



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Cheung v. Commercial Section of The Owners, Strata Plan BCS 2313*,
2018 BCCRT 83

B E T W E E N :

Andrew Cheung

APPLICANT

A N D :

Commercial Section of The Owners, Strata Plan BCS 2313

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Volk

INTRODUCTION

1. The applicant, Andrew Cheung (owner), owns 2 commercial strata lots (SL468 and SL469) in a strata corporation known as The Owners, Strata Plan BCS 2313

(strata). The strata corporation has created sections and SL468 and SL469 are in the respondent section of the strata corporation, Commercial Section of The Owners, Strata Plan BCS 2313 (commercial section). This dispute is about alleged outstanding strata fees for each strata lot of \$637.60, for a total of \$1,275.20.

2. The owner is self-represented. The commercial section is represented by an authorized member of the commercial executive.
3. For the reasons that follow, I find the owner is entitled to a refund of fees paid.

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 121 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 relationships between parties that may 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 123 of the Act and the tribunal rules, in resolving this dispute the tribunal may make order a party to do or to stop doing something, order a party to pay money, order any other terms or conditions the tribunal considers appropriate.

8. Under section 61 of the Act, the tribunal may make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the tribunal in accordance with its mandate. In particular, the tribunal may make such an order on its own initiative, on request by a party, or on recommendation by a case manager (also known as a tribunal facilitator).
9. Tribunal documents incorrectly show the name of the respondent as Strata Corporation Commercial Section of Strata Plan BCS 2313, whereas, under section 193(4) of the *Strata Property Act* (SPA), when a bylaw creating a section is filed at in the appropriate Land Title Office, the section is created bearing the name “Section [number of section] of [name of strata corporation]”. Here, the bylaws creating the respondent section did not specify a section number, as set out in the SPA, but rather created the “Commercial Section” consisting of all commercial strata lots. I note this only to bring it to the attention of the section and to explain why the section’s name appears at it does in the style of cause above, which I have amend using my discretion under section 61 of the Act. Any issues relating to the legal name of the section are not before me and I express no opinion as to the enforceability of matters relating to the section as it is currently named.

ISSUES

10. The issue in this dispute is whether the owner owes the commercial section \$1,275.20 in outstanding fees.

BACKGROUND AND EVIDENCE

11. I have reviewed all submissions and evidence provided. I refer only to the relevant evidence and submissions necessary to give context to my decision.
12. The strata is a mixed residential and commercial strata corporation with three multi-level buildings in Vancouver, B.C. The owner’s strata lots are part of the commercial section.

13. The relevant bylaws of the strata that were in effect at all material times were:
 - a. Division 1 creating 2 separate sections; the residential section and the commercial section,
 - b. Bylaw 2.1.1 requiring each owner to pay strata fees by the first day of each month,
 - c. Bylaw 3.2.1 requiring the strata to collect all fees for common expenses,
 - d. Bylaw 4.2.1 requiring each section to collect all fees for section common expenses and pay them to the strata,
 - e. Bylaw 12.1.4 dividing common expenses into commercial strata fees and strata corporation fees, and
 - f. Bylaw 12.1.9 requiring the annual budget, which begins on the day after the annual general meeting (AGM), to set out the amount of the monthly strata corporation strata fees.
14. The commercial section says the strata corporation' strata fees for the commercial strata lots are divided into a commercial maintenance fee and a joint maintenance fee. I infer by "commercial maintenance fee" the section means commercial section strata fees and by "joint maintenance fee" the section means strata corporation strata fee.
15. For the first half of 2017, the property manager for the commercial section (commercial section manager) collected the strata corporation's strata fees owed by commercial strata lots and paid the strata corporation strata fee to the property manager for the strata corporation (strata corporation manager).
16. The owner's documents show that in December 2016, the strata corporation manager applied a "catch-up fee" of \$47.30 to each of the owner's accounts for strata corporation strata fees. I infer that the fee was the result of an increase made in the monthly strata corporation strata fees which the strata corporation applied retroactively to August 1, 2016. The property manager for the commercial section

says the fees did not change in 2016 but, given the evidence, I find that the commercial strata fees remained the same and the strata corporation strata fees increased.

17. The retroactive fee created a negative balance in each of the owner's accounts. That negative balance increased by \$9.46 in each account when the owner paid the strata corporation strata fee in January 2017 without accounting for the fee increase.
18. Neither party made submissions about the amount of monthly strata fees for 2017. In a letter to the property manager for the commercial properties the owner says that the total strata fees as of January 2017 were \$273.26 per month, broken down as \$113.86 for commercial strata fees and \$159.40 for strata corporation strata fees. This is consistent with the fees invoiced by the property manager for the commercial section. The strata did not make submissions or present evidence disputing the owner's evidence and so I accept it.
19. In February 2017 the commercial section manager resigned. The owner says that there was no one to pay the strata corporation strata fees to until notice was provided of a new commercial section manager. The strata says that the resignation did not take effect until the end of February 2017 and that a new property manager began in March 2017. I do not find anything turns on this issue.
20. On March 22, 2017 the strata corporation manager notified the owner that he owed the negative balance left from January 2017 as well as the strata corporation strata fees for February and March totaling \$375.56 for each of the strata lots. On April 4, 2017 the owner paid the \$375.56 owing as well as \$159.40 in strata corporation strata fees for each strata lot for April 2017. Those payments brought the balance of each of the owner's strata lot accounts to zero.
21. On April 25, 2017 the new commercial section manager told the owner that they would be collecting all future commercial strata fees and strata corporation fees.

22. In July 2017 the commercial section manager invoiced the owner for \$1,093.04 for each strata lot for the period January 2017 to April 2017. The owner told the property manager that he had already paid the strata corporation strata fee to the strata corporation property manager. The owner argued that he only owed the commercial strata fees amounting to \$455.44 for each strata lot and enclosed that payment. The parties continued to disagree and the owner requested a hearing, which was not provided.
23. On April 11, 2018 the strata corporation manager confirmed to the commercial section manager that the owner paid the strata corporation strata fees up to April 2017. At that same time the strata corporation manager also confirmed that the commercial section manager had paid duplicate strata corporation strata fees in March and April 2017.
24. However, the strata corporation manager told the commercial section manager that the owner had not paid his strata corporation strata fees for September 2017 and October 2017 and that they applied the overpayment to offset those fees. In response, the commercial section manager advised the owner that there was an overpayment but that it was only 2 months and was applied to the September 2017 and October 2017 strata corporation strata fee arrears.

POSITION OF THE PARTIES

25. The owner asks for an order that the strata stop billing the owner for the alleged overdue strata corporation strata fees from January 2017 to April 2017 for both strata lots totaling \$1,275.20. The owner says that he paid the fees directly to the property manager for the residential section, as they requested. The owner also asks for reimbursement for the \$225 tribunal fees.
26. The strata says that the owner incorrectly paid his commercial strata fees and his strata corporation strata fees to the property manager for the residential section. Because the owner was in arrears, the strata says that the property manager for the

residential section chose to apply the payment to the arrears and did not reimburse the fees to the commercial section.

ANALYSIS

27. In a civil claim such as this, the owner bears the burden of proof, on a balance of probabilities.
28. Section 99 of the SPA requires owners to contribute to the strata their share of the strata's operating budget and contingency reserve fund. A strata corporation may pass a bylaw setting out a schedule for paying strata fees, which the strata did by establishing monthly payment of strata fees in bylaw 2.1.1.
29. On the evidence, I am satisfied that the owner paid strata corporation strata fees for 4 months from January 2017 to April 2017. While the owner paid the fees to the strata corporation manager rather than the commercial section manager, I find that this error was reasonable given the demand from the strata corporation manager. In any event, the strata always intended the strata corporation manager to receive the strata corporation strata fees.
30. Since the owner paid the strata corporation strata fees from January 2017 to April 2017, I find the property manager for the commercial section is not entitled to seek recovery of those fees. The fees were paid to the strata and are not outstanding.
31. Although the property manager for the commercial section did not file a counterclaim, the tribunal has a mandate to recognize the existence of ongoing relationships and to provide speedy, efficient and proportional dispute resolution. Given these mandates, I considered the property manager for the commercial section's position that outstanding strata corporation catch-up fees were owing in January 2017 which the owner's payment was put towards.
32. I find the strata did not have authority to charge a catch-up fee. Each owner's monthly assessment fee is set in the budget, which allocates common expenses between the sections, as required by bylaw 12.1.9. The property manager for the

commercial section says the 2016 budget was approved on September 16. However, bylaw 12.1.9 sets the start date for the budget as the date of the AGM. In 2016, the AGM was held on December 15. No evidence was presented showing the strata had authority to apply an increase to the monthly assessment retroactively to August 1, 2016. I find the owner was not responsible for the increased fees until January 1, 2017.

33. Additionally, although the strata advised the owner that an excess payment was applied to arrears for strata corporation fees from September 2017 and October 2017, I find that the owner paid those strata corporation fees. The statement of fees of the property manager for the commercial section shows that the owner paid \$273.26 for each of September 2017 and October 2017 for each of the units. As set out above, I accepted that this was the total for the strata corporation fees and commercial strata fees for those months. Those fees exclude the 2017 catch-up fee, which the strata incorrectly applied for September and October 2017 also.
34. The owner submitting the full payment to the property manager for the commercial section is consistent with the letter received from that section manager in April 2017 as well as the strata's notice to all owners following the October 25, 2017 AGM. Specifically, following the AGM the strata advised that the strata corporation fees, which had been included in the commercial strata fees and were paid to the property manager for the commercial section who then disbursed them to the property manager for the residential section, would now be paid directly to the property manager for the residential section.
35. Further, the strata advised that this requirement would be retroactive to August 1, 2017. Although the strata applied the requirement retroactively the owner's had, in accordance with the bylaws, already paid their strata corporation fees for September 2017 and October 2017. And, they had paid them to the property manager for the commercial section as required before October 25, 2017.
36. If the records for the commercial strata fees and the strata corporation fees between January 1, 2017 and October 31, 2017 are examined together, the owner paid a

total of \$2,779.90 for each strata lot. During this time the owner needed to pay \$2,732.60 for each strata lot. The overpayment by the owner totals \$47.30 for each strata lot.

37. Given the above, I find the commercial section owes the owner \$47.30 for each strata lot.

TRIBUNAL FEES AND EXPENSES

38. Under section 49 of the Act, and tribunal rules, the tribunal will order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason not to follow that general rule in this case and award reimbursement of \$225.00 in tribunal fees, as claimed. The owner did not claim dispute-related expenses.

39. The commercial section must comply with the provisions in section 189.4 of the SPA, including not charging dispute-related expenses against the owner.

DECISION AND ORDERS

40. I order that within 14 days of the date of this order the commercial section:
- a. Reverse any recorded overdue strata corporation strata fees for the period from August 2016 up to and including October 2017 for each strata lot,
 - b. Pay to the owner \$321.44 broken down as follows:
 - i. \$94.60 for overpayment of strata corporation strata fees for the two strata lots,
 - ii. \$1.84 in prejudgment interest under the *Court Order Interest Act* (COIA) for overpayment of strata fees from April 4, 2017 to the date of this decision, and
 - iii. \$225 for tribunal fees.
41. The owner is entitled to post-judgment interest under the COIA, as applicable.

42. 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.
43. 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.

Megan Volk, Tribunal Member