

CANADA / JUDGMENT

Deng v. Strata Plan LMS 3904

2020 BCSC 1762

COURT

Supreme Court of British Columbia

DECIDED

23 October 2020

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2020 BCSC 1762 Deng v. Strata Plan LMS 3904

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Deng v. Strata Plan LMS 3904,

2020 BCSC 1762

Date: 20201023

Docket: S1913377

Registry: Vancouver

Between:

Qiu Lian Deng

Petitioner

And

Strata Plan LMS 3904, Ernest Corlett and

the Civil Resolution Tribunal

Respondents

Before: The Honourable Madam Justice Wilkinson

Oral Reasons for Judgment

In Chambers

Appearing as Agent for the Petitioner:

F. Chen

Counsel for the Respondents, Strata Plan LMS 3904 & Ernest Corlett:

J.A. Hand

Counsel for the Respondent, Civil Resolution Tribunal:

Z. Rahman

Place and Date of Hearing:

Vancouver, B.C.

October 23, 2020

Place and Date of Judgment:

Vancouver, B.C.

October 23, 2020

[1] THE COURT: These reason were delivered orally and have been edited for distribution.

Background

- [2] This proceeding is a judicial review of a decision of the Civil Resolution Tribunal (the "CRT") dated September 27, 2019, indexed as 2018 BCCRT 1141 (the "decision"). The petition is brought pursuant to the Judicial Review Procedure Act.
- [3] The petitioner is the owner of a unit in a 38-unit condominium complex, Strata Plan LMS 4904, (the "Strata Plan"). The Strata Plan is managed through its strata council ("the Strata Council"). There are only four owners in the complex. There are two individual owners, one of which is the petitioner, and two corporate owners which own the remaining 36 units. That means the petitioner is automatically a member of the Strata Council because there are only the four owners. It appears she has never attended a Strata Council meeting.
- [4] The petitioner filed three disputes with the CRT, all of which sought orders requiring the Strata Plan to provide her with financial documents. The documents requested in 2016 and 2017 were copied by the Strata Council, but the petitioner has apparently not collected them from the Strata Council office.
- [5] The petitioner filed another dispute with the CRT on January 12, 2019, and it is the decision in that proceeding that forms the basis of this petition. In that 2019 CRT dispute, the petitioner again sought various orders against the Strata Plan seeking to compel the production of various financial records of the strata and an order compelling Strata Council meeting minutes to be signed by all council members, that the council prove the legality of all payments and operating funds since 2016 and that the strata president stop using his company email address.
- [6] In its decision, the CRT declined to determine the dispute.

- [7] The Strata Plan denied the petitioner's claims and also submitted that the petitioner did not request or attend a hearing before the Strata Council as required in s. 189.1(2)(a) of the Strata Property Act [SPA].
- [8] The CRT set out the issue before it. That is, should the tribunal refuse to resolve this dispute because the petitioner failed to request or attend a hearing before the Strata Council?
- [9] Paragraph 15 of the decision sets out the evidence before the CRT on this issue:

In its dispute response and submissions, the strata says the owner never requested a hearing before the strata council before filing her dispute. The strata says it asked her to request a hearing, and she refused. The strata also says it scheduled a hearing for an owner on April 3, 2019, so she could discuss her concerns, but the owner refused to attend.

- [10] From the evidence and the record, on February 6, 2019, Mr. Corlett, the Strata Council president, invited the petitioner to request a hearing before council. She did not do so. Despite not providing a request for a meeting to council, the petitioner was advised in an email dated March 21, 2019 that a hearing with the Strata Council had been scheduled for April 3, 2019.
- [11] On March 23, 2019, the petitioner advised the Strata Council that she would not attend the meeting. The petitioner was encouraged to reconsider her position on March 29, 2019. She responded on March 30, 2019 as follows:

Once again, Madam Deng and Ms. Leung "will not" and "do not" intend to attend the meeting on April 3, 2019 they do not want to wasting their time for nothing toward with the "meaningless" and "pointless" for nothing solution within the law.

- [12] This was apparently based on Ms. Deng's thinking that a hearing before the Strata Council was not possible.

The CRT Decision

- [13] In view of this evidence, the CRT made this finding:
16. I accept the strata's assertions as they are consistent with the correspondence in evidence, and were not specifically disputed by the owner. Rather, in a July 18th, 2019 email provided in evidence, the owner wrote that the strata has no right to hold hearings, and hearings can only be held by a court.
17. I find the owner's position is incorrect. SPA [Strata Property Act] sections 34.1 and 189.1(2)(b) specifically set out the power of a strata council to hold hearings. These sections also say that a hearing is mandatory before an owner may file a dispute with the tribunal.
- [14] The CRT went on to consider whether it should exercise discretion to waive the hearing request requirement, and it concluded there was no basis to waive the requirement in the circumstances of the case.

- [15] The CRT relied on the case of *Ducharme v. The Owners, Strata Plan BCS 753*, 2019 BCCRT 219, which held that the purpose of s. 189.1(2) was to ensure strata owners attempt to resolve their disputes at the council level and without recourse to the courts. The CRT also relied on *Buschau v. The Owners, Strata Plan LMS 1816*, 2018 BCCRT 413, in declining to waive the requirements of s. 189.1.
- [16] With regard to the request in this petition, the petitioner has never attended a council meeting. Nor did she request a waiver of the requirements of s. 189.1 in the course of her CRT dispute. The CRT disposed of the dispute as follows:
23. As previously stated, s. 189.1(2)(b) says that an owner may not request that the tribunal resolve the dispute unless they have requested a hearing before the strata council, or unless that hearing requirement is waived. Since there was no hearing request and I do not waive the hearing requirement, the owner was not entitled to file her dispute with the tribunal. I therefore find all of the owner's claims and therefore this dispute are outside the tribunal's jurisdiction because the owner does not have standing to make a request for dispute resolution under s. 4 of the CRTA [Civil Resolution Tribunal Act].

Standard of Review

- [17] The CRT was established under the Civil Resolution Tribunal Act, S.B.C. [2012], c. 25 [CRTA]. The CRTA was amended as of January 1, 2019 to provide for judicial review of final tribunal decisions pursuant to the Administrative Tribunals Act, S.B.C 2004, c. 45 [ATA]. A refusal to resolve a decision pursuant to s. 10 of the CRTA does not meet any of the definitions of a "final decision." Accordingly, the ATA does not prescribe the standard of review.
- [18] There are no other applicable CRTA provisions that determine the standard of review for non-final decisions. Therefore, the common law standard of review pursuant to the case of *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 applies to non-final tribunal decisions.
- [19] None of the exceptions requiring the application of the correctness standard of review apply. As I understand it, the parties do not dispute that in this case. Following *Vavilov*, the British Columbia Court of Appeal applied the reasonableness standard of review to a non-final decision of the tribunal where s. 56.7 of the CRTA does not apply in accordance with *Vavilov*: *The Owners, Strata Plan NW 2575 v. Booth*, 2020 BCCA 153, at para. 17.
- [20] In *Vavilov*, the Supreme Court of Canada provided considerable guidance on reasonableness review, including that the tribunal's reasons are the starting point for a reasonableness review. A reasonable decision is based on an internally coherent and rational chain of analysis that is justified in relation to the facts and law that constrain the decision-maker. The reasonableness standard requires that a reviewing court defer to such a decision.

- [21] The burden is on the party challenging the decision to show that it is unreasonable. Before a decision can be set aside on this basis, the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency.
- [22] Some elements that are generally relevant in evaluating whether a decision is reasonable include: the governing statutory scheme, other relevant statutory or common law, the principles of statutory interpretation, the evidence before the decision-maker and facts of which the decision-maker may take notice, the parties' submissions, the past practices of decisions of the administrative body and the potential impact of the decision on the individual to whom it applies. These elements are not a checklist and may vary in significance depending on the context.

Analysis

- [23] I find here that the CRT's application of the Strata Property Act was not unreasonable for the following reasons.
- [24] There was no evidence that the petitioner requested a hearing before commencing the CRT proceedings. In fact, the evidence was to the contrary. When offered the chance to attend a council meeting, she declined to attend. The CRT's decision not to exercise its discretion to waive the requirement that the petitioner first seek a hearing before commencing the CRT dispute was entirely reasonable based on the evidence before it.
- [25] The petitioner says the CRT has ordered production in prior decisions, so it should have here. However, the facts of those prior cases differ from the facts in the case before me.
- [26] The written reasons of the CRT clearly articulate its reasoning process. Those reasons clearly identify the evidence it relied upon in declining to accept jurisdiction over the petitioner's dispute. The CRT's interpretation of the SPA is reasonable given the clear language of the act and the CRT's expertise in SPA matters.

Conclusion

- [27] There is no basis for this Court to set aside the decision which refused to determine the relief sought by the petitioner.
- [28] Accordingly, I dismiss the petition.

Costs

- [29] Submissions were made regarding costs. I will award costs to the respondents other than the CRT, as they are entitled to their costs on the petition at Scale B as the successful party. Counsel for those respondents has submitted a draft bill of costs totalling \$5,420.80. I award costs fixed at \$5,000 and disbursements as claimed of \$112.51.

[30] No costs will be awarded to the tribunal, as is usual in these matters.

"Wilkinson J."

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