IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Coquitlam Holding Ltd. v. The Owners, Strata Plan BCS 3495,* 2024 BCSC 229

Date: 20240212
Docket: S247845
Registry: New Westminster

Between:

Coquitlam Holding Ltd. and Urban Gate Inc.

Petitioners

And

The Owners, Strata Plan BCS 3495

Respondent

Before: The Honourable Justice Caldwell

Reasons for Judgment

In Chambers

Counsel for the Petitioners:	J.W. Lebbert
Appearing as Representative for the Petitioners:	P. Majidi
Counsel for the Respondent:	M.D. Carter
Place and Date of Hearing:	Chilliwack, B.C. July 19, 2023
Place and Date of Judgment:	New Westminster, B.C. February 12, 2024

[1] The petitioners Coquitlam Holding Ltd. (“Coquitlam”) and Urban Gate Inc. (“Urban Gate”) seek relief from the respondent, The Owners, Strata Plan BCS 3495, arising from a strata dispute and a strata vote held as a result of a decision of the Civil Resolution Tribunal (“CRT”). The materials filed in support of and in opposition to the matter are quite extensive.

BACKGROUND

[2] The petitioner Coquitlam owns three commercial strata lots—SL7, SL8 and SL9—in the subject development. The petitioner Urban Gate operates a grocery store business on those three strata lots. Both petitioners are owned by Peyman Majidi.

[3] The patio area running along the southeast corner of one of the strata lots, together with the adjacent storage area, were originally wrongly designated as common property on the Strata Plan. A dispute arose over the issue and a court order was sought and obtained on November 12, 2013, wherein Justice Bowden ordered that SL9 was to have full and exclusive use of the patio and that the designation of the patio be changed from common property (“CP”) to limited common property (“LCP”), as though the requisite vote had taken place. The same order was made regarding the storage area, but it was to be exclusively used by all three of the Majidi-owned strata lots.

[4] The respondent accepts that the order was made and that the areas in question and the subject of this matter are LCP, but it has never successfully amended the actual Strata Plan to reflect the change. It claims that the order does not require or direct such a change and further, that such a change requires a unanimous vote of the owners.

[5] The Strata Corporation consists of 642 strata lots—14 commercial and 628 residential. There is considerable tension and conflict between the commercial minority and the residential majority. There is considerable tension and conflict between and among various individual strata owners. None of this is particularly unusual.

[6] In 2020, Mr. Majidi decided to convert the grocery store/restaurant operation, which was at that time operating in the three strata units, to a dedicated grocery store operation.

[7] He contemplated certain modifications to the exterior and to the LCP to accomplish the conversion.

[8] The by-laws of the Strata Corporation did not and do not require non-residential owners to get written approval for alterations to non-residential strata lots—requirements only relate to local government approvals and permitting from the City of Coquitlam.

[9] The petitioners have sought and obtained all necessary Coquitlam permits for the alterations. They in fact executed an indemnity agreement with the respondent acknowledging the necessity of doing so.

[10] The Strata Council gave the petitioners conditional approval for the renovations, although such approval was not required. It did so on the basis that, after investigation and consideration, it determined that in its view the alterations did not amount to a “significant change” in the use or appearance of the common property.

[11] In spite of this conclusion, the Strata Council noted that such approval, and the view that the alterations did not amount to a significant change, could be subject to a legal challenge. That expressed concern led to the conditional approval and to the indemnity agreement.

[12] The renovations began. The interior renovations were completed in September 2020.

[13] Exterior renovations stalled prior to commencement due to dealings with City of Coquitlam authorities. Modifications and reduction in scope were required for approval from the City. That approval was finally obtained in October 2022, after considerable discussion.

[14] Those discussions included the City's requirement that the petitioners consult with their counsel regarding s. 2.6(3) of the Strata Corporation's bylaws to ensure that the Strata Council's permission was not required for the type and scale of alterations being proposed.

[15] Such consultation took place and the petitioners indicate that they were advised by their lawyer that the Strata Council was not required to give further approval.

[16] In January 2022, concurrent with these ongoing discussions, a residential strata owner, Mr. Greene, filed a Dispute with the CRT, seeking revocation of the indemnity agreement. He argued, among other things, that the exterior renovations did constitute a significant change to both the use and appearance, thus requiring a vote of strata owners and the approval of 75% in such vote.

[17] The petitioners were aware of this proceeding and were in contact with the Strata authorities at various times, but they were not named parties to the dispute and were not invited to participate or provide submissions to the CRT. Their requests to counsel for the Strata Corporation for information and documentation regarding the CRT process were ignored or rebuffed.

[18] On October 25, 2022, the CRT issued a decision regarding the renovations. That decision held that the renovations to the exterior of the petitioners' strata lots did constitute a significant change in appearance (but not use) and thus, required a 75% approval vote to proceed. Absent a 75% approval vote, the Strata Council was to "take steps to revoke its permission" for the renovations.

[19] On November 1, 2022, the Strata manager notified the petitioners of the CRT decision.

[20] A subsequent General Meeting, as directed by the CRT decision, put the matter to a vote and the required 75% approval was not obtained.

ORDERS SOUGHT

[21] The petitioners seek:

- a declaration that the respondent acted significantly unfairly and in breach of its obligations under the *Strata Property Act*, S.B.C. 1998, c. 43 and its own bylaws regarding the alterations;
- an order setting aside the December 2022 vote of the strata owners as being significantly unfair;
- an order that the petitioners can immediately start work on the alterations;
- an order that the petitioners immediately take steps to amend the Strata Plan to reflect the changes ordered by Justice Bowden; and
- reimbursement for monetary and business losses attributable to the respondent's significantly unfair conduct or conversion of this petition into an action, so that such damages can be pursued.

SIGNIFICANT UNFAIRNESS

[22] The question as to what constitutes significant unfairness is well summarized in the fairly recent decision of the Court of Appeal in *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342 at para. 88:

> [88] As is apparent from the foregoing, the correct test for significantly unfair conduct in s. 164 is uncontroversial. It is as stated in *Reid* and fully endorsed in *Dollan*, namely, conduct that is oppressive in that it is burdensome, harsh, wrongful, lacking in probity or fair dealing, or done in bad faith, or conduct that is unfairly prejudicial in that it is unjust or inequitable. As I read Justice Garson's reasons in *Dollan*, in her view where the significant unfairness in question involves allegedly oppressive conduct, a modified reasonable expectations test should form part of the inquiry into whether the impugned conduct meets the s. 164 definition. I agree with this approach, which I see as consistent with Justice Cromwell's comments in *Rodgers* to the effect that some concepts and principles drawn from the law of corporations are relevant in the context of strata property law: at para. 5. In both contexts, the animating concern is one of achieving fairness in the

> resolution of conflicting interests between community stakeholders in a manner that is highly fact-specific.

[23] In the present case, I find nothing in the actions of the Strata Council which could constitute significant unfairness.

[24] They were approached by the petitioners about the intended alterations. Their approval was not required and the petitioners knew that. They participated in discussions with the petitioners and expressed their view that the proposed alterations did not constitute a significant change but maintained throughout that such decision was open to challenge and even directed the petitioners to obtain legal advice before proceeding. The petitioners did so, and on the basis of such advice, chose to proceed.

THE CRT HEARING

[25] In my view, the CRT hearing and decision are the key to this dispute.

[26] The dispute notice was filed by Mr. Greene very early in 2022. The petitioners, like all other owners, were notified of the dispute. They were clearly interested parties, potentially affected by the outcome of the dispute, and began making enquiries and involving themselves at least tangentially in the process.

[27] In spite of their involvement, they were not parties to the CRT dispute. It appears that no action was taken by anyone, including the petitioners, to have the petitioners added to the dispute as parties.

[28] The *Civil Resolution Tribunal Act*, S.B.C. 2012, c. 25 [*CRTA*] provides for the addition of appropriate parties:

> **Addition of appropriate parties**
>
> **31**(1) If the case manager considers that one or more other persons should properly be parties to a dispute, the case manager may provide the current parties with an opportunity to have those other persons added as parties in accordance with the rules and with any directions by the case manager.

[29] The *CRTA* further provides:

> **Rules of practice and procedure for tribunal proceedings**
>
> 62(1) The tribunal may make rules respecting practice and procedure in tribunal proceedings to facilitate the resolution of disputes before it in accordance with its mandate.
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> (2) Without limiting subsection (1), the tribunal may make rules respecting the following:
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> …
>
> (h) the participation of parties and other persons in tribunal proceedings, including rules
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> …
>
> (iv) respecting authority of the tribunal to allow other persons to participate in a tribunal proceeding.

[30] I note that the CRT was created and is widely recognized as an informal, people-friendly decision-maker. It is governed by an approach and process aimed at self-represented parties and problem solving as opposed to traditional adversarial litigation. The CRT's mandate and role, as described in s. 2 of the *CRTA*, includes providing dispute resolution services in a manner that is informal and flexible, and encouraging the resolution of disputes by agreement between the parties where possible. Section 20 of the *CRTA* lays out the general rule that parties are to represent themselves. I have little doubt that the petitioners could have made an application to be added as parties or participate in some manner in the proceedings, given their clear interest in the outcome of the process. No evidence of such an application was presented.

[31] Following the CRT hearing, the Tribunal Member and Vice-Chair delivered the Tribunal's decision along with fairly extensive reasons. Two specific problems arise with respect to that decision and its supporting reasons.

[32] The first problem is that the Tribunal found, at para. 50 of the Reasons, that:

> Despite Mr. Greene's assertion the patio enclosures would be constructed on limited common property, I find from the strata plan the ground level areas next to SL9 are common property.

[33] This finding, which may well have been key to the ultimate decision of the Tribunal on the issue of significant change, seems to be clearly wrong. The status of

that area was not dependant on Mr. Greene's assertions, nor on the "uncorrected" Strata Plan, rather it had already been determined by order of this Court to be LCP, not LP. With great respect, it was not open to the CRT Member to reverse a finding and order of this Court in that regard. Having proceeded based on this error, the CRT found that the alterations were a significant change and ordered the vote which resulted in the motion failing to obtain the required 75% approval.

[34] The second problem is that the decision of the CRT has never been challenged in any fashion by any party by way of judicial review. The Supreme Court of Canada described the rule against collateral attack in *British Columbia (Workers' Compensation Board) v. Figliola*, 2011 SCC 52 at para. 28 as preventing a party from "using an institutional detour to attack the validity of an order by seeking a different result from a different forum, rather than through the designated appellate or judicial review route". This petition is a collateral attack on or "end run" around the CRT decision, by a non-party to that hearing and decision, and seeks to avoid the necessary procedural and notice requirements associated with such judicial review.

DECISION

[35] Given the unchallenged decision and order of the CRT, it was not open to the respondent to simply disregard such order. It was required to hold the vote as ordered and it did so. The vote did not result in the 75% favourable mandate which was required to allow the alterations to proceed.

[36] In such circumstances, and based on the facts as they exist at this time, including the CRT decision, the vote that resulted from that decision, the outcome of that vote and the consequences which flowed from that outcome, the petition as framed must be dismissed.

[37] The *CRTA* makes provision for judicial review in Part 5.1 and includes the following:

> **Time limit for application for judicial review**
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> 56.6(1) An application for judicial review of a decision of the tribunal must be commenced within 60 days of the date the decision is given.

> (2) Despite subsection (1), either before or after expiration of the time, the Supreme Court may extend the time for making the application on terms the Supreme Court considers proper, if the Supreme Court is satisfied that
>
> (a) there are serious grounds for relief,
>
> (b) there is a reasonable explanation for the delay, and
>
> (c) no substantial prejudice or hardship will result to a person affected by the delay.

[38] In the circumstances of this case, I am satisfied that:

- there are serious grounds for relief given what appears, arguably, to have been a clear error in the basis for the Tribunal's decision and order;

- there is a reasonable explanation for the delay in that the petitioners were not, and currently are not, parties to the CRT dispute and thus, have pursued this current petition in hopes of obtaining a remedy; and

- there is no substantial prejudice or hardship which will result to any person affected by the delay, save and except, possibly, the petitioners themselves, and they may ultimately benefit from an extension of time to apply for judicial review.

[39] I make no order at this time that the petitioners be made parties to the CRT matter. I make no order that they be granted any form of status allowing them to apply for judicial review of the existing CRT decision. Those are matters which should be dealt with, at least initially, within the processes and boundaries of the CRT itself. I do order, however, that the time limit for application for judicial review of the existing CRT decision be extended to 90 days following the release date of this decision, in order to allow the parties sufficient time to investigate and determine how, if at all, they wish to proceed in that regard.

[40] The respondent is entitled to its costs.

"Caldwell J."