



# Civil Resolution Tribunal

Date Issued: August 7, 2019

File: ST-2019-003311

Type: Strata

Civil Resolution Tribunal

Indexed as: *Ksenhuk et al v. The Owners, Strata Plan VIS6540*, 2019 BCCRT 945

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

WAGNER KSENHUK, MICHAEL CROWE, KENNETH HACKSHAW,  
and FRANK KENNETH VON VEH

**APPLICANTS**

**A N D :**

The Owners, Strata Plan VIS6540

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Julie K. Gibson

## **INTRODUCTION**

1. This dispute is about how maintenance expenses can be allocated between different types of strata lots.

2. The applicants Wagner Ksenhuk, Michael Crowe, Frank Kenneth Von Veh and Kenneth Hackshaw (townhouse owners) are the owners of 4 townhouse type strata lots located in the respondent strata corporation The Owners, Strata Plan VIS6540 (strata). The strata also contains 38 apartment type strata lots and 11 live/work type strata lots.
3. The townhouse owners say that the houses do not share any of the main building infrastructure. Each townhouse connects to water, city sewer and BC Hydro separately. The townhouse owners say they pay operating expenses in the strata budget, separately according to their type and unit entitlement.
4. The townhouse owners say that they have not historically shared main building common expenses.
5. This dispute arises after a 2018/19 budget was approved with a new line item called “Building Maintenance” of \$9,400. The townhouse owners say this item related to common property expenses of the apartment-type strata lots, in the main building, and not to their townhouses. The townhouse owners say they should not be responsible to pay for any share of the “Building Maintenance” line item.
6. The townhouse owners seek an order that they are not responsible to pay any share of the Building Expenses line item approved in the budget on April 11, 2019.
7. The strata says that the townhouse owners feel that all repairs should come from the contingency reserve fund (CRF) rather than the operating budget. The strata says the appropriate way to manage the contested “Building Maintenance” line item is to allocate it between common property, live/work and townhouse categories, based on unit entitlement.
8. The applicants are represented by primary applicant Wagner Ksenhuk. The strata is represented by strata council member Robert Pearson.

## **JURISDICTION AND PROCEDURE**

9. 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.
10. 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.
11. 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.
12. 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**

13. The issues in this dispute are:
  - a. whether the building maintenance expenses in the Budget should be allocated to the live/work and apartment type strata lot owners only or should the townhouse owners also contribute, and
  - b. whether either party is entitled to tribunal fees or dispute-related expenses.

## BACKGROUND AND EVIDENCE

14. I have only commented on the evidence and submissions as necessary to give context to my reasons.
15. The strata was created on April 14, 2008 under the *Strata Property Act* (SPA). It consists of 54 strata lots, including 4 townhouses, 11 live/work units, and 29 apartment units.
16. The strata's current bylaws, as discussed further below, refer to townhouse-type, apartment type and live-work type strata lots.
17. The strata does not have separate sections within the meaning of the SPA.
18. The applicant townhouse owners own the following townhouse type strata lots:
  - a. Mr. Ksenhuk owns strata lot 2 (SL2), unit C.
  - b. Mr. Von Veh owns strata lot 3 (SL3), unit D.
  - c. Mr. Crowe co-owns strata lot 1 (SL1), unit B.
  - d. Mr. Hacksaw co-owns strata lot 4 (SL4), unit A.
19. SL1-4 have limited common property (LCP) yards and parking areas designated for their respective use on the strata plan. Less than ½ of the live/work units have LCP flower beds.
20. The apartment and live/work type strata lots have access to the parkade, whereas the townhouse owners do not have access or assigned parking spots in the main building's parkade. All garbage and recycling for the live/work and apartment strata lots is collected through a common property ramp, that is unused by the townhouse owners.
21. The parties agree, and I find, that on April 11, 2019, at a special general meeting (SGM), the owners approved a 2018/19 budget (Budget) with a line item of \$9,400 for "Building Maintenance"

22. In a document titled Selected General Ledger Detail – Summary, dated April 29, 2019, building maintenance expenses applied against this line item from the Budget are recorded to that date totalling \$7,501.68, for expenses that largely appear to be operating expenses relating to live/work and apartment-type strata lots only.

***Bylaws, SPA and Regulations***

23. The strata filed bylaws at the Land Title Office (LTO) on February 4, 2019, repealing all previous bylaws. Then, on February 6, 2019, the strata filed another set of bylaws that repealed the portions of the February 4, 2019 bylaws that were relevant to this dispute. Since the Dispute Notice was filed on April 29, 2019, the February 6, 2019 filing applies to this dispute.

24. The February 4, 2019 bylaws were passed at a Special General Meeting (SGM) on December 20, 2018, while the February 6, 2019 bylaws were passed at an Annual General Meeting (AGM) on January 31, 2019.

25. In the February 4, 2019 filing, Bylaw 13 designates three different types of strata lot, being the apartment strata lots, the live/work strata lots and the townhouse strata lots, and says they are considered different types for the purposes of sections 6.4(2) and 11.2(2) of the Strata Property Regulations.

26. I will now summarize the rest of the February 4, 2019 version of Bylaw 13.

27. At 13.2, the Bylaw specifies that a contribution to the operating fund which relates to and benefits only one of the types of strata lots shall be shared only by the owners of that type of strata lot, and each share of the contribution will be calculated by the following formula:

$$\frac{\text{unit entitlement of strata lot}}{\text{total unit entitlement of the type to which the contribution relates}} \times \text{contribution to operating fund}$$

28. 13.3 says that the strata's operating budget shall reflect the expenses and contributions solely applicable to the two types of strata lots and shall be drawn up in accordance with sections 6.4(2) and 11.2(2) of the Strata Property Regulations depending on whether an expense or contribution is common to all types, only apartment and live/work types, only apartment types, only live/work types or only townhouse types.
29. 13.4 says that the Apartment Strata Lots and Live Work shall be jointly responsible for the following operating expenses:
- a. HVAC Maintenance Contract;
  - b. Garage Door Maintenance Contract;
  - c. Elevator Maintenance Contract;
  - d. Interior Janitorial Contract;
  - e. Garbage, Compost, and Recycling;
  - f. Water meter;
  - g. Hydro electrical costs; and
  - h. Backflow testing for the backflow preventers servicing the building.
30. 13.5 says that the Apartment Strata Lots shall be solely responsible for the following operating expenses: a. Enter phone contract.
31. 13.6 says that the Townhouse Strata Lots shall be solely responsible for the following operating expenses:
- a. Water use for each townhouse is invoiced separately according to individual meters;
  - b. Gutter cleaning for the Townhouse Strata Lots;
  - c. Recycling for the Townhouse Strata Lots;

- d. Back flow testing for the four backflow preventers serving the irrigation systems of the Townhouse Strata Lots; and
  - e. Garbage and Compost for the Townhouse Strata Lots.
32. 13.7 says that the remaining operating expenses shall be the responsibility of the entire strata corporation.
33. However, the bylaws filed on February 6, 2019 (CA7336785) repeal and replace the February 4, 2019 version of Bylaw 13 with a Bylaw 13 that allocates the strata lots into the townhouse, live/work and apartment-types under Strata Property Regulation 6.4(2), but makes no provision for how expenses will be allocated between those different types.
34. I find that the February 6, 2019 bylaws were the applicable bylaws on April 11, 2019, when the contested budget line item for Building Maintenance was passed.
35. At a Special General Meeting (SGM) on January 31, 2019, the owners voted to amend the Bylaws to remove then Bylaw 10 and add a version of Bylaw 13. The Bylaw 13 amendment motion passed, but not unanimously. The Bylaw 13 proposed in that motion included a change to the formula used to calculation contributions to the operating expense fund of the strata, separated by strata lot type. In any event, the strata then filed the February 6, 2019 bylaws, which I have found did not include a change to the calculation of contributions to the operating fund for expenses relating to or benefitting only one type of strata lot.

## **POSITION OF THE PARTIES**

36. The townhouse owners argue that:
- a. All regular maintenance (occurring more than once a year) related to the houses is already included in the operating budget, specific to the townhouse type,

- b. Regular maintenance exclusive to the live/work-type strata lots and the apartment-type strata lots should be allocated to those strata lots as an operating expense,
- c. Anything else, occurring less than once a year, should come under the contingency reserve fund (CRF),
- d. The line item for “Building Maintenance” wrongly allocated \$9,400 for expenses to all owners, when the receipts show the expenses being applied against it are regular maintenance expenses that relate to and benefit only the live/work and apartment-type strata lots.
- e. Expenses occurring less than annually cannot be allocated out by types of strata lots under the bylaw

## **ANALYSIS**

- 37. The SPA permits a strata to define “types” of strata lots based on character or form of structure (*Smith v. G.C. (Goldie) Read*, 1991 CanLii 2149 BCSC).
- 38. Section 1 of the SPA defines common expenses as those related to the strata’s common property and common assets or is required to meet any other purpose or obligation of the strata.
- 39. Under Section 92 of the SPA, operating expenses are expenses that usually occur once a year or more often. By contrast, expenses that must generally be charged to the CRF are those that occur less than once a year. CRF expenses are not to be charged against the operating expense budget.
- 40. Section 99 of the SPA says that, subject to section 100, owners must contribute to the operating fund based on unit entitlement or as set out in the regulations.
- 41. Given the status of Bylaw 13 at the relevant time, I find that the strata has not changed its basis for operating expense calculation under section 100, which requires a unanimous vote.



42. The relevant SPA regulation is Regulation 6.4(2). It says that, **subject to a resolution under section 100** (my bold emphasis added), if a contribution to the operating fund “relates to and benefits only one type of strata lot”, and that type is identified as a type of strata lot in the bylaws, the contribution is shared only by the owners of strata lots of that type, and each lot’s share of that contribution is calculated by a formula as follows:

$$\frac{\text{unit entitlement of strata lot}}{\text{total unit entitlement of all strata lots of the type to which the contribution relates}} \times \text{contribution to operating fund}$$

43. Here, I find that although the Bylaws properly identify three different types of strata lots, there has been no section 100 SPA resolution to unanimously adopt a different calculation for contributions allocated by strata lot type. I note that, at the SGM of January 31, 2019, a motion to change the formula was carried, but not unanimously. That change was then not reflected in the February 6, 2019 Bylaws. For these reasons, I find that no valid section 100 resolution has been passed such that a different formula can be used to calculate the contributions of the townhouse owners to the operating expenses of the strata.

44. If a proper section 100 resolution were passed, I find that it would be compliant with the SPA to allocate operating fund expenses that benefit or relate to the townhouse type strata lot alone, to the townhouse owners.

45. A more difficult question is what would happen if an operating expense benefitted or related to both the apartment and live/work type strata lots, but not the townhouse type strata lots. In *Schultz et al v. The Owners, Strata Plan KAS 3313*, 2018 BCCRT 148 (CanLII), at paragraph 28, the tribunal’s Vice Chair interpreted section 6.4(2) of the SPA Regulation as burdening “...the owners of one strata lot type with an item

of expense from which they derive “the only benefit.” I agree that the wording of section 6.4(2) suggests that if the expense relates to or benefits more than one type of strata lot, then it cannot be re-allocated to those two types alone. Put differently, the SPA and Regulations only allow for a formula different from that set out in section 99, for operating expense contributions, if a section 100 resolution is passed and the expense being contested relates to one type of strata lot alone.

46. Given my conclusions above, it is not necessary for me to provide a detailed breakdown of whether the receipts applied against the Building Maintenance line item in the budget benefitted or related to only the apartment type or live/work type strata lots.
47. Although the applicants did not argue that the application of the Building Maintenance line item in the Budget was significantly unfair to them, I have considered the issue and find there was no reasonable expectation on the part of the townhouse type owners that they would not ever be asked to pay some expenses for the other two types of strata lots into the operating fund. The applicants were aware that they were purchasing into a strata corporation, where communal living is an accepted organizing principle often requiring shared operating expenses.

### ***Fence***

48. At the January 31, 2019 SGM, a  $\frac{3}{4}$  resolution was passed to spend up to \$10,000 on fencing, and up to \$5,000 on painting for the main road and parking area, and lines/numbers/visitor parking signs on the property, excluding the underground garage.
49. The parties agree and I find that, during a windstorm in December 2018, a part of the fence on the strata’s common property collapsed. It had to be put back up. I find that this expense was not an operating expense, because it was an expense occurring usually less than once per year. I find that the fence expense must be charged to the CRF. The applicants suggested that this expense was applied

against the CRF after being wrongly applied as an operating expense. In light of this I make no order about the specific fence expense.

## **TRIBUNAL FEES, EXPENSES**

50. 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. I see no reason in this case to deviate from the general rule. The strata was largely successful, but did not pay tribunal fees, and so I make no order for tribunal fees.
51. The strata did not make a specific claim to dispute-related expenses but mentioned in submission that it had spent over \$5,000 “trying to resolve this issue”. I do not allow any implied claim for legal expenses based on section 20 of the *Civil Resolution Tribunal Act* which says that the parties generally represent themselves and given that the expense was not specifically claimed or proven.
52. 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.

## **DECISION AND ORDERS**

53. I dismiss the applicants’ claims and this dispute.
54. In accordance with section 167 and 189.4 of the SPA, I order the strata to ensure the costs of defending this proceeding are not allocated to the applicant owners.

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Julie K. Gibson, Tribunal Member