



# Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Punta Del Mar Estates Ltd. v. The Owners, Strata Plan LMS 483, 2019*  
BCCRT 1020

B E T W E E N :

PUNTA DEL MAR ESTATES LTD.

**APPLICANT**

A N D :

The Owners, Strata Plan LMS 483

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr

## INTRODUCTION

1. The applicant, Punta Del Mar Estates Ltd., is the owner of a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 483 (strata). The strata is a bare land strata plan.

2. The applicant claims \$1,631.95, which was the cost to repair a water shut-off valve. The applicant claims that the shut-off valve is common property even though it is in its strata lot. The applicant also wants the strata to take responsibility for the maintenance of all the shut-off valves in the strata. The strata says that the repair and maintenance of the shut-off valve is the applicant's responsibility.
3. The applicant is represented by its president. The strata is represented by a 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 under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The tribunal must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the tribunal's process has ended.
5. The tribunal has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.
6. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The tribunal may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
7. Under section 123 of the CRTA 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, or order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

8. The issue in this dispute is whether the shut-off valve is common property.

## **BACKGROUND AND EVIDENCE**

9. In a civil claim such as this, the applicant must prove its case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
10. The strata consists of 18 strata lots. Sixteen of the strata lots contain single family dwellings. The other 2 strata lots, including the applicant's, contain multi-family dwellings. There are 4 townhomes on the applicant's strata lot.
11. The strata operates its own private water supply. The strata provided a written statement from JB, a former owner who was primarily responsible for planning and developing the strata, who described how the water system works. The applicant did not contest JB's explanation of the water system, so I accept it as accurate.
12. The strata's water comes from a creek on the other side of a highway. The main water supply runs under the highway and through the strata underneath the strata's road. The road is common property. From the main line, individual supply lines service each strata lot.
13. When the strata was first developed, the strata installed a water line on each strata lot up to a capped stub. Each capped stub was located within the boundaries of its strata lot. Each owner was responsible for installing a water shut-off valve at the point of the capped stub when they extended the water line as part of construction.
14. On October 30, 2018, there was a significant leak under the building on the applicant's strata lot. After someone notified the strata, a strata maintenance person attended the applicant's strata lot to shut off the water to the strata lot but could not do so because the shut-off valve was seized.

15. The leak lasted another day as the applicant arranged for a contractor to repair the shut-off valve. The applicant paid \$1,631.95 for this repair.
16. The applicant's contractor told the applicant that usually the "water supplier" owns the shut-off valves. The applicant took this to mean that the strata should be responsible for the repair and maintenance of the shut-off valves and asked the strata to reimburse it for the cost of the contractor. The strata refused, maintaining that the shut-off valve was the applicant's responsibility because it was in the applicant's strata lot.
17. The applicant requested a hearing before strata council on March 11, 2019, to try to persuade the strata that it owned the shut-off valve. The hearing occurred on March 29, 2019. The strata provided a detailed written decision on April 4, 2019, rejecting the applicant's arguments.

## **ANALYSIS**

### ***Is the shut-off valve common property?***

18. Section 72 of the *Strata Property Act* (SPA) says that the strata must repair and maintain common property.
19. The strata filed a consolidated set of bylaws in the Land Title Office on July 16, 1999, and 2 bylaw amendments on August 20, 2002. None of the strata's filed bylaws relate to repair and maintenance, so under section 120(1) of the SPA, the Standard Bylaws about repair and maintenance apply.
20. Standard Bylaws 2 and 8 confirm that the applicant must repair and maintain its own strata lot and the strata must repair and maintain common property.
21. Therefore, this dispute turns on whether the shut-off valve is common property. If it is, the strata must pay for the cost to repair the shut-off valve.

22. Section 1 of the SPA provides a complete definition of common property. The part of the definition that is applicable in this dispute is:

Common property means pipes and other facilities for the passage or provision of water if they are located wholly or partially within a strata lot, if they are capable of being and intended to be used in connection with the enjoyment of another strata lot or common property.

23. The applicant relies on 2 cases: *Taychuk v. Owners, Strata Plan LMS 744*, 2002 BCSC 1638 and *Fudge v. Owners, Strata Plan NW2636*, 2012 BCPC 409.
24. In *Taychuk*, the Court considered 2 owners' complaints about discoloured hot water in their strata lot, which was in a 25 floor building. The Court was unable to determine why the water was occasionally discoloured. As part of its decision, the Court determined that the "pipes are connected to pipes that service all the units, and so they are intended to be used in connection with the enjoyment of another strata lot". However, the Court did not describe in detail where the pipes at issue were located or otherwise explain this aspect of its decision.
25. In *Fudge*, the Provincial Court expanded on the reasoning in *Taychuk*. There was a wastewater backup that caused damage to an owner's strata lot in a high-rise residential tower. The Court determined that the backup originated in wastewater pipes that were shared by multiple strata lots. The backup entered the owner's strata lot through a discharge pipe that was installed in the wall of the owner's strata lot at the time of the building's original construction. The discharge pipe carried wastewater from the owner's laundry machine into the shared wastewater system.
26. The Court concluded that the wastewater piping infrastructure was an "integrated whole", with the discharge pipes feeding a network of pipes that moved wastewater out of the strata and into the municipal sewer system. The Court found that the entire wastewater piping system, including the discharge pipe, was common property.

27. The applicant argues that the strata's water system is directly analogous to the systems in *Taychuk* and *Fudge*. The applicant argues that while its individual water line, which includes the shut-off valve, does not directly benefit any other strata lot or common property, it does facilitate the applicant's strata lot's connection to the water system as a functioning whole. The applicant argues that this is no different than the discharge pipe in *Fudge* or the network of pipes in *Taychuk*. Thus, the applicant argues that the shut-off valve is the "line of demarcation between the public water supply and the private user".
28. The strata argues that each shut-off valve serves no purpose other than to service the strata lot that it is in. It provides no benefit to any other strata lot or to the water system as a whole. The strata argues that it does not make sense that the strata would be responsible for aspects of the water system that were designed, constructed and paid for by the individual owners when they built their homes, with no input from the strata.
29. I disagree with the applicant's interpretation of *Fudge* and *Taychuk*. The applicant provides no principled reason why the "line of demarcation" between common property and the applicant's property is just below, rather than just above, the shut-off valve.
30. Neither *Taychuk* nor *Fudge* involved a bare land strata. I find that this is a crucial distinction which limits the direct application of *Taychuk* and *Fudge*. I find that strata developments with strata lots that share a building necessarily have infrastructure that is integrated to a greater extent than in a bare land strata.
31. The applicant appears to accept this general proposition, since it acknowledges that the line below the shut-off valve is not common property, even though in *Fudge* the common property extended all the way to where the discharge pipe connected to the owner's washing machine. In other words, if *Fudge* was directly analogous, parts of the applicant's plumbing system inside the applicant's building would be common property, which the applicant does not allege.

32. So, where is the “line of demarcation”, as the applicant puts it? I agree with the strata that the initial construction of the system is relevant to this question. I find that if the shut-off valve was part of the “integrated whole” of the water system, then the developer would not have left it to the individual owners to install shut-off valves without giving any specifications, approval or other oversight. The fact that the individual owners decided the type and location of their own shut-off valves suggests that the shut-off valves were for their sole benefit, and not for the benefit of any other strata lots or common property. I find that the shut-off valve is not a facility used for the enjoyment of another strata lot or the strata’s common property.
33. I note my conclusion is consistent with *Beach et al v. The Owners, Strata Plan KAS 722*, 2018 BCCRT 2, which is another dispute where the tribunal determined that a water shut-off valve in a strata lot in a bare land strata was not common property. While the tribunal does not appear to have considered *Taychuk* or *Fudge*, the tribunal concluded that the shut-off valve was not capable of being enjoyed by another strata lot or common property.
34. The applicant also relies on the practices and bylaws of various local government bodies but I find that they have no bearing on the outcome of this dispute. I find that the question of whether the strata must repair the shut-off valve is governed entirely by its obligations under the SPA.
35. Therefore, I find that the shut-off valve is not common property. It is the owner’s responsibility to repair and maintain under section 72 of the SPA and Standard Bylaw 8(b). The owner’s claim is dismissed.

## **TRIBUNAL FEES AND EXPENSES**

36. Under section 49 of the CRTA, 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 was not successful so I dismiss its claim for tribunal fees and dispute-related expenses.

37. The strata retained a lawyer to assist it in the preparation of its response. The strata argues that the effort and expense required to deal with this dispute was disproportionate to the amount at stake. The strata also thinks that it is unfair that because of section 189.4 of the SPA, the applicant will not have to contribute to the cost of legal fees. The strata therefore believes that the owner should reimburse the strata's legal fees. The strata says that its lawyer will not render an invoice until after the tribunal makes a final decision, and seeks leave to claim its legal fees at that time.
38. Rule 9.4(3) of the tribunal rules says that the tribunal will not order a party to pay another party for their legal fees unless there are extraordinary circumstances. I find that the subject matter of this dispute was not extraordinary. Also, while I agree that section 189.4 of the SPA means that the applicant will not have to contribute to the legal fees, this is true in every tribunal dispute in which a strata corporation is a respondent. I find that the operation of this mandatory statutory provision is not an extraordinary circumstance.
39. The strata also argues that the applicant's claim was frivolous, vexatious and an abuse of the tribunal's process. The strata did not refer to special costs, but I find that its arguments raise the issue. While special costs arise under the *Supreme Court Civil Rules*, I find that the tribunal's authority to order legal fees in extraordinary circumstances includes the discretion to do so if a party has engaged in reprehensible litigation conduct that deserves rebuke. See *Bond v. The Owners, Strata Plan NW 2671*, 2019 BCCRT 344.
40. The strata argues that the applicant has used the tribunal as an inexpensive means to get a legal opinion on whether the shut-off valve is common property. The strata says that the applicant's choice saved the applicant money at the expense of the strata. The strata argues that the applicant's claim was clearly without merit and the applicant should have known its claim would fail after receiving the strata's detailed written decision. I disagree with both points. First, resolving disputes about the proper interpretation of the SPA is squarely within the tribunal's mandate. Second, while the applicant was not successful, its arguments were based on relevant



caselaw and were not frivolous. I find that there is no basis to conclude that the applicant's conduct was reprehensible.

41. Therefore, I decline to grant the strata leave to present its lawyer's invoices when rendered or to make further submissions about this issue. I dismiss the strata's claim for reimbursement of its legal fees.
42. As mentioned above, the strata 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**

43. I dismiss the applicant's claims, and this dispute.
44. I dismiss the strata's claim for reimbursement of its legal fees.

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Eric Regehr, Tribunal Member