



# Civil Resolution Tribunal

Date Issued: June 17, 2024

File: SC-2023-002338

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *0762101 B.C. Ltd. v. Worton*, 2024 BCCRT 558

BETWEEN:

0762101 B.C. LTD.

**APPLICANT**

AND:

ISRAEL BRUCE WORTON and LYNN GERTRUDE WORTON

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Alison Wake

## INTRODUCTION

1. The applicant, 0762101 B.C. Ltd. (076), is an owners' corporation. The shareholders of 076 co-own strata lot G within Strata Plan KAS3359. The strata is not a party to this dispute. Israel Bruce Worton and Lynn Gertrude Worton are shareholders in 076 and are parties to a co-ownership agreement with 076 dated February 8, 2008.

2. In May 2021, 076 issued a “cash call” to its shareholders to fund legal expenses to consider the subdivision of strata lot G. 076 issued the Wortons a \$1,000 invoice. The Wortons paid \$106 of this invoice, as they said they had paid the remaining \$894 during a previous cash call. 076 disagrees, and it claims the balance of \$894 from the Wortons.
3. 076 is represented by a director. Mr. Worton represents the Wortons.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 says that the CRT’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
5. The CRT conducts most hearings in writing, but it has discretion to decide the format of the hearing, including by telephone or videoconference. While an oral hearing would allow for cross-examination of witnesses, I find the factual disagreements in this dispute can be resolved on the parties’ written submissions and the documentary evidence. Further, neither party requests an oral hearing, and the small amount at stake weighs against one. Considering the CRT’s mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
6. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT may also ask questions of the parties and inform itself in any other way it considers appropriate.

## **ISSUE**

7. The issue in this dispute is whether the Wortons must pay \$894 to 076 for the May 2021 cash call.

## EVIDENCE AND ANALYSIS

8. As the applicant in this civil proceeding, 076 must prove its claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
9. As noted, this dispute concerns the payment of a cash call issued by 076 to its shareholders in May 2021. Through CRT staff, I asked the parties to provide additional submissions about the legal basis for the cash call, as it was not clear from the evidence they had submitted. Both parties provided submissions and additional evidence. In brief, they agree that their co-ownership agreement permits 076 to issue cash calls to shareholders to fund excess expenses. Although the co-ownership agreement refers to this process as a "special assessment", I will use the term "cash call" in this decision, consistent with the parties' submissions.
10. The Wortons say that they do not dispute the validity of the May 2021 cash call. Instead, they argue that they have contributed additional funds to a previous cash call for the same project, which should be credited toward the May 2021 cash call.
11. In support of this, the Wortons provided a copy of an August 5, 2017 cheque made out to 076 for \$3,000. The memo line on the cheque says "Stratification Lot B."
12. I pause to note that the parties agree that strata lot G was formerly called strata lot B. There is no evidence before me of when or how this change occurred. However, I find nothing turns on this as the parties agree that both refer to the same strata lot.
13. I also note that 076 says that the term "stratification" is incorrect, because lot G is already a lot in a strata. The Wortons do not directly address this, but use the terms "stratification" and "subdivision" interchangeably. I find both terms refer to separating strata lot G into individual strata lots for each of its co-owners. For consistency, I will refer to this process as "stratification" in this decision as that is the term used in most of the parties' evidence.

14. The Wortons provided an August 3, 2017 email from 076's board of directors to its shareholders, who it refers to as owners. In that email, the board advised of costs to stratify lot B. It advised that each owner must reimburse the developer's lender \$1,106 for park fees that it had prepaid on the owners' behalf. Additionally, it said that it would be collecting funds to retain a lawyer to expedite the stratification process. It proposed 2 payment options for these funds: 2 instalments of \$1,000 each, or 1 payment of \$2,000.
15. This email noted that the proposed payment schedules would be discussed at 076's upcoming annual general meeting (AGM). The August 5, 2017 AGM minutes include a motion for the owners to reimburse 076 \$1,106 each for the park fee. The minutes also say that there was discussion about payment to 076 for the stratification costs. The minutes say, in part, "it was decided that the Strata Owners Corp will accept and hold the fees until the time of disbursement. The fees will be held in the Savings account. Methods of payment will be PAD and cheques."
16. The minutes do not say how much each owner would pay in stratification fees, and do not show that a motion was passed to collect a specific amount from each shareholder. However, the minutes do say that there was discussion about the anticipated amount of the stratification fees for each owner, which remained "on target between \$3,000 and \$3,500".
17. Finally, the Wortons provided three spreadsheets which they say were prepared by 076's bookkeeper beginning after the 2017 AGM to keep track of the owners' payments. Each of these spreadsheets is titled "Stratification Payments." The most recent spreadsheet, dated July 2018, shows that the Wortons paid \$1,106 for the park fee and \$1,894 for "MOT app". Based on the 2017 AGM minutes and the board's August 3, 2017 email, I infer that "MOT" means the Ministry of Transportation and Infrastructure, which charged 076 application fees and survey expenses associated with the proposed stratification. However, I find this is not a determinative description of what the funds were collected for. The August 3, 2017 email from the board says that it anticipates that each owner will have to contribute \$3,000 to \$3,500 for

stratification expenses, including park fees, surveying costs, legal fees, land title fees, and application fees. Based on this email and the 2017 AGM minutes, I find the payments in the spreadsheet column labeled “MOT app” were for these stratification expenses, other than the park fee as documented in the minutes.

18. The spreadsheets show that most of the other owners paid \$1,106 for the park fee and \$1,000 each for other stratification expenses, but the Wortons and 2 other owners paid higher amounts. This is supported by the parties’ correspondence in evidence with the 2 other owners, who say that they contributed increased amounts towards stratification in 2017.
19. In summary, the Wortons say that their \$3,000 payment in August 2017 included \$1,106 for the park fee, and \$1,894 for other stratification expenses. They say that because other owners paid only \$1,000 for the stratification expenses before the May 2021 cash call, the additional \$894 they paid should be deducted from the new cash call invoice.
20. For its part, 076 does not dispute that it received \$3,000 from the Wortons in August 2017. However, it says that the option to pay additional amounts was not documented in minutes, and the additional funds were not allocated to a particular expense. 076 acknowledges that its pre-2019 accounting records are incomplete, but it says it is reasonable to believe that the additional funds were spent on “some other expense” in 2017 or 2018.
21. 076 also says that the May 2021 cash call is new business which is unrelated to the owners’ 2017 payments. So, it says it is not able to apply owners’ previous payments to the May 2021 invoices.
22. 076 has not explained why the Wortons and the two other owners who contributed additional amounts in 2017 should be required to pay more than other owners for stratification expenses, or for any other expenses. Based on the available evidence, I find that it is more likely than not that the Wortons paid an additional \$894 towards stratification expenses in August 2017. I find the Wortons reasonably relied on 076’s

statement in the AGM minutes that it would hold this payment in its savings account and use it for stratification expenses.

23. On balance, I find the May 2021 cash call is a continuation of the 2017 cash call for stratification expenses. I say this because 076's email communicating the May 2021 cash call to the owners says that the funds "will only be used for legal matters that help in the further subdivision of Lot G and to ensure that all matters of Strata KAS3359 involving our corporation are dealt with correctly from the onset." While 076 says that its previous cash calls were not for legal review of the strata matters, or legal advice on the requirements of stratification, I find 076's August 3, 2017 email shows that legal fees were contemplated in its 2017 cash call.
24. So, I find that the Wortons contributed an additional \$894 to stratification expenses in 2017. I find that 076 has not established that it is entitled to a further \$894 from the Wortons for the May 2021 cash call. So, I dismiss 076's claim for payment of the balance of its May 2021 cash call invoice.

## **CRT FEES AND EXPENSES**

25. 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. As 076 was unsuccessful, I dismiss its claim for CRT fees. The Wortons did not pay CRT fees, so I make no order for them. None of the parties claimed dispute-related expenses.

## **ORDER**

26. I dismiss 076's claims and this dispute.

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Alison Wake, Tribunal Member

