute-related expenses. The strata did not claim any dispute-related expenses or pay any CRT fees.

29. The applicants say that they should not have to contribute to the strata's legal fees related to this dispute. I agree. Section 167(2) of the SPA says that an owner who sues the strata does not need to contribute to the expense of defending it. Section 189.4(b) says that section 167 applies to CRT disputes. So, the strata must ensure that the applicants do not contribute to any dispute-related expenses, including legal fees.

DECISION AND ORDERS

30. I dismiss the applicants' claims, and this dispute.

Eric Regehr, Vice Chair