



Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

TREVOR HODGSON, ROBERT REID, PRADEEP PHADKAR, ALLAN
BARNETT and JOHN WILLIAMSON

APPLICANTS

A N D :

The Owners, Strata Plan LMS 908

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about governance and financial management in a strata corporation.

2. The applicants, Trevor Hodgson, Robert Reid, Pradeep Phadkar, Allan Barnett and John Williamson, each own or co-own strata lots in the respondent strata corporation, The Owners, Strata Plan LMS 908 (strata).
3. The applicants say the strata has made unapproved expenditures, contrary to sections 97 and 98 of the *Strata Property Act* (SPA). They also say the strata council members have not met their duties under SPA section 31, and that the strata has not disclosed records as required under SPA section 36.
4. As remedy in this dispute, the applicants request a declaration that the strata council has contravened the SPA, and has acted in bad faith. They also request an order that the strata bring a resolution to the next annual general meeting (AGM) to adopt a “revised spending protocol” as a strata rule.
5. The strata denies the applicants’ claims, and says they should be dismissed. It says it has met SPA requirements, and already has a spending protocol that complies with the SPA. It also says its council has acted in good faith.
6. Mr. Hodgson represents the applicants in this dispute. The strata is represented by a strata council member.
7. For the reasons set out below, I dismiss the applicants’ claim about the revised spending protocol vote. I refuse to resolve their claim for a declaratory order that the strata breached the SPA.

JURISDICTION AND PROCEDURE

8. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 says the CRT’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute’s parties that will likely continue after the CRT process has ended.

9. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.
10. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
11. Under CRTA section 123, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

PRELIMINARY ISSUES

Claims Against Council Members

12. The applicants' original dispute application named 2 individual strata council members, DA and AO, as respondents, along with the strata. On September 16, 2021, a CRT member issued a preliminary decision dismissing the applicants' claims against DA and AO. The reason for the dismissal was that individual strata lot owners do not have standing to make claims for breaches of SPA section 31: see *Rochette v. Bradburn*, 2021 BCSC 1752. SPA section 31 sets out the duty of care for council members. It says that in exercising the powers and performing the duties of the strata corporation, each council member must act honestly and in good faith with a view to the best interests of the strata corporation, and exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.
13. I agree with the CRT's members reasons, and with *Rochette*, which is a binding precedent. I therefore confirm the member's decision to dismiss the claims against DA and AO. For the same reasons, I dismiss the applicants' claims against the strata

for alleged breached of SPA section 31. I have amended the style of cause above to remove the individual council members' names.

SPA Section 36 – Records

14. As noted above, the applicants say the strata has failed to provide requested strata records, contrary to SPA section 36. However, they do not specify in the Dispute Notice or submissions what records, if any, they now seek. Also, the Dispute Notice does not include any request for an order that the strata disclose specific records. For this reason, I make no findings or order about strata records. I note that the strata must comply with SPA section 36, and that a CRT order to follow the SPA would not change that obligation.

Declaratory Order

15. As noted above, one of the applicants' requested remedies is that the CRT make declaratory order stating that the strata council has contravened the SPA, and has acted in bad faith.
16. As explained in the September 16, 2021 preliminary decision, the CRT can only make a declaratory order if it is incidental to a claim for relief in which the CRT has jurisdiction: see *Fisher v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379. I find the applicants' claim for a declaratory order in this dispute is not incidental to another claim. Their other claimed remedy is for an order that the strata hold a vote on adopting a spending protocol rule. I find that order is not dependent on whether or not the CRT declares that the strata has breached the SPA.
17. CRTA section 10(1) says the CRT must refuse to resolve a claim over which it does not have jurisdiction (authority). I find the CRT has no jurisdiction to make the requested declaratory order. I therefore refuse to resolve that claim.

ISSUE

18. The remaining issue in this dispute is whether the CRT should order the strata to hold a vote on whether to adopt a revised spending protocol rule.

REASONS AND ANALYSIS

19. In a civil claim like this one, the applicants must prove their claim on a balance of probabilities (meaning “more likely than not”). I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision.
20. The strata was created in 1993, and consists of 187 strata lots.
21. The parties provided a significant amount of evidence and submissions about the strata's expenditures, particularly in relation to fire system repairs and a patio/ramp wall drainage repair project.
22. The parties agree that the strata paid for the fire system repairs from the strata's contingency reserve fund (CRF), and paid for the patio drainage project from the operating fund (OF). The applicants say the strata breached the SPA
23. The applicants say that both of these expenditures were contrary to the SPA. First, they say the strata breached SPA section 98 by failing to get the necessary ownership approval to take money from the CRF for the fire system repairs.
24. The SPA says that unless an expenditure is approved in the strata's annual budget, or at an annual or special general meeting, the strata may only make an expenditure out of the OF or CRF if:
 - a. it is under an amount specified in the SPA or strata bylaws, or
 - b. if there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage: see SPA section 98(3).
25. In this case, the strata says the fire system repair expenditure was permissible under section 98(3), as the work was urgently required to ensure safety, and to avoid the extra costs of a full-scale breakdown. I find the evidence before me does not support this argument. In its submissions, the strata admits that fire system deficiencies were listed in the annual inspection reports for the 2 years before the repairs, and that part

of the system did not pass annual testing requirements in 2020. However, the repairs were not performed until 2021. Given this delay, I find that while the fire system repairs were important, they were not so urgent that the strata could not have held a general meeting to approve the expenditure.

26. Also, SPA section 98(5) says that an expenditure under section 98(3) must not exceed the minimum amount needed to ensure safety or prevent significant loss or damage. The strata has not provided evidence that the unapproved fire system repairs were the minimum amount required.
27. For these reasons, I find it likely that the fire system repair expenditure was contrary to SPA section 98.
28. Second, the applicants say the strata was not entitled under SPA section 97 to take money from the OF for the patio drainage repairs. SPA section 97 says, in part, that a strata corporation must not spend from the OF unless the expenditure is consistent with the purposes of the OF as set out in SPA section 92(a). Section 92(a) says that the OF is for common expenses that usually occur either once a year or more often than once a year, or are necessary to obtain a depreciation report.
29. There is no suggestion that the patio drainage repairs were necessary to obtain a depreciation report. So, to spend OF money for patio drainage repairs, it must be an expense that usually occurs at least once a year.
30. There is no evidence establishing that the patio drainage repair project was an expense that occurred at least once a year. Rather, the evidence before me indicates that it was a unique, remedial project. The strata submits that the patio drainage project included patio coring, plumbing drain installation, patio membrane replacement, and replacement of planters and shrubbery. These are infrequent expenses, which I find do not usually occur once a year or more.
31. The strata submits that the patio drainage project was a permissible OF expense because it was typical of other building, landscaping, plumbing, and other maintenance expenses that occur regularly every year. I do not agree. While routine

maintenance is part the strata's annual OF budget, I find the patio drainage project was not routine maintenance, but rather was a specific project of the type contemplated in SPA section 92(b). That section says the strata must use the CRF for common expenses that usually occur less often than once a year, or that do not usually occur.

32. For these reasons, I agree with the applicants that the strata was not entitled to spend from the OF for the patio repair project. Rather, under SPA sections 92(b) and 96, the strata should have obtained ownership approval to pay for the patio drainage project out of the CRF. Alternatively, the strata could have held a vote on collecting a special levy, under SPA section 108.
33. As noted above, the only remedy the applicants request is an order that the strata hold a vote at the next AGM about whether to adopt a revised spending protocol as a strata rule. The applicants provided a copy of their proposed revised spending protocol in evidence.
34. For the following reasons, I find that is not appropriate in the circumstances to order the strata to hold a vote on adopting a revised spending protocol rule. I therefore dismiss the applicants' claim.

Would a spending protocol rule be enforceable?

35. First, I find that the SPA does not allow strata spending decisions to be governed by a rule. SPA section 125 explains the scope of rules. It says a strata corporation may make rules governing the use, safety and condition **of the common property and common assets** (my emphasis added). I find that the strata's finances are not common property or common assets. These are both terms defined in SPA section 1(1), and include physical property or land, but not money or other strictly financial assets. Therefore, a rule about how the strata makes general spending decisions would not be enforceable.

36. I note that the strata raised this issue about the appropriate scope of rules under SPA section 125 to the applicants in its official response letter after the May 20, 2021 council hearing.
37. Even if SPA section 125 permitted rules about strata spending, there is nothing in the SPA, or the *Strata Property Regulation* (Regulation), that requires a strata to have such a rule, or any protocol or policy about spending. Rather, the SPA and Regulation set out a complete set of provisions for strata spending and financial reporting.
38. The evidence shows that the strata already has a spending protocol. The document was not filed at the Land Title Office. There is limited evidence before me about how the current protocol and its subsequent revisions were adopted or approved. The applicants in this dispute seek to have the current protocol replaced with a new one. Neither party has raised the validity or enforceability of the current spending protocol as an issue in this dispute, so I make no findings about that.

Is appropriate to order a spending protocol vote?

39. Second, I find that even if a spending rule was enforceable under the SPA, I find it would be inappropriate to order the vote requested by the applicants.
40. As explained above, I find the strata has likely breached the SPA in some of its spending decisions. The applicants also provided evidence about other alleged spending-related problems, such as inaccurate financial statements and council meeting minutes, and a general lack of transparency in decision-making.
41. Finally, in a prior CRT decision, *Barnett v. The Owners, Strata Plan LMS 908*, 2017 BCCRT 78, a CRT member found that the strata had breached the SPA by paying for fire system repairs from the OF rather than the CRF.
42. Under the SPA, strata corporations operate based on democratic principles. Under SPA sections 4, 25 and 26, the strata ownership elects a council, and the council exercises the power and duties of the strata, including making and reporting expenditures. In this case, it appears that the strata council has not followed SPA requirements in getting the necessary approvals for some spending, and in taking

money from the correct funds. However, it is open to the strata ownership to challenge such decisions, by electing a new council at the AGM, or by calling for a special general meeting (SGM) under SPA section 43.

43. SPA section 43 says that persons holding at least 20% of the strata corporation's votes may, by written demand, require the strata to hold an SGM to consider a resolution or other matter. There is no evidence before me suggesting that the applicants, or other owners in the strata, took this step to have the strata hold a vote.
44. Numerous court decisions emphasize the importance of maintaining democratic governance in strata corporations. For example, in *Lum v. Strata Plan VR519 (Owners of)*, 2001 BCSC 493 at paragraph 12, the court said the democratic government of the strata community should not be overridden by the court except where absolutely necessary. This quote was cited in a more recent case, *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333. In *Foley*, the court said it was important that strata lot owners attempt to resolve their differences by following the procedures set out in their bylaws and the SPA. I find this reasoning from *Lum* and *Foley* applies equally to the CRT as to the courts. I therefore conclude that it is not appropriate to order the strata to hold a vote, when there are other democratic means available to the strata ownership to resolve the issues raised by the applicants.
45. For these reasons, I do not order the strata to hold a vote on the revised spending protocol rule. I dismiss the applicants' claim, and this dispute.

CRT FEES AND EXPENSES

46. Under CRTA section 49 and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule.
47. The strata is the successful party. It paid no CRT fees and claims no dispute-related expenses. I therefore do not award them to any party.

48. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to the applicants.

ORDER

49. I refuse to resolve the applicants' claim for a declaratory order that the strata council breached the SPA, and the applicants' claims for records under SPA section 36.

50. I dismiss the applicants' remaining claims and this dispute.

Kate Campbell, Vice Chair