



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Watt v. The Owners, Strata Plan VIS 6983*, 2024 BCCRT 95

B E T W E E N :

LORISA M WATT and NAOMI DAIGLE

APPLICANTS

A N D :

The Owners, Strata Plan VIS 6983

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This strata property dispute is about rules governing the use of common facilities.
2. The applicant, Lorisa M Watt, co-owns strata lot 52, in the respondent strata corporation, The Owners, Strata Plan LMS VIS 6983 (strata). The applicant, Naomi Daigle, co-owns strata lot 58 in the strata. Lorisa M Watt represents the applicants. A strata council member represents the strata.

3. The applicants claim the strata improperly approved new rules for the use of the pool, gym, and hot tub (recreation facilities). The strata ratified the rules by majority vote at a general meeting held in March 2023. The applicants say $\frac{3}{4}$ vote approval is necessary under the *Strata Property Act* (SPA) section 71. In particular, they say the new rules significantly changed the use of the recreation facilities by requiring residents to use a sign-in sheet and restricting the number of residents and guests that can use the facilities at the same time, and for how long, none of which were in the preceding version of the rules. The applicants also say use of sign-in sheets is contrary to the *Personal Information Protection Act* (PIPA). They request orders that the strata stop restricting access to the recreation facilities and that the sign-in sheets be “abolished”.
4. The strata says SPA section 71 does not apply to the new rules because the rules do not affect how the recreation facilities are used. The strata argues the new rules govern how residents access the facilities, limit the number of users, place a maximum time on use, and require users to sign up in advance. It says the rules allow fair access to all residents and are necessary for capacity reasons. It disagrees the sign-in sheets used are contrary to the PIPA. The strata asks that the applicants’ claims be dismissed.
5. As explained below, I refuse to resolve the applicants’ PIPA claim and dismiss the rest of their claims.

JURISDICTION AND PROCEDURE

6. 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.

7. Under CRTA section 10, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues. The CRT may also refuse to resolve a claim within its jurisdiction under CRTA section 11(1)(a)(i) if it considers the claim would be more appropriate for another legally binding process.
8. 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. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the written evidence and submissions provided.
9. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

Preliminary Issue – Unreadable Evidence

10. I could not open 4 files of submitted evidence. However, based on the parties' descriptions, I find the evidence is not relevant. In 1 case, the evidence was a letter from an applicant about their refusal to abide by the rules. In another case, the evidence was about ratification of 2017 rules. In a 3rd case, the evidence was about the hot tub reopening in 2021. In the final case, the evidence was about the Province's COVID-19 protocol in June 2021. I did not request the parties resubmit the evidence given the CRT's mandate to provide dispute resolution services quickly, informally, and flexibly.

ISSUES

11. The issues in this dispute are:
 - a. Are the strata's May 2023 recreation facility rules valid and enforceable?
 - b. If not, what is an appropriate remedy, if any?

BACKGROUND, EVIDENCE AND ANALYSIS

12. In a civil proceeding such as this, the applicants must prove their claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' submissions and evidence but refer only to information I find relevant to explain my decision.
13. The strata was created under the SPA in June 2010 as part of a 10-phase strata development. It consists of 91 residential townhouse-style strata lots in several buildings plus a separate recreation building. The recreation building contains the pool, gym, and hot tub, plus an amenity room and patio area. It was constructed as part of the strata's first phase and is identified on the strata plan as "common facilities". There is no definition of "common facilities" in the SPA or the bylaws. However, I find the common facilities are captured under the definition of "common property" under SPA section 1(1) because they are part of the buildings shown on a strata plan that are not part of a strata lot. The parties do not dispute this.
14. On September 24, 2018, the strata filed a consolidated set of bylaws with the Land Title Office. Based on my review of the bylaws, the Standard Bylaws do not apply. The strata has not filed subsequent bylaw amendments, so I find the 2018 bylaws apply to this dispute, however, I find none are relevant.
15. The strata has also passed rules. Some of the rules apply to the recreation facilities. The strata's recreation facility rules were last ratified in May 2023. These are the rules at issue here. I discuss them further below.

Are the strata's May 2023 rules valid and enforceable?

16. SPA section 125 addresses rules. I summarize the relevant parts of section 125 as follows:
 - a. The strata (through its council) can make rules governing the use, safety and condition of the common property and common assets.
 - b. A rule is not enforceable to extent it contravenes the SPA or any other legislation,

- c. The strata must inform its owners of any new rules as soon as feasible, and
- d. A rule must be ratified by a majority vote at the first general meeting held after it is made, or the rule ceases to have effect. Once a rule is ratified, it is effective until it is repealed, replaced, or altered.

Rules Adoption History

- 17. The evidence shows the strata ratified rules governing the recreation facilities at an annual general meeting (AGM) held on July 5, 2018. The strata ratified separate rules for the pool, hot tub, and gym, as well as other rules that do not apply here. As mentioned, these rules did not require residents to use a sign-in sheet or restrict the number of residents and guests that can use the facilities at the same time. Only the gym rules included a 30-minute time limit for use of the equipment when other residents were waiting to use the equipment. It is unclear whether the ratified rules replaced all previously ratified rules, but for the purposes of this dispute, I find that they did.
- 18. The strata council amended its pool and hot tub rules at its July 10, 2019 meeting. The minutes say the rules were amended based on survey results the strata council received from owners. The additional pool and hot tub rules were ratified at the May 25, 2020 AGM. The ratified rules did not require residents to use a sign-in sheet or restrict the number of residents and guests that can use the facilities at the same time. The rules also did not change the 30-minute use of gym equipment.
- 19. The BC government declared a state of emergency in March 2020. At some point in 2020, the strata closed the recreation facilities due to COVID-19. The state of emergency ended on July 6, 2021. During the state of emergency, the strata communicated regularly with the local health authority and obtained advice on approved COVID-19 safety procedures, including reopening the recreation facilities. While the applicants say the strata kept the facilities closed for a longer period than necessary, they do not seek relief for that alleged issue. Therefore, I make no findings about how long the facilities remained closed due to COVID-19.

20. It appears the strata introduced the use of a sign-in sheet for anyone using the common facilities in January 2021 as part of the COVID-19 protocols. It did not make any rule changes. The strata also surveyed its owners on their preferences about opening the recreation facilities in March 2021.
21. By April 22, 2022, the strata had lifted all COVID-19 restrictions, as reported in council meeting minutes of that date, even though not all recreation facilities were re-opened. In May 2022, the strata conducted an owner survey about the recreation facility rules. Based on the survey results, a majority of owners were in favour of continuing with sign-in sheets to pre-book 1-hour time slots and restricting the number of people using each recreation area (pool, hot tub, and gym) as was done during COVID-19 restrictions. The strata council voted on rules at a May 20, 2022 meeting. It also posted the rules and distributed them to all owners on that date.
22. About December 30, 2022, the strata council amended the rules to restrict owners from booking back-to-back time slots and extending their use into the next time slot if another owner had already booked it. It also restricted owners from pre-booking more than 3 timeslots per week for the gym.
23. Subject to my discussion on SPA section 71 below, the new rules became enforceable on May 20, 2022, and the amended rules became enforceable on December 30, 2022.
24. The March 23, 2023 AGM minutes show the strata ratified the new rules, and amendments by a majority vote of the owners, consistent with SPA section 125.

SPA Section 71

25. SPA section 71 says a strata corporation must not make a significant change in the use of common property unless the change is first passed by a $\frac{3}{4}$ vote at a general meeting. An exception is if there are reasonable grounds to believe an immediate change is necessary to ensure safety or prevent significant loss or damage. I find that COVID-19 protocols and safety measures are captured by the noted exception. So, to the extent the applicants argue the use of sign-in sheets to restrict the number of residents in the recreation facilities during the COVID-19 pandemic was contrary to

section 71, I dismiss their claim.

26. However, the applicants' main argument is that the recreation facility rules ratified at the March 23, 2023 AGM required $\frac{3}{4}$ vote approval rather than the majority vote approval they received. To be successful, the applicants must prove the ratified rules represent a significant change in the use of the recreation facilities.
27. While I agree with the strata that the use of the recreation facilities did not change, I find the way the facilities were used did change. In other words, there was no physical change in the use. The pool continued to be used a pool, the hot tub as a hot tub, and the gym as a gym, as the strata says. However, the new rules placed a restriction on when, how long, and how often a resident can use the facilities, which I find is a change in use.
28. Was the change significant? I find it was not.
29. The leading BC Supreme Court case on this issue is *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333. In that case, the court summarized the findings in *Chan v. Strata Plan VR 677*, 2012 BCSC 2255 and listed several factors to consider when deciding whether a change is significant.
 - a. Is the change visible to other residents or the general public?
 - b. Does the change affect the use or enjoyment of a unit or an existing benefit of another unit?
 - c. Is there a direct interference or disruption because of the new use?
 - d. Does the change impact the marketability or value of a strata lot?
 - e. How many units are in the strata and what is the strata's general use?
 - f. How has the strata governed itself in the past and what has it allowed?
30. I acknowledge the factors set out in *Foley* are mostly physical factors. I could not locate any court or CRT decisions that address whether a bylaw or rule change can represent a significant change to the use of common property.

31. Focusing on the *Foley* factors, I find the change in rules affects all residents equally and does not affect the public. There is no proven change in the marketability or value of any strata lot because of the rule change and it appears the strata has governed itself according to the SPA based on other rule changes. The only factor that might weigh in favour of the applicants is that the rule change could cause them a direct disruption if they could not use the facility when they wanted. They did not argue this was the case.
32. The above list is non-exhaustive, meaning I can consider any other factors I find relevant. Other CRT decisions have considered whether the change is permanent, finding a permanent change is more significant. See, for example *Hurst v. The Owners, Strata Plan K466*, 2023 BCCRT 986. Here the lack of permanence is relevant. The strata could easily change the rule if that is what the owners want.
33. I also considered that the strata surveyed the owners about the rule changes before making them. While the applicants say the survey did not expressly ask whether the owners wanted to do away with sign-in sheets, I find owners could have responded to the questions in a way that did not support the sign-in sheets or other disputed restrictions. But that is not what happened. The evidence is that the owners overwhelmingly supported the rule changes at issue here.
34. Overall, I find the recreation facility rule changes ratified by the strata owners at the March 2023 AGM are not contrary to SPA section 71. I dismiss this aspect of the applicants' claim.

Significantly Unfair

35. Although not expressly argued by the applicants, I have considered whether the change in recreation facility rules was significantly unfair to the applicants. I find it was not.
36. The CRT has authority to make orders remedying a significantly unfair act or decision by a strata corporation under section 123(2) of the CRTA. The legal test for significant unfairness is the same for CRT disputes and court actions. See *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113.

37. As discussed in *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, strata corporations must often utilize discretion in making decisions which affect various owners or tenants. At times, the strata corporation's duty to act in the best interests of all owners is in conflict with the interests of a particular owner, or group of owners. Following *Reid*, this means in order for the CRT to intervene, a strata corporation must act in a significantly unfair manner, resulting in something more than mere prejudice or trifling unfairness. Conduct may be significantly unfair to one owner even if it benefits a majority of other owners.
38. The basis of a significant unfairness claim is that a strata corporation must have acted in a way that was “burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable.” See *Reid, Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, and *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173.
39. Here, the applicants were entitled to provide their input on the rules through the survey. The ratified rules also govern all owners equally. There is no evidence the applicants have been treated any differently than any other owner, so I find the strata did not act in a significantly unfair way as defined by the courts. Therefore, their claim for significant unfairness must also fail.

PIPA

40. Finally, I have considered the applicants' claim that the sign-in sheet is contrary to the PIPA. The PIPA is provincial legislation that governs how private organizations, including strata corporations, collect, use, disclose, and destroy personal information. Generally speaking, the Office of the Information and Privacy Commissioner for B.C. (OIPC) has jurisdiction about whether the strata has acted contrary to the PIPA as set out in PIPA section 36(2)(e).
41. In *Wong et al v. The Owners, Strata Plan BCS 435*, 2020 BCCRT 53, upheld by the B.C. Supreme Court in 2020 BCSC 1972, the CRT found it was better suited to scrutinize a form mandated by a strata corporation's bylaw because there were remedies the OIPC could not order. I have considered *Wong* and find that the CRT has jurisdiction to determine whether the sign-in sheet mandated by the rules is

contrary to the PIPA. However, unlike in *Wong*, the OIPC can completely resolve the sign-in sheet issue in this dispute by ordering the strata to stop collecting personal information. I find the OIPC is best suited to address whether the use of sign-in sheets is contrary to the PIPA.

42. For this reason, I refuse to resolve this aspect of the applicants' claim under CRTA section 11(1)(a)(i) because the claim would be more appropriate for the OIPC to resolve.

CRT FEES AND EXPENSES

43. 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 was the successful party but did not pay CRT fees, so I make no order for CRT fees.
44. Neither party claimed dispute-related expenses other than CRT fees, so I order none.
45. Under section 189.4 of the SPA, the strata may not charge any dispute-related expenses against the applicants.

DECISION AND ORDER

46. Under CRTA section 11(1)(a)(i), I refuse to resolve the applicants' claim that the sign-in sheets required under the strata's rules are contrary to the PIPA.
47. I dismiss the applicants' remaining claims.

48. 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.

J. Garth Cambrey, Vice Chair