



# Civil Resolution Tribunal

Date Issued: October 20, 2020

File: ST-2020-002970

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VIS5602 v. Copeland*, 2020 BCCRT 1188

**B E T W E E N :**

The Owners, Strata Plan VIS5602

**APPLICANT**

**A N D :**

MONICA COPELAND

**RESPONDENT**

**A N D :**

The Owners, Strata Plan VIS5602

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Julie K. Gibson

## INTRODUCTION

1. This dispute is about the enforcement of rental restriction bylaws and the allocation of parking in a strata.
2. The respondent Monica Copeland owns strata lot 24 (unit 104) in the applicant strata corporation The Owners, Strata Plan VIS5602 (strata).
3. The strata says Ms. Copeland rented out part of her strata lot contrary to its bylaws. The strata seeks:
  - a. \$29,000 in bylaw violation fines from Ms. Copeland,
  - b. An order that she stop renting out all or part of her strata lot, and
  - c. An order that she abide by all strata bylaws.
4. Ms. Copeland denies renting out part or all of her strata lot. While there were some people living in unit 104 either with her daughter Morgan or on their own, Ms. Copeland denies that any of them were tenants or paying rent.
5. Ms. Copeland counterclaims, seeking an order that:
  - a. Strata council stop harassing her,
  - b. The strata pay her \$29,000 for stress allegedly caused by their actions, and
  - c. The strata return her parking spot.
6. Ms. Copeland represents herself. The strata is represented by council member AH.
7. For the reasons that follow, I find that Ms. Copeland must pay the strata \$27,000 for violating the strata's bylaw requiring advance permission before renting a strata lot. I dismiss Ms. Copeland's counterclaims to an extra parking stall and monetary compensation for stress.

## **JURISDICTION AND PROCEDURE**

8. 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.
9. 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.
10. 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.
11. 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.

### ***Privacy Claim***

12. On September 4, 2018, Ms. Copeland emailed the strata to say a strata council member had been overheard wrongly disclosing Ms. Copeland's personal information, allegedly learned through strata council duties, while on an out-of-country cruise.
13. On October 26, 2018, the strata wrote to Ms. Copeland to say that it reviewed her concerns about breach of privacy and disclosure of personal information and had determined that no action was necessary.

14. To the extent that Ms. Copeland's request for relief arises from these fall 2018 privacy concerns, I find that claims about the strata's duty to protect an owner's personal information are outside the CRT's jurisdiction: see *Rozenthal v. The Owners, Strata Plan NW 1370*, 2020 BCCRT 156 and *Bosence v. The Owners, Strata Plan VIS 5894*, 2020 BCCRT 330 at paragraphs 19-22.
15. I find both *Rozenthal* and *Bosence* persuasive though they do not bind me. Specifically, I find privacy matters around the strata's obligations under the *Personal Information Protection Act* (PIPA) may be addressed through the Office of the Information and Privacy Commissioner (OIPC).
16. To the extent that Ms. Copeland is claiming for the tort of breach of privacy, I adopt the Vice Chair's persuasive but non-binding analysis in *M.W. v. C.V.*, 2020 BCCRT 1158.
17. In BC, there is no common law tort of breach of privacy: *Ari v. Insurance Corporation of British Columbia*, 2015 BCCA 468 at paragraph 9. However, the BC *Privacy Act* makes it a tort (civil wrong) for a person to violate another's privacy, with exceptions. I make no findings here about whether the strata or any council member breached the *Privacy Act*. Section 4 of the *Privacy Act* says that an action based on it must be heard and determined by the BC Supreme Court.
18. Section 10 of the CRTA says the CRT must refuse to resolve a claim that it considers not within its jurisdiction.
19. For these reasons, I refuse to resolve any breach of privacy claim by Ms. Copeland, under the authority in CRTA section 10.

### ***Harassment Claim***

20. Under CRTA section 10, I also refuse to resolve Ms. Copeland's harassment claim because I interpret it as a claim that strata council members have failed to meet their duties under section 31 of the *Strata Property Act* (SPA). I adopt the Vice Chair's persuasive analysis from his non-binding decision in *Richiraj v. The Owners, Strata*

*Plan LMS 1647*, 2020 BCCRT 593 at paragraphs 26-29, which I find applies equally here.

21. Section 31 says that each council member must act honestly and in good faith, with a view to the best interests of the strata, and exercise the care, diligence, and skill of a reasonably prudent person in comparable circumstances. I find a strata council member's standard of care captures Ms. Copeland's allegations of harassment.
22. In *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 at paragraph 267, the BC Supreme Court found that the duties of strata council members under section 31 of the SPA are owed to the strata corporation, not to individual strata lot owners. This means that a strata lot owner cannot be successful in a claim against a strata corporation for duties owed by its strata council members under section 31.

### ***Limitation Period Issue***

23. The parties provided a great deal of evidence about rental issues going back to October 2016. The *Limitation Act* sets out that a claim must be commenced not more than 2 years after it is discovered. Because the strata's Dispute Notice was issued on April 8, 2020, I find that claims about any fines pre-dating April 2018 are barred by the expiry of the limitation period.
24. I therefore dismiss any claims that arose prior to April 8, 2018. I find that this dispute is confined to fines issued after April 8, 2018, and Ms. Copeland's parking and damages counterclaim.

## **ISSUES**

25. The remaining issues in this dispute are:
  - a. Did Ms. Copeland breach the bylaws by renting all or part of her strata lot?
  - b. Must Ms. Copeland pay the strata \$29,000 in fines for violations of the rental bylaw?

- c. Should I order Ms. Copeland to stop renting out all or part of her strata lot, or order that she abide by strata bylaws in future?
- d. Should I order the strata to pay Ms. Copeland \$29,000 for “stress”?
- e. Should I order that strata to return Ms. Copeland’s parking spot?

## **POSITIONS OF THE PARTIES**

- 26. The central issue in this dispute is about rental of a strata lot
- 27. The strata says that Ms. Copeland has been renting out either part or all of her strata lot contrary to the Bylaws on and off since 2015.
- 28. The strata also says that Ms. Copeland has failed to provide a Form K - Notice of Tenant’s Responsibility (Form K) for any tenants/roommates, despite requests.
- 29. Ms. Copeland says that neither she nor her daughter Morgan have rented part or all of the strata lot. Ms. Copeland says there has not been a “rental situation” at the unit, so there was no requirement for her to return a Form K.
- 30. I will also address Ms. Morgan’s counterclaim for a parking stall and payment of money in my analysis below.

## **EVIDENCE AND ANALYSIS**

- 31. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.

### ***Bylaws***

- 32. The relevant bylaws were deposited at the Land Title Office (LTO) on June 9, 2005, subject to amendments setting a maximum general bylaw fine of \$200 on May 18, 2011, to include Bylaw 32 about rental restrictions on May 26, 2015, and Bylaw 34 about parking stalls on August 12, 2016 (Bylaws), and other amendments that do not apply to this dispute.

33. The relevant rental restriction Bylaws are as follows:

- a. **Bylaw 32.1** provides that no more than 6 strata lots in the strata may be rented at one time.
- b. **Bylaw 32.2** provides that an owner wishing to rent a strata lot must apply to the strata council, in writing, for permission, before entering into any tenancy agreement.
- c. **Bylaw 32.7** provides that prior to possession of the strata lot by a tenant, an owner must deliver the tenant the current Bylaws and rules and a Form K.
- d. **Bylaw 32.8** provides that an owner must provide the strata a copy of the Form K, signed by the tenant, within 2 weeks of renting a strata lot, in accordance with the SPA section 146.
- e. **Bylaw 32.9** provides that a violation of bylaws 32.1-32.6 is subject to a \$500 fine.
- f. **Bylaw 32.10** says that an owner, tenant or occupant must not rent less than all of a strata lot.
- g. **Bylaw 24** provides that if an activity or lack of activity that constitutes a Bylaw contravention continues uninterrupted for longer than 7 days, a fine may be imposed every 7 days.
- h. **Bylaw 24.1** provides that the strata council may grant an exemption from the operation of a bylaw to accommodate a disability in accordance with the BC *Human Rights Code*.

### ***Background Facts***

34. In October 2014, Ms. Copeland purchased unit 104. It is undisputed that her daughter Morgan then began living in unit 104.
35. It is also undisputed that Ms. Copeland never sought or received the strata's permission to rent out all or part of unit 104.

36. On March 14, 2018, Ms. Copeland wrote to the strata to say that Morgan and another person, LA, would need their phone numbers entered for the front door, and that she would need a second parking stall.
37. LA provided a statement that in January 2018 she moved in with Morgan as her “live-in companion and guest”. LA describes Morgan as her close friend. LA provided evidence that she was sharing the whole strata lot, including expenses relating to it such as food and pet expenses.
38. Neither LA nor Morgan commented on whether LA paid rent or paid for expenses, or whether LA was renting, despite both providing statements in this dispute. Based on the request to add LA’s details to the enter phone and the request for a second parking stall, I find that Ms. Copeland was likely again renting part of the strata lot to LA, contrary to Bylaw 32.2 and 32.10. I discuss this further below.
39. In this dispute, Ms. Copeland says that LA, a “live-in companion and guest”, was living at unit 104 starting in January 2018. The strata says, and because it is uncontested, I find, that LA stopped residing in unit 104 in July 2019. I find that LA was living in unit 104 from January 2018 to July 1, 2019.
40. On April 16, 2018 the strata council held a meeting where it discussed Ms. Copeland’s request to add LA to the enter phone and for an extra parking stall. The minutes records that there were no parking stalls available in parkade at that time. Strata council decided to write to Ms. Copeland to ask if the person was a roommate and to enforce the Bylaws if needed.
41. On May 23, 2018, the strata wrote to Ms. Copeland to say that it had received a complaint that a roommate had moved in with Morgan, contrary to Bylaws 32.2, 32.7 and 32.8. I find that the strata’s letter complies with the SPA section 135 (1) because it provided an opportunity for Ms. Copeland to respond and to request a hearing.
42. On June 18, 2018, strata council met again. Ms. Copeland was present at the meeting as the then strata council treasurer. Based on statements from other strata council



members who were present, I find that, when the matter of unit 104 arose, Ms. Copeland refused to answer questions specifically put to her about:

- a. If this was a hardship case under the SPA,
- b. If Morgan required a roommate for medical reasons,
- c. If this was a common-law situation, which I take to be a question about whether LA was a family member or spouse to Morgan, and
- d. Why Ms. Copeland did not ask the strata for permission to rent the unit.

- 43. I find that Ms. Copeland did not provide the strata council with evidence that Morgan required a roommate for medical reasons, to accommodate a disability, or that LA was Morgan's family member or spouse.
- 44. Given the lack of substantive response from Ms. Copeland, at this meeting strata council decided to fine Ms. Copeland \$500 for the roommate issue.
- 45. On September 21, 2018, the strata wrote to inform Ms. Copeland about its decision, effective June 18, 2018, to issue a \$500 fine every 7 days from June 18, 2018 "until the matter is resolved", presumably by having the roommate move out. I find that September 21, 2018 letter meets the notice requirements in the SPA section 135(2).
- 46. On January 21, 2019, the strata wrote to Ms. Copeland to say that it had information that a roommate continued to reside in unit 104, in violation of Bylaw 32.2, 32.7, 32.8, 32.9 and 32.10. The strata noted it was continuing to apply a \$500 fine every 7 days.
- 47. In July 2019, Ms. Copeland replied denying any violation of Bylaw 32.10.
- 48. Thereafter, the strata made several demands for payment of the fines, which it says now total \$29,000 in fines imposed after April 2018.

***Did Ms. Copeland breach the bylaws by renting all or part of her strata lot?***

- 49. The question is whether LA was a roommate renting part of a strata lot contrary to Bylaw 32. Ms. Copeland submits that LA was not renting part or all of the strata lot,

because she did not pay rent, and because she was Morgan's companion. For the reasons given below, I find that LA was a tenant.

50. I find that Bylaw 32.2 requires an owner to obtain strata council's approval prior to renting all or part of a strata lot. Ms. Copeland did not have strata council's approval for Morgan to have LA rent a room within the strata lot.
51. In *K.M. v. The Owners, Strata Plan ABC XXXX*, 2018 BCCRT 29, the Vice Chair considered whether a bylaw restricting rentals applied to tenants renting a portion of the strata lot. I find the Vice Chair's analysis applicable here. In *K.M.*, the Vice Chair found, in paragraphs 39 to 46, that the strata's rental restriction bylaws applied equally to roommates as to those renting an entire strata lot.
52. The SPA defines a "tenant" as a person who rents all or part of a strata lot.
53. Ms. Copeland submits that LA is not a tenant because there is no evidence that she paid rent. The SPA does not define the word rent. The *RTA* defines rent as "money paid...or a value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit..."
54. The *RTA* definition allows that rent can include non-monetary value or rights. I find it likely that LA paid expenses for services and maintenance associated with the strata lot, given the absence of evidence from Morgan or LA on this central question. I draw an adverse inference from the absence of evidence from Morgan or LA on this point, because it is a central question in this dispute and the information is within Ms. Copeland's control.
55. The *RTA* does not require a written agreement for an arrangement to be a tenancy. If someone occupying less than an entire strata lot under a verbal agreement with the owner, tenant or occupant is paying monetary rent or providing other value to the owner, that individual is renting and in violation of Bylaw 32.2 and 32.10.
56. I turn to the inference in Ms. Copeland's materials that she should be exempt from the Bylaw 32 rental restrictions because Morgan has a medical requirement for a live-in companion. Ms. Copeland provided a July 12, 2018 letter from a physician, Dr.

CW, that Morgan benefits from residential/live-in support, resulting in improved mental health. No one provided evidence that Dr. CW's letter had been submitted to the strata as part of a request for roommate rental permission or in response to the complaint about a Bylaw 32 violation.

57. Looking at Dr. CW's letter, I find that it does not say that Morgan is disabled, or that having live-in support is a medical need or requirement for Morgan. Rather, Dr. CW only describes live-in support as beneficial for Morgan. I therefore find that, while Bylaw 24.1 which allows strata council to provide an exemption for a disability under the *Human Rights Code*, Ms. Copeland did not prove that such an exemption applies. Ms. Copeland also did not establish any exemption before the strata council in June 2018, despite the opportunity to do so. If Ms. Copeland wishes to request an exemption from the rental restriction Bylaw based on disability, she may make that request to strata council with supporting materials.

58. Based on the evidence before me, I find it likely that LA was a roommate in unit 104, paying rent from January 1, 2018 to July 1, 2019. Therefore, I find that by renting to LA, Ms. Copeland violated Bylaw 32.10 which prohibits rental of part of a strata lot.

59. I also find Ms. Copeland violated Bylaw 32.2 by renting part of the strata lot to LA without permission.

***Must Ms. Copeland pay the strata \$29,000 in fines for violations of the rental bylaw?***

60. Section 135(1) of the SPA says a strata cannot impose a fine against a person for a bylaw contravention unless it has

- a. received a complaint about the contravention,
- b. given the owner the particulars of the complaint in writing, and
- c. given the owner a reasonable opportunity to respond to the complaint (including a hearing if requested).

61. SPA section 135(2) requires the strata to give notice in writing of a decision to fine a person for a bylaw contravention, as soon as feasible.
62. SPA section 135(3) says that once the strata had complied with the procedural steps outlined above, the strata may impose fines or penalties for a continuing contravention without further compliance with those steps.
63. The strata must strictly follow the SPA section 135 requirements before fines can be imposed: *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449.
64. I have found that Ms. Copeland violated Bylaw 32.2 by renting part of her strata lot to LA without strata council's written permission.
65. The only fines the strata seeks in this dispute are those imposed for Bylaw 32 violations, starting June 18, 2018, of \$29,000 total or 58 weeks' worth of \$500 fines.
66. I find that the strata met its section 135 obligations to impose a fine for this continuing breach by:
- a. writing to her on May 23, 2018 to inform her of a complaint that she was renting part of her strata lot contrary to Bylaw 32.2, and giving her an opportunity to respond and request a hearing if desired, as required by SPA section 135(1) and
  - b. writing to her on September 21, 2018 to inform her that a \$500 fine would be issued every 7 days, effective from June 18, 2018 when strata council held a hearing and decided to issue the fine, meeting the requirements of SPA section 135(2).
67. A \$500 fine may be issued for a breach of Bylaw 32.2, namely failing to obtain strata council's permission for the rental.
68. I find that the \$500 fines every 7 days for violations of Bylaw 32.2 end should when LA moved out on July 1, 2019. Starting at June 18, 2018 and counting to July 1, 2019, I find that the strata could impose fines for 54 weeks, not 58. This leaves \$27,000 in fines.

69. I find that these \$27,000 in fines are valid because I have found that Ms. Copeland was renting part of her strata lot to LA, and Ms. Copeland did not prove that LA moved out in the intervening period or that Ms. Copeland was otherwise entitled to an exemption from the bylaw requiring strata permission.
70. The Bylaws do not permit \$500 fines for breaches of Bylaw 32.7 or 32.10. Fines for Bylaws 32.7 and 32.10 are limited to \$200 under Bylaw 23.
71. I find that the strata did not have the separate, additional ability to fine Ms. Copeland for a Bylaw 32.7 failure to provide a Form K or a breach of Bylaw 32.10, because they did not provide separate section 135 letters showing compliance, nor did they show any files of \$200 or under for these infractions.
72. For these reasons, I find that Ms. Copeland must pay the strata \$27,000 for Bylaw 32.2 violations.

***Should I grant an order that Ms. Copeland stop renting out all or part of her strata lot, or an order that she abide by strata bylaws in future?***

73. Generally, the CRT does not make prospective orders, which are orders about things that have yet to happen: see *Yas v. Pope*, 2019 BCCRT 1349. As an owner, Ms. Copeland is already subject to the Bylaws and the SPA, including rental restrictions, making such an order unnecessary. I decline to order that Ms. Copeland to stop renting out all or part of her strata lot, or that she abide by the Bylaws in future.

***Should I order the strata to pay Ms. Copeland \$29,000 for “stress”?***

74. I decline to order any compensation for stress. Ms. Copeland did not provide any evidence of compensable harm, being something more than the usual stress associated with a claim, such as a report from a health care provider. As well, I did not find the strata’s conduct toward Ms. Copeland in requesting responses to its concerns to be improper. As a result, I find Ms. Copeland is not entitled to compensation for stress.

75. I acknowledge Ms. Copeland's submissions, in her counterclaim, that the strata had not complied with Bylaws 3A and 3C.
76. Bylaw 3A provides, among other things, that an owner, tenant, occupant or visitor must not use a strata lot, the common property (CP) or common assets in a way that unreasonably interferes with the rights of other persons to use and enjoy the CP, common assets or another strata lot.
77. Bylaw 3C says that all complaints about strata plan matters shall be made to council in writing.
78. It is unclear how Bylaw 3A or Bylaw 3C would apply to the strata.
79. I find that the evidence did not prove any breach of Bylaws 3A or 3C by the strata, and so I dismiss this submission.

***Should I order the strata to return Ms. Copeland her parking spot?***

80. I will now turn to the factual background regarding Ms. Copeland's parking stall assignment claim.
81. On September 15, 2017, the strata wrote to Ms. Copeland to say that parking stall 32 would be removed from unit 104 and re-assigned effective October 1, 2017.
82. On April 16, 2018 the strata council held a meeting where it discussed Ms. Copeland's request to add LA to the enter phone and for an extra parking stall. The minutes record that there were no parking stalls available in parkade at that time.
83. Bylaw 34 provides that strata council will assign each strata lot 1 vehicle parking space. Extra parking spaces may be rented for \$30 per month, at strata council's discretion. I find that the Bylaws provided for only 1 guaranteed parking space per strata lot since at least 2005.
84. At some point, Ms. Copeland had the use of 2 parking stalls, until the strata reassigned 1 in 2017. Ms. Copeland did not object to the reassignment at the time, based on the materials before me. Then, in 2018, Ms. Copeland asked to rent an

extra parking stall to allow LA to park there. The strata council had no parking stalls available and decided not to allocate an extra stall in response to her request. I find that this decision was a reasonable exercise of strata council's discretion about the allocation of extra parking stalls because (a) there were no spare parking stalls when Ms. Copeland made her request, (b) the request was made to accommodate a renter who was living in the strata lot without strata council's written authorization and (c) the Bylaws only guarantee one parking stall per strata lot.

85. I find that Ms. Copeland did not prove that the strata acted improperly by reassigning her extra parking stall.
86. I have considered section 164 of the *SPA*, which permits the CRT to make an order to prevent or remedy a “significantly unfair” action by, threatened action by, or decision of a strata, including a strata council, in relation to an owner.
87. The British Columbia Court of Appeal has considered the language of section 164 of the *SPA* in *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44. The test established in *Dollan* was confirmed in *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164, and can be stated as follows:
- a. What is or was the expectation of the affected owner?
  - b. Was that expectation on the part of the owner objectively reasonable?
  - c. If so, was that expectation violated by an action that was significantly unfair?
88. In *Kunzler v. the Owners, Strata Plan EPS 1433*, 2020 BCSC 576, the Court determined that the reasonable expectations portion of the *Dollan* test may not be appropriate in all circumstances. However, the Court held it may apply when a strata council is exercising discretionary authority. Because here the strata council was exercising discretionary authority regarding the parking stall, I will consider the reasonableness of Ms. Copeland's expectations.
89. Ms. Copeland did not prove a significantly unfair action by the strata towards her. The Bylaws only allow for 1 parking stall per strata lot, with additional spaces being

provided at strata council's discretion. Strata lots have been assigned only 1 parking spot each at least as far back as 2005. I therefore find it is not an objectively reasonable expectation on Ms. Copeland's part to have 2 parking stalls. I dismiss Ms. Copeland's counterclaim for an order that the strata return "her" parking spot.

## **CRT FEES, EXPENSES AND INTEREST**

90. 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. Here, because the strata was mostly successful, I order Ms. Copeland to pay the strata \$225 in CRT fees. The strata did not claim dispute-related expenses.
91. The *Court Order Interest Act* (COIA) applies to the CRT. The strata entitled to pre-judgement interest on the \$27,000 from July 1, 2019, when the fines had been imposed, to the date of this decision. This equals \$689.50.
92. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Copeland.

## **ORDERS**

93. I order that, within 60 days of this decision, Ms. Copeland pay the strata a total of \$27,914.50, broken down as:
  - a. \$27,000 in fines for a breach of Bylaw 32.2,
  - b. \$689.50 in pre-judgement interest under the COIA, and
  - c. \$225 in tribunal fees.
94. I dismiss the remaining claims and counterclaims.
95. The strata is also entitled to post-judgement interest under the COIA.



96. 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.

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Julie K. Gibson, Tribunal Member