

BRIEFING NOTE

The BC Supreme Court publishes first set of reasons granting leave to appeal from a Strata decision of the Civil Resolution Tribunal

Introduction

In *The Owners, Strata Plan BCS 1721 v. Watson*, 2017 BCSC 763 (“*Watson*”), Mr. Justice Kent of the BC Supreme Court granted the first leave to appeal from a decision of the BC Civil Resolution Tribunal (“CRT”) in a strata dispute. The decision provides a helpful summary of the factors that will be considered in deciding whether to grant leave for appeals in strata cases and provides some insight into the weighing of those factors in the court’s analysis.

Distinction between CRT Strata and Small Claims Appeals

It is important to note that this decision, and thus the analysis below, applies solely to the appeal process for strata disputes at the CRT, pursuant to section 56.5 of the *Civil Resolution Tribunal Act*, SBC 2012, c. 25. CRT Small Claims appeals are governed by sections 56.1 – 56.4 of the *CRT Act*, which set out a completely distinct process and do not allow for direct appeals to the BC Supreme Court. The reasoning in *Watson* therefore will not be directly relevant to CRT Small Claims appeals. The CRT Small Claims appeal process is outlined further at the end of this briefing note.

Brief Review of the CRT

The CRT is the first online tribunal in Canada. Up until June 1, 2017, the CRT had jurisdiction over claims relating to strata disputes. Since June 1, 2017, the CRT’s jurisdiction has been expanded to encompass most claims for damages amounting to \$5,000 or less. For more information on the CRT, please see the briefing note by Kristal M. Low located on our website at:

<http://www.guildyule.com/uncategorized/civil-resolution-tribunal/>.

CRT Decision in *Watson*

There were two issues before the CRT in *Watson*: first, whether the strata bylaw relating to moving fees was reasonable; and second, whether the manner in which the strata enforced the fees in this case was “significantly unfair” to the claimant.

The CRT held that the fees as set out in the strata bylaws were not reasonable. Further, it held that the manner in which the fees were levied was unfair. The CRT

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ordered that the claimant be reimbursed for the fees (\$200) and that the strata pay the cost of the CRT application and decision fees (an additional \$225).

Watson on Appeal: “The Interests of Justice and Fairness”

In seeking leave to appeal to the BCSC, the appellant strata identified a number of errors of law in the CRT member’s reasons.

At the BCSC, Justice Kent began by summarizing the two-step appeal process contemplated for strata disputes in the *Civil Resolution Tribunal Act* (the “*CRTA*”). First, an applicant must seek leave to appeal. Second, if leave is granted, a separate hearing is scheduled for the appeal itself. These reasons solely address whether to grant leave to appeal and do not reach a conclusion on the merits of the appeal.

Pursuant to section 56.5 of the *CRTA*, an appeal is only available on a question of law arising out of a CRT decision, and leave is only granted if it is in the interests of justice and fairness to permit the appeal to proceed.

The court reviewed some of the factors listed in the *CRTA* which are to be used in determining whether an appeal is in the interests of justice and fairness. These include

- a) Whether the issue under appeal is of such importance that it would benefit from being resolved by the BCSC in order to establish a precedent;
- b) Whether an issue raised by the claim relates to the constitution or the *Human Rights Code*;
- c) The importance of the issues to the parties or to a class of persons of which one of the parties is a member;
- d) The principle of proportionality.

In deciding to grant leave to appeal, Mr. Justice Kent observed that ordinarily, he would be disinclined to grant leave in this case. This was due to two factors: first, the small amounts involved, engaging the principle of proportionality; and second, his observation that the CRT’s decision was made on two separate grounds, only one of which was really at issue. Therefore, he noted that even if the appellants were successful on the points of law under appeal, the ultimate outcome of the case may remain the same. Each of these factors was seen as weighing against granting leave to appeal.

Despite these negative factors, Justice Kent concluded that it was in the interests of justice and fairness to allow the appeal to proceed. In particular, he identified a number of areas in which the CRT member may have made reversible errors in her application of the law. He observed that both parties agreed that the decision had important precedential value and that the questions at issue in this case would likely arise again in future CRT proceedings. For those reasons, Justice Kent concluded that he was satisfied that the question at issue on appeal was important, and resolution of the matter by the BCSC would establish a potentially helpful precedent for future

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CRT cases. Thus, leave was granted to appeal the questions of law, to be argued at a future hearing.

Watson is the first case which considers the granting of leave to appeal a CRT strata decision to the BCSC, and it will likely serve as an important precedent for future appellants. The reasoning in the case demonstrates that the court will likely give significant weight to the question of whether the issues are important and will help to establish future CRT precedents. Claimants and defendants would be well-advised to consider the reasoning in this case before deciding whether to pursue an appeal for future CRT strata decisions.

CRT Small Claims Appeals

As noted above, it is important to be aware that the appeal process for CRT Small Claims decisions is a distinct and separate process from the appeal process for CRT strata disputes. The appeal process for CRT Small Claims matters essentially requires re-litigation of the action in Provincial (Small Claims) Court. There is no process for appealing directly to the BC Supreme Court from a CRT Small Claims decision and the parties are not required to apply for leave.

Pursuant to section 56.1 of the *CRT Act*, in order to dispute a CRT Small Claims decision the objecting party must file a Notice of Objection within 28 days of receiving a Notice of Final Decision. There is a \$200 fee for filing the Notice of Objection, which must be paid by the objecting party. Once filed, the effect of the Notice of Objection is to make the CRT decision unenforceable. The claimant then must file their claim with the Provincial Court if they wish to continue to pursue the matter.

Once the claim is filed with the Provincial Court, the parties must re-litigate the entire claim at that level. If a party then wishes to challenge that Provincial Court judgment, at that point they can appeal the decision to the BC Supreme Court in the usual manner for a Small Claims appeal.

With the recently expanded jurisdiction at the CRT, we expect that the number of CRT claims will increase in the future, and it is therefore advisable to become familiar with the CRT's processes and to stay apprised of new decisions in this area.



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