



# Civil Resolution Tribunal

Date Issued: July 29, 2019

File: ST-2018-005456

Type: Strata

Civil Resolution Tribunal

Indexed as: *King v. The Owners, Strata Plan VR 2594*, 2019 BCCRT 914

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

Judith King

**APPLICANT**

**A N D :**

The Owners, Strata Plan VR 2594

**RESPONDENT**

---

## **REASONS FOR DECISION**

---

Tribunal Member:

Julie K. Gibson

## **INTRODUCTION**

1. The applicant Judith King owns strata lot 3, which is unit 2 in the respondent strata corporation The Owners, Strata Plan VR 2594 (strata).

2. The strata consists of 4 townhouse units. The garages and decks for each unit are designated as limited common property on the strata plan. The strata plan also shows that the outdoor areas within the strata are common property.
3. The applicant is represented by her partner SV. The respondent is represented by strata council member BH, who co-owns strata lot 1 (unit 4).
4. The applicant says the strata has engaged in improper practices. Specifically, she makes the following claims and remedy requests:
  - a. The applicant says that there was water damage to her common property garage and patio, and that she paid \$3,600 for repairs. She says the strata should reimburse her for this amount.
  - b. The applicant says she made a \$5,000 overpayment or loaned the strata \$5,000 to be paid toward a roofing levy. The applicant seeks an order that the strata refund her the \$5,000.
  - c. The applicant says the strata improperly fined her \$1,750 for non-payment of 2015 strata fees. She seeks an order that the strata reverse the \$1,750 “fine and penalty” applied to her strata lot account.
  - d. The applicant contests the validity of a 2016 special levy to repair retaining walls because (a) she alleges a council member was in a conflict of interest and (b) the special levy was \$2,500, despite either an agreed limit of \$2,000 per unit or strata council reporting that units were only charged \$2,000 each.
  - e. The applicant claims that the strata contracted with the sons of the owners of unit 1 for lawn maintenance, without proper authorization. She seeks an order barring those gardeners from cutting the grass.
  - f. The applicant says the owner of unit 4 was in a “conflict of interest” in benefitting from a \$1,750 special levy to have fences maintained, because the fence “around unit 4” was power washed, repaired and stained.

- g. The applicant says that SV has not received proper notice of strata meetings since a disagreement between him and BH.
  - h. The applicant says that because SV is no longer welcome at unit 3, she seeks an order that strata meetings be held at a neutral location.
5. The strata says it has a properly elected strata council, and has carried on strata business in compliance with the *Strata Property Act* (SPA) and the Bylaws. It says the special levies that the applicant raises were approved in accordance with the SPA. The strata denies conducting business in an unfair manner. The strata says it offered the applicant a hearing before strata council in July 2018 to hear her concerns, but she did not attend.

## **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 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.
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. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
10. 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.

## **ISSUES**

11. The issues in this dispute are:
  - a. Is the applicant entitled to be reimbursed for \$3,600 she spent to repair water damage to her garage and patio, that she says the strata did not reimburse?
  - b. Is the applicant entitled to a refund of \$5,000 she says she paid the strata toward a roofing levy, on behalf of another unit?
  - c. Was a \$1,750 fine for non-payment of strata fees levied against the applicant improperly, such that it should be reversed?
  - d. Was a 2016 special levy to repair retaining walls invalid due to (a) a council member's conflict of interest or (b) the amount of the levy being incorrect or reported incorrectly?
  - e. Was a \$1,750 per unit special levy for fence maintenance invalid due to a council member's "conflict of interest"?
  - f. Was the strata's contract for lawn maintenance invalid, because the strata hired relatives of unit owners? If so, should the gardeners be banned from cutting the grass?
  - g. Is SV entitled to notice of strata meetings, and has that notice been provided? If not, what remedy is appropriate?
  - h. Should there be an order that strata meetings be held at a neutral location, rather than unit 3?

## **BACKGROUND AND EVIDENCE**

12. I have reviewed all of the evidence but only refer to the evidence and submissions as I find necessary to provide context for my decision.

13. The strata's bylaws are the Standard Bylaws under the SPA.

### ***Repair Costs for Water Damage to Garage and Patio***

14. The applicant says that in 2007 she repaired water damage to her garage and patio for \$3,600 but was not reimbursed by the strata.

15. Due to the timing of the applicant's payment, I find that the claim to be reimbursed for the repair of her garage and patio is out of time.

16. In about 2007, Ms. King engaged a contractor to repair her garage and rear patio. The strata says that Ms. King agreed to pay for that work personally, rather than applying for a levy. Ms. King alleges the strata agreed to repay her.

17. Then, in 2008, the other owners engaged a separate contractor who repaired the rear patios of units 1, 3, and 4. The work was funded by a special levy. Unit 2 was exempted from the special levy because it had the work completed in 2007.

18. At the August 27, 2015 strata council meeting, a motion to have the strata repay the applicant \$3,200 as an approved emergency expense for repairs to her deck and garage was defeated. Although I note that this is a different amount than the \$3,600 mentioned by the applicant, I find the payment being discussed at the August 2015 strata council meeting was the same one the applicant raises in this claim.

19. As stated in section 13 of the Act, the *Limitation Act* applies to tribunal disputes. A limitation period is a specific time period within which a person may pursue a claim. If the time period expires, the right to bring the claim disappears.

20. British Columbia's *Limitation Act* was replaced on June 1, 2013. The current version says that for a claim discovered before June 1, 2013, the limitation period in the former legislation applies. Under the former *Limitation Act*, a person generally had 6

years to file a claim regarding strata property issues, except for damages in respect of injury to person or property, which had a 2-year limitation period. The limitation period begins to run the day after the claim is “discovered”.

21. Both versions of the *Limitation Act* say a claim is “discovered” on the first day that the person knew or reasonably ought to have known that the loss had occurred, that it was caused or contributed to by an act or omission of the person against whom the claim may be made, and that a court or tribunal proceeding would be an appropriate means to seek to remedy the loss.
22. I find that the applicant would have discovered her claim to be reimbursed for her payment by, at latest, January 1, 2009.
23. The Dispute Notice was issued on August 3, 2018, stopping the limitation period. That is more than 6 years after the discovery date of January 1, 2009.
24. For these reasons, I find that the applicant is not entitled to relief relating to her claim that she paid for repairs to the garage and back patio due to water damage, back in 2007.
25. I find the claim is barred because the limitation period expired. I dismiss the applicant’s claim.

### ***Roofing Levy Payment***

26. The applicant says she paid \$10,000 for a roofing levy, being \$5,000 for her own unit and \$5,000 to cover the cost of the roof for unit 1. She says that the then strata council president MN promised to reimburse her \$5,000 once he tracked down the owners of unit 1. However, he never did so. Based on the minutes filed in evidence, I find that this claim arose sometime in 2003.
27. The strata says that a \$5,000 special levy was applied for roof repair work in about 2002. The strata says the applicant loaned money to the then owners of unit 1, to pay their portion of the special levy. The strata says it was not involved in the loan and is not responsible for repaying it.

28. The August 27, 2015 strata council meeting minutes record that this issue was discussed. The applicant had the impression that another council member would collect the debt on her behalf. The strata disagreed and confirmed that the applicant should collect from the former owners of unit 1. A motion to have the strata pay \$5,000 to the applicant was defeated.
29. Because the August 27, 2015 minutes record the roof replacement as occurring in 2003, I find that the applicant's claim is out of time. Under the old *Limitation Act*, which I find applies to this claim, the applicant had, at most, until 2009 to bring a claim for the \$5,000. Since the Dispute Notice was issued on August 3, 2018, I find that the claim is barred due to the expiry of the limitation period.
30. If I am wrong in this determination, for the following reasons I dismiss the claim for a \$5,000 refund by the strata to the applicant, on the merits.
31. The applicant only provided an illegible photograph of a document that she says shows she paid the extra \$5,000 to the strata. The document does not prove that \$5,000 was provided because I cannot read it in the form provided.
32. I find that the applicant did not prove an agreement by the strata to reimburse her for the \$5,000. The evidence suggests that she made a personal loan to the then owners of Unit 1. I dismiss this claim.

### ***Non-Payment of Strata Fees - \$1750 Fine***

33. The applicant asks for an order that the strata cancel the fine levied against her unit for non-payment of her 2015 strata fees.
34. The current *Limitation Act* applies to this dispute. It came into force on June 1, 2013 and requires a claim to be started within 2 years of it being discovered.
35. Because this claim arose in 2015, which was after the new *Limitation Act* was introduced, I find that a 2-year limitation period applies to it.
36. I find this claim is barred by the 2-year limitation period under the *Limitation Act*.

37. I find the relevant timeline is as follows:

- a. On January 6, 2016, the strata against wrote to the applicant, through her then legal counsel, about her unpaid strata fees, an unpaid \$250 special levy, lien costs and a fine for the unpaid strata fees, totalling \$3,776.55, of which \$1,700 was for fines.
- b. In August 2016, the strata again wrote to the applicant, explaining that she had failed to pay \$1,125 for 2015 strata fees.
- c. The strata registered a lien against her strata lot, pursuant to section 116 of the SPA.
- d. In early 2016 Ms. King paid her 2015 strata fees. The lien was cancelled. The fines, totalling \$1,750, remain outstanding.
- e. On February 17, 2017, the applicant emailed the members of strata council asking that it expunge the outstanding fines.
- f. The Dispute Notice in this dispute was issued August 3, 2018.

38. I find that the applicant knew of her claim to reverse the fines by January 10, 2016, as I find she would have received the strata's January 6, 2016 demand letter. I find that the limitation period ran from January 10, 2016 until it expired on January 10, 2018.

39. Given that the Dispute Notice did not issue until August 3, 2018, I find that the applicant's claim to reverse strata fee fines is out of time. I dismiss the claim for reversal of the fines.

### ***Special Levy for Wooden Retaining Walls***

40. The applicant claims that a 2016 special levy was improper because one council member was in a conflict of interest, and because the amount of the levy was to be limited to \$2,000, but was passed at \$2,500, per unit.



41. The applicant says the owner of unit 4 was in a conflict of interest because they used some of the 2016 special levy to repair retaining walls in their strata lot, rather than on the common property.
42. Section 33 of the SPA deals with remedies where a council member has an interest in a contract or transaction and fails to disclose it as required by the SPA section 32.
43. The tribunal does not have jurisdiction to order a remedy regarding conflict of interest claims about strata council members (see *Mykle-Hotzon v. The Owners, Strata Plan LMS 1372*, 2018 BCCRT 609 at paragraph 37). Under section 122 of the Act matters under section 33 of the SPA are outside the tribunal's jurisdiction and must be dealt with by the BC Supreme Court.
44. The February 17, 2017 annual general meeting (AGM) minutes show that a special levy of \$2,500 per strata lot was implemented in 2016 to repair wood retaining walls around the property. The minutes record that the applicant did not pay on time but paid shortly thereafter. No fines or enforcement proceedings were pursued against the applicant in respect of this late payment.
45. The only evidence about this the applicant filed were photographs of fencing and concrete areas of a yard. She did not prove when these items were constructed, by whom, or who paid for them.
46. Under section 10 of the Act, the tribunal must refuse to resolve a claim that it considers is not within the tribunal's jurisdiction. A dispute that involves one or more issues that are within the tribunal's jurisdiction and one or more that are outside its jurisdiction may be amended to remove those issues that are outside its jurisdiction.
47. Based on the strata plan, I find that the retaining walls were likely on common property, namely the common outdoor area designated on the plan or the limited common property reserved to the use of each strata lot.

48. Based on the evidence, I am unable to make any finding about conflict of interest and, given that remedies for conflict of interest do not fall within my jurisdiction, I refuse to resolve that aspect of the applicant's claim.
49. The other issue arising from the retaining wall special levy is that the applicant claimed the levy was for \$2,500, but that the minutes reported it as \$2,000 per unit. As well, the applicant seems to argue that the levy should have been \$2,000, not \$2,500, per strata lot.
50. The minutes show that at an AGM on February 24, 2016, a special levy of \$2,500 per strata lot was approved to fund repair of the retaining walls.
51. Under the *Limitation Act*, the applicant had two years to bring a claim about the special levy, meaning the limitation period expired on February 24, 2018.
52. Because the Dispute Notice was not filed until August 3, 2018, I find that the claim about the special levy being improperly authorized or authorized in the wrong amount is out of time. I dismiss the claim.
53. However, if I am wrong about the limitation period analysis, I would dismiss the claim on the merits, for the following reasons.
54. Based on my review of the minutes, I find that a special levy of \$2,500 per strata lot was approved to repair and replace the retaining walls. While I agree with the applicant that the budgets for 2016 and 2017 proposed a \$2,000 cap on special levies in each of those years, a budget is a working document containing estimates only. By contrast, the SPA allows for owners to pass a special levy in a higher amount, which I find that they did.
55. For all these reasons, I dismiss the applicant's claim about the special levy for retaining wall repairs.

### ***Fencing Special Levy***

56. The applicant claims that a 2018 special levy of \$1,750 per strata lot for fencing repairs is invalid because the owner of unit 4 was in a conflict of interest and benefitted by having a portion of fence power washed, repaired and stained “around unit 4.”
57. Based on the minutes filed in evidence, on June 13, 2018, the strata held an SGM. The applicant did not attend and did not send a proxy. A \$1,750 special levy, per strata lot, was approved, for fencing repairs.
58. There is scant evidence of a conflict of interest and, in any event, I do not have jurisdiction to determine a remedy for conflict of interest. As such, I refuse to resolve this claim, consistent with section 10 of the Act.

### ***Lawn Maintenance Contract***

59. The applicant says that at the February 2017 AGM, the owners passed a motion for lawn maintenance to be contracted to the sons of the owners of strata lot one, for \$500 for one summer. She says the vote should have been a  $\frac{3}{4}$  majority vote but was not. She says that the strata council nonetheless permitted the sons to cut the grass.
60. The February 2017 AGM minutes record that the 2017 Budget was discussed and included a \$600-line item for grass cutting. BH proposed hiring LD and CD, of unit 1, to complete this work. There was discussion about other options, since LD and CD were owners in the strata. BH explained that this was a good way for the strata to “get valuable service for a modest cost.” The budget was approved on a 3 to 1 vote, with unit 2 voting against it.
61. I find that the arrangement to have LD and CD provide lawn maintenance in 2017 was properly authorized as part of the budget approval process.
62. I find that the budget was passed by a majority vote.
63. Under section 38 of the SPA, a strata may enter into contracts in respect of its powers and duties under the SPA. I find that the lawn maintenance contracts falls

under section 38 of the SPA. That is, the strata council likely had power to enter that contract without putting it to a vote, because it relates to repair and maintenance obligations under the SPA.

64. On May 9, 2017, the strata wrote to LD and CD laying out terms of engagement for lawn maintenance for common property areas from May 1, 2017 to September 30, 2017, for a monthly charge of \$100.
65. On January 31, 2018, notice was given to all owners of an AGM to take place on February 15, 2018, attaching appropriate materials.
66. A continuing relationship where LD and CD would again provide lawn maintenance was approved at the 2018 AGM, via approval of the budget that included a \$700 line item for gardening. The applicant did not attend the February 2018 AGM. The minutes show that the budget was approved unanimously by the 3 unit owners attending.
67. On May 14, 2018, Mr. BH again wrote to CD and LD with the terms of engagement, consistent with the owners' majority wishes.
68. I find that the process of approval for the lawn maintenance contracts was appropriate. I dismiss the applicant's claim.

### ***Notice of Strata Council Meetings/AGMs/SGMs and Meeting Location***

69. The applicant says SV has been denied proper notice of strata meetings since a disagreement between him and BH. I infer that she seeks an order requiring SV to receive notice of those meetings.
70. As well, the applicant seeks an order that strata meetings be held in a neutral location, and not at unit 3, because she says SV is no longer welcome there.
71. I find that as SV is not a registered owner in the strata, he is not entitled to notice of strata council meetings. The applicant, who is an owner, is entitled to notice of 1 week for strata council meetings (Bylaw 14(1)), unless all council members consent

in advance of the meeting to a shorter notice period or the meeting is required to address an emergency situation.

72. For AGMs and SGMs, the applicant is entitled to notice of those meetings under the SPA section 45 which says that owners must be given at least 2 weeks' written notice of an AGM or SGM. Section 45 does not require notice to non-owners, or non-tenant occupants, such as SV, unless they are mortgagees.
73. SV is permitted to attend strata council meetings, because tenants and occupants are permitted to attend. As well, I note that section 26(30) of the Bylaws allows the owners to pass a majority resolution to require a non-voting attendee to leave an AGM or SGM.
74. I dismiss the applicant's claim regarding a lack of notice to SV.
75. I also dismiss the applicant's claim to have strata meetings held somewhere other than unit 3 or unit 4. There is no SPA or Bylaw requirement that the strata's meetings be held in a particular location.

### ***Significant Unfairness***

76. I now turn to the applicant's argument about significant unfairness.
77. I understand the applicant's argument on this point to be a general allegation that the strata's approach on each of the issues raised in this dispute has been significantly unfair to her.
78. Section 123(2) of the Act provides the tribunal with discretion to make orders directed at a strata, its council or a person who holds 50% or more of the votes, if the order is necessary to prevent or remedy a significantly unfair action, decision or exercise of voting rights in strata property disputes.
79. The British Columbia Supreme Court confirmed the tribunal's jurisdiction to remedy significant unfairness on the part of a strata corporation: *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164 at para. 119 (*Watson*).

80. Since section 123(2) of the Act is substantially similar to section 164 the SPA, the case law interpreting section 164 of the SPA is instructive. In *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44 (*Dollan*), the Court held that, in order to be significantly unfair, the conduct at issue must be more than “mere prejudice” or “trifling unfairness”. To meet the threshold, the actions of a strata corporation would at the very least encompass oppressive conduct and unfairly prejudicial conduct or resolutions. Oppressive conduct is conduct that is “burdensome, harsh, wrongful, lacking in probity or fair dealing, or has been done in bad faith.” Unfairly prejudicial conduct means “conduct that is unjust and inequitable.” See also: *Sherwood v. The Owners, Strata Plan VIS 1549*, 2018 BCSC 890.

81. The test established in *Dollan* involves an assessment of the following questions:

- a. What is or was the expectation of the affected owner or tenant?
- b. Was that expectation on the part of the owner or tenant objectively reasonable?
- c. If so, was the expectation violated by an action that was significantly unfair?

82. Applying the test to the facts before me, I find the applicant’s stated expectation that the strata would act as she wished on each of the issues raised in this dispute was not objectively reasonable. I come to this conclusion based on my findings that the strata followed the requirements of the SPA and the Bylaws in respect of the claims decided in this dispute. As one example of the strata’s approach, the strata sought the input of owners on the lawn maintenance contract, even though the SPA did not strictly required it.

83. I do not find that the strata’s approach to be significantly unfair.

## **TRIBUNAL FEES, EXPENSES**

84. 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 applicant did not succeed in her claims.

As the strata paid no tribunal fees and claimed no dispute-related expenses, I make no order in this regard. I dismiss the applicant's claims for tribunal fees and dispute-related expenses.

## **DECISION AND ORDERS**

85. I dismiss the applicant's claims and her dispute.

---

Julie K. Gibson, Tribunal Member