



Civil Resolution Tribunal

Date Issued: May 23, 2024

File: CS-2023-007184

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Knezevic v. Cultus Lake Holiday Park Association*, 2024 BCCRT 471

B E T W E E N :

MLADEN KNEZEVIC, ZORAN LATINOVIC, JIM PAQUETTE and
CHERILYNN NEWMAN

APPLICANTS

A N D :

CULTUS LAKE HOLIDAY PARK ASSOCIATION

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicants, Mladen Knezevic, Zoran Latinovic, Jim Paquette, and Cherilynn Newman, are members of the respondent society, Cultus Lake Holiday Park Association. The applicants say the society used \$24,000 from its contingency fund to obtain legal advice defending previous Civil Resolution Tribunal (CRT) claims

involving different applicants. The applicants say contingency fund money should only be used for emergencies, and society members did not approve the expenditure. The applicants want the society to refrain from spending contingency fund money on non-emergencies without member approval. Mr. Knezevic represents the applicants.

2. The society says it informed members of the expenditure around the time it happened. It says that the society has followed its bylaws and the *Society Act* to the best of its ability. A director represents the society.
3. As I explain below, I dismiss the applicants' claims.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons. The CRT has jurisdiction over certain society claims under section 129 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.
5. 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. 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.
6. 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.
7. Under CRTA section 131, 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

8. The issues in this dispute are:
 - a. Did the society need member approval to spend money from its contingency fund on legal advice?
 - b. What remedy, if any, is appropriate?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicants must prove their 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. The society did not provide any documentary evidence, despite having the opportunity to do so.
10. The society's bylaws applicable to this dispute are the bylaws filed with the Registrar of Companies on September 27, 2018. Although the applicants submitted more recent versions of the bylaws, section 17(3) of the *Societies Act* says that a bylaw alteration takes effect when the bylaw alteration application is filed with the registrar. There is no evidence that any newer bylaws had been filed with the registrar when the events at issue here occurred.
11. The background facts are undisputed. In 2022, certain members or former members of the society started five CRT disputes against the society. The society's board of directors decided to obtain legal advice. The society says it communicated this decision to its members at a July 23, 2022 meeting. There are no minutes from that meeting in evidence, but I find nothing turns on when the society informed its members that it was seeking legal advice. The issue is not when the society was required to inform its members about the expenditure, but whether it was required to seek member approval.
12. At a May 21, 2023 general meeting, the society reported that two of the CRT claims were withdrawn, two were dismissed by the CRT, and one was ongoing. The minutes

said the society had hired a lawyer and incurred approximately \$24,000 in legal fees. It is undisputed that at some point before this meeting, the society paid the legal fees from its contingency fund.

13. The applicants and the society both refer to bylaw E(8)(a), which says that the society must establish and maintain a financial reserve for “emergency or urgent non-budgeted expenditures.” This reserve includes separate funds – a contingency fund and a maintenance fund. Bylaw E(8)(d) says the society must not spend contingency fund money without “permission of the Society” unless the board “considers that the expenditure is necessary to meet an extraordinary emergency.” Exactly how the board is to obtain the society’s permission is somewhat unclear, but given my conclusion, it is not necessary to address this issue that neither party raised. In that Where the board makes an emergency expenditure, it must report the reasons for the extraordinary emergency expenditure at the next annual general meeting. The board did that at the 2023 annual general meeting.
14. The society does not use the words “extraordinary emergency” in its submissions. However, it says that in 2022 it discussed the CRT claims and “deemed it necessary” to obtain legal advice to protect the society’s interests. I find the society argues that it did not need the membership’s approval for the expenditure because it was an extraordinary emergency. The applicants say it was not an extraordinary emergency.
15. Neither party referred to any legal decisions that supported their position or shed light on the term “extraordinary emergency”. The *Strata Property Act* (SPA) does not apply to societies, but it contains provisions that allow strata corporations to spend money from their contingency reserve funds without an owner vote in certain situations. One of those situations is where the strata council has reasonable grounds to believe that an immediate expenditure is necessary to prevent significant loss or damage, whether physical or otherwise (see SPA section 98(3)). That provision is, in my view, analogous to bylaw E(8)(d) because an extraordinary emergency, if ignored, may result in significant loss or damage.

16. In *Lum v. Strata Plan VR519*, 2001 BCSC 493, the court held that strata council has a duty to have the strata corporation properly represented in legal proceedings. Relying on *Lum*, the CRT held that where a strata council had reasonable grounds to believe that urgent legal advice was needed to avoid financial loss, the expenditure did not require the owners' approval (see *The Owners, Strata Plan VR 942 v. Thompson*, 2018 BCCRT 4). In contrast, retaining a lawyer to start a claim was not reasonably necessary to avoid loss where the strata provided no evidence to explain why it could not wait for a vote (see *Wong v. The Owners, Strata Plan LMS 2461*, 2022 BCCRT 562, at paragraph 56-57). Each case will turn on its specific facts.
17. The society says one of the CRT claims sought a remedy of \$3 million. The applicants say this is not true and all claims were for non-monetary remedies other than CRT fees, which are minimal. They say the society is hiding behind false information to justify the legal expense. In a recording of part of the May 2023 GM, a person I infer is a society director explained that the initial claim was for \$3 million but at some point, the claim was reduced or dropped altogether. Although it would have been preferable for the society to provide documentation of this, I accept that this happened. There is no limit on how much parties can claim in an application for dispute resolution, and parties often revise their claims and their requested remedies as the dispute works its way through the CRT's facilitation process. Ultimately, my decision does not turn on the amount claimed in any particular dispute. Even non-monetary orders can be expensive or time-consuming to comply with. The two CRT decisions that resulted from those claims indicate that the applicants in those disputes asked the CRT to order the society to provide records, remove a director, ban companies from doing business with it, and invalidate meetings. That is, the claims were not simple and straightforward even though they were dismissed.
18. In considering whether the need to respond to the CRT claims presented an extraordinary emergency, I am mindful of the fact that the society's directors are volunteers who do not necessarily have legal training. Directors have a duty under section 53(1)(a) of the *Societies Act* to act in the society's best interests. The reasoning in *Lum* and *Thompson* suggests that seeking legal advice may well be part

of that duty, particularly where the board does not consider itself capable of responding to the claims on its own.

19. In that context, I find the board's decision to seek legal advice was based on reasonable grounds. In particular, there were 5 different CRT proceedings filed within a short period of time, and the society had to respond to each claim within 14 days of receiving the Dispute Notice. Also, the society had never previously been involved in a CRT proceeding. There is no evidence it had ever had to defend itself in a legal proceeding of any kind.
20. While expenditures on legal fees will not always qualify as an extraordinary emergency, for the reasons set out above I find that the society's legal fees at issue in this dispute did. This means the society did not need to seek member approval by a vote under the bylaws. It follows that I dismiss the applicants' claim.
21. Under section 49 of the CRTA and the CRT's rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. The society was successful but did not pay CRT fees and does not claim dispute-related expenses, so I make no order.

ORDER

22. I dismiss the applicants' claims and this dispute.

Micah Carmody, Tribunal Member