



Civil Resolution Tribunal

Date of Original Decision: May 8, 2018

Date of Amended Decision: May 10, 2018

File: ST-2017-006258-A1

Type: Strata

Civil Resolution Tribunal

Indexed as: *Huck et al v. The Owners, Strata Plan KAS1565*, 2018 BCCRT 172

B E T W E E N :

Debra Huck and Reiner Huck

APPLICANTS

A N D :

The Owners, Strata Plan KAS1565

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

James Posynick

INTRODUCTION

1. This dispute involves the calculation and collection of water taxes and tolls by the respondent on behalf of the Okanagan Falls Irrigation District (OFID). The applicants say water taxes and tolls are common expenses while the respondent says they are not.

2. Both parties are self-represented.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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.
6. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
7. 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

8. The issue in this dispute is whether the cost of water supplied by the OFID to lot owners is a 'common expense' of the respondent.

BACKGROUND AND EVIDENCE

9. The respondent is a bare land strata corporation created under the (former) *Condominium Act* in January, 1995 and continues to operate under the SPA.
10. The OFID is an 'improvement district' created by letters patent under the *Local Government Act* (LGA). It is empowered to regulate the distribution of water and establish bylaws that impose tolls and other charges on water users.
11. In March 1992, the OFID passed bylaw 281 making bare-land strata corporations subject to OFID bylaws and "responsible" for the payment of all tolls, taxes and other charges it may levy.
12. In December, 1994, a disclosure statement for the establishment of the bare land strata corporation was created in accordance with the *Real Estate Act*. Paragraph 6 (q) states that "Water, electricity, sewerage, gas, garbage collection, cable television and telephone are separately metered and assessed to each strata lot with the Development and are the responsibility of each strata lot owner". The disclosure statement does not determine the issue in question. It merely sets out the intention of the owner developer. For example, water charges are not based on meters installed on each strata lot.
13. In January, 1995, phase 1 of Bareland Strata Plan KAS 1565 was filed in the Land Titles office, Kamloops. Phase 2 was filed in August 1997. The plan contains 51 strata lots, 21 of which are 60' X 100' while 30 range in size from ½ acre to 3.62 acres. The applicants' strata lot is 2.3 acres. Each strata lot is assigned a 'unit entitlement' of 1 for the purpose of contributing to the respondent's operating and contingency reserve fund.
14. On October 27th, 1998 the OFID sent a memo addressed to all strata councils within its district advising that as of 1999, each strata council would be invoiced for water tax and tolls "for all strata lots within the strata plan" adding that several other strata councils had already adopted the "procedure". Strata councils exercise the powers and perform the duties of strata corporations under ss. 4 and 26 of the

SPA. As announced, the 1999 OFID invoice included a list of taxes and tolls for each strata lot to “assist... in billing the individual owners”. Yearly notices from OFID have followed the same format ever since. The respondent invoices each lot owner based on the taxes and tolls in the OFID invoices. No lot owner has raised an objection to the invoicing practice or the amounts due prior to the applicants.

15. When the applicants’ purchased their strata lot in 2015 they were billed \$342.00 for water taxes. After their home was built and they moved-in, their water taxes increased to \$531.11 and a water toll of \$148.94 was added. The total cost of water rose from \$342.00 to \$680.05. A copy of the 2018 OFID invoice shows their water taxes are \$613.45 and the toll is \$172.03 for a total of \$785.48. The applicants say they believed they were paying for water on a unit of entitlement basis until they built a home on their lot and their water costs increased.
16. When the applicant’s concerns were raised, the respondent reviewed the disclosure statement, OFID bylaw 281 and related correspondence from the OFID. The respondent says it also obtained a legal opinion confirming its view that water is not a common expense. The legal opinion was not entered as evidence. The respondent calculated the impact of treating water as a common expense using the 2018 OFID invoice. It found the applicants would receive a \$270.81 decrease in their water costs while smaller lot owners would pay \$54.20 more. The respondent believes that smaller lot owners should not be subsidizing larger lot owners’ water taxes and tolls.
17. The respondent called a general meeting on October 24, 2017, to bring the issue to the attention of the owners. The applicants did not attend the meeting. The owners in attendance unanimously agreed with the respondent’s position. The letter confirming the result of the meeting was sent to the applicants.
18. On October 31st, 2017, the applicants filed a Dispute Notice with the Civil Resolution Tribunal.

POSITION OF THE PARTIES

19. The applicants seek a finding that the OFID water payments is a 'common expense' within the meaning of sections 1 and 91 of the SPA. They say section 91 and OFID bylaw 281 make the respondent, not individual owners, responsible for the payment of water taxes and tolls. As such, those costs must be treated according to s. 92 (a) of the SPA which requires owners to contribute to common expenses by means of strata fees and s. 99 of the SPA which requires apportionment of those fees by unit entitlement. The Estimated Operating Budget in the 1994 Disclosure Statement also states each lot owner must contribute on a unit entitlement basis to common expenses. Consequently the applicants' annual payment and the payment made by each strata lot owner should reflect that proportion of the total, common expense of water taxes and tolls.
20. The applicants also seek an order for tribunal fees in the sum of \$225. They do not seek an order having any retroactive effect on previous payments made to the respondent.
21. The respondent says it has treated water taxes and tolls as the responsibility of lot owners in accordance with the Strata Lot Expenses paragraph in the 1994 Disclosure Statement and the long-established assessment and billing procedures of the OFID. For the past 19 years it has invoiced lot owners individually in accordance with OFID invoices which base assessments on lot size. It seeks a finding that water provided by OFID is not a common expense and the present scheme of collecting taxes and tolls assessed to each owner is lawful.
22. The respondent requests that I dismiss the applicant's claim and makes no claim for costs.

ANALYSIS

Is the payment of water taxes and tolls a ‘common expense’ of the respondent strata corporation?

23. Section 1 of the SPA states that common expenses are either expenses “relating to common property and common assets” or they are expenses required to meet a “purpose or obligation” of the strata corporation. Section 1 states that common property is property that is not part of the strata lot unless it is also used for the benefit of other strata lot owners. Water flowing to individual strata lots is obviously intended for the benefit of individual lot owners. I find that water, in this case, it is not common property. Does the supplying of water by the OFID give rise to an “obligation” of the respondent? For the following reasons I find the answer is “yes”.
24. Since OFID bylaw 281 was passed in 1992 the respondent strata corporation, not individual strata lot owners, has an “obligation” to pay water taxes and tolls to the OFID.
25. The OFID’s characterization of strata corporations’ responsibility to collect water charges and remit them as a “procedure”, does not change the respondent’s SPA obligations under the bylaw. Nor does it change their obligation to pay common expenses under s. 91 of the SPA and, further, to comply with establishing strata fees and apportioning them by unit entitlement (ss. 92 and 99 of the SPA).
26. Finally, the respondent’s argument that because the collection of taxes has not changed in 19 years and therefore “overrides” an interpretation that water is a common expense is without legal foundation. The SPA and municipal or district bylaws, along with the strata corporation’s bylaws are the source of authority for the actions of strata councils, not past practice.
27. I conclude the payment of water taxes and tolls is a common expense of the respondent strata corporation. Nothing in this decision precludes the respondent from bringing a resolution to change the basis for calculation of strata lot

contributions to the operating and contingency reserve fund under s. 100 of the SPA.

DECISIONS AND ORDERS

28. 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 dispute-related expenses. In this case the applicants seek the reimbursement of their tribunal fees in the sum of \$225.00. I see no reason in this case to deviate from the general rule. I therefore order the respondent to reimburse the applicants for said sum.
29. I order the following:
 - a) water taxes and tolls invoiced by the OFID to the respondent shall be treated as a common expense in accordance with Part 6 of the SPA, and
 - b) the applicants shall have their tribunal fees in the sum of \$225.00 plus post-judgment interest.
30. 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 any monetary order issued against the strata corporation or to any expenses the strata corporation incurs in defending the claim. I order the respondent to ensure that no part of the amount ordered to be paid by the respondent, or any other expenses incurred by the respondent in defending this claim, are allocated to the applicant owner.
31. 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.

32 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.

ⁱ Amended Notes: Paragraph 25 was amended to correct a typographical error (underlined).

James Posynick, Tribunal Member