



# Civil Resolution Tribunal

Date Issued: April 25, 2018

File: ST-2017-00093-A1

Type: Strata

Civil Resolution Tribunal

Indexed as: *Dickson et al v. The Owners, Strata Plan K 671*, 2018 BCCRT 147

BETWEEN :

Kenneth Dickson, Lorna Jean Winters, Douglas Chepil, Coralynn Baker,  
Sylvia Szarko, John Reichel, and Duane Zilm

**APPLICANTS**

AND :

The Owners, Strata Plan K 671

**RESPONDENT**

---

## AMENDED REASONS FOR DECISION

---

Tribunal Member:

Kate Campbell

## **INTRODUCTION**

1. The applicants, Kenneth Dickson, Lorna Jean Winters, Douglas Chepil, Coralynn Baker, Sylvia Szarko, John Reichel, and Duane Zilm (owners), each own a strata lot in the respondent strata corporation, The Owners, Strata Plan K 671<sup>1</sup> (strata).
2. The owners seek remedies in relation to a decorative pond located on common property in the centre of the strata complex.
3. The owners are represented by a lawyer, Matthew Fischer. The strata is also represented by a lawyer, Lanny James.
4. For the reasons set out below, I order the strata to restore the pond to its original condition by February 2019. This decision has been amended to correct a typographical error in the original decision.

## **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

---

<sup>1</sup> The Dispute Notice and other tribunal documents incorrectly show the strata corporation's legal name as The Owners, Strata Plan KAS 671.

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. Is the strata required to repair the pond?
  - b. Is the strata required to compensate the owners for loss in value of their strata lots?

## **BACKGROUND**

11. The facts are not at issue in this dispute, and the parties provided an agreed statement of facts. To summarize, leaking of the pond liner was noted in strata documents in 2011, and the liner failed in April 2014. A portion of the liner was repaired, but it was later found to be irreparable. The pond has been empty since 2015.
12. In April 2015, strata council formed a pond committee, which put forward a proposal to remediate the pond, reduce its area, and add a footpath around it. At a special general meeting (SGM) held September 10, 2015 the owners voted on a special levy totalling \$80,000 to pay for the proposed pond project. 74.3% of the owners were in favour of the resolution, but it failed as it did not receive the  $\frac{3}{4}$  vote required for special levies under section 108 of the *Strata Property Act*(SPA).

13. A second pond committee was formed in October 2015, and a questionnaire regarding pond redesign was circulated to owners. The committee obtained 3 quotations for redesign and reconstruction. The quotations were \$64,000, \$90,905 and \$94,213.
14. At a SGM on March 16, 2016, the owners voted on another \$80,000 special levy for the pond project. Again, the  $\frac{3}{4}$  vote resolution did not pass. 67.5% of the owners voted in favour of the resolution.
15. In November 2016, following another SGM and lobbying from concerned owners, the strata's depreciation report was updated to include the replacement cost of the pond.
16. At a January 19, 2017 SGM, the owners voted on 3 separate resolutions: two options to repair the pond using \$55,000 or \$90,000 from the contingency reserve fund (CRF) by majority vote, and one option to fill in the pond and cover the area with grass using \$42,000 from the CRF by  $\frac{3}{4}$  vote. None of the 3 resolutions passed, and the pond remains empty.

## **REASONS AND ANALYSIS**

17. As set out in section 72 of the SPA, the strata has a duty to repair and maintain common property and common assets. There is no dispute in this case that the pond is common property.
18. The pond is a large feature in the centre of the complex, and was part of the original strata construction. Photographs provided by the parties show that the pond runs lengthwise between the central strata lots, and repair estimates indicate that it is approximately 200 feet long and 30 feet wide.
19. The strata submits that because only 11 of the 82 strata lots abut the pond, and the cost of remediation will be significant, I should instead order that the pond be replaced by a grassed park area.

20. The owners submit that replacing the pond area with grass would be significantly unfair, in part because they purchased their strata lots based on the water view. The owners also submit that the strata's failure to repair the pond since 2015 is significantly unfair. The strata submits that replacing the pond would not be significantly unfair, based on the test set out in case law.
21. I have considered those submissions, and I do not find that the strata has acted in a significantly unfair manner. The evidence in this case shows that the strata lacked authority to take action in the absence of a special levy approved by a  $\frac{3}{4}$  or CRF expenditure by majority vote under section 96(b)(i)(A) . The owners submit that the depreciation report should have been updated sooner to reflect the pond repair requirements, so that a majority of the owners could have approved a CRF expenditure before November 2016. While I agree that there was some delay, the evidence does not establish that the strata acted in bad faith, or in a hard, burdensome, or wrongful manner.
22. Rather, I find that the arguments presented by the strata about the cost of remediation and limited access to the pond do not supersede its statutory obligation to repair common property. In addition to the repair obligation set out in section 72, section 3 of the SPA says the strata corporation is responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners.
23. For the following reasons, I do not order the strata to replace the pond with grass. I note that in 2016, landscaping companies estimated costs of \$35,500 and \$37,680 to fill in and grass over the pond, not including irrigation supplies and installation. While this is less than the estimates to repair the existing pond, it is still a significant expense. I also note that while one side of the pond is accessible only to the facing strata lots, the other side is accessible to all residents via a footpath, and the pond is visible from common areas such as the pool.
24. The strata submits that it is prudent to allow the ownership the opportunity to consider if a pond is the right fit for the community. However, the strata already did

this in January 2017. Moreover, it is always open to the strata to put another resolution to the owners to change the use of the pond by filling it in. Until such a resolution passes with the  $\frac{3}{4}$  vote required under section 71(a) of the SPA, the strata must meet its duty under section 72(1) to repair and maintain the existing pond. As stated by the British Columbia Supreme Court in *Kayne v. The Owners, Strata Plan LMS 2374*, 2013 BCSC 51 and *Browne v. Strata Plan 582*, 2007 BCSC 206, dissension among owners regarding the appropriate approach to repairs does not absolve the strata corporation from its duty to repair and maintain common property.

25. In the circumstances of this case, I am satisfied that there must be an order that the strata perform its statutory obligation to repair the pond.
26. The courts have authority under section 165 of the SPA to make such repair orders, including orders imposing special levies: see *Browne and Tadeson v. Strata Plan NW 2644*, 1999 CanLII 6999 (BCSC).
27. In tribunal decision *MacArthur v. The Owners, Strata Plan K588*, 2016 BCCRT 2, the tribunal member applied a remedy similar to section 165 of the Act, under the authority of sections 48.1(a) and (c) of the *Civil Resolution Tribunal Act*. The provisions allow the tribunal to issue an order requiring a party to do something, or to pay money.
28. In *MacArthur*, the tribunal member found that building foundation repairs were required, and that the strata had not met its section 72 obligation to repair and maintain common property. The member ordered the strata to repair the foundation, and ordered a levy in the amount of \$100,000 to finance these repairs.
29. While repairs to a decorative pond are not as crucial as repairs to a building's foundation, as previously stated the strata nonetheless has an obligation to repair and maintain common property, including the pond. Though not binding on me, I find the decision reached in *MacArthur* applies equally to the circumstances here.

## DECISION AND ORDERS

30. For these reasons, and because the strata owners have been unable to pass a resolution to repair or replace the pond, I order the strata to restore the pond to its original state by February 2019.
31. To finance the pond restoration, the strata is required to issue a special levy to the owners in the amount of \$80,000. The contribution of each strata lot owner must be based on unit entitlement, payable in a single installment due on September 1, 2018.
32. Because I have ordered the strata to repair the pond, I find that the strata is not required to compensate any owners for loss in value of strata lots.
33. The tribunal's rules provide that the successful party is generally entitled to recovery of their tribunal fees. As the owners substantially successful in this dispute, I see no reason to depart from this general rule. I therefore order the strata to reimburse the owners a total of \$225 for tribunal fees.
34. Under section 189.4(b) of the SPA, an owner who brings a tribunal claim against the strata corporation is not required to contribute to the expenses of bringing that claim. I order the strata to ensure that no part of the strata's expenses with respect to defending this claim is allocated to the applicant owners.
35. 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.
36. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia. However, the principal amount or the value of the personal property must be within the Provincial Court of British Columbia's monetary limit for claims under the *Small Claims Act* (currently

\$35,000). Under section 58 of the Act, the Applicant can enforce this final decision by filing in the Provincial 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 Provincial Court of British Columbia.

---

Kate Campbell, Tribunal Member