B.C.'s New Civil Resolution Tribunal Orders Special Levy to Fund Repairs to Strata Property

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In its first significant decision, BC's new Civil Resolution Tribunal ("CRT") has ordered a strata corporation to raise a special levy to perform repairs at the urging of a single strata owner. This decision indicates that the CRT, which is the new, mandatory dispute resolution venue for many strata disputes (and which will begin hearing Small Claims matters later this year), takes an expansive view of its jurisdiction and may be a useful tool for strata owners and councils who cannot marshal a majority of votes for a key decision.

The CRT began operations in July of last year and issued its first significant decision on December 15, 2016. In *MacArthur v. The Owners, Strata Plan K588*, 2016 CRTBC 2, a strata lot owner succeeded in persuading the Tribunal that the four-lot strata property urgently required major repairs to its foundation. The applicant had previously brought a motion at the strata's AGM to include a capital expense of $100,000 for repairs in the annual budget and to retain a professional engineer to design a foundation remediation. The four-member strata council was divided and the motion failed to pass. After that, the owner initiated a claim with the CRT in September 2016. When the strata failed to respond to the claim, the Tribunal agreed to issue a default decision.

The CRT found, based on the evidence submitted by the applicant, which included photographs and an engineer's report, that the strata corporation operated under a "culture of indifference" and had breached its duty to repair and maintain the common property. The Tribunal made two orders: first, that the engineering consultant put forward by the applicant be retained to conduct repairs by January 15, 2017, and second, that each strata lot contribute $25,000 to fund a special levy totaling $100,000 to pay for the repairs.

The strata's right to seek leave to appeal this decision (on error of law grounds only) expired earlier this month. Under the *Civil Resolution Tribunal Act*, this decision is now binding on the strata corporation and can be enforced as if it was an order of the B.C. Supreme Court.[1]

About the Civil Resolution Tribunal

The CRT is a new online tribunal designed to allow strata owners and strata corporations to resolve disputes cheaply and quickly without the need to appear in person before a court, and without the need for legal representation. Tribunal members are appointed by the provincial government, in consultation with the Chair of the Civil Resolution Tribunal. The majority of the current members are lawyers in private practice who resolve Tribunal disputes on a part-time basis for a *per diem* fee. Like Small Claims Court, the CRT is not required to apply the formal rules of evidence. Unlike Small Claims Court, in most situations a party cannot be represented by a lawyer without leave of the Tribunal, although lawyers can provide advice to parties at all times. The CRT's online tools start with the "Solution Explorer", which provides information about a problem, and progresses through initiating a dispute, negotiation, facilitated negotiation and, failing agreement, a tribunal decision.

The CRT has broad jurisdiction over a number of strata disputes, some of which include:

(a) the interpretation of the *Strata Property Act* and regulations, or of bylaws made under the Act;

(b) the common property or common assets of the strata corporation, or the use or enjoyment of a strata lot;

(d) money owing, including money owing as a fine, under the *Strata Property Act* or a regulation, bylaw or rule under that Act; and

(e) a decision of the strata corporation, or an action or threatened action by the strata corporation, including the council, in relation to an owner or tenant.

The CRT cannot hear claims to remove claims of lien, claims involving developers and phased strata plans, claims to force a sale of a strata lot, liquidate or wind up a strata corporation, or a number of other issues, which remain in the sole jurisdiction of the B.C. Supreme Court.

Parties who receive a Notice of Dispute from the CRT must file and serve a Dispute Response Form within 14 days after receiving the notice or, as in the above case, the dispute may be decided against them without their input. Recipients of a Dispute Notice ought not to ignore it, as did this strata council, but to consult a lawyer immediately and to file a Dispute Response before the deadline expires.

Strata claims to the CRT are currently voluntary, but later this year the CRT is expected to become the mandatory procedure for strata claims within its jurisdiction. Also later this year, the CRT expects to become the mandatory starting point for non-strata small claims under $10,000. Businesses that frequently make or respond to Small Claims in Provincial Court should prepare to transition to the CRT.

The CRT is still very new. It raises a number of issues, such as the competing principles of privacy and openness, judicial independence, credibility of evidence presented online, and procedural fairness. Whether the CRT will truly be more efficient and cost-effective than the courts remains to be seen. However, as the *MacArthur* decision suggests, the CRT may prove to be a powerful tool in the hands of strata owners who feel that they have been treated unfairly by the strata corporation.

For more information about the Civil Resolution Tribunal, contact the author.

[1] Interestingly, the Tribunal made no reference to section 3.6(2)(h) of the Act, which provides that the Tribunal does not have jurisdiction in relation to a claim that may be dealt with by the Supreme Court under s. 173(2) of the *Strata Property Act*. Section 173(2) of the *Strata Property Act* gives the Supreme Court the power to intervene where a proposed special levy for repairs is necessary to prevent significant loss or damage and obtains more than ½ but less than ¾ of the votes cast on the resolution. In this case, exactly ½ the votes were cast in favour of the levy, so the Supreme Court would not have had the power to make the order sought. It is debatable whether 3.6(2)(h) was intended to give the Civil Resolution Tribunal a power that the Supreme Court was never granted.

By

Krista M. Johanson

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BLG Offices

Calgary
Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa
World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver
1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal
1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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