



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan BCS1511 v. Stratatech Consulting Ltd., 2021*
BCCRT 1273

B E T W E E N :

The Owners, Strata Plan BCS1511

APPLICANT

A N D :

STRATATECH CONSULTING LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. The respondent, Stratatech Consulting Ltd. (Stratatech), was the property manager for the applicant strata corporation, The Owners, Strata Plan BCS1511 (strata).

2. The strata makes 3 separate claims over alleged improper fee charges. The first claim is for \$4,147.29 in fees that Stratatech charged the strata to administer a special levy. The second claim is for an alleged \$420 overcharge for a “statutory review of books”. The third claim is for a \$432.71 general administration fee. The strata says Stratatech collected these fees with no authority to do so under the parties’ signed contract. In total, the strata seeks a \$5,000 refund, which is the small claims monetary limit of the Civil Resolution Tribunal (CRT).
3. Stratatech says the parties’ signed contract authorized it to charge and collect the fees and there is no basis for a refund. I discuss Stratatech’s specific responses to each fee claim below.
4. In addition to its monetary claims, the strata seeks an order that Stratatech “hand over” the strata’s records to the strata’s new property manager, Select Real Estate Prop. Management Division (Select). Stratatech says it already provided the records to Select within 4 weeks following its contract termination.
5. The strata is represented by a strata council member and Stratatech is represented by a company employee or officer.

JURISDICTION AND PROCEDURE

6. These are the CRT’s formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that 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.

7. Section 39 of the CRTA 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.
8. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
9. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

Preliminary Jurisdiction Matter

10. Under section 11 of the CRTA, the CRT may refuse to resolve a claim when satisfied on satisfactory evidence that it is outside the CRT's jurisdiction (authority). A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.
11. During the CRT case management phase, the CRT's case manager informed the strata that its claim for a remedy that Stratatech "hand over" its records to Select might not be a remedy that the CRT is authorized to grant. The case manager gave the strata the opportunity to withdraw its claim and it did not withdraw it. So, this claim remains part of the dispute that is before me for adjudication.
12. The CRTA does not authorize the CRT to grant general injunctive relief to order a party to do something. However, CRTA section 118 does give the CRT authority to resolve a claim and make an order for specific performance of an agreement relating to services. I find the claim to hand over records to Select is a claim for specific

performance of clause 15 in the parties' contract. Clause 15 says that on the strata's direction, Stratatech must transfer the records back to the strata or its agent on contract termination. So, I find I have authority to resolve this claim.

ISSUES

13. The issues in this dispute are:

- a. To what extent, if any, must Stratatech refund the strata \$5,000 in fees?
- b. Should I order Stratatech to transfer the strata's records to Select?

EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, the applicant strata must prove its claims on a balance of probabilities (which means "more likely than not").

15. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.

16. The parties had a contract for Stratatech to perform strata property management services in 2020. The parties agreed the strata would pay Stratatech a monthly fee of \$1,404, plus extra fees and disbursements as set out in the contract. For payment, the contract authorized Stratatech to automatically deduct its own service fees and disbursements from the amounts the owners paid for strata fees and other contributions.

17. As mentioned, the parties dispute whether Stratatech properly charged and collected fees for a special levy, a statutory review of the strata's books, and its quarterly administration.

Special Levy Fee

18. As shown in the invoices, Stratatech charged the strata a total of \$4,147.29 for a special levy administration fee. The strata says the parties had not agreed to this specific fee amount in the signed contract and so Stratatech had no right to charge or collect any part of it. Stratatech disagrees. It says the contract provides for the fee in clause 5.2(e) and the strata “adopted” the fee during the 2020 Annual General Meeting (AGM).
19. Clause 5.2(e) states that the strata must pay an additional fee as specified in Schedule A. There is no specific fee identified in Schedule A. Instead, it says the fee is “T.B.A.”. In this context, I find T.B.A. means the parties agreed the fee would be as agreed or approved at a later date.
20. The strata passed a \$142,390.29 special levy at the August 6, 2020 AGM to pay for insurance premiums. As set out in the AGM Notice, the total special levy was \$142,390.29, calculated as \$138,243 for the insurance premium and \$4,147.29 for Stratatech’s administration fee (3% of the total insurance payment levy). A table setting out the specific fees is included in the Notice. The AGM minutes state that the resolution approving the special levy for the insurance premium plus administration fee passed 27 in favour and 4 against. I find the strata ownership approved the \$4,147.29 fee by passing the special levy resolution at the AGM.
21. The strata argues that the \$4,147.29 fee was not approved nor seen by the strata council in advance of the AGM because Stratatech drafted the special levy resolution on the strata’s behalf. However, I find the emails show the council president did receive and approve the AGM Notice with the special levy resolution prior to the meeting. As mentioned, that resolution included the fee that was approved at the AGM.
22. As an alternative argument, the strata says the special levy administrative fee must be refunded because Stratatech erred in preparing the 2020 AGM special resolution. It is undisputed that Stratatech’s drafted resolution did not strictly comply with the

Strata Property Act. However, the drafting error was remedied and the special levy fee was again approved at the 2021 AGM through a second vote.

23. I am not satisfied a drafting error is a basis to award a refund. I say this because the error was rectified, the fee was approved, and the fee was not to prepare the resolution but to administer the fees.
24. The strata records show the total special levy was paid and so, I find Stratatech must have deposited and processed the owners' special levy payments. As a result, I find Stratatech was entitled to the approved fee for its administrative work and so I dismiss the strata's claim for the \$4,147.29 special levy fee.

Statutory Review of Books Fee

25. The contract states that Stratatech must keep full and detailed books and make the books available for the "statutory review of books" as required by the Real Estate Council of BC (RECBC) pursuant to the *Real Estate Services Act*. The contract states that the annual statutory review fee for this work is \$350.
26. The strata claims that Stratatech charged \$420 for a statutory review of the books, which is more than the \$350 it was entitled to under the contract. The strata also alleges that Stratatech never actually reviewed its books and left their "financial statements in a horrible mess" and seeks a full refund.
27. Stratatech says it never charged the strata for a statutory review of the books and so, it does not owe the strata any refund.
28. There is no evidence that Stratatech charged the strata for a statutory review of its books or that the strata paid for such a review. Instead, Stratatech's invoices show the \$400 plus \$20 GST fee was for Stratatech to prepare the strata's "T2 Corporate Income Tax Return (May 31/20)". A corporate tax filing under the *Federal Tax Act* is different from an RECBC review of books. To the extent the strata intended to claim reimbursement for the \$420 fee it paid Stratatech to prepare its corporate tax return,

the strata never made this specific claim in the Dispute Notice. So, I find that it is not a claim before me.

29. Even if the review was not done, I find the strata is not entitled to any reimbursement because it never paid Stratatech a fee for a statutory review of its books. I dismiss the strata's claim for this \$420 review fee.

Quarterly Administration Fee

30. Stratatech's June 30, 2020 invoice charged the strata \$657.42 for "printing, mailing, copying and other service charges". The parties agree the strata paid in full. The strata seeks reimbursement of \$432.71 of the paid amount.
31. The strata says the services were never approved, it received no receipts or invoices from Stratatech to support this fee and it does not know what they are for. Stratatech says the \$657.42 fee is a quarterly administration fee for costs that it was authorized to collect under the contract.
32. Clause 5.5 and Schedule B state that the strata must pay the cost of Stratatech's expenses including printing, duplicating, and other charges directly attributed to the strata. I find this means that the parties agreed the strata was responsible to reimburse Stratatech the cost it incurred for expenses in performing work for strata.
33. I accept Stratatech must have incurred some expense for printing, mailing, copying through its management of this 78 strata lot complex. The records show that Stratatech handled the strata's correspondence, notices, strata fee processing, and other administrative work. However, the evidence does not show the exact expense costs Stratatech incurred for its work.
34. On the one hand, Stratatech is not entitled to more than it incurred in expenses under the contract because it was only permitted to chargeback the actual costs. On the other hand, I find the strata is not entitled to a full refund because it agreed to pay the expenses and I am satisfied Stratatech incurred some expense. Without knowing the exact expense amount, I conclude on a judgment basis that a \$350 reduction from

the total invoiced amount is reasonable to balance these considerations. I order Stratatech to refund the strata \$350 in administration fees.

35. The *Court Order Interest Act* applies to the CRT. In the circumstances, I find the strata is entitled to pre-judgment interest on the \$350 debt from June 30, 2020 to the date of this decision. The interest equals \$2.27.

Should I order Stratatech to transfer the strata records to Select?

36. The strata says it gave Stratatech notice on October 6, 2020 that it was going to change property management companies on January 1, 2021. It says Stratatech had still not transferred the records when it filed for dispute resolution with the CRT in April 2021 and seeks an order that it hand over the records.

37. The parties' contract at clause 15 says Stratatech must transfer the strata's records to the strata or its agent as may be directed by the strata on contract termination. I have reviewed the strata's correspondence with Stratatech that was submitted in evidence. I find the strata only informed Stratatech that the strata was ending their contract and did not inform Stratatech that Select would be its new agent nor direct Stratatech to transfer the strata's records to Select. I find Stratatech was not therefore required to transfer the records under clause 15.

38. However as noted, Stratatech says it did transfer the strata records to Select after the contract termination because it was required to do so under the RECBC rules. The strata did not submit evidence to show otherwise. For example, if Select did not receive the strata's records, I would have expected the strata to submit a witness statement from Select about it and there is none in evidence. So, I find the strata has not proven that Stratatech failed to transfer the records to Select in any event and I dismiss the strata's claim.

CRT Fees and Dispute-Related Expenses

39. Under section 49 of the CRTA and 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. As I find the strata was partially successful in its claims, I find Stratatech must pay half the strata's paid CRT fees, or \$87.50. The strata did not claim specific dispute-related expenses.
40. Stratatech paid no CRT fees but it claimed \$246.58 in administrative fees as an alleged dispute-related expense. Stratatech describes the fees as the unpaid amount the strata still owes it for administrating the special levy. This is not properly a dispute-related expense and Stratatech did not file a counterclaim. I dismiss the \$246.58 expense claim.

ORDERS

41. Within 30 days of the date of this order, I order Stratatech to pay the strata a total of \$439.77 broken down as follows:
 - a. \$350 for the administration fee refund,
 - b. \$2.27 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$87.50 in CRT fees.
42. The strata is entitled to post-judgment interest, as applicable under the *Court Order Interest Act*.
43. I dismiss the strata's remaining claims and Stratatech's claim for dispute-related expenses.
44. Under section 48 of the CRTA, the CRT will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for

filing a notice of objection is 28 days after the party receives notice of the CRT's final decision.

45. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Trisha Apland, Tribunal Member