



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *VPSS Holdings Corp. v. The Owners, Strata Plan LMS 1669*,
2018 BCCRT 804

B E T W E E N :

VPSS Holdings Corp.

APPLICANT

A N D :

The Owners, Strata Plan LMS 1669

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Michael J. Kleisinger

INTRODUCTION

1. The applicant VPSS Holdings Corp. (VPSS) owns 3 commercial strata lots within the respondent strata corporation, The Owners, Strata Plan LMS 1669 (LMS1669). VPSS claims that it overpaid its share of the strata fees in 2016 and seeks return of the overpayment.

2. As detailed below, I find that VPSS has overpaid its share of strata fees and LMS 1669 must return the amount it overcharged.
3. The company's principal represents VPSS and a council member represents LMS1669.

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. I decided to hear this dispute through written submissions, because I found that there were no significant issues of credibility or other reasons that might have required 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 order a party to do or stop doing something, order a party to pay money, and order any other terms or conditions the tribunal considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. Did LMS 1669 overcharge VPSS for strata fees in 2016? If so, should VPSS recover the amount overcharged?

- b. Should VPSS be excluded from contributing to the amount it may recover in this dispute?
- c. Should the tribunal relieve other commercial strata lot owners in LMS 1669 from contributing to the amount that VPSS may recover in this dispute?
- d. Should VPSS be excluded from contributing to potential payments made to other commercial strata lot owners for their overpayment of strata fees?
- e. Should the tribunal make any order with respect to the proposed 2018 budget?

BACKGROUND AND EVIDENCE

- 9. LMS 1669 is comprised of 15 commercial strata lots and 25 residential strata lots. LMS 1669 has not passed any bylaws to create different 'types' of strata lots or 'sections' as permitted under the *Strata Property Act* (SPA).
- 10. VPSS owns 3 of the commercial strata lots. It purchased strata lot 10 in April 2016, strata lot 5 in September 2016, and strata lot 12 in July 2017. Strata lot 12 is not the subject of this dispute.
- 11. The total unit entitlement of LMS 1669 is 35,442. The unit entitlement for strata lots 5 and 10 are 348 and 535, respectively.
- 12. For many years, LMS 1669 has not charged strata fees based on each strata lot's unit entitlement. Rather, LMS 1669 has approved budgets at annual and special general meetings that allocated strata fees on a different calculation. LMS 1669 says it uses this different calculation to address the inequitable distribution of various costs between the commercial and residential strata lots.
- 13. LMS 1669 has not filed any resolutions with the land title registry to alter the strata fee calculation as the SPA requires.

14. In 2016, VPSS paid \$338.80 per month for strata lot 5 and \$556.12 per month for strata lot 10. VPSS claims that it overpaid strata fees in 2016 for strata lots 5 and 10 and seeks recovery of the overpayment.
15. VPSS says that LMS 1669 used the correct strata fee calculations in 2017. However, in March 2018, LMS 1669 held a special general meeting at which time it purported to pass a new budget. The budget included reference to “operational costs” which were to be charged to the commercial strata lots in addition to their unit entitlement calculation.
16. The propriety of the March 2018 meeting is in question. VPSS says that it was illegitimate given that it did not meet certain statutory requirements, including notice requirements. For its part, LMS 1669 says that the initial 2018 budget was incorrect and required recalculations. It is unclear from the evidence whether the budget has, in fact, been passed and, if so, in what form.
17. In 2014 and again in December 2017, LMS 1669 received 2 legal opinions. Both opinions suggested that LMS 1669’s strata fee calculations were contrary to the SPA. According to the evidence, LMS 1669 previously repaid an owner of commercial strata lots for charging strata fees in excess of the unit entitlement calculation.

POSITION OF THE PARTIES

18. VPSS says that LMS 1669 was only permitted to charge strata fees in accordance with its unit entitlement. It says LMS 1669 overcharged strata lots 5 and 10 a total of \$1,988.21 in 2016. It also says that it should not contribute to any amount returned to it, nor should any of the other commercial owners because LMS 1669 also overcharged them. VPSS also asks that it be relieved from contributing to any future claims that other commercial owners bring for excessive strata fee charges.
19. LMS 1669 says that the residential owners pay more than they should for various services that mainly benefit the commercial units, including increased water/sewage

fees, hydro rates and insurance. LMS 1669 says that the commercial owners should pay their fair share of the total costs to LMS 1669.

ANALYSIS

Did LMS 1669 overcharge VPSS for strata fees in 2016? If so, should VPSS recover the amount overcharged?

20. Under section 91 of the SPA, LMS 1669 is responsible for the common expenses. Under section 99, the owners must contribute their strata lots' shares of the total contributions budgeted for the operating fund and contingency reserve fund by means of strata fees calculated in accordance with their unit entitlement.
21. Under section 100 of the SPA, LMS 1669 has the ability to change the basis for calculation of strata fees. The changes must be approved by a unanimous vote at an annual or special general meeting. Changes do not take effect until the resolution is filed in the land title office.
22. According to the evidence, LMS 1669 has not filed a unanimous resolution with the land title office allowing it to change the calculation of contributions. Further, LMS 1669 has not passed bylaws designating different types of strata lots or separate sections, which would enable it to assign specific common costs to one type or section. As such, the SPA requires that LMS 1669 only charge strata lot owners strata fees in proportion to their strata lots' unit entitlement. To do otherwise is contrary to section 99 of the SPA.
23. I find that LMS 1669's strata fee calculations for VPSS's units in 2016 were contrary to the SPA. I find LMS 1669 was not entitled to the strata fees collected beyond those calculated on the basis of unit entitlement for VPSS's strata lots. I find LMS 1669 must return the amount it overcharged VPSS.
24. Based on the unit entitlement and the total strata fees collected, I find that VPSS was required to pay monthly strata fee payments of \$233.45 for strata lot 5, and \$358.90 for strata lot 10. VPSS actually paid \$338.80 per month for strata lot 5 and \$556.12 per month for strata lot 10.

25. From the purchase of the strata lot 5 in April to the end of December 2016, I find that VPSS overpaid a total of \$1,619.48 in strata fees. I also find that VPSS overpaid a total amount of \$368.73 for strata lot 10 from mid-September to the end of December 2016. I find VPSS's total overpayment of strata fees in 2016 to be \$1,988.21.
26. LMS 1669 says that VPSS accepted the strata fee schedules when it purchased its strata lots and should be obliged to pay the amounts as designated. I do not agree. I find that LMS 1669 cannot rely on the improperly imposed strata fee schedules. LMS 1669 is responsible to calculate strata fees in a manner that is compliant with the SPA. It has not. It is also no answer that LMS 1669 approved budgets that contravened the SPA. Approving an improper budget does not make the budget proper.
27. LMS 1669 says that a strata fee structure based solely on unit entitlement is unfair to the residential owners. It says that the commercial lots use more utilities and other services than the residential owners and should pay for the disparity. VPSS takes the opposite view and says that the commercial owners have subsidized the residential owners' use of common utilities and services for several years.
28. On the facts presented, the tribunal is not able to determine which side suffers more than the other. Clearly, the situation is untenable. LMS 1669 will need to take the appropriate steps to address these competing complaints, which may include obtaining legal advice. Unless and until those steps are taken, LMS 1669 must observe the mandatory language of section 99 of the SPA.

Should VPSS be excluded from contributing to the amount it may recover in this dispute?

29. Under sections 166 and 189.4(a) of the SPA, a judgment or tribunal order against the strata corporation is a judgment or tribunal order against all owners. Under sections 169(2) and 189.4(c), an owner who obtains payment from a strata corporation in full or partial satisfaction of the owner's claim against the strata corporation, whether under a judgment or tribunal order or neither, is not liable to

share in the cost of the payment with the other owners. As such, and further to sections 169(2) and 189.4(c), I order that VPSS will not contribute to the amount it will recover in this dispute.

Should the tribunal relieve the other commercial owners in LMS 1669 from contributing to the amount VPSS may recover in this dispute?

30. LMS 1669 correctly points out that the other commercial owners are not individual parties to this dispute. With respect to this dispute, the other commercial owners are on the same footing as the residential owners in LMS 1669. There is no provision in the SPA akin to section 169(2) which would authorize the tribunal to relieve the other owners in LMS 1669 (commercial or otherwise) from contributing their proportional share to VPSS's award. I find it would be inappropriate to make such an order and decline to do so.

Should VPSS be excluded from contributing to potential payments made to other commercial owners for their overpayment of strata fees?

31. For the same reasons that I decline to relieve the other commercial owners from contributing to VPSS's claim, I decline to relieve VPSS from contributing to any prospective claim that other owners may bring in the future.

32. Generally, the tribunal will avoid making orders about speculative claims that may or may not be brought in the future. Whether other owners are entitled to repayment of their strata fees is not before me. I make no such findings. Further, I find there is no mechanism in the SPA or the Act that would permit me to grant the order that VPSS seeks. I decline to do so.

Should the tribunal make any order with respect to the proposed 2018 budget?

33. As discussed above, the law prohibits LMS 1669 from altering the strata fee contribution calculation unless it follows the specific procedures found in the SPA and the regulations. It has not done so. As I have found above, to the extent LMS

1669 has attempted to alter the strata fee contributions in 2018 from being based solely on unit entitlement, those attempts are invalid.

34. The evidence is unclear as to what, specifically, the owners passed or did not pass at the special general meeting in March 2018. There is evidence from both parties that LMS 1669 was in the midst of altering the budget at the time this dispute was filed. What has transpired since is not before me. As such, I find that I do not have the facts necessary to order LMS 1669 to do something or to stop doing something with respect to the proposed 2018 budget. That said, I note that the proposed 2018 budget that was in evidence suffered from the same shortcomings as that of the 2016 budget. Specifically, the budget purported to charge strata fees in a manner not based on unit entitlement as the SPA requires. While I decline to make any order with respect to this specific claim, LMS 1669 may wish to re-evaluate the manner in which it calculates strata fees.
35. Council has attempted to balance the conflicting needs of the commercial and residential owners - both of which believe they bear a disproportionate burden of LMS 1669's common expenses. Moving forward, LMS 1669, as a community, will need to find a legally appropriate manner to adjust strata fee contributions as fairly and equitably as possible.

TRIBUNAL FEES AND EXPENSES

36. 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 paid. As VPSS was successful in this dispute, I order LMS 1669 to pay VPSS \$225 for its tribunal fees.
37. As described above, LMS 1669 must comply with the provisions in section 189.4 of the SPA. Specifically, LMS 1669 must not make VPSS contribute to payments under this decision or any of LMS 1669's dispute-related expenses.
38. The *Court Order Interest Act* (COIA) applies to the tribunal. I find the applicant is entitled to pre-judgement interest on each overpayment from the date of each of the

overpayments to the date of this decision. I calculate pre-judgement interest to be \$33.94.

DECISION AND ORDERS

39. I order that:

- a. Within 30 days of this decision, LMS 1669 must pay to VPSS a total of \$2,247.15, comprised of the following:
 - i. \$1,988.21 representing VPSS's strata fee overpayment;
 - ii. \$33.94 in prejudgment interest under the COIA; and
 - iii. \$225.00 representing VPSS tribunal fees.
- b. VPSS is also entitled to post judgement interest under COIA.
- c. VPSS will not contribute to the payments required in paragraph 39(a) and (b).
- d. VPSS will not contribute to any dispute-related expenses that LMS 1669 incurred in this dispute.

40. I dismiss the remaining claims of VPSS.

41. 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.

42. 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.

Michael J. Kleisinger, Tribunal Member