



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VR 942 v. Thompson*, 2018 BCCRT 4

B E T W E E N :

The Owners, Strata Plan VR 942

APPLICANT

A N D :

Anthony Thompson

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This case deals with a contested expenditure on legal fees for advice provided at an Annual General Meeting (AGM).

2. The Owners, Strata Plan VR 942 (strata) says that Anthony Thompson (Mr. Thompson) spent \$3,668 in legal fees using strata corporation funds without approval.
3. Mr. Thompson says the \$3,668 was spent in good faith, on agreement by a majority of 2011 strata council members, for legal services needed to prevent significant loss to the building. Both parties are self-represented.
4. The strata requested an oral hearing. I decline to hold an oral hearing because the written materials were sufficient to address the issues fairly.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 3.6 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
7. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. The applicable tribunal rules are those that were in place at the time this dispute was commenced.

9. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute the tribunal may make order a party to do or stop doing something, order a party to pay money, order any other terms or conditions the tribunal considers appropriate.

ISSUES

10. The issues in this dispute are:
 - a. whether the \$3,668 of strata corporation money spent on legal fees was authorized either as a budget line item for legal expenses, through a $\frac{3}{4}$ resolution, or because it meets the criteria in *Strata Property Act* (SPA) section 98(3)?
 - b. if the expenditure was not properly authorized, what is an appropriate remedy?

BACKGROUND AND EVIDENCE

11. In 2011, the strata council had six active members, Ms. Easton, Mr. Hadden, Mr. Clarke, Mr. Thompson, Mr. Landsberger, and Mr. Pasini.
12. The applicant strata chose to name only Mr. Thompson in this claim.
13. Mr. Thompson was on strata council from 2011 until his formal resignation on March 14, 2012, though the applicants refer to February 29, 2012 as the date he resigned. I find that nothing turns on this discrepancy in dates.
14. On March 24, 2011 a strata council meeting was held. The minutes do not mention retaining legal counsel to provide advice at the upcoming AGM.
15. Ms. Easton provided evidence that one council member launched a “verbal attack” at a June 2010 council meeting, and that there were “deep divisions in the building” dating back to 2010. Ms. Easton’s account is supported by a 2010 email exchange between Mr. Thompson and Mr. Landsberger and the rest of the strata council revealing heated disagreements about whether the strata ought to sue a previous property management firm.

16. I therefore find that the strata council had become dysfunctional by May 2011.
17. Mr. Thompson says that in late May 2011 he obtained agreement from council members Clarke, Hadden and Easton to have expert legal counsel attend the upcoming AGM to try to assist with issues around a non-functioning strata council. Mr. Thompson provided evidence that the agreement from these members of strata council was obtained through separate one-on-one meetings with him “without asking Landsberger”.
18. I find that the agreement to retain legal counsel was not reached through a properly constituted strata council meeting.
19. I have reviewed evidence that demonstrates severe dysfunction in the council, but this does not excuse council from its obligations to put all council members on notice of a meeting and to communicate minutes and decisions promptly to the owners.
20. The materials for the applicant and respondent suggest that the property managers at that time recommended and perhaps implemented having a strata lawyer present at the AGM to provide advice.
21. On June 21, 2011, an AGM was held. The 2011 fiscal year budget was presented to the owners for approval. The budget did not contain an amount for legal expenditures. The budget was approved.
22. The AGM Minutes show that a motion was carried to approve Mr. Patrick Williams, strata lawyer, and Mr. Tim Coffey (property manager) as chairs of the AGM. This is evidence that, by June 21, 2011, a majority of owners knew about and approved of Mr. Williams’ participation at the AGM.
23. The minutes of the June 21, 2011 AGM reflect that Mr. Williams, “strata corporation lawyer” and Mr. Brian Hubbs, building envelope engineer were “...invited to speak to the ownership about the responsibilities of the strata corporation, under the Strata Property Act, to repair the building and to ensure the repairs are done to industry standards.”

24. The minutes record that Mr. Williams gave an extensive presentation about the obligations of the strata related to building repair and maintenance and answered questions from owners including about strata business in the transition from the previous property management firm. The minutes record that:

“Questions raised regarding the building envelope repairs and strata corporation issues were answered to the satisfaction of the owners present.”
25. On July 1, 2011, the contested invoice for legal services was issued to Tim Coffey, for the strata, care of Harbourside Property Management Ltd., on July 1, 2011. The invoice provides dates and descriptions for the legal services consistent with retainer to provide advice at a strata AGM.
26. On December 5, 2011, Mr. Thompson wrote to Council on a number of issues, including the legal bill of Clark Wilson, as he had missed their meeting the week before. He indicated that Harbourside Property Management generally recommended having legal counsel present at the first AGM, in older buildings, when they assume management. As well, he explained that Mr. Williams had been asked to attend because the strata had stopped functioning and had a number of building issues. He noted that Mr. Williams’ invoiced time was appropriate, reflecting a total of 6 hours spent in meetings and at the AGM.
27. On February 28, 2012, a strata council meeting was held. At this meeting, the unapproved expenditure made by “certain other members of Council” who retained a law firm on behalf of the strata corporation was discussed. The question was whether SPA section 98, dealing with unapproved expenditures, applied. A recommendation was made to address this item at an AGM “...where any questions regarding the duties of Council under SPA can be asked and answered.”
28. I accept Mr. Thompson’s evidence that no matters personal to him were discussed with Mr. Williams. Mr. Williams’ invoice supports this interpretation as it itemizes strata business (discussions with a council member who had obtained consent from other council members to have legal counsel attend the AGM, discussion with the property manager, attendance at the AGM).

29. Mr. Williams authored a letter to the strata dated March 6, 2012. In it, he offers his opinion that, having reviewed the documentation in May 2011, it was clear that "...circumstances at the Strata Corporation dictated the need to retain counsel to ensure that significant financial loss did not occur. The services necessary included attendance at the AGM of the strata corporation on June 21, 2011. It is the view of the writer that if the services had not been provided, the dysfunction of council and the Strata Corporation comprising only 14 owners would have resulted in the likely appointment of an administrator and the significant expense that would have been incurred due to such appointment." He also notes that, based on his recollection, and the documents he reviewed later, "...a majority of council members approved the expenditure necessary to retain legal counsel by operation of s. 98(3) of the Act."
30. I find that a majority of 2011 council members approved having a strata lawyer retained to attend the AGM. Further, the minutes of the AGM show that an invitation was made to Mr. Williams for this purpose, and no objections were raised in the minutes.
31. On July 16, 2015, the property management company, on behalf of the strata, wrote to Mr. Thompson asking him to substantiate the legal expense.
32. On December 7, 2015, the property management company Urban Properties wrote to Mr. Thompson stating that the amount of the invoice for legal services would be "charged back" to his strata lots account because there was "...no valid evidence proving that this expense was approved by the strata council and/or the owners."
33. The strata asserted that because Mr. Thompson paid personally for Mr. Williams' March 2012 letter, he must be in a conflict of interest. I do not agree. Mr. Thompson paid the 2012 invoice personally; the correspondence filed with the tribunal suggests he did so in order to avoid conflict about that invoice, even though the March 6, 2012 letter dealt only with strata issues, not matters personal to Mr. Thompson.

BYLAWS

34. Bylaw 22.3 requires that all votes at a council meeting must be recorded in the council meeting minutes, and Bylaw 23.1 provides that those minutes must be circulated or posted for all owners within two weeks of any meeting.
35. Here, there was neither a properly called council meeting, nor was authority to make an expenditure delegated to one individual on council in accordance with the requirements in Bylaw 24.
36. Bylaw 25.1 states that a person may not spend the strata corporation's money unless delegated that power in accordance with the Bylaws.
37. Bylaw 26.1 provides that a council member who acts honestly and in good faith is not personally liable for anything done or omitted in the exercise of their powers or performance of duties as a strata council member.

POSITIONS OF THE PARTIES

38. The strata asks that the \$3,668 spent on legal advice, plus interest, be repaid by Mr. Thompson. The strata requests an order to prevent individual owners from spending strata corporation funds without prior approval, in future. The strata requests reimbursement of \$225 in tribunal fees.
39. Mr. Thompson says the expenditure falls within SPA section 98(3). He denies spending any strata corporation money personally. Mr. Thompson says the money was spent after an agreement of the majority of strata council, and as part of his duties as a council member.

ANALYSIS

Was the legal expenditure authorized?

40. The strata spent \$3,668 on legal advice for the 2011 AGM.
41. The strata did not include any amount in its annual budget for this expense.

42. The strata did not pass a $\frac{3}{4}$ resolution approving the legal expense, either before or after the 2011 AGM.
43. Strata council did not have a formal meeting, minuted and communicated as required in their bylaws, at which it agreed to retain legal counsel for the AGM. Rather, a majority of strata council members agreed to retain legal counsel for the AGM in separate communications with Mr. Thompson. I therefore find that the expenditure was unapproved.
44. The central question is whether the expenditure falls under SPA section 98(3). The applicable part of Section 98 reads:

98 (1) *If a proposed expenditure has not been put forward for approval in the budget or at an annual or special general meeting, the strata corporation may only make the expenditure in accordance with this section.*

(2) Subject to subsection (3), the expenditure may be made out of the operating fund if the expenditure, together with all other unapproved expenditures, whether of the same type or not, that were made under this subsection in the same fiscal year, is

(a) less than the amount set out in the bylaws, or

(b) if the bylaws are silent as to the amount, less than \$2 000 or 5% of the total contribution to the operating fund for the current year, whichever is less.

(3) The expenditure may be made out of the operating fund or contingency reserve fund if there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage, whether physical or otherwise.

45. In *Lum v. Strata Plan VR 519 BCSC 49* the court held that a strata council has a duty to have the strata properly represented in legal proceedings concerning it. While some owners may oppose legal proceedings, or oppose obtaining legal

advice for the strata, this does not alter the strata's obligation to arrange for representation.

46. Here, the strata council and the strata generally had fallen into dysfunction. While there were not formal legal proceedings, there were repair and maintenance issues that were not being addressed, and the strata had a reduced ability to make necessary decisions because of disagreements between its owners. The decision in *Lum* supports the analysis that a strata council may decide to obtain legal advice for the strata in these circumstances.
47. A majority of the members of the strata council decided that advice from a strata property lawyer at the 2011 AGM was necessary to try to return the strata to an adequate level of function. This step was in the best interests of the strata.
48. Given Mr. Williams' expert opinion on the issue, the strata council had reasonable grounds to believe that an immediate expenditure to obtain legal advice was needed to avoid financial loss to the strata.
49. I find that, in these circumstances, legal advice was reasonably required in the best interests of the strata. It was appropriate for the strata council to retain a lawyer to appear at the AGM to address repair and maintenance obligations and to answer questions from owners.
50. I find that a SPA section 98(3) exception applies to the legal expenditure.

Remedy

51. The strata sought to have Mr. Thompson personally reimburse it for the \$3,668 paid to strata lawyer Mr. Williams. I decline to grant this order. There is no evidence that anything personal to Mr. Thompson was discussed with Mr. Williams. Mr. Thompson performed his duties as a strata council member honestly and in good faith, despite the mistake he made in the process he used to obtain the consent of strata council to retain a lawyer. I do not find him personally liable.

52. I find that all strata owners, including the applicants, benefited from the strata having legal guidance at and relating to the 2011 AGM. The minutes of that meeting record guidance provided on the strata's SPA obligations.
53. The strata is responsible for payment since it had reasonable grounds to believe it was immediately necessary to prevent significant financial loss, supported by Mr. Williams' opinion. A $\frac{3}{4}$ vote is not required in these circumstances. I am guided by the reasoning, though not binding upon me, in *Hodgson v. The Owners, Strata Plan LMS 908*, 2017 BCCRT 66, at paragraph 63 and following, which includes the statement:
- “A council may spend money from the CRF, if there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage, whether physical or otherwise.”
54. I have found that the legal expenditure of \$3,668, paid to Mr. Williams, from the contingency reserve fund, was authorized pursuant to SPA section 98(3).
55. It was appropriate to use the contingency reserve fund because it was an expense that appears to occur less frequently than once a year, in this set of circumstances. Section 98(3) permits this allocation.

DECISION AND ORDERS

56. If any charges in respect of the \$3668 amount were made against Mr. Thompson personally, I order that those be reversed.
57. In the future, strata and its council will abide by the terms of the SPA and the bylaws. Strata council ought to convene meetings in accordance with the bylaws, and communicate the minutes of such meetings in a timely way to all owners.
58. The strata's application is dismissed.
59. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and

reasonable expenses related to the dispute resolution process. In this case, though the respondent succeeded to an extent, there were also shortcomings in how both parties approached the issue. Mr. Thompson failed to follow the bylaws regarding strata council meetings and decisions, while the strata tried to charge him for the legal expenditure when it was not a personal expense. I therefore decline to make any order in respect of tribunal fees.

60. Under section 57 of the Act, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia, a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.

Julie K. Gibson, Tribunal Member