



Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

GLEN ORTT

APPLICANT

A N D :

The Owners, Strata Plan NES 3039

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey

INTRODUCTION

1. This strata property dispute is about disclosure of documents.
2. The applicant, Glen Ortt, co-owns 2 strata lots in the respondent bare land strata corporation, The Owners, Strata Plan NES 3039 (strata). He is self-represented. The strata is represented by a strata council member.

3. Mr. Ortt says the strata failed to provide records and documents to which he is entitled under *Strata Property Act* (SPA) section 36. In particular, he says the strata did not provide him with an owners list, insurance information including legal correspondence, and pool repair information. He also says the strata did not permit him to speak or vote at a special general meeting (SGM) held September 8, 2024, regarding the pool repairs, which he says was contrary to the SPA.
4. Mr. Ortt seeks an order that the strata provide him with the documents he requests or a written response that the documents do not exist. He also asks for an order that the approved resolutions relating to his document requests be declared “null and void” until the strata provides the documents.
5. The strata denies it has acted contrary to the SPA. It says Mr. Ortt’s request is too broad, but that it provided him with all the documents he is entitled to receive under the SPA noting he is engaged in a lawsuit with the strata. It denies not allowing him to speak or vote at the September 2024 SGM. I infer the strata asks the CRT to dismiss Mr. Ortt’s claims.
6. As explained below, I find the strata must provide Mr. Ortt with a current owners list and copies of insurance-related records and documents. I dismiss Mr. Ortt’s remaining claims.

JURISDICTION AND PROCEDURE

7. 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.
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 find I am properly able to assess and weigh the documentary evidence and

submissions before me. I am satisfied an oral hearing is not necessary in the interests of justice. I therefore decided to hear this dispute through written submissions.

9. 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.

ISSUES

10. The issues in this dispute are:
 - a. Must the strata provide records and documents to Mr. Ortt?
 - b. Are any of the strata's resolutions null and void?

BACKGROUND, EVIDENCE AND ANALYSIS

11. As applicant in a civil proceeding such as this, Mr. Ortt must prove his 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.
12. The strata plan shows the strata was created in June 2006 under the SPA. There are a total of 185 bare land strata lots in the strata as well as common facilities that include a swimming pool identified as common property.
13. Land Title Office documents show Mr. Ortt purchased 2 strata lots on June 28, 2010. It is undisputed that he is also the President of the strata's owner developer, Valley's Edge Park Ltd., and controls the votes of 17 strata lots owned by that company.
14. I have reviewed the strata's bylaws filed with the Land Title Office and find that no bylaws apply to this dispute.

Must the strata provide any records and documents to Mr. Ortt?

The law on records and documents

15. SPA section 35 requires the strata to prepare and keep a list of records and documents, including a list of owners (section 35(1)(c)), correspondence sent or received by the strata and council (section 35(2)(k)), legal opinions (section 35(2)(h)), and any reports obtained by the strata about repair and maintenance of major items in the strata such as engineering and sanitation reports (section 35(2)(n.2)).
16. Generally speaking, *Strata Property Regulation* (Regulation) section 4.1(1) addresses how long the strata must retain its records and documents. For owner's lists, only a current owner's list must be kept. The strata must retain correspondence for 2 years and legal opinions permanently. The strata must retain reports concerning major items "until the disposal or replacement of the items to which the reports relate". In the context of this dispute, I find the pool is a major item captured by the SPA.
17. SPA section 36 requires the strata to make section 35 records and documents available for inspection or provide copies to an owner within 2 weeks of the request date, unless the request is for bylaws and rules, where the timeframe is 1 week. SPA section 36 and Regulation section 4.2 do not allow the strata to charge for inspection of records and documents but does allow it to charge a maximum fee of \$0.25 per copy, if copies are provided.
18. The SPA does not grant the strata any ability to refuse an owner's request for records and documents captured by section 35, nor is the disclosure of records and documents contingent on their subject matter. That means that disclosure requirements under SPA sections 35 and 36 are generally mandatory but there are exceptions. These include information or documents in which a party is owner who is involved in lawsuit or a CRT proceeding under SPA sections 169(1)(b) and 189.4(c).
19. The strata's requirement to disclose records and documents has also been considered by the courts. In *Kayne v. The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610, the court considered a strata corporation's general disclosure requirements. In *Mitchinson v. The Owners, Strata Plan VR 1120*, 2024 BCCA 89, the court considered a strata corporation's obligation to disclose legal

correspondence, including legal opinions, that is protected by solicitor-client privilege. I discuss these cases further below.

20. As noted, Mr. Ortt made 3 separate requests for an owner's list, insurance-related correspondence and reports, including legal opinions, and pool repair correspondence and reports. I will consider each in turn.

Owners list

21. It is clear from the evidence that Mr. Ortt requested a copy of an owners list , including owners' email addresses, from the strata manager on December 4, 2023. He says the strata's primary method of contacting owners is by email, so email addresses should be included in the records kept by the strata. Mr. Ortt says the strata did not provide an owners list for privacy reasons. The strata argues that it relied on its strata manager for guidance and was informed it was not appropriate to give Mr. Ortt the owners list "without a valid reason". Despite the strata's assertion it provided Mr. Ortt with an owners list and based on the overall submissions and evidence, I agree with Mr. Ortt that the strata did not provide him with an owners list.
22. *Kayne* has established that the strata's obligation to provide documents under SPA sections 35 and 36 is mandatory. This includes the owners list set out under SPA section 35(1)(c), which that provision describes as a list of "owners, with their strata lot addresses, mailing addresses if different, strata lot numbers as shown on the strata plan, parking stall and storage locker numbers, if any, and unit entitlements". Notably, owners' email addresses are not included in the list, so I find the strata need not provide them. It does not matter that the strata might regularly contact owners by email. If the legislation had intended the list to include email addresses, I find it would have included email addresses in the list, such as it did when permitting owners to be given notices and records by email under SPA section 61.
23. The court in *Kayne* also found there is no requirement for owners to provide a reason for their document request. This is confirmed at paragraph 7, where the court found the SPA (my emphasis added):

...sets out certain documents or categories of documents that must be kept and produced. *The question of what relevance they have or do not have to any dispute between the petitioner and the corporation is really not relevant.*

24. Therefore, to the extent the strata feels Mr. Ortt's intention for requesting the owners list was to "undermine the democracy and functioning aspects of the elected council", that is not relevant. Disclosure of the owner's list is mandatory, and Mr. Ortt is free to use the information to contact other owners as he sees appropriate provided he does so in a legal manner.
25. In light of the foregoing, I order the strata to provide Mr. Ortt with a copy of the strata's current owners list that includes the information required under SPA section 35(1)(c). The strata must do this within 2 weeks of the date of this decision and may charge Mr. Ortt up to \$0.25 per copy.

Insurance information

26. On November 26, 2023, Mr. Ortt requested copies of correspondence:
- a. Between council members, the strata's insurers, agents and adjusters relating to the 2022 flooding of "5 cottage basements" and the renewal of strata's insurance policies "for the current renewal period",
 - b. With the strata's lawyer relating to the flood claims, including legal opinions, and
 - c. Between council members and any owner relating to the 2022 flooded basements.
27. I first consider whether Mr. Ortt's insurance correspondence request is unreasonable because it is overly broad or unclear, which the strata appears to suggest. I find it is not.
28. In *The Owners, Strata Plan NWS 1018 v. Hamilton*, 2019 BCSC 863, the court considered an appeal of a CRT decision (permitted under a previous version of the CRTA) that included the production of records and documents. The CRT decision

that was the subject of the appeal is indexed as 2017 BCCRT 141. Among other things, the court found the strata corporation's complaint that filtering minutes to identify those pertaining to certain contracts was too onerous was overstated and that the amount of work was manageable (See paragraph 30).

29. I find the same principle applies here to reviewing correspondence and legal opinions. The strata knew, or ought to have known, section 35 correspondence must be produced on request. The correspondence clearly identifies what correspondence Mr. Ortt seeks, and I find it would not be onerous for the strata to provide it, given it appears to relate to a single incident involving a sewer back up that occurred in 2022.
30. In his submissions, Mr. Ortt stated he made his request because he was concerned about increased insurance premiums since 2023 and lack of details provided by the strata on a 2022 flood and resulting insurance claim. Mr. Ortt says the strata did not provide any of the requested information despite that the strata manager acknowledged receipt of his request. I accept the strata manager received Mr. Ortt's request on November 26, 2023, based on what I find is an automatic reply to his email request.
31. The strata asserts in its Dispute Response that it provided Mr. Ortt with his requested records and documents. In submissions, the strata explains why it believes the insurance premium increased. Again, the reason for Mr. Ortt's document request is not relevant, nor are the strata's submissions on the matter. The strata's production of records and documents under SPA sections 35 and 36 is mandatory. On a balance of probabilities, I find the strata did not provide Mr. Ortt with all correspondence relating to the insurance premiums, 2022 flood, or insurance claim as it must do.
32. I note that *Kayne*, at paragraph 22, establishes that email correspondence exchanged between council members that does not relate to the business of the strata is not required to be produced under the SPA. I reach the same conclusion about correspondence exchanged between the council and the property manager, so I find correspondence between council members and between the council and property manager that does not relate to the strata's business does not need to be disclosed.

33. I turn now to Mr. Ortt's request for legal correspondence. The strata alleges that Mr. Ortt sued the strata but provided no details of the lawsuit. So, to the extent a lawsuit involving the parties in this dispute has been started, section 169(2) applies, and the strata is not required to disclose that correspondence.
34. In *Mitchinson*, the court considered a request from an owner for a legal opinion the strata obtained for legal proceedings in which he was not a party. The strata corporation claimed solicitor-client privilege over the documents. The court addressed whether or not the SPA contains language specifically clear, explicit, and unequivocal enough to override solicitor-client privilege, and found it did not.
35. Specifically, the court found that the term "legal opinions" is not defined in the SPA but inferred that use of the term was intended to capture documents and communications containing legal advice, including legal opinions. While SPA section 35 includes the phrase "legal opinions," the court determined it does not adequately identify the broader substantive interests protected by solicitor-client privilege. So, the language used in the SPA is not sufficiently "clear, explicit and unequivocal" to show the legislature intended to set aside solicitor-client privilege. *Mitchinson* also confirmed that the strata corporation is its lawyer's client. This means that an owner is not entitled to legal correspondence or opinions involving the strata corporation over which the strata claims solicitor-client privilege.
36. With this mind, I order the strata to provide Mr. Ortt with the records and documents he requested, subject to the SPA, the timelines set out in Regulation section 4.1, and the case law set out above. The strata must do this within 2 weeks of the date of this decision and may charge Mr. Ortt \$0.25 per copy. If there are records and documents the strata has that it will not disclose, it must state why it will not disclose that information.

Pool repair

37. Mr. Ortt says he requested production of all correspondence, quotes, estimates and reports relating to the pool on November 27, 2023. There is no request made on that date in evidence. However, there is a similar undated request from Mr. Ortt in which he requests:

“copies of all correspondence, quotes, estimates and reports between council any council members... and any pool contractor... relating to maintenance and repair of our pool and any future repairs of the pool. That would include any contemplated repairs to leaking lines and the pool liner.”

38. On December 11, 2023, a council member emailed Mr. Ortt 28 attachments. I infer from the attachment titles that they were all emails that related to the pool repairs. Only the December 11, 2023 council email is before me. The attachments are not. Mr. Ortt argues he did not receive all of the requested documents, which, again, the strata does not deny. It is undisputed that the strata had determined the pool was leaking and was considering how best to repair it. The strata argues that over the course of the next several months, other information concerning the pool was provided to all owners, including Mr. Ortt in preparation for meetings held to discuss the pool repairs.
39. Briefly, the evidence shows that the strata held an SGM on May 8, 2024, in part to consider a $\frac{3}{4}$ vote resolution to spend \$70,000 from the strata's contingency reserve fund (CRF) for pool repairs, which failed to pass. The minutes are not before me, but it appears 1 owner holding 54 proxies voted against the resolution, causing it to fail. The strata then held an information meeting on May 19, 2024, to discuss required pool repairs with the strata owners. As a result of a demand by 20% of the owners under SPA section 43, the strata held another SGM on September 8, 2024, to reconsider the same $\frac{3}{4}$ vote resolution that failed to pass at the May 8, 2024, SGM. The resolution to approve the CRF expense to repair the pool passed at the September 2024 SGM.
40. Based on the overall evidence and submissions, I find the thrust of the strata's argument is that Mr. Ortt's original record and document request about the pool repairs was overly broad and that decisions on the final repairs were fluid, given the several meetings and additional information provided to the owners that resulted in approval of the CRF expense.
41. Several CRT decisions have concluded that a strata corporation is justified in declining to respond to an owner's document request in circumstances where a

demand for records is vague or overly broad. See *Cassey v. The Owners, Strata Plan VR326*, 2023 BCCRT 645 and *Slack v. The Owners, Strata Plan EPS 4413*, 2022 BCCRT 681. While CRT decisions are not binding on me, I agree with this reasoning.

42. Here, I agree with the strata that Mr. Ortt's original request was overly broad because it requested information about future pool repairs which had not yet been determined. This is supported by Mr. Ortt's reply submissions where he states his "request is for all of the documents relating to this major repair". The strata clearly provided him (and other owners) with additional records and documents related to the pool repair as they became available. These included an engineer's report on the pool dated January 25, 2023, an undated internal report on the pool's condition, and information on estimates about repair methods and costs in advance of the 3 meetings I have described.
43. Further, Mr. Ortt does not specify which documents the strata failed to provide. Without more information, I find Mr. Ortt has not proved his claim.
44. For these reasons, I dismiss Mr. Ortt's claim for documents relating to the pool repair.
45. However, that does not necessarily end the matter. The strata's obligations under SPA sections 35 and 36 are ongoing and it must respond to reasonable record requests within the established timelines. If Mr. Ortt still requires records and documents about the pool repairs, it is open to him to make a clear request for those records.

Are any resolutions null and void?

46. As noted, Mr. Ortt asks for an order that resolutions approved at general meetings held by the strata which relate to his document requests be found null and void. He says the strata's failure to give him the owners list prevented him from exercising his right to contact other owners to discuss the issues that were being voted on at the general meetings. He also says that if other owners had known about the insurance claim and the reasons for the claim, they might not have approved the 2024-2025 budget. Finally, he says the strata did not provide adequate information for the pool

repairs for owners, stating that is the reason why the resolution for CRF pool repair expenses was defeated at the May 2024 SGM.

47. I decline to make Mr. Ortt's requested order for the following reasons.
48. First, I do not find that the strata's failure to provide an owners list prevented him from contacting other owners to discuss upcoming votes. While email addresses might have been the most convenient method of contacting owners, I have found that email addresses do not form part of the owners list. Mr. Ortt was not restricted from contacting owners in person or by another method or raising his concerns at the specific meeting in advance of the vote. Unfortunately for Mr. Ortt, the passage of time has not been helpful to him. As I note below, I am not persuaded the outcome of the strata's votes would have changed in any event.
49. Next, I find Mr. Ortt's arguments about insurance-related documents purely speculative. That is, he has not proven the budget approval vote would have failed if the strata provided additional information about the insurance claim. Put another way, the majority of the owners were satisfied with the proposed budget and approved it, even though the budget included a note that an insurance deductible had been paid. It appears that Mr. Ortt was the only owner that raised concern about the strata's payment of an insurance deductible and sought information about that loss.
50. I turn now to Mr. Ortt's request for records and documents related to the pool repair. While the reason the May 2024 resolution was defeated may have been that owners did not fully understand the repair or have adequate information to decide, that issue has now been resolved with the passing of the CRF pool expense resolution in September 2024. I find the additional information the strata provided to the owners before the September 2024 SGM was sufficient to allow them to approve the necessary work. I find the strata's democratic process operated as it should have to resolve the issue.
51. Finally, Mr. Ortt also argues that he was not able to vote at the September 2024 SGM where the pool repair expense was approved. The meeting was held electronically via Zoom, where owners were asked to "raise their electronic hand" if they had a question. I understand a separate electronic voting platform was used to count the

votes. The minutes state that, after discussion had concluded on the resolution, the chairperson asked 3 times if all owners were able to vote, and no one responded. The minutes also state the chairperson asked an owner with 19 votes, which Mr. Ortt confirms was him, if they were able to vote and “no response was given”. He says the system would not allow him to cast his votes and he “couldn’t object because he was muted”.

52. I do not accept Mr. Ortt’s argument because there are other ways he could have objected, such as raising his hand in the Zoom call. Further, he could have emailed the strata during or after the meeting to register his voting concerns, but he did not. The minutes show there was a total of 146 votes at the meeting. The resolution passed with 131 votes in favour, 0 votes opposed, and 1 vote abstaining. This equals 90.3% after allowing for the abstention, which is not counted under the SPA definition of “ $\frac{3}{4}$ vote”. (131/145). So, even allowing for Mr. Ortt’s 19 negative votes, the resolution would still have passed with a 79.9% majority of 131 votes in favour, 19 votes opposed, and 1 abstention. (131/164).
53. Overall, I find it is more likely than not that only Mr. Ortt was unhappy with the strata council’s communications. I dismiss his arguments about the validity of the general meeting votes.

CRT FEES AND EXPENSES

54. 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. Mr. Ortt paid \$225.00 in CRT fees and did not claim dispute-related expenses. The strata did not pay CRT fees, nor did it claim dispute-related expenses. Given Mr. Ortt was partially successful, I order the strata to pay him $\frac{1}{2}$ of his CRT fees, or \$112.50.
55. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Ortt.

DECISION AND ORDER

56. I order that the strata, within 2 weeks of the date of this decision:

- a. Provide Mr. Ortt with a copy of the current owners list set out under SPA section 35(1)(c),
- b. Provide Mr. Ortt with copies of the strata's insurance-related records and documents he requested subject to the SPA, the timelines set out in Regulation section 4.1, and the case law set out above. If there are records and documents the strata has that it will not disclose, it must state why, and
- c. Pay Mr. Ortt \$112.50 for CRT fees.

57. Mr. Ortt's remaining claims are dismissed.

58. Mr. Ortt is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.

59. This is a validated decision and order. 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 in which it is filed.

J. Garth Cambrey, Tribunal Member