
Strata Alert: Supreme court Clarifies Jurisdiction of the Civil Resolution Tribunal Over Strata Claims

Publication / Date: The CHOA Journal Winter 2019

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Under the *Civil Resolution Tribunal Act*, both the BC Supreme Court and the Civil Resolution Tribunal (CRT) have overlapping jurisdiction over strata claims. Both bodies also have the power to dismiss or stay claims brought before them on the basis that the other venue should hear the case.

The CRT has also rendered decisions such as *Somers v. The Owners, VIS 1601*, 2017 BCCRT 28 (*Somers*), which has held that a former owner cannot bring a claim against a strata corporation even where the claim arose while they were an owner.

This has caused uncertainty regarding where strata claims should be brought. In a recent victory for Lesperance Mendes and our client, the Court in *Downing v Strata Plan VR2356*, [2019 BCSC 1745](#) gave some clarity to both these questions.

Jurisdiction of the CRT

The underlying facts of the *Downing* case are common. An owner who was trying to sell her strata lot reported water leaks into the unit. The strata corporation responded by hiring a contractor and engineer to mitigate and inspect the water ingress. The mitigation work involved pulling up carpets, cutting drywall, and removing cabinets from the walls. Unfortunately, the unit could not be restored until the strata's building envelope was repaired.

The owner filed a Petition in Court alleging that the strata had acted significantly unfairly in how it

responded to the leaks. She claimed damages resulting from her inability to sell her condominium. The owner also subsequently amended her claim to allege trespass and mental distress against the strata for how her strata lot was, in the words of the owner's lawyer, "torn apart."

The strata denied the allegations and argued that the CRT, not the Court, was the appropriate venue for the dispute.

The Court accepted that all of the issues raised in the Petition in some way deal with a combination of:

- A. The application of the *Strata Property Act* (SPA) and the strata's bylaws;
- B. The decisions of the strata corporation and its council; and
- C. The actions of the strata corporation.

The Court also held that s. 121 of the CRT Act conveys jurisdiction for such matters to the CRT, and therefore the presumption was that the Court should stay the Petition under s. 16.1 of the CRT Act so that the CRT could hear the matter.

The owner argued that s. 16.1 of the CRT Act only requires the Court to stay or dismiss the proceedings in favour of a resolution by the CRT if the court determines that "all matters" are within the jurisdiction of the CRT. She further argued that her trespass and mental distress claims moved this dispute outside the

typical jurisdiction of the CRT. However, the Court rejected that argument, stating that those common law claims did not change the “complexion of the dispute” which concerned “the strata corporation’s powers and duties to enter, inspect, maintain, and repair strata property” and are “firmly within the specialized expertise and jurisdiction granted to the CRT”.

Once the Court finds the CRT has jurisdiction, the claim may still proceed in Court if it is in the interest of “justice and fairness” to do so. The CRT Act lists specific factors to consider whether it is in the interest of justice and fairness for a claim to proceed in the CRT or the Court.

On justice and fairness, the petitioner argued that the claim was too big, too evidentially complex and should be left to the Court to establish a precedent. The Court rejected these arguments holding that:

- “Precedent is not entirely a monopoly of the courts: the reasons of the [CRT] are publicly available online and would provide persuasive, albeit not binding, authority and guidance for future similar disputes.”
- The case would not establish a valuable precedent because it “will largely turn on the individual facts.”
- The CRT had resolved similar cases in the past.
- The CRT has jurisdiction to decide larger claims over \$100,000.
- The CRT can consider expert evidence that may be needed to decide claims for lost opportunities to sell strata lots.
- “[T]he CRT, like other administrative tribunals, frequently adjudicates disputes where there are conflicts in the evidence.”

This ruling confirms that if the underlying facts of the dispute relate to the application of the SPA, the bylaws, or the decisions and actions of the strata corporation, then framing the action in terms of a large or complex common law claims may not take action outside the

jurisdiction of the CRT. An exception may be where the parties consent to have the court hear the matter (see *Strata Plan VR 855 v. Shawn Oaks Holdings Ltd.*, [2018 BCSC 1162](#)).

Claims by Former Owners Are Allowed in the CRT

The Court also ruled the *Somers* case was wrongly decided because it did not consider *Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 (*Sze Hang*). Although *Sze Hang* did not deal with the CRT, it did decide the issue before the CRT in *Somers* regarding whether an “owner” includes a former owner for the purposes of bringing a claim under the SPA. Following *Sze Hang*, the Court held that the owner becoming a former owner would not oust the CRT’s jurisdiction to hear her claims that arose when she was an owner.