



Civil Resolution Tribunal

Date Issued: July 24, 2020

File: ST-2019-008512

Type: Strata

Civil Resolution Tribunal

Indexed as: *Saigeon v. The Owners, Strata Plan KAS1997*, 2020 BCCRT 821

B E T W E E N :

RODNEY SAIGEON and LAUREL SAIGEON

APPLICANTS

A N D :

The Owners, Strata Plan KAS1997

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about strata governance. The applicants, Rodney Saigeon and Laurel Saigeon, own a strata lot in the respondent strata corporation, The Owners, Strata Plan KAS 1997 (strata). The applicants say that the strata's governance has not complied with the requirements of its bylaws or the *Strata Property Act* (SPA). The applicants ask for orders requiring the strata to comply with its bylaws and the

SPA when calling and conducting meetings, setting the budget and strata fees, enforcing the bylaws, and dealing with strata council membership. The applicants also ask for orders that the strata provide them with copies of documents they requested and reimburse them for legal fees. The strata denies the applicants' claims, and says that it is not responsible for their legal fees.

2. The applicants are represented by Mr. Saigeon. 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 (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.
4. The CRT 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. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
6. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

ISSUES

7. The issues in this dispute are:
 - a. Whether the strata convenes and conducts annual general meetings (AGMs) properly,
 - b. Whether the strata sets its budget and strata fees properly,
 - c. Whether the strata failed to provide the applicants with requested records,
 - d. Whether the strata has enforced its bylaws properly,
 - e. Whether the strata has improperly excluded the applicants from membership on the strata council, and
 - f. Whether the applicants are entitled to reimbursement of \$9,476.42 in legal expenses.

PRELIMINARY MATTERS

8. In 2019, Mr. Saigeon commenced a British Columbia Supreme Court action against JH (another strata lot owner who serves on the strata council) for damages and other relief related to allegations of defamation. In this dispute, the applicants discuss additional allegations against JH, and claim that the strata council has made false accusations against them for which it has failed to apologize. The applicants also say that the strata council has failed to prevent JH's comments or censure him for these comments. They ask for orders that the strata council provide them with an apology, censure JH, and refrain from any future false or unsubstantiated statements about them.
9. As JH is not a party to this dispute, I find that the applicants' claims against JH are more appropriately dealt with in the Supreme Court action. Therefore, I refuse to resolve these claims under section 11(1)(a)(i) of the CRTA.

10. The applicants appear to be making claims of defamation against the other strata council members, who are not parties to this dispute. I find that claims about defamation between owners are outside the CRT's strata jurisdiction as set out in section 121 of the CRTA. As such, I refuse to resolve these claims under section 10(1) of the CRTA.
11. The applicants' submissions discuss a previous CRT decision and order that required JH to pay \$300 in outstanding strata fees and the strata to reimburse the applicants for \$225 in tribunal fees. Based on the evidence before me, it appears that the strata was collecting \$25 per month from JH to put towards these amounts. It is not clear whether these amounts remain outstanding. However, I would point out that the order required reimbursement to the applicants within 30 days and a demand for payment to JH within 30 days, with his payment to be made to the strata within 14 days of the demand. It was not open to the strata or JH to alter the payment schedule contained in the order, which remains binding on all parties.
12. The applicants' submissions contain information about their May 17, 2019 request for a hearing about implementing the CRT order. This hearing was not held within 4 weeks of the request, as required by section 34.1 of the SPA. It is not clear whether the hearing has since been held. As noted above, it also is not clear whether the payments contemplated by the CRT order had been made. However, as the applicants have not requested a remedy, I will not address this issue further.

EVIDENCE AND ANALYSIS

13. The strata is comprised of 4 strata lots and is self-managed. It is apparent that, in the past, the strata took a somewhat relaxed approach to its management and governance issues. The strata council did not always follow the SPA when conducting strata business. The owners were able to resolve issues in a mostly constructive manner, and the strata council relied on majority votes to make decisions.
14. In recent years, there was an increase in conflict about the use of parking stalls, particularly about the use of the visitor's parking stall. Matters escalated when JH's

vehicle was damaged while parked in the visitor's stall. JH suggested that Mr. Saigeon was responsible for this damage, and withheld his strata fees in an amount equivalent to his insurance deductible in an attempt to compel the other owners to take lie detector tests to identify the guilty party. As noted above, a previous CRT decision required JH to pay the withheld amount to the strata.

15. Feelings of ill will related to the parking issue and JH's vehicle damage spilled over into other strata matters. The applicants became concerned about what they perceived as the strata's refusal to comply with the SPA and the bylaws. They also felt that they were being treated differently than other owners and excluded from some strata-related meetings, despite the fact that Mrs. Saigeon was serving on the strata council. Their concerns were compounded by the fact that the strata council was not consistently producing and distributing minutes as required by the bylaws.
16. The applicants say that matters came to a head during an October 23, 2018 meeting of the strata council when JH, who was serving as president, attempted to change the meeting to the strata's 2018 AGM. Mrs. Saigeon says that there was no notice of the change, only the strata council members were present, there was not a proper budget, and there was no discussion or a vote about keeping the strata fees the same as the previous year.
17. The applicants obtained legal advice, and a lawyer wrote to the strata on November 1, 2018 to convey the applicants' concerns about the procedural problems with the purported AGM. The strata held a new AGM on November 18, 2018 in an attempt to remedy these procedural problems. However, the applicants say that they did not receive adequate notice of the November 18 AGM, it was not conducted properly, and that Mr. Saigeon was prevented from attending because he is not permitted in the strata lot where the meeting was held. The applicants say they have been working with a lawyer to encourage the strata to follow the requirements of the SPA and bylaws, without success. According to the applicants, subsequent AGMs have not been conducted appropriately and the strata's operating budgets have not been approved properly.

18. The strata says that the applicants have “provided constant critique of the Strata’s operations but have failed to step in and bear the responsibilities of arranging the necessary meetings themselves”. However, the strata says it is willing to facilitate the meetings suggested by the applicants’ lawyers. As will be discussed below, despite its initial denial of all of the applicants’ claims, the strata now agrees with some of the remedies proposed by the applicants.

Convening & Conducting AGMs

19. The applicants say the strata has never followed the process for AGMs set out in the SPA. According to the applicants, the strata often does not provide proper notice of the meetings, and the notices frequently do not contain agendas, financial statements, or proposed budgets. When the AGMs are held, the applicants say no voting cards are distributed and the agenda (if there is one) is not followed. They say that, at the 2018 AGM, no budget was presented or voted on. The applicants ask for an order that, within 90 days, the strata hold an AGM that complies with the SPA and the bylaws.
20. The strata says that, due to its small size, the strata council has sometimes “taken a more practical and efficient approach to operating the Strata than is set out in the [SPA]”. However, the strata consents to the order sought by the applicants on this matter and expresses hope that the issues can be resolved at the next properly convened AGM.
21. While I acknowledge the strata’s historical preference for informal management, it must follow the requirements set out in the SPA and the bylaws for convening meetings. As set out in section 40 of the SPA, a strata corporation must hold AGMs. An exception is set out in section 41, if all eligible voters waive, in writing, the holding of the meeting and consent to resolutions approving the budget, electing a council by acclamation, and dealing with other business. There is no indication that the strata has followed this procedure in the past. Therefore, it must hold annual AGMs that conform with the requirements of the SPA, which I note are largely mirrored in the strata’s bylaws.

22. Given that the parties agree about the resolution of this issue, I order that the strata hold an AGM within 90 days. In preparing for and conducting the AGM, the strata must comply with the following requirements:
- a. follow the notice requirements set out in section 45 of the SPA, including providing an agenda, the proposed wording of any resolutions requiring a $\frac{3}{4}$ vote, 80% vote, or unanimous vote, and the budget and financial statement required by section 103 of the SPA (which I will discuss in more detail below),
 - b. at the AGM, follow the order of business set out in bylaw 28,
 - c. conduct votes as required by section 50 of the SPA and bylaw 27, and
 - d. document the meeting, including the results of any votes in minutes as required by section 35(1)(a) of the SPA and bylaw 27.
23. I would also point out that all strata lot owners are entitled to attend an AGM. The strata must ensure that the location of the meeting is accessible to all owners who wish to attend.
24. Nothing in my decision would prevent the strata from seeking advice or assistance from a lawyer, property manager, or other professional about the proper conduct of AGMs or other strata business.

Strata Fees & Budgets

25. The applicants say that, at past AGMs, the owners decided to keep the strata fees the same without a proper budget or voting procedure. According to the applicants, the strata treats contingency reserve fund contributions and insurance payments as “separate surcharges” rather than budgeted amounts, and does not budget expenditures for repair and maintenance needs. The applicants state that the strata fixed the monthly fees arbitrarily. They ask for an order that the strata “prepare a proper and sufficient proposed budget” for consideration at the upcoming AGM.
26. The strata says agreement to the budget and strata fees was implied as no council members disagreed. I do not find that a lack of disagreement on the part of council

members is equivalent to a vote of all eligible owners. In any event, the strata says it consents to the order requested by the applicants.

27. As noted above, section 103 of the SPA states that a strata corporation must prepare a budget for the coming fiscal year for approval by a resolution to be passed by a majority vote at each AGM. This budget must be distributed with the AGM notice and must be accompanied by a financial statement.
28. As the evidence submitted by the parties does not include budgets or financial statements for any of the fiscal years discussed in the submissions, I am unable to determine whether the strata has been appropriately formulating its budgets. However, as the strata agrees to an order that it prepare a budget for consideration at the upcoming AGM, I find that nothing turns on this.
29. The form of a strata corporation's budget is set out in the *Strata Property Regulation* (Regulation). Section 6.6 of the Regulation provides the requirements for a strata corporation's budget. Among other things, a budget must include estimated income, expenditures and contributions to the operating and contingency reserve funds. Section 6.7 lists the requirements for financial statements, including details of the opening balances in the operating and contingency reserve funds, as well as income and expenditures.
30. Section 99 of the SPA sets out the manner in which strata fees must be calculated, with reference to each strata lot's share of the contribution to the operating funds and contingency reserve fund budgeted for each year. Although this calculation may result in the same monthly fees as the previous year, it is not open to a strata corporation to modify the method of calculation.
31. The strata must ensure that, in preparing the budget and financial statement for the upcoming AGM, it complies with the requirements in the SPA and the Regulation. This includes the calculation of strata fees for each strata lot.

Record Requests

32. Section 35 of the SPA sets out a variety of records and documents that a strata corporation must prepare or retain. Bank statements are listed as documents that must be retained. Section 36 of the SPA requires a strata corporation to provide copies of the documents listed in section 35 to an owner upon request.
33. In December of 2018, the applicants requested copies (either paper or digital) of the monthly bank statements from the strata's bank accounts. The applicants say that they received some, but not all, of the statements they requested. The strata says that it disclosed all of the requested statements except for 2 which were left out inadvertently. The strata's position is that it has since disclosed all bank statements in its possession.
34. The applicants disagree, and say they have received no statements for November and December 2019, and only partial statements for December 2018, October 2019, February 2020 and March 2020. The evidence contains several bank statements, but does not include statements for the months referenced by the applicants. The evidence also contains an email message from a strata council member indicating that no further bank statements would be provided.
35. Based on the information before me, I find that it is more likely than not that the applicants did not receive copies of all of the bank statements they requested from the strata. The strata must provide the applicants with full copies of the bank statements for December 2018, October 2019, November 2019, December 2019, February 2020 and March 2020 within 2 weeks, as required by section 36 of the SPA.
36. The strata must also comply with the requirements of section 36 of the SPA for all future document requests. I would point out that section 36 of the SPA also requires the strata to make records or documents available for inspection by owners upon request. The strata cannot prevent owners from accessing this information, whether or not those owners are on the strata council.

Bylaw Enforcement

37. The applicants say that the strata approaches bylaw enforcement in an unfair manner. They say that the strata is enforcing a non-existent bylaw against Mr. Saigeon, who uses a common property (CP) outlet to charge his hybrid vehicle. According to the applicants, there is no bylaw or rule preventing owners from using common property (CP) electrical outlets. However, in a December 23, 2018 email message, a member of the strata council threatened to fine Mr. Saigeon for using the CP outlet. It is not clear whether the strata has pursued this matter. Although the strata agrees that it should comply with the SPA when enforcing bylaws, it says that the strata council agreed that personal rather than CP electricity would be used for recharging vehicles. The strata says that all owners should not fund the operating expenses for 1 owner's vehicle.
38. Bylaw 3(1) provides that an owner must not use CP in a way that causes a nuisance or hazard, unreasonable noise, unreasonably interferes with the rights of other persons to use and enjoy the CP, common assets or strata lot, is illegal, or is contrary to the purpose for which the CP is intended as shown expressly or by necessary implication on or by the strata plan. The bylaws do not address CP electrical outlets or place any restrictions on their use.
39. While the strata council may have taken a vote about whether to permit the use of CP electrical outlets for vehicle charging, it did not amend its bylaws pursuant to sections 126 and 128 of the SPA. The strata also did not enact a rule about the use of CP electrical outlets in accordance with section 125 of the SPA. The strata council's vote alone is not sufficient to create an enforceable bylaw or rule.
40. Even if there was a binding rule or bylaw about the use of CP electrical outlets, the strata cannot fine owners without following the requirements of section 135 of the SPA. This section says that a strata corporation must not impose a fine against a person, require a person to pay the costs of remedying a contravention, or deny a person the use of a recreational facility for a contravention of a rule or bylaw unless the strata corporation has received a complaint about the contravention, given the

owner or tenant the particulars of the complaint, and a reasonable opportunity to answer the complaint, including a hearing if requested. In this case, I find that the requirements of section 135 were not met.

41. I find that the applicants did not violate a bylaw or rule by using the CP electrical outlets. Therefore, the fine discussed in the December 23, 2018 email message is not valid.
42. In addition to the vote about the CP electrical outlets, I would point out that the strata council's vote to allow owners to use the visitor's parking stall is also unenforceable. Bylaw 3(7)(a), which says that the visitor's parking space is reserved for the use of visitors only, remains in force. If the strata wishes to make a change to the parking bylaw, it will need to formally amend bylaw 3(7)(a).

Membership on Strata Council

43. The applicants say the strata has made repeated attempts to deprive them of a seat on the strata council due to animosity towards Mr. Saigeon. They say that, although Mrs. Saigeon remains on the strata council, the other members do not inform Mrs. Saigeon of events and developments, and do not provide her with proper notice of meetings. They ask for an order confirming that Mrs. Saigeon is a member of the strata council and that the strata must follow the SPA and bylaws for calling and conducting strata meetings, and when attempting to adjust the council size. The strata says it has no intention of excluding the applicants from a seat on the strata council, and denies that it has done anything to deprive them of a seat.
44. The strata's bylaw 9 states that all 4 strata lot owners are on the strata council. However, no strata lot can have more than 2 seats on the strata council at the same time. Bylaw 11 says that a resolution passed by a majority vote at an AGM or special general meeting (SGM) is required to remove a council member.
45. The evidence shows that Mrs. Saigeon has served on the strata council for some time, and that she previously held the position of treasurer. She accepted a

nomination as secretary in November of 2018, but soon resigned that position. Mrs. Saigeon did not resign from the strata council.

46. As noted above, feelings of ill will have impacted strata business, and the conflict between JH and Mr. Saigeon seems to feature prominently in these feelings. It appears that, on at least one occasion, JH initiated a discussion about reducing the strata council to 3 members and having Mrs. Saigeon “sit in” on meetings rather than being a council member. Such a change would be contrary to bylaw 9. As noted in the November 19, 2018 minutes, the “by-law needs everyone on the council”. There is no indication that the strata took action to change the strata council size, or that it has ever drafted a resolution for consideration at an AGM or SGM to remove any council member.
47. I do not find that the strata’s informal approach to calling strata council meetings or discussions about council size amount to attempts to prevent the applicants from participating on the strata council. Further, although Mrs. Saigeon may have preferred to remain in her previous position as treasurer, no council member is entitled to retain a particular officer position.
48. I find that the applicants have not proven that the strata has attempted to remove Mrs. Saigeon from the strata council or to prevent the applicants from participating in the strata council. I dismiss this claim.

Legal Fees

49. The applicants say they had to get assistance from a lawyer to deal with the improper procedures and unfair treatment they experienced in strata matters. They suggest that the strata should pay their legal fees of \$9,476.42, but that a new owner who was not an owner when these events occurred should be excluded from responsibility for these expenses. The strata denies that it treated the applicants in an unfair manner and says that the “rules and regulations” do not allow for an award of solicitor’s fees.

50. CRT rule 9.5 states that, in a strata dispute, the CRT will not order a party to pay another party any fees charged by a lawyer or other representative in the CRT dispute process unless there are extraordinary circumstances. I am satisfied that this rule distinguishes between fees incurred before and during the dispute process.
51. The applicants provided 4 invoices to support their claim for reimbursement of legal fees:
- a. \$224 on November 26, 2018 for issuing a demand letter to the strata to address the previous CRT decision and the deficiencies in the October 2018 AGM,
 - b. \$4,969.04 on September 30, 2019 for preparing for and attending the aborted June 23, 2019 strata meeting, variety of other correspondence and document review
 - c. \$2,348.24 on January 3, 2020 for reviewing documents and drafting a List of Documents, and
 - d. \$1,897.44 on February 10, 2020 for matters related to the CRT dispute.
52. These invoices total \$9,438.72 rather than the \$9,476.42 claimed by the applicants. No explanation was provided for this discrepancy. Given my conclusions about the applicants' entitlement to reimbursement, I find that nothing turns on this.
53. The invoices do not all reflect work related to this dispute. The invoice for \$2,348.24 appears to cover document preparation for the Supreme Court action against JH. I find that the applicants are not entitled to reimbursement of legal fees that relate to the Supreme Court action in the context of this dispute.
54. The invoices for \$224 and \$4,969.04 are for work performed before this dispute was commenced with the CRT. They relate to the applicants' claims about governance problems with the strata and unfair treatment. In his Notice of Civil Claim, Mr. Saigeon claimed damages related to JH's "conduct and influence" over the strata council and the strata's management. In essence, Mr. Saigeon claimed that JH is responsible for the problems he is having with the strata. I find that the applicants'

claims in this dispute are intertwined with Mr. Saigeon's claims against JH. I have determined that all claims against JH are more appropriately dealt with in the Supreme Court action. I find that this includes the applicants' claims for the \$224 and \$4,969.04 legal invoices. Therefore, I refuse to resolve these claims under section 11(1)(a)(i) of the CRTA.

55. Turning to the issue of legal fees for this dispute, I find that (absent JH's conduct) the dispute itself is not extraordinary. The issues were not overly complex, the parties were self-represented and there is no indication that any party caused unnecessary delay or expense during the dispute process. I do not find that, in these circumstances, it would be appropriate to order the strata to pay the applicants' legal fees. I therefore dismiss the applicants' claim for reimbursement of \$1,897.44 in dispute-related legal fees.

CRT FEES AND EXPENSES

56. Under section 49 of the CRTA, 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. As the applicants have been largely successful, I order the strata to reimburse the applicants for CRT fees of \$225 within 30 days. As discussed above, it is not open to the strata to alter these payment terms. I have addressed the applicants' claim for dispute-related expenses above.
57. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicants.

ORDERS

58. I order that:
- a. within 90 days the strata must hold an AGM that complies with both the SPA and its bylaws,

- b. in preparing for the AGM, the strata must comply with the requirements for the budget and financial statement set out in the SPA and Regulation,
 - c. within 2 weeks the strata must provide the applicants with full copies of the bank statements for December 2018, October 2019, November 2019, December 2019, February 2020 and March 2020,
 - d. the fine discussed in the December 23, 2018 email message is not valid and must be reversed, and
 - e. within 30 days the strata must reimburse the applicants for \$225 in CRT fees.
59. The applicants are also entitled to post-judgment interest under the *Court Order Interest Act*.
60. The remainder of the applicants' claims are dismissed.
61. Under sections 57 and 58 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia. The order can also be enforced by the Provincial Court of British Columbia 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.

Lynn Scrivener, Tribunal Member