



# Civil Resolution Tribunal

Date Issued: February 27, 2019

File: ST-2018-003594

Type: Strata

Civil Resolution Tribunal

Indexed as: *Malm v. The Owners, Strata Plan NW 2588* 2019 BCCRT 234

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

Justin Malm

**APPLICANT**

**A N D :**

The Owners, Strata Plan NW 2588

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Julie K. Gibson

## **INTRODUCTION**

1. The applicant, Justin Malm co-owns strata lot 20 (SL20), which is unit 20 in the respondent The Owners, Strata Plan NW 2588 (strata). The applicant says that he did a complete repiping of his townhouse, at his cost and with strata approval, in 2015. In March 2018, the strata passed a special levy approving re-piping for all 45

units, including SL20. The applicant says he should be exempted from his \$10,702.49 portion of the special levy, because he replaced “his” pipes recently.

2. The strata says the applicant cannot be exempted from this special levy on the basis that they volunteered to pay for re-piping, that would otherwise have been a common expense. It asks that the dispute be dismissed.
3. The applicant is self-represented. The strata is represented by strata council member.

## **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 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 123 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**

8. The issue in this dispute is whether the applicant is required to pay a special levy to re-pipe common property plumbing in the strata, where he had piping associated with his strata lot re-piped at his own cost a few years earlier.

## **BACKGROUND AND EVIDENCE**

9. Based on the evidence, I find the following facts.
10. On June 2, 2015, the strata passed a special levy to replace hot and cold water piping in 17 of the 45 units. The owners of SL20 at the time paid \$1,091.65 under that special levy.
11. In September 2015, the applicant and his co-owner took possession of SL20. They renovated the unit. Their renovation coincided with the plumbing contractor's work arising from the June 2015 special levy. Based on the applicant's evidence, I find that the contractor completed the June 2015 special levy work on SL20 at the beginning of the applicant's renovation.
12. As part of their renovation, the applicant sought to replace the poly B piping servicing it. The applicant says they were motivated to reduce the risks of failure of the piping and completed this work at their own expense. I find that the applicant was motivated to complete the work, at that time, by the desire to preserve the renovation work from plumbing failure.
13. They asked the property manager if the strata would fund the additional, more extensive, plumbing work. The property manager said the strata would not fund the work at that time. He wrote:

This is not something the strata could do at this time, if you want to have your plumbers do this you may but I cannot promise any reimbursement from the strata at this time. As you are doing a large renovation it may be in your best interest to get this done as all of the work inside would be a (sic) considered a

betterment and is not covered under the strata insurance if there is a leak. If your plumbers could let me know a cost I could let the council know.

14. On October 5, 2015, the property manager wrote to the applicant, on behalf of the strata, approving the applicant's request to re-pipe their unit. There was no commitment by the strata to pay for any of the re-piping expense.
15. The work was completed, under permit with the City of Richmond, and passed inspection.
16. At the time, the applicant was not asked to sign an indemnity agreement relating to the 2015 re-piping but says he would have done so upon the strata's request. His co-owner signed an assumption of liability agreement including a form of indemnity clause relating to the 2015 re-piping on September 9, 2015.
17. On January 31, 2018, strata council met and reported, in their minutes, that a specific contract was being considered to complete re-piping of the 1 and 3 story units and phase 2 of the 2 storey units. The minutes specify that a special levy would be required to fund the project. The minutes say that the owners will vote on the appropriate resolution at the March 7, 2018 annual general meeting (AGM), and that an AGM package would be distributed.
18. On February 15, 2018, the applicant received the AGM package which included resolutions about re-piping.
19. On March 7, 2018, the owners passed a  $\frac{3}{4}$  vote resolution to replace completely both the hot and cold common property piping in all units. The owners approved a \$500,000 special levy, assessed against all strata lots in proportion to their unit entitlement, to fund this work. The special levy was made payable in six instalments. The applicant did not attend the AGM.
20. On March 19, 2018, the applicant wrote to the property manager to say that they had done a complete re-piping of SL20 in 2015. The applicant said it was his assumption that either the amount paid for 2015 re-piping would be deducted from his 2018 special levy assessment, or whatever cost was associated with a 2-level

unit would be deducted from his assessment, since no work needed to be done on his unit.

21. On April 1, 2018, the first instalment of the March 2018 special levy was due. The applicant did not pay it, as he was expecting to hear back from the strata. The applicant failed to pay a few instalments, but eventually paid the instalments that had come due to the strata into trust under section 114 of the SPA, pending the resolution of this dispute.
22. On April 12, 2018, the applicant received a copy of the strata council minutes. The council decided that no owners would be permitted to opt-out of the re-piping project.
23. On May 1, 2018, the applicant emailed the property manager requesting a strata council hearing.
24. On May 22, 2018, the applicant appeared before strata council.
25. On June 6, 2018, strata counsel wrote to the applicant explaining the strata's position that the special levy was valid and that the applicant was obliged to pay it, even though he had upgraded the piping in 2015 at his own cost.
26. On July 3, 2018, the applicant's then lawyer wrote to the applicant stating that he had spoken to the strata's lawyer and "...it appears both he and the property manager are onboard with the fact that it would be equitable for you not to pay the special levy, although the mechanics of how we accomplish that still need to be worked out." This is the only inconsistency in the evidence regarding the strata's position on the issue of the special levy. I find that this is, at most, a reflection of a without prejudice discussion. Particularly given the formal letter of July 17, 2018, discussed below, I find that this email between the applicant and his then counsel does not establish any concession by the strata that the applicant would somehow be exempt from the special levy.
27. On July 17, 2018, the strata's lawyer wrote to the applicant's lawyer confirming the strata's position that,

- a. with the applicant's unit excluded from the 2018 re-piping work, because it had been re-piped to an acceptable standard in 2015, the strata assumed there would be a "...proportional reduction in the total price of the contract" and was "...cautiously hopeful this would mean a refund to the owners pursuant to s. 108(5) SPA".
  - b. The applicant was obliged to pay the 2018 special levy, and
  - c. the 2018 special levy was one of a series of levies that covered piping work in different buildings in the strata. The special levies were to repair common property and not to fix just one person's property.
28. On July 30, 2018, the strata received the \$5,349 that was owing by the applicant for the 2018 special levy up to that date, although the applicant continued to dispute whether he was obliged to pay it.
  29. On August 29, 2018, the applicants say they instructed their then counsel to release the funds held in trust to the strata's property management company, although they were continuing with this dispute.
  30. On October 16, 2018, the strata's lawyer emailed the applicant advising that the strata "would agree to exempt" the applicant and his co-owner from the 2018 re-piping project upon receipt of a signed indemnity agreement from them.
  31. The documents show that the applicant received legal advice, prior to signing the indemnity agreement, to confirm that the agreement would exempt his strata lot from the current re-pipe work, but not from paying his proportionate share of the special levy.

## **POSITION OF THE PARTIES**

32. The applicant says that, on October 16, 2018, the strata agreed to exempt him from the 2018 re-piping project, provided that he signed an indemnity agreement. I find that this was an exemption from the work being done on SL20, not an exemption

from the special levy. This is clear in multiple communications by the strata to the applicant.

33. The applicant feels it is significantly unfair to require his unit to pay its share of the special levy (\$10,702.49). He argues that section 164 of the SPA ought to apply to remedy this unfair act.
34. The strata says that section 108 of the SPA sets out the way in which a special levy may be used to fund common repair expenses. The levy is then imposed based on unit entitlement. There is no legal basis to exempt one owner.
35. The strata points out that, because the applicant's unit was recently re-piped, it may be that his unit will not need re-piping, thereby reducing the overall cost of the project. However, the applicant remains obliged to pay his portion of the special levy, pursuant to section 108(2) of the SPA.

## **ANALYSIS**

36. The SPA requires that strata lot owners are "all in it together". (see *Coupal v. Strata Plan LMS 2503*, 2004 BCCA 552 at paragraph 34 and *Strata Plan LMS 537 v. Alvarez* 2003 BCSC 1085 (CanLII))
37. Under this communal scheme, owners may contribute to common repair expenses in a different proportion to the relative benefit they derive from their financial contribution.
38. It is undisputed that the common property plumbing pipes that are the subject of this dispute are usually a strata repair and maintenance responsibility, consistent with section 1 of the SPA given that the piping runs through the concrete slabs forming the foundation of each strata lot.
39. Section 108 of the SPA governs special levies. Section 99 and 108(2) of the SPA require owners to contribute to a special levy proportionately to their unit entitlement.

40. Section 164 of the SPA addresses the question of what happens when, despite a fair process and democratic vote, the majority decision making process yields a “significantly unfair” results for the interests of minority owners.
41. I am bound by the British Columbia Court of Appeal in *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, at paragraphs 22-25, that a significantly unfair decision, reached through a fair process, may still be the subject of judicial intervention where appropriate.
42. The *Dollan* test was restated in *The Owners, Strata Plan BCS 1721 v. Watson*, 2017 BCSC 763 at paragraph 28:

The test under s. 164 of the *Strata Property Act* also involves objective assessment. *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, requires several questions to be answered in that regard:

- 1) What is or was the expectation of the affected owner or tenant?
  - 2) Was that expectation on the part of the owner or tenant objectively reasonable?
  - 3) If so, was that expectation violated by an action that was significantly unfair?
43. Turning to the SPA section 164 analysis, the question is whether the evidence, examined objectively, supports the applicant’s expectation to exempted from the special levy. I find that it does not. Nor does the evidence establish that a reasonable expectation of the applicant was violated by a strata action that was significantly unfair.
44. Based on the evidence, I find there is no conduct on the part of the strata that would have led a reasonable person to expect that the provisions of the SPA would not apply to piping replacement costs. There is no evidence to support a finding of significant unfairness under section 164 of the SPA. The strata communicated clearly, and on several occasions that, while it would work with the applicant on the question of whether SL20 needed to be re-piped again in 2018, it was not exempting him from his unit entitlement share of the valid special levy.



45. Since the strata has now approved the applicant's request that the common property piping serving his strata lot not form part of the 2018 repiping project, the reduction in overall contract price, unless the project runs over in other aspects, will be reimbursed to all owners by unit entitlement, as required by section 108(5) of the SPA.
46. The strata Bylaws says that a special levy is due and payable on the dates noted in the resolution authorizing the special levy.
47. I find that the applicant has failed to establish that he should be exempted from the special levy. I find that he is obliged to pay the instalment payments laid out in the March 7, 2018 special levy.

### **TRIBUNAL FEES, EXPENSES**

48. 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 was the successful party but paid no tribunal fees. I make no order in this regard.
49. The strata corporation must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owner.

### **ORDER**

50. The applicant's claims and his dispute are dismissed.

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Julie K. Gibson, Tribunal Member