Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

Ben Pedret

APPLICANT

A N D :

The Owners, Strata Plan LMS 1089

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kate Campbell

INTRODUCTION

1. The applicant, Ben Pedret (owner) owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 1089 (strata). The strata was created in 1993, and includes 2 sections, a commercial section and a residential section. The owner's strata lot is within the residential section.

2. On November 20, 2015, the strata filed amendments to its bylaws at the Land Title Office. The filed documents say that all previous bylaws were repealed and replaced with new bylaws. The documents also say the amendments were approved by a resolution passed in accordance with section 128 of the *Strata Property Act* (SPA) at an annual or general special meeting on March 10, 2015.

3. The owner says the March 2015 amendments to the strata's bylaws were not approved through ¾ vote resolutions passed by both residential and non-residential owners, which is contrary to section 128(1)(c) of the SPA. As remedy, he seeks the following declarations:

    a. The March 2015 amendments are unenforceable.

    b. The strata must be governed by the 1993 bylaws, or alternatively the Schedule of Standard Bylaws set out in the SPA (Standard Bylaws).

    c. Any decisions based on the unenforceable bylaws are null and void.

    d. Any financial benefits arising from the wrongfully amended bylaws be refunded.

4. The owner also says that costs of parking lot resurfacing in 2017 were wrongfully paid from the strata corporation's common funds, when the costs should have been paid solely by the commercial section. He seeks a refund of his portion of those costs.

5. The strata says the March 2015 bylaw amendments were approved by a ¾ vote resolution of the ownership, which included owners from both the residential and commercial sections. The strata says the March 2015 bylaws should therefore be found valid and enforceable. The strata also says the owner does not have standing to dispute the parking lot resurfacing issue, and that the work was appropriately paid for out of strata funds as a repair to common property.

6. The owner is self-represented. The strata is represented by a strata council member.

7. For the reasons set out below, I find that the March 2015 bylaw amendments are invalid, and of no force and effect, as they were not approved in accordance with section 128(1)(c) of the SPA. The December 2015 and March 2017 bylaw amendments are also of no force or effect, as they were amendments to the invalid March 2015 bylaws. I find that the bylaws that were in effect immediately prior to March 2015 are the applicable bylaws.

8. I find the owner is not entitled to any refund for parkade resurfacing costs.

JURISDICTION AND PROCEDURE

9. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 121 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.

10. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

11. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

12. Under section 123 of the Act and the tribunal rules, in resolving this dispute the tribunal may make order a party to do or stop doing something, order a party to pay money, order any other terms or conditions the tribunal considers appropriate.

ISSUES

13. The issues in this dispute are:

    a. Were the March 2015 bylaw amendments approved in accordance with section 128 of the SPA, and if not, what remedies are appropriate?

    b. Is the owner entitled to a refund of his portion of costs for the 2017 parkade resurfacing?

EVIDENCE, FINDINGS AND ANALYSIS

14. I have read all of the evidence provided but refer only to evidence I find relevant to provide context for my decision.

15. Documents provided in evidence show that the strata corporation held an annual general meeting (AGM) on February 25, 2015. The minutes of that meeting do not refer to any bylaw amendments.

16. An AGM for the residential section was held on March 10, 2015. The Notice of AGM document provided in evidence clearly indicates that the March 10, 2015 meeting was a meeting of the owners of the residential section only. Also, the minutes of the previous meeting attached to the notice were minutes of a residential section AGM held on March 11, 2014. The proposed operating budget attached to the meeting notice was also for the residential section only. For these reasons, I find that the March 10, 2015 meet was an AGM for the residential section only. It was not an AGM or special general meeting (SGM) for the strata corporation.

17. For that reason, I agree with the owner that the bylaw amendments voted on at the March 10, 2015 meeting are not valid or enforceable, as they did not meet the requirements of section 128(1)(c) of the SPA.

18. The strata did not provide any minutes, attendance sheets, or other records from the March 10, 2015 meeting. The strata says it “continues to investigate the whereabouts” of those documents. I infer that the March 10, 2015 meeting minutes

were either never prepared or lost, which violates section 35 of the SPA. For that reason, I do not accept the strata's unsubstantiated assertion that commercial section owners attended the March 10, 2015 and voted on the bylaw amendment resolution. Even if I accept that commercial owners were present, there is no evidence that written notice of the meeting was provided to them, as required in section 45 of the SPA, since the meeting notice was addressed to residential owners only.

19. As explained above, I find the March 10, 2015 meeting was not a general meeting of the strata corporation, but was a general meeting of residential owners only. There was no corresponding AGM or SGM of the commercial section, and the commercial section owners did not hold a separate vote on the bylaw amendments. Sections 128 and 197 of the SPA do not allow for bylaw amendments applicable to the strata corporation to be passed by a vote held at an AGM or SGM of only 1 section, where there is more than 1 section in the strata corporation.

20. Finally, under sections 126 and 128(1)(c) of the SPA, the only way to pass bylaw amendments applicable to the whole strata corporation, in a strata corporation with both residential and non-residential strata lots, is to hold separate votes for residential and non-residential owners. Section 128(1)(c) states as follows:

> (c) in the case of a strata plan composed of both residential and nonresidential strata lots, by both a resolution passed by a 3/4 vote of the residential strata lots and a resolution passed by a 3/4 vote of the nonresidential strata lots, or as otherwise provided in the bylaws for the nonresidential strata lots.

21. The strata admits that only 1 vote was held. It says that following the reasoning in decisions such as *C.2K Holdings Ltd. v. The Owners, Strata Plan K 577*, 2018 BCCRT 236A, this should not defeat the bylaw amendments since commercial owners had the opportunity to vote anyway.

22. I do not accept this argument, for there is no evidence before me to confirm that commercial owners voted. Also, I find the facts in *C.2K Holdings* are distinguishable from those before me in this dispute, as the vote at issue in this dispute was held at

an AGM of only 1 section of the strata corporation, which is not consistent with the SPA requirements. I find that allowing the March 2015 bylaw amendments to stand would defeat the principles of democracy and transparency underlying Part 4 and Part 7 of the SPA.

23. For all of these reasons, I find the March 10, 2015 bylaw amendments, which were filed with the Land Title Office on November 20, 2015, are invalid.

Remedies

24. The March 2015 bylaws amendments repealed and replaced all previous bylaws. However, because the March 2015 amendments were invalid, I find they are of no force or effect. On December 24, 2015 and March 23, 2017, the strata filed amendments with the Land Title Office amending some portions of the March 2015 bylaws. There is no evidence before me about whether the December 2015 and March 2017 bylaw amendments were passed through valid votes, as required under the SPA. However, since the December 2015 and March 2017 amendments consisted of changes to the March 2015 bylaws, which were invalid, I find the amendments registered on December 24, 2015 and March 23, 2017 also cannot stand.

25. It is clear from the strata's correspondence in evidence that no one really knows which bylaws should be in effect. In an email to the owner dated June 27, 2018, the strata corporation's property manager said the strata was currently operating under a set of bylaws registered in 2009. It is unclear who made the decision to use those bylaws, or why, since the Land Title Office records show that the 2009 bylaws were subsequently amended 6 times before the March 2015 amendments were registered. The property manager also said they had no records prior to 2015. For these reasons, I find there is no basis to accept that the bylaws as registered in January 2009 should prevail.

26. The correspondence also shows that while lawyers for both the residential and commercial sections have proposed entirely new sets of bylaws, no vote has occurred.

27. In *Omnicare Pharmacy Ltd. v. The Owners, Strata Plan LMS 2854*, 2017 BCSC 256, the BC Supreme Court considered a situation where a strata corporation had voted to repeal and replace its previous bylaws with new bylaws, but the vote was not passed by a ¾ vote of non-residential owners, as required in section 128(1)(c) of the SPA. The court held that the new bylaws were therefore invalid. In *Omnicare,* both parties agreed that the Standard Bylaws should apply. However, I find that the facts before me are different from those in *Omnicare,* as there is no agreement between the parties. In the dispute before me, the strata has not asserted a position on this issue, other than to assert that the March 2015 bylaws should continue to apply.

28. I do not accept the strata's position, and find the March 2015 bylaws and subsequent amendments unenforceable, for the reasons set out above. The owner says the 1993 bylaws should apply, or alternatively the Standard Bylaws should apply. However, I find the owner has not provided evidence to support that position. Rather, I find that the bylaws in effect immediately prior to the 2015 continue to be enforceable, subject to the SPA and *Strata Property Regulation* 17.11.

29. The owner submits there is no evidence that the bylaws prior to 2015 were voted for in a manner consistent with SPA section 128, since the strata has retained no records of such votes. However, I am not persuaded by that argument. The applicant owner bears the burden of proving his claims, and there is no evidence before me to establish that the pre-March 2015 bylaws were voted on in a manner contrary to section 128.

30. It remains open to the strata corporation to put forward new bylaws for approval by the owners, in accordance with section 128 of the SPA. Until that time, I order that the bylaws in effect immediately prior to March 2015 will apply to the strata corporation.

Decisions Made Under Invalid Bylaws

31. The owner asks that all decisions made by the strata based on the invalid March 2015 bylaws should be declared void, and that any monetary payments by owners

made based on the March 2015 bylaws should be refunded. I acknowledge that the owner is extremely frustrated, since the bylaw problems at issue in this dispute were raised to the strata by at least June 2017. However, I find it would be unreasonable and entirely impractical in the circumstances to declare every decision and payment made since November 2015 void. Such an order would include many operational decisions necessary to run the strata, as well as all payments of monthly strata fees, since these are collected under the authority of the bylaws.

32. For these reasons, I find this decision shall apply to all strata decisions made following this decision, but I do not make a blanket order cancelling decisions retroactively.

Strata Council Composition

33. The original bylaws from 1993 said that the strata council must have between 3 and 7 persons, including 1 owner of a non-residential strata lot. As submitted by the owner, a bylaw amendment was passed requiring that the strata council be comprised of 7 members, with 4 representatives from the commercial section and 3 representatives from the residential section. The owner submits that this amendment is invalid, as it was wrongfully approved in March 2014. I disagree, since the records from the Land Title Office show that this bylaw about strata council composition has been in effect since at least January 2009.

Since the strata council composition has been the same since January 2009, I find that the bylaw about strata council composition in effect immediately prior to March 2015 should remain in effect.

Parkade Resurfacing

34. At the strata's AGM on February 7, 2017, owners voted in favour of a ¾ vote resolution to pay up to $400,000 from the contingency reserve fund (CRF) to resurface the parkade.

35. The owner says that the commercial section should have paid for that expense, rather than the strata corporation as a whole. He says that level 1 of the parkade is limited common property, and section 4 of the original bylaws filed in 1993 make each section of the strata responsible for repairs and maintenance of limited common property designated to that section.

36. The owner also says that while residential owners drive through level 1 of the parkade to access their parking stalls, the 142 stalls on level 1 are assigned for the exclusive use of the commercial owners, and the commercial section collects and keeps rent from some of those stalls.

37. The strata says the parkade is common property, and that it used CRF funds to maintain and repair that common property, consistent with the SPA. The strata also says an individual owner does not have standing to dispute the parking lot resurfacing costs, as that is for the residential section to dispute.

38. I disagree with the strata's submission about standing. The owner was affected by the decision, and therefore has standing to dispute it. However, I find the owner has not met the burden of proving this claim.

39. The strata's duty to repair and maintain common property is set out in sections 3 and 72 of the SPA. Section 3 of the SPA says the strata corporation is responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners. Section 72 says the strata corporation must repair and maintain all common property. Common property includes limited common property, but repairs of limited common property may be delegated to a particular owner under a strata corporation's bylaws.

40. The owner asserts that only level 1 of the parkade, which he says is primarily used by commercial section owners and customers, was resurfaced. However, the evidence before me does not confirm that assertion. There is no evidence before me about the specific work resurfacing work performed, and whether it included level 2, which is primarily used by residential owners. While the owner says the resolution passed at the February 17, 2017 AGM related solely to level 1

resurfacing, that is not correct. The wording of the resolution referred to the "parkade re-coating project", and did not mention specific areas of the parkade. For this reason, and based on the evidence before me, I do not accept that the parkade resurfacing benefitted only commercial owners.

41. The owner also says that parkade resurfacing may not have been necessary, as the strata did not obtain an engineering report. The owner has not provided evidence to support this assertion, so I am not persuaded by it. Also, the February 17, 2017 AGM minutes show that the required ¾ vote in favour of paying for parkade resurfacing was achieved, and the lack of an engineering report does not make that vote invalid.

42. For these reasons, I find the owner is not entitled to any refund for parkade resurfacing costs.

43. The owner has made numerous requests to the property manager about where the revenue from parking stall rental goes. I therefore order the strata to produce a record showing all parking stall revenue collected by the strata as a whole, and by the commercial section, since January 1, 2016. The record must also show where parking stall revenue is deposited.

Legal Fees

44. The owner says he should be refunded the portion of legal fees paid to the strata's lawyer Elaine McCormack, as she acted in a conflict of interest by representing both the strata corporation and the commercial section. I decline to make a finding about conflict of interest, as I find that is outside the tribunal's jurisdiction. However, under sections 167(2) and 189.4 of the SPA, I find the strata may not charge any expenses related to its defence of this dispute to the owner.

Summary

45. For all of these reasons, I find the March 2015 bylaw amendments, and all subsequent bylaw amendments, were improperly passed and therefore

unenforceable. I order that from March 1, 2015 onwards, the applicable bylaws are those in effect prior to March 2015.

46. I also find that the owner is not entitled to any refund of the 2017 parkade resurfacing costs.

Fees and Expenses

47. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees. As the owner was partially successful in this dispute, I order the strata to reimburse one-half of his tribunal fees, which equals $112.50. The owner also provided a receipt for $10.50 for the cost of serving the Dispute Notice on the strata. I find this amount is justified, and I order the strata to reimburse it.

DECISION AND ORDERS

48. I order the following:

a. The March 2015 bylaw amendments, and all subsequent bylaw amendments, are invalid, and therefore of no force or effect.

b. Effective March 1, 2015, the applicable bylaws are those in effect prior to March 2015.

c. The strata corporation must comply with the provisions in section 189.4 of the SPA, by not charging dispute-related expenses against the owner.

d. Within 30 days of this decision, the strata must do the following:

    i. Produce a record showing all parking stall revenue collected by the strata as a whole, and by the commercial section, since January 1, 2016. The record must also show where parking stall revenue is deposited.

ii. Reimburse the owner $123.00 for tribunal fees and dispute-related expenses.

49. Under section 57 of the Act, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia, a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.

50. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia. However, the principal amount or the value of the personal property must be within the Provincial Court of British Columbia's monetary limit for claims under the *Small Claims Act* (currently $35,000). Under section 58 of the Act, the Applicant can enforce this final decision by filing in the Provincial Court of British Columbia a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Kate Campbell, Tribunal Member