

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Majithia v. The Owners, Strata Plan EPS
2884,*
2024 BCSC 1519

Date: 20240819
Docket: S242509
Registry: Vancouver

Between:

Anoop Majithia and Sharlene Gill

Petitioners

And

The Owners, Strata Plan EPS 2884

Respondent

Before: The Honourable Justice Latimer

Reasons for Judgment

Counsel for the Petitioners:

W.A. Berger

Counsel for Respondent:

K.K. Uppal

Place and Date Hearing:

Vancouver, B.C.
August 13, 2024

Place and Date of Judgment:

Vancouver, B.C.
August 19, 2024

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Introduction

[1] This is an application brought by the petitioners for an order pursuant to s. 16.2(1)(b) of the *Civil Resolution Tribunal Act*, S.B.C. 2012, c .25 [*CRTA*], that it is not in the interests of justice and fairness for the Civil Resolution Tribunal (“CRT”) to adjudicate the petitioners’ claim.

[2] The application is opposed by the respondent.

Issue

[3] For the reasons that follow, I dismiss the petitioner’s application, stay the petition under s. 16.1 of the *CRTA* and refer the matter to the CRT pursuant to s. 16.4 of the *CRTA*.

Background Facts

[4] The petitioners are the registered owners of three strata lots at 1151 West Georgia Street, Vancouver, BC. The lots were acquired in 2016, 2019 and 2021 respectively.

[5] The petitioners have made requests to merge the three units (“Alteration”). They allege that the respondent approved the Alteration, but later called a special general meeting at which three resolutions were passed by the members of the respondent. The resolutions:

- a) Amended the strata bylaws so that major alterations (such as those proposed by the petitioners) would be subject to a different approval process;
- b) Directed the respondent to withhold approval of the Alteration and required that the matter be determined in a general meeting by a resolution passed by a majority vote at the meeting; and
- c) Resolved not to approve the Alteration.

[6] The petitioners argue that the developer was the driving force behind the special general meeting and the resolutions and that the developer was in a conflict of interest.

Analysis

Legal Principles

[7] The purpose of the CRT is to provide an accessible, flexible and speedy dispute resolution process to parties involved in strata claims falling within s. 3.6(1) of the *CRTA*. The CRT's online processes and emphasis on facilitated dispute resolution are intended to provide the parties with a quick and less expensive form of decision-making than adjudication in the Supreme Court: *Allard v. The Owners, Strata Plan VIS 962*, 2019 BCCA 45 at para. 34.

[8] The *CRTA* directs most strata disputes from the court to specialized adjudicators with the CRT: *Yas v. Pope*, 2018 BCSC 282 at paras. 12-15 [*Yas*].

[9] Section 121(1) of the *CRTA* provides the CRT broad authority to determine most forms of strata disputes and it is not disputed that this dispute falls within that authority. Subsection 121(2) expressly confirms that the CRT is to be considered "...to have specialized expertise in respect of claims within the jurisdiction of the tribunal" with respect to disputes arising from the *Strata Property Act*, S.B.C. 1998, c. 43 [*SPA*].

[10] While the *SPA* generally limits the monetary jurisdiction of the CRT to that of the Small Claims Court, the *CRTA* specifically does not limit the CRT's monetary jurisdiction with respect to *SPA* disputes: *Downing v. Strata Plan VR2356*, 2019 BCSC 1745 at para. 26 [*Downing*].

[11] Division 3 of the *CRTA* sets out the factors that guide whether a matter is to be heard by this Court or the CRT. Sections 16.1 and 16.4 presumptively bar a proceeding in this Court if the subject matter of that proceeding is one over which the *CRTA* deems the CRT to have specialized expertise. That presumption is

subject to certain limited exceptions identified in those sections. The only exceptions that may be applicable in this case are the following:

16.1 (1) Subject to subsection (2) and section 16.4 (1) and (2) *[bringing or continuing claim in court]*, if, in a court proceeding, the court determines that all matters are within the jurisdiction of the tribunal, the court must...

...

(b) in the case of a claim in respect of which the tribunal is to be considered to have specialized expertise, dismiss the proceeding unless it is not in the interests of justice and fairness for the tribunal to adjudicate the claim...

16.4 (1) Subject to this section and Division 5 *[Objection to Tribunal Small Claim Decision]* of Part 5 *[Tribunal Resolution]*, a person may not bring or continue, as the case may be, a claim that is within the jurisdiction of the tribunal as a claim in a court unless one or more of the following apply:

...

(c) the court orders under section 16.2 that the tribunal not adjudicate the claim;

[12] The petitioners ask this Court under s.16.2 of the *CRTA* for an order that the CRT not adjudicate their claim. Specifically, the petitioners rely upon s. 16.2(1)(b), which allows this court to hear a matter otherwise directed to the CRT on the grounds that “it is not in the interests of justice and fairness for the tribunal to adjudicate the claim.”

[13] Section 16.3 itemizes relevant considerations in the interest of justice and fairness. The specific provisions of s. 16.3 relied on by the petitioners are the following:

Considerations in the interest of justice and fairness

16.3(1) For the purposes of sections 16.1(1) and 16.2(1), when deciding whether it is in the interests of justice and fairness for the tribunal to adjudicate a claim, the court may consider the following:

(a) whether an issue raised by the claim or dispute is of such importance that the claim or dispute would benefit from being adjudicated by that court to establish a precedent;

...

(c) whether an issue raised by the claim or dispute is sufficiently complex to benefit from being adjudicated by that court;

(2) For the purposes of section 16.1(2), when deciding whether it is in the interests of justice and fairness for the tribunal to make the determination

referred to in that subsection, the court may consider the principle of proportionality.

[14] As well, the petitioners argue that the list of factors in s. 16.3 is neither mandatory nor exhaustive: *Canadian Ramgarhia Society v. Panesar*, 2022 BCSC 751. They rely on an additional factor and that is the alleged urgency of their claim.

Position of the Parties

[15] The petitioners say their claim is complex because:

- a) Significant facts are in dispute and the matter has an intricate backstory;
- b) There is alleged inappropriate involvement of the developer in the dispute and the improper use of proxies which introduce complexity; and,
- c) The dispute involves the retroactive nullification of an approval that the same strata corporation already approved.

[16] The petitioners say this claim has precedential value. They argue this will be the first time this court will consider, under s. 164 of the *CRTA*, whether significant unfairness occurs when a strata corporation retroactively withdraws approval of a project it had previously approved.

[17] The petitioners argue there is an urgency to having the claim adjudicated because the Alteration needs to proceed by October 2024 in order to avoid having the building permit expire in December 2024. They have already obtained a hearing date in court for September 10, 2024 for the adjudication of this claim.

[18] The respondents argue the claim is not complex in particular:

- a) The CRT is equally able to resolve factual disputes and the facts are not complex;
- b) There is no evidence that the matter has to do largely with the role of the developer or the improper use of proxies; and,

- c) The CRT has considered cases with analogous facts including reversal of a previous strata counsel decision: *Sabell v. The Owners, Strata Plan KAS 3635*, 2021 BCCRT 620 [*Sabell*]; *Parsons v. The Owners, Strata Plan KAS 1436*, 2022 BCCRT 721 [*Parsons*].

[19] The respondents say the claim has low precedential value as it will turn largely on the facts. They further say that the court does not have a monopoly on developing precedent.

[20] Finally, the respondents argue the *CRTA* and CRT rules favour the facilitation of a speedy process. The CRT rules have specific mechanisms to permit parties to have disputes decided expeditiously. Without evidence that these mechanisms have been utilized, the respondent argues the urgency argument should fail.

Discussion

[21] All of the issues raised in the petition deal with a combination of:

- A. The application of the SPA and the strata's bylaws;
- B. The decisions of the strata corporation and its council; and
- C. The actions of the strata corporation.

[22] These are all matters over which the *CRTA* expressly confers jurisdiction on the CRT under s. 121.

[23] I turn to the petitioners' arguments as to why it would not be in the interests of justice and fairness for the CRT to adjudicate the dispute.

Complexity

[24] In *Yas*, the petitioners argued that their claims involved complex and interrelated issues making the CRT an unsuitable venue for their resolution. In addition to a noise complaint, the complexity was said to arise because the claim involved "large amounts of money, interwoven with allegations of lack of procedural fairness against the Strata, over-layered with claims of bias on the part of the CRT facilitator, topped off with the 'privity of contract' issue".

[25] At para. 46, this court rejected that the claim was so complex that the CRT was an unsuitable venue. In so doing, the Court noted the CRT's lack of monetary limit in strata disputes and its authority to sanction strata councils that fail in their duty of fairness towards owners. The Court further noted that the question of whether the alteration of an agreement bound the petitioners was something well within the competence of the CRT to decide.

[26] For similar reasons, I reject the petitioners' argument that the issues raised by the claim is sufficiently complex to benefit from being adjudicated by that court. The CRT must resolve factual dispute in the course of exercising its jurisdiction under the *CRTA*.

[27] *Yas* is one example of a case where this court found the CRT sufficiently well positioned to determine a dispute about whether an agreement was binding. I have been pointed to precedents where the CRT has had to contend with strata councils who have reversed course on decisions previously made in the context of a fairness analysis: *Sabell*; *Parsons*.

[28] I do not consider the allegations about the involvement of the developer and the improper use of proxies to be so complex that they should be adjudicated by this court. That is the kind of factual inquiry that falls squarely within the CRT's jurisdiction to determine in its assessment of whether the owners have been dealt with fairly. If that inquiry cannot be fully resolved on the basis of a written record, ss. 39-42 of the *CRTA* permit the CRT to question parties and witnesses, and to convene an in-person hearing with oral testimony if appropriate.

Precedential Value

[29] In *Kunzler v. Strata Plan EPS 1433*, 2020 BCSC 576 [*Kunzler*], this Court took jurisdiction of a claim that was within the jurisdiction of the CRT on the basis, in part, that the resolution of the claim had precedential value.

[30] At issue in *Kunzler* was a challenge to the passage of new bylaws by the respondents which prevented the petitioner's planned construction and operation of

a licensed cannabis production facility. The petitioner had purchased the property with the intention of leasing the property to a licensee and operator of a cannabis business. At the time of the purchase, the bylaws permitted agricultural use of the property. Several other strata owners voted and passed new bylaws which expressly prohibited the commercial production of cannabis plants or cannabis passed bylaws. The petitioners argued, in part, that the respondent and its members had taken concerted efforts to specifically target their planned business.

[31] They argued this was significantly unfair under s. 164 of the *SPA* and that the test under that provision had to take their reasonable expectations into account. Their claim failed on the merits in part because the Court concluded the petitioners' expectations were not reasonable. They were not reasonable because there was no evidence that the respondent said or did anything to create an expectation that the bylaws would not change in the future.

[32] The petitioners in this case say that their claim fills in gaps left in the jurisprudence by *Kunzler*. In particular, they say, it asks the question of when a strata council will be found to have done something to create reasonable expectations. They submit this question is of precedential value to any owner because all owners need to know whether approvals can be binding and in what circumstances strata corporations can change course.

[33] I agree with the respondent that the question of whether and when reasonable expectations will have arisen turns largely on the facts. While a body of case law will be of assistance to future owners in determining whether a reasonable expectation can be said to arise on the particular facts of their own case, no single case is likely to set the parameters on that issue. The CRT is well positioned to develop that body of case law. As noted by this Court in *Downing* at para. 42, the CRT's decisions are publicly available online and will provide persuasive guidance to future would-be litigants.

Urgency

[34] There is insufficient evidence upon which I can draw the inference that the Court will be able to determine this matter before the CRT. In particular, although the petitioners have secured a September hearing date, I am advised that the respondent’s counsel is not available on the date in question. Given a full day is required, it is unlikely the matter can be rescheduled before October.

[35] It is also worth noting that this petition was filed in April 2024, and there is no evidence that the petitioners made any efforts at that time, or at all, to avail themselves of the mechanisms available under the *CRT* rules to secure a speedy resolution of their claim.

Conclusion

[36] For all these reasons, I conclude it is in the interests of justice and fairness for the CRT to adjudicate this claim. The application is dismissed, the petition proceeding is dismissed, and the matter is referred to the CRT for adjudication.

“Latimer J.”