



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VR2477 v. Campbell*, 2020 BCCRT 1183

B E T W E E N :

The Owners, Strata Plan VR2477, ERICA VERONICA RAY, FREN
GUIV, JACK WONG, NANCY ELISABETH CAMERON, RUTH
HIDDLESTON and CLIFFORD EDWARD LAMBERT

APPLICANTS

A N D :

BRUCE CAMPBELL

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about a strata council member's duties.
2. The applicant strata corporation The Owners, Strata Plan VR2477 (strata) says that strata council member, the respondent Bruce Campbell, failed to meet his obligations

to the strata and its residential owners. Mr. Campbell is the President of a company that owns the strata's only 4 commercial strata lots.

3. The applicants collectively seek orders that Mr. Campbell:
 - a. provide the strata with the banking authorization needed to add the strata president as signing authority on all relevant strata accounts,
 - b. provide the strata council with access to strata accounting records under the *Strata Property Act* (SPA),
 - c. provide the strata with details of his discussions with the engineering company that oversees the roof repair contract,
 - d. provide the strata with details of the agreement governing a common property (CP) area that the commercial unit owners lease from the strata for use as a kitchen/lunch room,
 - e. furnish a depreciation report, and
 - f. pay all costs relating to this dispute.
4. Mr. Campbell says he met his obligations as a strata council member. He asks that the dispute be dismissed.
5. The strata is represented by strata council member Richard Horsfall. Although Mr. Horsfall says he is also acting on behalf of 7 of the 8 residential owners in the strata, the Dispute Notice shows that Mr. Horsfall represents 6 named residential strata lot owners, Clifford Edward Lambert, Erica Veronica Ray, Freni Guiv, Jack Wong, Nancy Elisabeth Cameron and Ruth Hiddleston (applicant owners). Mr. Horsfall is not named personally. Mr. Campbell represents himself.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution*

Tribunal Act (CRTA). 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.

7. 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.
8. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.
9. 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.
10. 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.
11. Section 31 of the SPA requires strata council members to act honestly and in good faith with a view to the best interests of the strata corporation, and to exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances. I interpret the strata's claim against Mr. Campbell as a claim that he breached SPA section 31.
12. Only a strata corporation, not an individual owner, can bring a claim against a strata council member for breaching SPA section 31: see *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32. Therefore, I refuse to resolve the claims of the applicant owners against Mr. Campbell under section 31 for lack of

jurisdiction. Below, I will consider the strata's claims against Mr. Campbell. I will also consider the strata's claims for document production.

13. I turn to the question of whether the CRT can order a remedy for a breach of SPA section 31. The Court in *Dockside Brewing Co. Ltd. v. Strata Plan LMS 3837*, 2007 BCCA 183 wrote that "...section 33 provides remedies for breaches of sections 31 and 32". I interpret this to mean that where strata council member conduct breaches both sections 31 and 32, a section 33 remedy is available. *Dockside* does not mean that section 31 breach claims, on their own, give rise to section 33 remedies. Section 33 does not provide remedies for section 31 claims. Based on the language in section 33(1), I find that section 33 remedies apply only where a strata council member fails to comply with section 32. SPA section 33 remedies are expressly outside the CRT's jurisdiction under CRTA section 122(1)(a).
14. However, section 121 (1)(a) of the CRTA gives the CRT jurisdiction over SPA claims about the interpretation and application of the SPA, or its regulations, bylaws or rules. Section 31 is not excluded from the CRT's jurisdiction under CRTA section 122, so claims about the interpretation and application of section 31 fall within the CRT's jurisdiction: see *The Owners, Strata Plan LMS 2385 v. Field*, 2020 BCCRT 673. On this basis, I find that I can order remedies for section 31 breach claims where a strata corporation is the party alleging the breach.

ISSUES

15. The remaining issues in this dispute are
 - a. whether Mr. Campbell breached his SPA section 31 duties to the strata, and
 - b. whether the strata is entitled to orders requiring Mr. Campbell to provide:
 - i. banking authorization to change signing authority on all relevant strata accounts,
 - ii. access to accounting records as provided for in the SPA,

- iii. details of Mr. Campbell's discussions with the engineering company that oversees the roof repair contract,
- iv. details of the agreement governing a CP area that the commercial unit owners lease from the strata for use as a kitchen/lunch room, and
- v. an updated depreciation report.

EVIDENCE AND ANALYSIS

16. The applicants have the burden of proving their claims on a balance of probabilities.
17. Mr. Campbell has not submitted any evidence despite being given an opportunity to do so. He provided submissions, as did Mr. Horsfall. I have reviewed all of the evidence and submissions provided, but only refer to them as I find necessary to explain my decision.
18. The strata is a 3-storey mixed use building constructed in 1986. The strata has 8 residential units and 4 commercial units. The 4 commercial units are owned by Wedge Investments Ltd. (Wedge). Mr. Campbell is the President of Wedge. Mr. Campbell is not a residential owner and does not live in the strata.

Strata Bank Account Administration

a. Use of Pre-Signed Cheques

19. On May 9, 2019, the strata held an AGM at which Mr. Campbell was acclaimed as Vice President, and Mr. Horsfall was elected President.
20. The parties agree that another council member, MR, and Mr. Campbell were the two signatories on the strata's Royal Bank of Canada (RBC) bank account up until September 2019, when MR suffered a debilitating stroke. Thereafter, MR was unable to manage his financial affairs. Two of MR's family members were appointed as his powers of attorney.

21. The parties also agree that Mr. Campbell had several cheques that had been pre-signed by MR, which Mr. Campbell continued to use after MR's stroke. Mr. Campbell says he followed this practice "for the benefit of efficiency".
22. The strata's practice is to require signatures of both strata council members on all cheques, as a check on each individual council member's ability to access strata funds. I find that Mr. Campbell's practice of using the cheques for "efficiency" ignores and overrides the protective mechanism of having two signatories. I find that Mr. Campbell's practice of using pre-signed cheques was unreasonable.
23. By using pre-signed cheques, I find that Mr. Campbell breached his section 31 duty to the strata to exercise reasonable care. Although the strata did not expressly seek a remedy to preclude the use of pre-signed cheques, the strata did request its bank account be properly accessed. I find the use of pre-signed cheques circumvents the dual signature required on the cheques and is a form of improper access to the strata's bank accounts. I order that Mr. Campbell stop using the pre-signed cheques.

b. Signing Authority

24. A related issue is that Mr. Campbell has failed to authorize the strata to amend signing authority on its RBC bank accounts.
25. Mr. Horsfall says he tried to amend signing authority directly with RBC. However, RBC indicated that it requires a directive from each of the two signing officers. In his communications, Mr. Horsfall discovered that two former owners, including one now deceased, still have signing authority.
26. On February 17, 2020, MR's powers of attorney provided a letter to RBC to ask that Mr. Horsfall, as strata council president, be allowed access to all strata accounts and have signing authority on those accounts.
27. Mr. Horsfall says RBC still requires a directive from Mr. Campbell to change signatories on the strata's bank account. Mr. Campbell does not dispute this but has not provided such a directive.

28. I find that a reasonably prudent strata council member would have provided the requested directive to the strata. I find that Mr. Campbell breached SPA section 31 by failing to authorize the strata to change signing authorities on the RBC accounts in a timely manner after MR's stroke.
29. I order that Mr. Campbell provide the strata with a signed letter, addressed to RBC, authorizing the strata to change the signatories on the strata's RBC accounts as the strata council sees fit, including to remove MR and replace him with another council member, and to remove any non-owner signatories still on the accounts.

Accounting Records/Financial Statements

30. The strata submits that it has asked Mr. Campbell for more detailed financial information than is provided in the strata's annual financial statements, but he has failed to provide it. Under SPA section 91, the strata corporation is responsible for its common expenses.
31. Mr. Campbell says that financial year end statements are prepared and distributed at each AGM. Mr. Campbell says the strata does not prepare detailed ongoing or monthly statements, and so he cannot provide them.
32. Under the SPA section 36, an owner may request to view records and documents listed in section 35 and may pay a fee to obtain copies of those documents that must not exceed \$0.25 per page under *Strata Property Regulation* (Regulation) 4.2(1). Minutes of annual and special general meeting and council meetings are included in section 35(1)(a). The strata must provide access or copies within 2 weeks of the request, unless the request is for Bylaws or Rules.
33. Where a document is not set out in section 35 of the SPA, it is generally not available to an owner or tenant: *Kayne v. The Owners Strata Plan LMS 2374*, 2007 BCSC 1610.
34. Owners may make a written request to the strata under section 36, for section 35 records, which include annual budgets or financial statements, or "books of account showing money received and spent and the reason for the receipt or expenditure."

The SPA does not mandate the form in which Section 35 documents are to be kept nor the particular level of detail: see *Kanye*, paragraph 8.

35. Section 35(1)(d) requires books of accounts to be kept. While I find that it implies that such books should be kept reasonably current, it does not specify that reporting must be generated as a *monthly* financial statement. The owners may request copies of the strata's books of account, but there is no specific section 36 written request before me.
36. I find that the request for more detailed financial information or for monthly statements is overly general and not a request for a section 35 SPA document. For this reason, I find it is reasonable that Mr. Campbell declined to provide it, considering his section 31 duties. I dismiss the applicants' claims to have Mr. Campbell produce more accounting records or financial statements.

The Kitchen Lease

37. The strata has a CP area that originally housed a hot tub/spa area. A former owner of the 4 commercial units converted the area to a lunch room/kitchen at its own cost. The parties refer to this area as "the Kitchen". The commercial units' owner then paid the strata rent to use the Kitchen.
38. In 2004, Wedge bought the 4 commercial strata lots and continued to lease the Kitchen by paying monthly rent to the strata.
39. The applicants say that they may wish to sell the Kitchen or use it for other purposes. They say they have asked Mr. Campbell for information and a copy of the Lease, but he has not provided it.
40. Mr. Horsfall requested that Mr. Campbell produce the lease for the Kitchen on July 19, 2018 and again on October 3, 2019.
41. In submissions, Mr. Campbell says that the Kitchen lease rate now is \$7,200 per year. Mr. Campbell has not provided a written lease governing the Kitchen.

42. Mr. Campbell submits that the Kitchen lease rate should not be revised until an alleged overcharge of strata fees to the commercial strata lots between 2004 and 2011 is addressed. As there is no counterclaim, I find that the issue of an alleged overcharge, which may be barred by a limitation period expiry, is not before me.
43. While the strata did not make express submissions about section 32, I infer the strata alleges that Mr. Campbell is in a conflict of interest with respect to the Kitchen lease. Remedies for a section 32 claim are contained in section 33, which is expressly outside the CRT's jurisdiction as set out in CRTA section 122(1)(a). Such claims must be dealt with by the Supreme Court: *Dockside* at paragraph 59. I therefore refuse to resolve the strata's claim to the extent that it is a claim based on the SPA section 32.
44. The remaining question is whether Mr. Campbell's section 31 SPA duties include providing a copy of the Kitchen lease to the strata, if he has such a document.
45. Under section 35(2) the strata must retain copies of any written contracts to which it is a party. Thus, if there is a written lease governing the Kitchen, the strata must retain a copy of it. If the only copy is with Mr. Campbell, then I find his reasonable obligations as a strata council member include providing the strata with a copy.
46. I therefore order Mr. Campbell to provide strata council with a copy of the Kitchen lease, if there is a written lease document in his possession or control, or provide written confirmation that there is no written lease agreement, within 15 days of this decision.

Roof Repairs and Expenditure Authorization

47. The strata submits that Mr. Campbell either contracted with a roofing contractor or the consultant overseeing the roofing project, without owner approval, or failed to provide information such as a quote and the contractor's name.
48. Bylaw 21 says that strata council may not authorize an expenditure exceeding \$1,500 except in emergencies or without prior owner approval by a $\frac{3}{4}$ vote.

49. Bylaw 22 says that a strata council member is not personally liable because of anything they do or fail to do in the exercise or intended exercise of any power of the performance or intended performance of a strata council duty.
50. On June 26, 2019, the strata received a proposal from RDH Building Science Inc. (RDH) for a deck and roof assessment of the strata building for a fixed fee of \$6,000. It does not appear that the strata pursued retaining RDH.
51. On January 28, 2020, strata council met and discussed roofing repairs. Mr. Horsfall reported that he had discussed the project with some contractors. The strata council discussed the need for a management company to define the scope of work, solicit bids and oversee the project for roofing repairs. After discussion, the council decided to approach Morrison Hershfield (MH), an engineering company, about overseeing the project and addressing tenders for a roofing contractor. Mr. Campbell was to liaise with MH and report back to strata council within 2 weeks. I find he did not do so.
52. On April 13, 2020, MH provided Mr. Campbell with an invoice to the strata for \$5,701.50 for some design services for the roofing project up to March 27, 2020.
53. Mr. Campbell says that MH had not provided tender documents, as of June 1, 2020, attributing their delay to the COVID-19 pandemic.
54. On July 24, 2020, Mr. Horsfall wrote to AM of MH about the planned contract for roof and decking repairs, asking for information including the life expectancy of the repaired roof, and a copy of the selected contractor's quote. AM replied to say that all communication had been through Mr. Campbell as strata representative and asking that Mr. Horsfall contact Mr. Campbell for any requests.
55. On July 27, 2020, the strata held a special general meeting (SGM) at which Mr. Campbell responded to a series of questions about his dealings with MH. The owners voted to adopt a base contract of about \$100,000 to the roofing tender selected by MH. The owners also agreed to add an additional \$32,000 amount for tiling on a third-floor deck. Based on the SGM Minutes, I cannot tell whether these funds were to come from the contingency reserve fund (CRF) or via a special levy.

56. As of August 15, 2020, MH tendered the roofing maintenance work and awarded the roofing contract to Marine Roofing.
57. Based on the evidence before me, I find that the strata has not proven that Mr. Campbell breached his SPA section 31 duties regarding the roofing repair consulting.
58. While Mr. Campbell may have contracted with MH for preliminary work of \$5,701.50 contrary to Bylaw 21(c), the strata did not explain why it asked him to approach MH without addressing the \$1,500 expenditure limit. The evidence does not prove that Mr. Campbell entered into a contract without strata council's authorization. I also do not find that Mr. Campbell acted dishonestly or in bad faith in his dealings with MH, and so I find that he is not personally liable in his role as a strata council member.
59. I find that the strata council decided to retain MH, and that Mr. Campbell reasonably followed the strata council's direction to do so.

Depreciation Report

60. In December 2014, Mr. Campbell provided a depreciation report to the strata for no cost. No one provided a copy of the depreciation report, and I make no findings as to whether it met the criteria set out in SPA section 94 and Regulation section 6.2. The applicants say the depreciation report has not been updated.
61. Mr. Campbell says there has not been any discussion or request or him to update the 2014 depreciation report. Mr. Horsfall said he asked Mr. Campbell for these documents.
62. Depreciation reports are listed in the SPA section 35(2). Owners may obtain a copy of any depreciation reports by following the section 36 process. The SPA requires that depreciation reports be updated every 3 years: see SPA section 94 and Regulation section 6.2. Having said that, there is no evidence proving that Mr. Campbell is withholding an existing depreciation report from the strata. The strata may obtain an updated depreciation report using the SPA process. Mr. Campbell is not obliged to generate a depreciation report himself. I therefore dismiss the strata's claim to have Mr. Campbell provide or update a depreciation report.

CRT FEES AND EXPENSES

63. 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. I see no reason in this case not to follow that general rule. The strata paid \$250 in CRT fees, and Mr. Campbell paid none. Because success was divided, I order Mr. Campbell to pay 50% of the strata's CRT fees, which is \$125. None of the parties claimed dispute-related expenses.
64. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Campbell.

ORDERS

65. I refuse to resolve the applicant owners' claims under CRTA section 10(1).
66. I order that, within 15 days of this decision, Mr. Campbell provide to the strata:
- a. a signed letter to RBC authorizing Mr. Horsfall, as strata council president, to remove MR as a signatory on strata accounts and to amend signing authority on the strata's RBC accounts to make it consistent with the strata council's present directions, and
 - b. a copy of the Kitchen lease, if there is a written lease in his possession, or written confirmation that there is no written lease agreement.
67. I also order that Mr. Campbell pay the strata \$125 for CRT fees, within 15 days of this decision.
68. I dismiss the strata's remaining claims.

69. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

Julie K. Gibson, Tribunal Member