



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *West v. The Owners, Strata Plan BCS 983*, 2020 BCCRT 547

B E T W E E N :

MURIEL WEST

APPLICANT

A N D :

The Owners, Strata Plan BCS 983

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. The applicant, Muriel West, is an owner of a strata lot in the respondent strata corporation, The Owners, Strata Plan BCS 983 (strata). She says that the strata acted in bad faith and engaged in significantly unfair and prejudicial conduct surrounding a special general meeting (SGM) on July 3, 2019. She also says that the strata has failed to provide her with requested documents as required by the

Strata Property Act (SPA). The applicant asks for an order that the strata pay her damages of \$0.01. The strata denies that it acted in bad faith, or in a significantly unfair or prejudicial manner. The strata also says that the applicant has no claim under the SPA to the documents she requested.

2. The applicant is self-represented. The strata is represented by a member of the strata council.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The tribunal must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the tribunal's process has ended.
4. The tribunal has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.
5. Under section 10 of the CRTA, the tribunal must refuse to resolve a claim that it considers to be outside the tribunal's jurisdiction. A dispute that involves some issues that are outside the tribunal's jurisdiction may be amended to remove those issues.
6. The parties' submissions address social media posts that the strata says are defamatory. As set out in section 121(1) of the CRTA, the tribunal's jurisdiction in strata matters covers certain types of claims under the SPA, and I find that claims for defamation are not included in the scope of this section. Although not binding upon me, my finding is consistent with previous tribunal decisions (see, for example, *Adamson v. The Owners, Strata Plan NW 2582*, 2019 BCCRT 377 and *Taylor et al*

v. The Owners, Strata Plan 1801 et al, 2018 BCCRT 925). Accordingly, I decline to address the parties' submissions about allegedly defamatory conduct, except in the context of the claim about significant unfairness, which I find does fall within the tribunal's jurisdiction.

7. In her submissions, the applicant raised a number of issues that were not identified in the Dispute Notice. Specifically, she says that the strata failed to follow the procedure for complaints set out in section 135 and failed to prepare accurate minutes as required by section 35 of the SPA. As these issues are not in Dispute Notice, they are not before me in this dispute.
8. The applicant also submits that members of the strata council failed to comply with the SPA's sections about the standard of care for council members and conflicts of interest, and with bylaw 27.4 about unapproved expenditures. She says that council members were dishonest, impeded her right to free speech, mismanaged finances, made inappropriate maintenance decisions, and mishandled a different SGM about tree removal. As individual strata council members are not parties to this dispute, I cannot make any orders against them. I will not address these submissions further.
9. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The tribunal may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
10. Under section 123 of the CRTA and the tribunal rules, in resolving this dispute the tribunal may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

11. The issues in this dispute are:
 - a. whether the strata has acted in a significantly unfair manner in calling the July 3, 2019 SGM,

- b. whether the strata failed to comply with its obligations under the SPA to provide copies of documents to the applicant, and
- c. whether the applicant is entitled to \$0.01 in damages.

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. The parties provided detailed evidence and submissions in support of their respective positions. While I have considered all of this information, I will refer to only what is relevant to the issues before me and necessary to provide context to my decision.
13. The evidence before me shows that there has been friction between some strata lot owners and members of the strata council in recent years, resulting in various allegations of assault and harassment. Some of these incidents and claims about unauthorized alterations have been the subject of other disputes before the tribunal.
14. An owner or owners created a Facebook page for the strata community. Although initially open to all owners, membership in the page later was restricted to owners who were not members of the strata council. Some postings to the page contained accusations of financial mismanagement, corruption, and inappropriate maintenance decisions against the strata council. A particular strata council member was described as “creepy” and he was accused of violating residents’ privacy by taking pictures through their windows.
15. The strata council was upset by the content of the posts, and became concerned that the Facebook page was being viewed as a resource set up and sanctioned by the strata. The strata council believed that the applicant and another owner, SM, were the administrators of the Facebook page. On the recommendation of the strata’s property manager, the strata council sought legal advice about whether the postings were defamatory. Based on the advice they received, the strata decided to draft a resolution for the ownership to approve a \$20,000 expenditure to fund

litigation with the aim of obtaining damages for defamation and an injunction to prevent further defamation.

16. The strata arranged for an SGM on July 3, 2019 to discuss and vote on the resolution. Notice of the SGM was sent through the strata's portal system and by regular mail to those owners who did not have email. It also appears that strata council members hand-delivered notices to some owners, although they missed some people who were not home.
17. The strata's property manager also sent letters to the applicant and SM (as well as the other owners of their respective strata lots) to advise them that they would be provided with an opportunity to speak at the beginning of the SGM, then they would be asked to leave. The property manager cited section 169 of the SPA, which states that if a strata corporation sues an owner, that owner does not have a right to information or documents relating to the suit, or to attend those portions of an SGM where the suit is discussed.
18. The applicant and SM each obtained legal advice. SM's lawyer wrote to the strata on June 28, 2019 to point out that litigation funds could not be taken from the contingency reserve fund (CRF) as contemplated by the resolution.
19. According to the minutes of the SGM, the owners unanimously accepted the proof of notice of the meeting. The owners voted to amend the resolution to provide that the \$20,000 expenditure would be funded by a special levy rather than a withdrawal from the CRF. After having an opportunity to make statements, the applicant, SM and their lawyers left the meeting. A lengthy discussion ensued, during which the strata's lawyer apparently explained the process and anticipated costs of a defamation action. The owners voted against the resolution.
20. After the SGM, the applicant wrote to the strata's property manager to request copies of all correspondence between the strata, the property manager, and the lawyer. The property manager declined to provide the requested documents alleging they were privileged.

Significant Unfairness

21. Section 123 of the CRTA contains language similar to section 164 of the SPA, which allows a tribunal member to make an order to remedy a significantly unfair act by a strata corporation. A “significantly unfair” act encompasses oppressive conduct and unfairly prejudicial conduct or resolutions. The latter has been interpreted to mean conduct that is unjust and inequitable (see, for example, *Strata Plan VR1767 (Owners) v. Seven Estate Ltd.*, 2002 BCSC 381). In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, the British Columbia Court of Appeal interpreted a significantly unfair action as one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable.
22. The test for significant unfairness was summarized by a tribunal vice chair in *A.P. v. The Owners, Strata Plan ABC*, 2017 BCCRT 94, with reference to *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44: what is or was the expectation of the affected owner or tenant? Was that expectation on the part of the owner or tenant objectively reasonable? If so, was that expectation violated by an action that was significantly unfair?
23. The applicant says that the strata engaged in significantly unfair conduct, bath faith, dishonesty and collusion by setting up an SGM to shut down the Facebook page. She says that the strata engaged in a scam to punish select owners, including herself. The applicant also suggests that the SGM was significantly unfair as the strata did not provide any evidence of defamation. She says that there was “no hearing or dialogue with those affected by the allegations” as she and the other owners had to leave the meeting. The applicant also says the details of what occurred at the SGM were not contained in the minutes.
24. The strata denies that it acted in a significantly unfair manner, and submits that it had no authority to demand that the Facebook page be disbanded. The strata says that it was motivated to put an end to the “constant postings of defamatory and slanderous language”, and drafted the resolution for consideration at the SGM.

25. I do not find that the strata's decision to consult the owners about what it perceived to be defamation amounted to oppressive or unfairly prejudicial conduct. Although the decision does appear to have been motivated in part by some personal concerns from individual council members, the evidence suggests that there were also concerns about the possibility of negative effects on property values for all owners. I do not find that the evidence supports the presence of bad faith.
26. The applicant denies that she was an administrator for the Facebook page and suggests that the strata unfairly targeted her. However, she also submits that she had agreed to be an administrator initially "but shortly after refused any additional role". An April 6, 2018 welcome letter to homeowners identified both SM and the applicant as "FB Admin". On this basis, I find that it was reasonable for the strata to conclude that the applicant was involved in administering the page.
27. The SPA does not require a strata corporation to engage in discussion or alternate dispute resolution before considering legal action against an owner. Therefore, the fact that the strata did not speak to the applicant or SM about the matter before calling the SGM did not render it procedurally unfair.
28. The applicant's key concern appears to be that the strata did not allow her to participate in the SGM or provide her with detailed information about it, either at the time of the meeting or in the minutes. As discussed above, section 169 of the SPA states that if a strata corporation sues an owner, that owner does not have a right to information about the suit or to attend those portions of any SGM at which the suit is dealt with or discussed. The purpose of the SGM in this case was to discuss the legal opinion from the strata's lawyer and obtain approval from the owners for funding for proposed legal action. No action had been started at the time.
29. The British Columbia Supreme Court considered section 169 of the SPA in the context of proposed legal action in *Azura Management (Kelowna) Corp. v. Owners of the Strata Plan KAS2428*, 2009 BCSC 506 (varied on another point 2010 BCCA 474) (*Azura*). At paragraph 66, the Court concluded that it could not have been the Legislature's intent to require a strata corporation to waive solicitor-client privilege or

to require a solicitor to breach solicitor/client privilege by producing documents which relate to a dispute or a potential dispute where litigation is contemplated but not commenced. At paragraph 67, the Court also stated that it could not have been the intent of the Legislature that an owner would be in a position to know both sides of the negotiations as well as the opinion provided by a strata's legal counsel. This comment was made in the context of section 169(1)(b), which says that an owner does not have a right to information or documents relating to a suit.

30. Under section 169(1)(b), I find that the applicant was not entitled to information about possible legal action against her. It follows that she was also not entitled to participate in the portions of the SGM that would have disclosed this information. I also find that it was not objectively reasonable for the applicant to expect to be provided with the information discussed or communicated at the meeting in these circumstances. I find that it was not significantly unfair for the strata to exclude the applicant and SM from the SGM after having provided them with an opportunity to make statements.
31. I find that the available evidence does not support the conclusion that the strata acted in a significantly unfair manner with respect to the July 3, 2019 SGM. Accordingly, I dismiss this claim.

Record Requests

32. Section 35 of the SPA sets out the scope of records that a strata must prepare and retain. The retention requirements apply to, among other things, legal opinions obtained by the strata corporation and correspondence sent or received by the strata corporation. Section 36 of the SPA states that the strata corporation must provide copies of requested documents to an owner who requests them within 2 weeks.
33. As noted above, the strata declined to release the documents requested by the applicant due to solicitor-client privilege. The applicant says the claim of privilege is contrary to the tribunal's rules and the Canadian legal system. The strata says section 169 of the SPA states that the applicant has no claim to documents.

34. At some point the lawyer's legal opinion about defamation and some correspondence among the lawyer, property manager and strata was made available to the applicant. It is not clear whether there is additional correspondence that was not disclosed. This disclosure does not render the matter moot, and I will consider whether the strata failed to comply with its obligations under the SPA.
35. I find that a claim of solicitor-client privilege is not contrary to the tribunal's rules or Canadian law as asserted by the applicant. However, such a claim is not without limits, particularly in the context of section 169 of the SPA. As discussed above, at paragraph 66 of *Azura*, the Court said that, while section 169(1)(b) only denies an owner the right to documents if an action has been commenced, it could not have been the Legislature's intent to require a strata corporation to waive solicitor-client privilege by producing documents which relate to a dispute or a potential dispute where litigation has not been commenced and is only contemplated.
36. Another tribunal member considered the practical effect of the interplay between section 169(1)(b) and solicitor-client privilege in *0716712 BC Ltd. v. The Owners, Strata Plan LMS 3924*, 2019 BCCRT 388. At paragraph 39, the tribunal member found that a strata corporation "is entitled to assert solicitor-client privilege over legal advice related to disputes or potential disputes between an owner and the strata corporation, but only as against the owner that is the subject of the dispute". He determined that this exception applies if the legal advice relates to a dispute or potential dispute with the requesting owner, even if the parties are not engaged in litigation. While not binding upon me, I agree with this reasoning.
37. The fact that the owners did not approve the SGM resolution for litigation funding did not necessarily mean that the potential for some sort of dispute with the applicant had ended. I find that, at the time the applicant made her request, the strata was entitled to claim solicitor-client privilege over the communications with its lawyer. In these circumstances, I find that the strata did not fail to comply with its disclosure obligations under section 36 of the SPA and dismiss this claim. As the lawyer's opinion has been disclosed, it is not necessary for me to consider the duration of the privilege.

38. Given my conclusions above, I find that the applicant is not entitled to damages from the strata. As such, it is not necessary for me to consider whether the applicant established the \$0.01 in damages she claimed.

TRIBUNAL FEES AND EXPENSES

39. Under section 49 of the CRTA, and the tribunal rules, the tribunal generally will order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. As the applicant was unsuccessful, I dismiss her claim for reimbursement of tribunal fees. The successful strata did not pay tribunal fees, but it made a claim for \$21.00 in dispute-related expenses for printing. I find that this claim is reasonable, and therefore order the applicant to reimburse strata for these expenses.
40. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicant.

ORDERS

41. I dismiss the applicant's claims and this dispute.
42. I order that, within 30 days, the applicant pay the strata \$21.00 as reimbursement of dispute-related expenses.
43. The strata is also entitled to post-judgment interest under the *Court Order Interest Act*.
44. Under section 57 of the CRTA, a party can enforce this final tribunal decision by filing a validated copy of the attached order in the Supreme Court of British Columbia (BCSC). Once filed, a tribunal order has the same force and effect as a BCSC order.

45. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia (BCPC). However, the principal amount or the value of the personal property must be within the BCPC's monetary limit for claims under the *Small Claims Act* (currently \$35,000). Under section 58 of the CRTA, this final decision may be enforced by filing a validated copy of the attached order in the BCPC. Once filed, a tribunal order has the same force and effect as a BCPC order.

Lynn Scrivener, Tribunal Member