



# Civil Resolution Tribunal

Date Issued: June 28, 2018

File: ST-2016-00663 and ST-2017-004206

Type: Strata

Civil Resolution Tribunal

Indexed as: *Thompson v. Pasini et al*, 2018 BCCRT 292

**B E T W E E N :**

Anthony Thompson

**APPLICANT**

**A N D :**

Heather Pasini and The Owners, Strata Plan VR 942

**RESPONDENTS**

**A N D :**

Anthony Thompson and Tatiana Easton

**RESPONDENTS BY COUNTERCLAIM**

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**REASONS FOR DECISION**

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Tribunal Member:

Julie K. Gibson

## **INTRODUCTION**

1. This dispute is about the cost to reinstall a gas line. The gas line was installed in 2010, but relocated to the building's interior after being removed to facilitate an extensive building envelope remediation years later.
2. The question is whether the cost of re-installing the gas line after remediation is the strata's responsibility or that of the owner who had it installed originally to service her gas appliances.
3. The parties are each self-represented. The strata is represented by the strata council treasurer.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. 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.
6. 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.

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 issues in this dispute are:
  - a. Is Mr. Thompson's claim brought within the applicable limitation period?
  - b. Was the gas line installation an unapproved alteration to common property, such that fines could be levied under the *Strata Property Act* (SPA)?
  - c. Does s. 71 of SPA, which requires a  $\frac{3}{4}$  vote at an annual or special meeting before a "significant change" can be made to the use or appearance of common property, apply to this dispute?
  - d. Is Ms. Pasini responsible for the cost to re-install the gas line to service her strata lot, following the building envelope remediation?

## **BYLAWS**

9. The strata's bylaws provide that an owner must obtain written approval from the strata before altering a strata lot in a way that involves the exterior of the building or the "wiring, plumbing, piping, heating air conditioning and other services."
10. Under Bylaw 7.2 the strata corporation may require as a condition of its approval that the owner agree, in writing, to take "...responsibility for any expenses relating to the alteration and to indemnify and hold harmless the strata corporation for any future costs in connection with the alteration."
11. A similar bylaw applies for owners seeking permission to alter common property or limited common property.
12. Under Bylaw 8.3(d), the strata can make it a condition of the approval to alter common property from which the owner will obtain a benefit, that the owner agree,

in writing, to be responsible for "...all present and future maintenance, repairs or replacements ... and any damage suffered or cost incurred by the strata" due to the alterations to the common property.

## **EVIDENCE AND ANALYSIS**

13. The applicant Tony Thompson, an owner in the respondent strata, claims against Heather Pasini and The Owners, Strata Plan VR 942, saying that Ms. Pasini received a gas line repair on her property, costing \$7,159.11, which should have been charged to her, as unit owner. Mr. Thompson is a past strata council member.
14. Ms. Pasini owns Unit 301 in the respondent strata. She is a past strata council chair.
15. The applicant argues that although gas lines original to the building in 1981 are common property, the new gas line installed to service Ms. Pasini's unit is her personal responsibility.
16. Mr. Thompson says the gas line should have been reinstalled externally, at lower cost. He alleges that Ms. Pasini and another council member, secretly authorized a "costly and secret interior route install" that was not properly authorized by the owners.
17. Mr. Thompson says a  $\frac{3}{4}$  vote resolution was required for this decision. Although he did not say why, I will consider whether s. 71 of SPA, which says a strata, must not make a "significant change" in the use or appearance of common property unless it is approved by a  $\frac{3}{4}$  vote resolution, applies in this dispute.
18. Mr. Thompson says there was no specific discussion at the 2014 AGM and that owners "assumed as Pasini had paid for the install in 2010 she would be paying for it."
19. Mr. Thompson asks that Ms. Pasini reimburse the \$7,159.11 into the strata funds, and requests reimbursement of his \$225 tribunal fees.

20. In her Dispute Response, Ms. Pasini explains that she did an interior renovation in 2010. As part of the renovation, she wanted to convert a wood-burning fireplace in her unit to gas.
21. Ms. Pasini says she notified the strata and obtained authorization to install the gas line.
22. In 2013/14 the strata had a building envelope remediation. As part of that process, the architect/engineer required the exterior gas line to be removed to access and replace the envelope. The gas line was then re-installed inside the building walls, since the envelope was open. The cost for this re-installation was \$7,159.11.
23. The strata's building has gas servicing common hot water tanks and gas fireplaces located in other strata lots and the expense is part of the common operating expenses included in strata fees.
24. The strata says it has no records or strata council meeting minutes that show what occurred when the initial renovations were done on Unit 301 in 2010. They say there is no information about the request for a gas line installation or any records of whether there were to be any changes made to the common property.
25. The strata says a  $\frac{3}{4}$  vote resolution to alter common property would have been needed, but was never obtained.
26. The strata has counterclaimed against Mr. Thompson and Ms. Tatiana Easton.
27. The strata says, and I agree, that there are no records designating the contested gas line as limited common property.
28. Ms. Pasini pays for the gas and delivery through the gas line servicing her strata lot. It is separately metered, with the meter owned by Fortis BC.
29. The strata says that common property was altered without appropriate owner approvals in 2010, and that the members of council at that time, including Ms. Easton and Mr. Thompson, may be responsible for the failure to follow an appropriate process to obtain a  $\frac{3}{4}$  vote resolution to alter common property.

30. The strata asks for compensation in the form of fees or fines regarding any actions taken contrary to the bylaws and the SPA that “ended up causing Strata unnecessary time and costs.”
31. The strata also asks for (i) a letter from Mr. Thompson and Ms. Easton apologizing and stating that they will not do this again, (ii) costs of the tribunal proceedings against them and (iii) reimbursement of their \$125 tribunal fees.
32. The strata also requests a declaration that no one owner (even if on council) can do things unilaterally that cost the strata money, and that actions of individual owners must comply with the bylaws and SPA.
33. In their responses to the counter claim, Ms. Easton and Mr. Thompson say that Ms. Pasini’s contractor installed a “personally-owned gas line” in her unit.
34. They say no compensation is due to the strata because the strata council acted appropriately. They say that this issue is barred by the *Limitation Act*.
35. In reply to the counterclaim responses from Ms. Easton and Mr. Thompson, the strata says that the owners were kept updated on the gas line relocation during building remediation. They say there are weekly email reports to owners and that owners also received a January 27, 2014 report titled “Strata VR942 – Building Remediation Synopsis and Info for Discussion” which contains a “detailed reconciliation of the costs in the project to date, all items including Change Orders listed which includes the gas line relocation.” The strata says Mr. Thompson would have received that report.
36. I now turn to the underlying chronology. On December 28, 2009, Ms. Pasini wrote to the strata council informing the council of her renovation plans, including plans to upgrade the gas line to her unit.
37. On January 8, 2010, Ms. Pasini wrote again to strata council about her renovations. She explained that she would include a separate gas meter for her new gas line.

38. On January 11, 2010, via an email authored by Ms. Easton and copied to Mr. Thompson, the strata council responded and noted that it needed to understand the routing for the new gas line, and any impacts on the roof membrane or roof turrets from weather ingress from the gas line hole. They confirmed their understanding that the gas would be separately metered.
39. Ms. Pasini's contractor responded to strata council's questions via an email sent January 11, 2010. They indicated the gas line would be located on the upper deck on the outside of the building and would not go into the roof or wall membrane.
40. On January 13, 2010, Ms. Easton wrote to Ms. Pasini, on behalf of strata council copying the then members of the council, including Mr. Thompson, approving the plans for renovation to Ms. Pasini's unit. The emails filed with the tribunal suggest that the strata council likely met for a discussion about the approval, but no minutes were filed in evidence. Section 35 of SPA requires the strata to keep minutes of council meetings, but in this case it was not clear to me whether minutes were never kept, or simply not filed with the tribunal.
41. It would have been preferable for the strata council to prepare minutes of the meeting regarding the approval, but the email approval is sufficient evidence for my purposes. Under section 26 of SPA, the strata council "must exercise and perform the duties of the strata corporation", which I find includes considering and approving this owner's request for authorization to proceed with her renovation and gas line installation. I find that this approval by the strata council was the authorization Ms. Pasini was obliged to obtain under the Bylaws.
42. I now turn to the whether the gas line installation was a "significant change" in use or appearance of the common property, such that a  $\frac{3}{4}$  vote would be required under Section 71 of SPA.
43. In *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 133, the court provided criteria for evaluating whether an alteration to common property is a "significant change" in use or appearance as follows:

- (a) whether or not the change was visible to other residents and the public;
  - (b) whether the change affects the use or enjoyment of the unit or number of units or an existing benefit of all unit or units;
  - (c) is there a direct interference or disruption as a result of the change to use?
  - (d) does the change impact on the marketability or value of the unit?
  - (e) the number of units in the building may be significant along with the general use, such as whether it is commercial, residential or mixed-use; and
  - (f) how the strata governed itself in the past including whether it permitted allowed similar changes before.
44. I find that the change in installing a new gas line was not significant. I say this because there were already gas lines in the building, and there was no disruption to other unit owners. In any case, the gas line has since been placed inside the building, such that it longer changes the appearance of the building at all.
45. In *Wood v. The Owners, Strata Plan VR 2646*, 2018 BCCRT 261, an owner made unapproved changes to common property including altering gas connections. As well, she had not given any indemnity to the strata. This case is different because I have found that the strata approved the gas line installation by way of Ms. Easton's January 13, 2010 email.
46. Unlike in *Wood*, the bylaws here allow for indemnity to be obtained from an owner who proposes renovations, but do not require the indemnity as a condition for the renovation to proceed. The strata never obtained an indemnity agreement from Ms. Pasini regarding the new gas line.
47. In February 2010, the new gas line was installed. Ms. Pasini paid the full price of installation, at \$3,900, personally. The gas for her strata lot is separately metered and she pays the gas and delivery charges.



48. Given the location of the gas line on the exterior of the building, and that the strata did not require the owner to take responsibility for the installation, I find that it then formed part of the common property under the definition in section 1 of SPA.
49. Years later, the strata identified problems with its building envelope requiring remediation. As part of the repair work, the gas line servicing Ms. Pasini's strata lot had to be removed. In fall 2013, the strata obtained quotes to replace the gas line, after the remediation work was complete, by concealing it within the exterior framing of the building, instead of having it run on the outside. The quotes ranged from \$7,000-\$9,000.
50. The strata held regular meetings regarding the building remediation construction work. The meeting minutes show that the gas line relocation issue was discussed regularly at these meetings between October and December 2013. A copy of these Construction Meeting Minutes was available to the strata, the general contractor and the consultants.
51. An October 7, 2013 change directive for the gas line relocation issued to the contractor on the building remediation project dated October 7, 2013 says that the strata had "reviewed the quotation of \$8,797 (plus GST) and asked that you please proceed with the work". The gas line relocation work was completed and the strata paid the full cost of \$6,401.00 by December 22, 2013, which was less than the quoted cost.
52. Based on this change directive, I find that the strata knew of the gas line relocation and approved the work as its own expenditure, in October 2013. This is consistent with the strata then paying the invoice for the work in December 2013 and reporting that the work was completed.
53. The respondent strata filed in evidence the Building Renewal Project Final report dated January 14, 2015, detailing work done during the building envelope remediation. It contains reference to the gas line relocation as a "legacy issue" and does not list it among "costs that should be allocated to Individual Owners to be paid separately by those Owners." Notably, costs being passed on to individual

owners include demolition of any “unauthorized” structures, such as solariums, and repairs due to owner-caused damage. The strata considered the gas line relocation to be part of the needed building repairs for which it was responsible.

54. In an October 17, 2016 email, strata council member Tatiana Easton wrote to the owner, Ms. Pasini, saying, in part:

“Because you wanted the addition of three (3) gas appliances, for your exclusive use, the Strata Council agreed that you - in consultation with the gas company, your designer and a construction engineer - would be allowed to have an additional gas line installed at your own expense since it was for own personal and exclusive use and became part of your personal property and increased its value if and when you decided to sell it.

Council allowed it to be installed on Common Property because it would not interfere with any other owner's limited common property.

Since there would be no expense accruing (sic) to the Strata Corporation VR 942, there was no need for approval of the other owners.”

55. The strata treasurer at the time wrote back saying that the owner of Unit 301 paid for the original gas line installation in 2010, and that “Subsequent work was necessary due to the building deficiencies pre-existing on the rain screen of the east wall; should there not have been these deficiencies and premature failure, there would not have been the additional expense of having to move the gas-line to perform the remediation work and place it again.”
56. On January 27, 2014, Ms. Pasini circulated financial information and details of the building remediation to all owners. It includes reference to the change order for the “gas line relocation for unit 301”.

57. I find that the gas line work in 2013 was, to quote from building remediation documents circulated to the owners on January 27, 2014 a “required relocation” and part of the strata’s obligation to repair and maintain common property.
58. Shortly after receiving the detailed budget and progress information in the January 27, 2014 email from Ms. Pasini, at an AGM on March 6, 2014, the owners voted unanimously to fund the building remediation project to completion. According to the AGM minutes, there were no objections to the gas line relocation having been included in the expenditures of the strata as part of the remediation project.
59. Mr. Thompson says he first learned of his claim on January 14, 2015 when a detailed construction project cost breakdown was first uploaded to the strata electronic account.
60. Based on the evidence provided, I find it more likely than not that Mr. Thompson knew or should have known about the gas line much earlier and in any event by March 6, 2014, because on that date the owners had an AGM to vote on completing the building remediation. The contested gas line was among the items detailed in documents circulated to the owners prior to that meeting.
61. Given that the current *Limitation Act* sets a two-year limit for bringing this type of claim, I find that the limitation period for Mr. Thompson’s claim had well expired by the time he filed his Dispute Notice on June 14, 2017.
62. Having said that, there is an argument to be made that Mr. Thompson should have known of his claim in October 2013, when the line was being relocated. If that were the case, the former *Limitation Act* would apply and there would be a six year limitation on the claim, meaning his Dispute Notice was filed in time.
63. Given the contentious nature of the issues between the parties, I have considered the merits of this dispute, in case my analysis of the limitation defence is incorrect.
64. In light of my findings that the gas line’s initial installation was properly authorized by the strata under the bylaws, was common property of the strata, and that the remediation of the common property building exterior made it necessary to move

and relocate the gas line, I find that it was the strata's responsibility to pay for the gas line relocation cost. Since the strata did pay that cost, I dismiss the applicant's dispute.

65. Turning to the counterclaim, I do not find that a  $\frac{3}{4}$  vote resolution to amend common property was needed for the gas line installation. The bylaws do not require such a resolution. If the strata wants to require a  $\frac{3}{4}$  vote resolution for any alterations to the common property, or to require a written indemnity or assumption agreement as a condition of approving alterations to strata lots and/or common property, it can do so by amending its bylaws.
66. To the extent the applicant suggests the initial gas line installation was a significant change in appearance of common property under section 71 of the SPA, thus requiring a  $\frac{3}{4}$  vote resolution, I have found no evidence before me to suggest the alteration was significant.
67. Further, it was up to strata at the time to determine if the proposed alteration was captured by section 71. The strata council considered the proposed alteration, and issued written authorization to the owner to proceed. I therefore find that the strata council considered the alteration and determined it was not significant. If the strata now takes the view that further renovation applications need to be approved by vote of the owners, rather than through the powers of the strata council, it may alter its bylaws accordingly.
68. I therefore find that the strata has failed to prove its claim.
69. I dismiss the counterclaim against Mr. Thompson and Ms. Easton.
70. Under section 189.4 of the SPA, an owner who brings a tribunal claim against a 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. With respect to Mr. Thompson's claim against the strata, I order the strata to ensure that no expenses incurred by the strata in defending his claims are allocated to Mr. Thompson.

71. 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. Given that the applicant did not succeed in this claim, but that the strata also failed in its counterclaim, Mr. Thompson and the strata will bear their own tribunal fees.
  
72. 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.

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Julie K. Gibson, Tribunal Member