



# Civil Resolution Tribunal

Date Issued: March 9, 2021

File: CS-2020-006118

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Courtenay Airpark Association v. Pelling*,

2021 BCCRT 262

B E T W E E N :

Courtenay Airpark Association

**APPLICANT**

A N D :

Shawn Pelling

**RESPONDENT**

A N D :

Charmaine Barclay

**RESPONDENT BY THIRD PARTY CLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Herb Morton

## **INTRODUCTION**

1. This dispute concerns two aircraft parked on a society's property.
2. The applicant, Courtenay Airpark Association, is a society registered under the *Societies Act* (SA). It seeks payment by the respondent, Shawn Pelling, of membership dues for 2020, parking fees for one aircraft in 2019, and parking fees and grass cutting penalties for two aircraft in 2020.
3. The society also seeks an order requiring Mr. Pelling to remove the two aircraft from the airpark. The society says the aircraft are parked illegally on its property. The society says Mr. Pelling is no longer a member and has not produced required proof of liability insurance of \$500,000 per aircraft.
4. The society is represented by a director. Mr. Pelling is self-represented. Ms. Barclay is also self-represented.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over certain society claims under section 129 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.
6. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, email or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.

7. 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 the parties and witnesses questions and inform itself in any way it considers appropriate.
8. Under section 131 of the CRTA and the CRT rules, 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.

## **ISSUES**

9. Does Mr. Pelling owe the society \$2,127.35 for:
  - a. 2020 membership renewal (\$100.00),
  - b. aircraft parking fees for 2019 for FOQV (\$557.25),
  - c. aircraft parking fees for 2020 for FOQV and GPWN (\$1,220.10), and,
  - d. grass cutting penalties for 2020 (\$350.00).
10. Must Mr. Pelling remove the aircraft from the society's property?
11. Does Ms. Barclay owe Mr. Pelling \$3,500.00, plus interest, for airpark charges on FOQV since 2009? This raises a preliminary question as to whether this is a claim in respect of the SA as required under CRTA section 129.

## **BACKGROUND**

12. The society says that as a member since 2012, Mr. Pelling is knowingly in breach of its bylaws and policies and practices. The airpark is a non-profit society and pays a portion of all parking fees collected to the City of Courtenay which owns the land leased by the society.
13. Mr. Pelling says he does not personally own the aircraft, described as FOQV and GPWN. He says he is not the legal owner of either aircraft.

14. Mr. Pelling says one aircraft, FOQV, is 99% owned by a corporation, Pelling Industries Ltd., and 1% owned by an estate, James Barclay (deceased). The estate is that of his former father-in-law, James Barclay. Mr. Pelling says that his ex-wife, Charmaine Barclay, respondent by third party claim, is the beneficiary of the estate.
15. Mr. Pelling says the other aircraft, GPWN, is solely owned by Pelling Industries Ltd.
16. Mr. Pelling says ownership of both planes is tied up in a matrimonial matter before the British Columbia Supreme Court. He says that as he is no longer a member of the society, the responsibility for paying fees for parking the aircraft falls to the owners.
17. The society says it does not allow corporate members, and that Pelling Industries Ltd. is solely owned by Mr. Pelling.
18. Mr. Pelling says Ms. Barclay is claiming 100% ownership of FOQV in a matrimonial proceeding before the British Columbia Supreme Court. In his third party claim against Ms. Barclay, Mr. Pelling seeks payment of \$3,500.00 for at least half of the airpark dues since 2009, plus interest.
19. Ms. Barclay says she does not claim to own 100% of FOQV. She says FOQV is registered to Pelling Industries Ltd. and her late father, James Barclay. She says she had no contractual agreement or lease with the society.
20. Ms. Barclay confirms that in a November 6, 2020 British Columbia Supreme Court hearing, she claimed that FOQV is common property.

## **EVIDENCE AND ANALYSIS**

21. In a civil proceeding like this one, the applicant must prove their claims on a balance of probabilities. This means the society must prove its claims against Mr. Pelling, and Mr. Pelling must prove his third party claim against Ms. Barclay.
22. Mr. Pelling and Ms. Barclay provided written submissions, but no other evidence.

23. I have considered all of the evidence provided by the parties, but will only refer to the information which is necessary to my decision.

**A. Membership dues**

24. The society's policies and practices set out the fees that are payable by members of the society. These include fees of \$100.00 for an annual membership.

25. The society's statement of account for Mr. Pelling shows no record of any payment by him to the society subsequent to payment of \$657.25 on April 6, 2019.

26. Mr. Pelling does not say that he made any payment after April 6, 2019. It is undisputed that he was a member of the society in 2019.

27. The society says that annual parking for aircraft is only offered to members in good standing. The aircraft were left parked at the airpark throughout 2020. The society submits that Mr. Pelling is required to pay \$100.00 to renew his annual membership for 2020.

28. Section 11 of the SA says that a society must have bylaws that contain provisions about the internal affairs of the society, including membership in the society. There must be bylaws about the admission of members and any rights and obligations arising from membership. If members may cease to be in good standing, there must be bylaws about the conditions under which that may occur.

29. Section 69 of the SA provides that membership in a society terminates, among other things, when the member's term of membership expires, when the membership terminates in accordance with the by-laws, or the member resigns.

30. Section 9 of the society's by-laws says that a member who has failed to pay their current annual membership fee or other debt owing to the society ceases to be in good standing. Section 7 of the society's by-laws says that a person ceases to be a member by not having been a member in good standing for a period of time prescribed by the directors.

31. The society's policies and procedures say, on page 2, that annual fees are due and payable on January 1. The policies and procedures cite a board of directors' resolution dated September 25, 2019. Notice of annual fees and a summary of the consequences of non-payment will be sent out, in writing, in early December. In February, at the time of the annual general meeting (AGM) notification, final reminders will be sent to members who have not paid their fees. Members who have not paid their fees by the last Sunday in February (the date of the AGM) will have their parking spots reassigned.
32. The society's policies and procedures say that on April 1, those who have not paid their fees will cease to be members of the association.
33. CRTA section 130(2)(a) says the tribunal does not have jurisdiction over a claim or matter relating to the termination of membership in a society. I consider, however, that the question as to whether a member may be obliged to pay annual membership fees is within the tribunal's jurisdiction.
34. I find that a member of a society has the right to not renew their membership.
35. I find that Mr. Pelling is not liable for the 2020 membership fee. He was not obliged to renew his membership in the society.
36. I dismiss the society's claim against Mr. Pelling for the \$100.00 annual membership fee for 2020.

### ***B. Aircraft parking charges for 2019***

37. The society's policies and practices set out the fees that are payable by members of the society. These include annual fees of \$557.25 for parking in 2019, and of \$610.05 in 2020, for any aircraft parked at the airpark.
38. Under the heading "Prorated fees", the policies and practices say that annual membership fees for individuals joining partway through the year are automatically prorated. Members who have the "care, custody and control" of an aircraft parked at

the airpark for periods less than a year are permitted to prorate the annual parking fees on a monthly basis.

39. Under the heading "Parking", the society's policies and procedures say on page 3 that a member is required to provide proof of minimum insurance coverage of \$500,000 for tied-down aircraft "for each aircraft owned or controlled by the member and parked at the Airpark."
40. The society's policies and procedures also say that "all part-owners of aircraft parked on the basis of a Tie-down Agreement or Hangar Agreement are required to apply for membership and pay the applicable fees (AGM 2003)." The society says that it does not allow corporate membership.
41. The society has not provided a copy of any membership agreement or aircraft tie down agreement signed by Mr. Pelling.
42. The society has provided a copy of its account statement for Mr. Pelling. Its records show that in January 2018, Mr. Pelling paid \$657.25 and \$557.25. This was for \$557.25 in parking fees for each aircraft, and \$100.00 for his membership renewal for 2018.
43. The account statement shows that in April 2019, Mr. Pelling paid \$657.25. This was for \$557.25 in parking fees for one aircraft, and \$100.00 for his membership renewal for 2019. Mr. Pelling did not pay the annual parking fee of \$557.25 for the other aircraft in 2019.
44. Mr. Pelling does not deny having paid the parking fees as shown in the society's account statement.
45. The society seeks payment for annual parking fees in 2019 and 2020 for the FOQV, and in 2020 for the GPWN.
46. The society's policies and procedures include provision for a member to be responsible for fees on the basis of ownership, or on the basis of "care, custody and control", of an aircraft.

47. By letter dated June 26, 2020 to Mr. Pelling, a lawyer for the society stated that unless Mr. Pelling paid all the amounts owing and removed the aircraft, he would seek instructions to file a claim against Pelling Industries Ltd. and Mr. Pelling personally. Pelling Industries Ltd. is not a party in this dispute.
48. Mr. Pelling's position is that he does not own either aircraft, and is thus not responsible for any charges relating to the aircraft.
49. While documentary evidence has not been provided to confirm the registered owners of the aircraft, it is undisputed that Mr. Pelling is not a registered owner of either aircraft.
50. I interpret the evidence as showing that the aircraft were parked at the airpark on the basis of Mr. Pelling's membership in the society.
51. In *Barrie v. Royal Colwood Golf Club*, 2001 BCSC 1181, the court noted at paragraph 55 that the court's jurisdiction to review the disciplinary proceedings of voluntary organizations historically derived from the property rights of members and later from the terms of an implied contract among the members: see *Lee v. Showmen's Guild of Great Britain*, [1952] 2 Q.B. 329 at 341.
52. In *Whittal v. Vancouver Lawn Tennis and Badminton Club*, 2005 BCCA 439, the court noted that it was common ground that the relationship between a society and its members is contractual in nature and that the by-laws of voluntary associations constitute contractual obligations as between the members and the organization: see *Senez v. Montreal Real Estate Board*, 1980 CanLII 222.
53. In *Senez*, the Supreme Court of Canada reasoned:

When an individual decides to join a corporation like the *Board*, he accepts its constitution and the by-laws then in force, and he undertakes an obligation to observe them. In accepting the constitution, he also undertakes in advance to comply with the by-laws that shall subsequently be duly adopted by a majority of members entitled to vote, even if he disagrees with such changes. Additionally, he may generally resign, and by remaining he accepts the new



by-laws. The corporation may claim from him arrears of the dues fixed by a by-law. Would such a claim not be of a contractual nature? What other basis could it have in these circumstances?....

54. I find that as a member of the society, Mr. Pelling had a contractual obligation to pay the fees set by the society for parking the aircraft on its grounds.
55. I find Mr. Pelling is contractually liable for the annual parking fee of \$557.25 in 2019 for FOQV. He was a member of the society in 2019, and the aircraft was parked at the airpark based on his membership in the society.

### ***C. Aircraft parking charges for 2020***

56. Mr. Pelling was not required to remain a member of the society. A further question is whether he remains liable for parking fees for the two aircraft in 2020.
57. Mr. Pelling did not advise the society that he was resigning his membership at the end of 2019. Under the society's bylaws and policies and procedures, a member who has not paid their membership fees by April 1 ceases to be a member of the association.
58. Section 69(1) of the SA says that a member's membership in a society terminates when the member's term of membership, if any, expires, or the membership terminates in accordance with the bylaws,
59. Section 7 of the society's bylaws says that a person ceases to be a member by submitting a written resignation, or on being expelled, or on not having been a member in good standing for a period of time prescribed by the directors.
60. Section 7 of the society's bylaws says that all members are in good standing except a member who has failed to pay his current annual membership fee. As noted above, the society's policies and procedures say that on April 1, those who have not paid their fees will cease to be members of the association.
61. The society's bylaws and policies and procedures do not address a member's obligations on the termination of their membership. I find no provision under which

the member is made responsible for the removal of the aircraft when their membership expires, or for payment of parking fees or other fees if the aircraft is not removed.

62. As the society's bylaws and policies and procedures are silent on this question, I find insufficient basis on which to find that Mr. Pelling is contractually liable for the parking fees for the two aircraft in 2020 subsequent to the termination of his membership.
63. Mr. Pelling did not provide the society with a written resignation at the end of 2019. So, he would have ceased to be a member on April 1, 2020.
64. I find that Mr. Pelling was responsible for the parking fees for the two aircraft for the first three months of 2020 while he remained a member of the society.
65. I find that Mr. Pelling was responsible for parking fees of \$152.51 for each aircraft, calculated as one quarter of the \$610.05 annual parking fees for each aircraft in 2020, for a total of \$305.02.
66. I dismiss the society's claim against Mr. Pelling for parking fees in 2020 for the remaining eight months after his membership ended.

#### ***D. Grass cutting penalties***

67. The society provided copies of invoices sent to Mr. Pelling for grass cutting penalties totaling \$350.00 in 2020.
68. The society says that members are expected to cut the grass around their parking spots. If the members fail to do so, the society may charge a \$50.00 penalty each time the volunteers have to move the aircraft and cut the grass for the member. Mr. Pelling does not claim that he cut the grass around the two parking spots in 2020.
69. The annual membership agreement states that the member agrees to maintain the grass and keep the area surrounding the aircraft in a neat and tidy condition.
70. Section 24 of the bylaws says that the society may make rules in general meetings. Subject to any such rules, the directors may exercise the powers of the society.

71. The minutes of the society's September 26, 2017 directors' meeting noted that during the summer of 2016, four outside parking spots with aircraft were left in an unkempt state. In two cases, the owners ignored requests to clean them up despite being given notice that a \$20 fee would be added to the following year's membership renewal if airpark volunteers took on the task. The minutes noted that the airpark membership agreement, which all members sign each year, states that "I further agree to maintain the grass and keep the area surrounding my aircraft, whether tied down or in a hangar, in a neat and tidy condition." The directors approved a motion to increase the monetary penalty to owners of aircraft occupying an outside parking spot to \$50.00, for failure to keep a spot maintained.
72. The September 26, 2017 directors' meeting minutes refer to a notice that a fee or monetary penalty would be added to the following year's membership renewal if airpark volunteers had to clean up an outside parking spot.
73. I find that by adding fees or penalties for grass cutting to the following year's membership renewal, the directors made payment of such penalties a condition for renewal of membership rather than a debt which was immediately payable.
74. I find that as Mr. Pelling did not renew his membership for 2020, he is not liable to pay the fees which were added for his 2020 membership renewal.
75. I dismiss the society's claim for \$350.00 for grass cutting penalties in 2020.

### ***E. Removal of Aircraft***

76. The society seeks an order requiring Mr. Pelling to remove the two aircraft from its property. The society says the aircraft are parked illegally on its property.
77. The society's policies and practices require a member to provide proof of minimum insurance coverage of \$500,000 for tied-down aircraft for each aircraft owned or controlled by the member and parked at the airpark. Proof of insurance is required at the time of membership application or renewal.

78. Mr. Pelling does not dispute the society's claim that he did not renew his membership for 2020 and that he did not provide the society with proof of liability insurance of \$500,000 per aircraft for 2020.
79. The society's bylaws and policies and procedures do not expressly address the obligations of a member after failing to provide proof of insurance or failing to renew their membership.
80. Implicitly, the former member loses any rights associated with membership. Does this mean the former member, rather than the owner(s), has a contractual obligation to remove the aircraft?
81. I find that the society's constitution, bylaws, and policies and procedures contain no provision saying that a member is responsible for removal of an aircraft from the society's property upon the termination of their membership.
82. The evidence before the tribunal does not show, on a balance of probabilities, that Mr. Pelling has any direct ownership interest in the aircraft.
83. I therefore dismiss the society's request for an order requiring Mr. Pelling to remove the two aircraft from the airpark.

#### ***F. Claim against Ms. Barclay***

84. Mr. Pelling says Ms. Barclay is claiming 100% ownership of FOQV. Mr. Pelling seeks payment of \$3,500.00 by Ms. Barclay, for at least half of the airpark dues since 2009, plus interest.
85. Ms. Barclay says she does not claim to own 100% of FOQV. She says Mr. Pelling correctly says in his dispute notice that her late father was registered as 1% owner of FOQV. She says that Mr. Pelling or Pelling Industries Ltd. owned the other 99%.
86. Ms. Barclay confirms that in a British Columbia Supreme Court hearing on November 5, 2020, she claimed that the FOQV is common property and is seeking such a determination by the court. She says she is trying to claim 50% ownership for the

estate. She says that she would agree to be responsible for 50% of any costs if the court finds she is entitled to 50% ownership.

87. Mr. Pelling says the registration for FOQV only lists the two owners without specifying a percentage.
88. It is evident that ownership of the FOQV is in dispute. Mr. Pelling and Ms. Barclay say that the question as to whether this aircraft is common property is to be determined by the British Columbia Supreme Court.
89. A dispute concerning the division of family property under the *Family Law Act* is outside the jurisdiction of the CRT: see *Cook v. Hill*, 2021 BCCRT196.
90. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction.
91. The dispute about ownership of the FOQV is before the British Columbia Supreme Court as part of a matrimonial proceeding.
92. As well, under section 129 of the CRTA, the tribunal's jurisdiction to decide a claim in respect of the SA is in relation to:
  - a. the interpretation or application of the Societies Act or a regulation, constitution or bylaw under that Act, including a request to inspect, or to receive a copy of, a record of a society;
  - b. an action or threatened action by the society or its directors in relation to a member;
  - c. a decision of the society or its directors in relation to a member.
93. I find that this dispute does not come within the tribunal's jurisdiction as set out in section 129 of the CRTA.
94. I refuse to review Mr. Pelling's claim against Ms. Barclay for \$3,500.00 plus interest for airpark charges on FOQV since 2009, as being outside the tribunal's jurisdiction.

## **CRT FEES AND EXPENSES**

95. No expenses are claimed apart from CRT fees.
96. Under section 49 of the CRTA 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.
97. I find the society is entitled to reimbursement of \$112.50 for CRT fees, as it was partly successful in its dispute.
98. The *Court Order Interest Act* (COIA) applies to the CRT. The society is entitled to pre-judgment interest on the parking fees from the date of the invoices to the date of this decision. This equals \$30.10.
99. I find Mr. Pelling is not entitled to reimbursement of his CRT fees.

## **ORDERS**

100. Within 30 days of the date of this decision, I order that Mr. Pelling pay the society a total of \$1,004.87, broken down as follows:
- a. \$557.25, for aircraft parking fees in 2019, for FOQV,
  - b. \$305.02, for aircraft parking fees in January to March 2020, for FOQV and GPWN,
  - c. \$30.10, in pre-judgment interest under the COIA, and,
  - d. \$112.50, in CRT fees.
101. The society is also entitled to post-judgment interest under the COIA, as applicable.
102. I refuse to review Mr. Pelling's claim against Ms. Barclay for \$3,500.00 plus interest for airpark charges on FOQV since 2009, as being outside the tribunal's jurisdiction.

103. Under sections 57 and 58 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia. The order can also be enforced by the Provincial Court of British Columbia if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

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Herb Morton, Tribunal Member