



Civil Resolution Tribunal

Date Issued: July 25, 2018

File: ST-2017-003879

Type: Strata

Civil Resolution Tribunal

Indexed as: *Lo v. The Owners, Strata Plan VR 2100*, 2018 BCCRT 366

B E T W E E N :

Pak Kin Lo

APPLICANT

A N D :

The Owners, Strata Plan VR 2100

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Graeme Nunn

INTRODUCTION

1. The applicant, Pak Kin Lo (owner), owns strata lot 54 in the respondent strata corporation, The Owners, Strata Plan VR 2100 (strata).
2. The owner says the strata is incorrectly using operating funds and therefore not complying with the *Strata Property Act* (SPA). The owner wants the strata to

comply with the SPA. The owner also wants the strata to issue him an apology and pay his tribunal fees.

3. The strata says it is using operating funds correctly and complying with the SPA. The strata seeks dismissal of the owner's claims.
4. The owner is self-represented. The strata is represented by a strata council representative.
5. For the reasons that follow I dismiss the owner's claim.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.
8. 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.
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. Did the strata fail to comply with the SPA with its use of the 2017 operating fund surplus?
 - b. Should the strata issue the owner an apology?
 - c. Should the strata pay the owner's tribunal fees?

BACKGROUND AND EVIDENCE

11. I have read all of the evidence provided but refer only to evidence I find relevant to provide context for my decision.
12. On April 25, 2017 the strata's representative provided a notice of the Annual General Meeting for the Owners Strata Plan VR2100, to be held on May 17, 2017. That package included a $\frac{3}{4}$ vote resolution that the strata use the prior year's operating fund surplus for the following repairs to the strata property (repairs):
 - (a) Replacement of a few fire doors in the elevator lobby and storage rooms. Rekeying of all doors to using fob only. Replace some door handles to conform to fire code. \$10,000.00.
 - (b) Above grade (podium) membrane assessment (as per RDH Depreciation report) \$11,500.00.
 - (c) Post tension cable recesses and inspection (as per RDH Depreciation report) \$41,500.00.
 - (d) Replace baldor vector drives (as per RDH depreciation report) - Fujitec to confirm need \$40,000.00.
 - (e) Repair/Replace of pumps, valves and some copper piping in pump room. Assess make-up air units and exhaust fans in parkade. \$30,000.00.

- (f) Parkade floor membrane (from garage entrance to end of driveway on P1, before turning) to reduce water and salt seeping into rebar. \$30,000.00.
 - (g) Put in additional drains around landscape. Epoxy inject cracks in ceiling of P1. Repair exposed concrete wall in carwash area. \$25,000.00.
13. The $\frac{3}{4}$ vote resolution passed at the strata's annual general meeting on May 17, 2017.
 14. By letter dated May 23, 2017, the owner provided information to the strata regarding concerns he had with the strata financial management and financial reports. In particular, the owner was concerned that the allocation of the operating surplus to the repairs violated sections 92, 97 and 105 of the SPA.
 15. On June 7, 2017, the agent for the strata provided a response to the owner regarding the concerns raised by the owner. In that letter the strata stated their position was that they were in compliance with the SPA.
 16. On June 21, 2017, the strata's representative emailed the owner regarding his concern about accounting practices, and attached the strata's response dated June 7, 2017.
 17. In December 2017, the parties exchanged further email but their positions did not change.

POSITION OF THE PARTIES

18. The owner says that the strata is not in compliance with the SPA. In particular, the owner says that the allocation of the operating fund surplus to the repairs violated sections 92, 97 and 105 of the SPA.
19. The owner requests that I order the strata comply with the SPA, issue him an apology and pay his tribunal fees.

20. The strata argues that they are in compliance with the SPA. In particular they say that section 105 allows the strata broad spending discretion and that allocation of operating surpluses to the repairs was allowed by the SPA.
21. The strata requests that I dismiss the owner's claim.

ANALYSIS

Did the strata fail to comply with the SPA with its use of the 2017 operating fund surplus?

22. Under section 92 of the SPA, the strata must establish, and strata owners must contribute through strata fees, to an operating fund and a contingency reserve fund (CRF). The operating fund is to be used for common expenses that usually occur either once a year, or more often than once a year, or are necessary to obtain a depreciation report under section 94 of the SPA. The reference to section 94 does not apply here.
23. Under section 96 of the SPA, the strata must not spend money from the CRF unless the expenditure usually occurs less often than once a year, does not usually occur, is authorized by a $\frac{3}{4}$ vote at a general meeting or is authorized under section 98 of the SPA as an unapproved expenditure.
24. Under section 97 of the SPA, the strata must not spend money from the operating fund unless the expenditure usually occurs once a year or more often than once a year **and** is first approved by a $\frac{3}{4}$ vote at a general meeting.
25. Exceptions to the foregoing unapproved expenditures include situations where there are reasonable grounds to believe that immediate expenditure is necessary to ensure safety or prevent significant loss or damage. These exceptions do not apply here.
26. Under section 105 of the SPA, any operating fund surpluses must be dealt with as follows: 1) transferred into the contingency reserve fund; 2) carried forward as part of the operating fund, as a surplus; or 3) used to reduce the total contribution to the

next fiscal year's operating fund. A strata may use the surplus for uses not prescribed in the section by a resolution passed by a 3/4 vote at an annual or special general meeting.

27. The heart of this dispute lies in interpretation of the SPA. It is a general rule of statutory interpretation that the specific overrules the general or the specific is preferred over the general.
28. In this case, there is an important distinction to be made between the operating fund budget and operating fund surplus. Section 92 of the SPA requires operating fund expenditures to be made on items that usually occur not less than once per year. While there was no specific evidence on this point, I find that it is more likely than not that the proposed repairs were required less than once per year. As such, section 97 of the SPA required that those repairs come from the CRF as opposed to the operating fund. Section 105 requires the strata to transfer any operating surplus to the CRF or to carry it forward in the operating fund. However, section 105 also allows the strata to deviate from the prescribed allocation of the operating surplus if a ¾ vote resolution is passed at an annual or special general meeting. There is no limitation in section 105 that requires the operating surplus allocation to comply with section 97 of the SPA if the ¾ vote is passed. The general wording of section 97 relating to the use of the operating funds should not limit the specific wording of section 105 in relation to the use of the operating surplus. I find that section 105 of the SPA allows the strata to use the operating surplus for expenditures outside of the purview of section 97.
29. I find that the allocation of the surplus to the repairs at the May 17, 2017 general meeting was authorized by the SPA and that the strata was in compliance with the SPA.

Should the strata issue the owner an apology?

30. I have found that the strata was in compliance with the SPA. Further, apologies are generally voluntary and ordering a forced apology would serve no purpose. I decline to order the strata apologize to the owner.

Should the strata pay the owner's tribunal fees?

31. 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. The owner was not successful and I decline to order the strata pay his tribunal fees.

DECISION AND ORDERS

32. I order that the owner's claim is dismissed.
33. 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. I order the respondent to ensure that no expenses incurred by the strata in defending this claim, are allocated to the owner.

Graeme Nunn, Tribunal Member