



# Civil Resolution Tribunal

Date Issued: September 7, 2018

File: ST-2017-005391

Type: Strata

Civil Resolution Tribunal

Indexed as: *Thompson v. The Owners, Strata VR 942*, 2018 BCCRT 497

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

Anthony Thompson

**APPLICANT**

**A N D :**

The Owners, Strata VR 942

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Salima Samnani

## **INTRODUCTION**

1. The applicant, Anthony Thompson (owner), owns strata lot 4 in the strata. The respondent, The Owners, Strata VR 942 (strata), is a strata corporation existing under the *Strata Property Act* (SPA).

2. This dispute involves the collection of a number of bylaw fines, interest, and special levies which the applicant says are not owed due to the expiry of the 2–year limitation period. The owner is self-represented and the strata is represented by an authorized strata council member.

## **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. 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.

## **ISSUE**

7. The issue in this dispute is whether the tribunal can prospectively find that the strata is statute barred by the Limitation Act (LA) from bringing a claim against the owner for unpaid fines, interest, fees and chargebacks?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

8. I have read all of the submissions and evidence provided, but refer only to information I find relevant to provide context for my decision.
9. In a civil proceeding such as this, the owner must prove their claim on a balance of probabilities.
10. During 2013 and 2014 the strata issued a number of fees, fines, chargebacks and special levies against the owner. The owner did not pay the amounts owing and interest was calculated on the some of the outstanding amounts. In January 2015, a ledger was provided to the owner totalling the amount owed at \$2,650.43. The owner is arguing that he no longer has to pay any of the outstanding amount because the limitation period has expired for the strata to make a claim against the owner.

### ***Limitation Period***

11. Section 13 of the Act states that the LA applies to the tribunal as if it were a court. It also says reference to a claim in the LA is deemed to include a claim under the Act. The LA defines a “claim” as “a claim to remedy an injury, loss, or damage that occurred as a result of an act or omission”. The 2 year limitation period applies only to claims as defined.
12. The owner provided copies of invoices, demand letters and a ledger relating to the special levies, fines and interest. The owner is asking the tribunal to determine whether these outstanding amounts are uncollectable based on the LA. The tribunal is being asked to determine the limitation period based strictly on the date of the invoices. The tribunal has not been provided with any evidence as to how the total amount outstanding was calculated.
13. In this dispute, the strata has not made any claims or counterclaims for injury, loss or damage. The strata says that the charges made against the applicant are valid. Although evidence supporting some of the charges was provided, there is limited

evidence on the attempts that were made to collect the outstanding amount and how the amount breaks down.

14. The owner is bringing this dispute and its claims contained herein. As such, the owner is asking the tribunal to make a finding that if the strata were to file a dispute against the owner, the LA would bar the claims in the dispute. The tribunal cannot make this finding. The tribunal cannot anticipate the claims of the strata, if any, and what, if any limitation period, or extension on a limitation period would apply.
15. The owner says that some of the fines do not comply with the bylaws. This claim was not made in the dispute notice, as such the strata has not had opportunity to respond to this claim. The tribunal cannot make a decision unless a claim has been made.

### ***Fines***

16. Although I am not making a finding on the limitation period of the fines, I will note that the Supreme Court of British Columbia has confirmed that a claim to enforce a bylaw fine under the SPA is not caught by the LA because a claim under the LA does not include a penalty, which is what a bylaw fine is. (See *The Owners, Strata Plan KAS 3549 v. 0738039 B.C. Ltd.*, 2015 BCSC 2273, affirmed in 2016 BCCA 370.).

## **DECISION AND ORDERS**

17. I dismiss all of the applicant's claims.
18. 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 strata is the successful party but has not paid any fees or claimed any dispute related expenses. 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 respondent in defending this claim are allocated to the applicant owner.

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Salima Samnani, Tribunal Member