



Civil Resolution Tribunal

Date Issued: September 16, 2019

File: ST-2019-002571

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wang v. The Owners, Strata Plan LMS 2970*, 2019 BCCRT 1090

B E T W E E N :

YI WANG

APPLICANT

A N D :

The Owners, Strata Plan LMS 2970

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. The applicant, YI WANG, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 2970 (strata). The applicant says that the strata took the costs of hallway paint and carpet upgrades from the operating budget when it would have been an allowable expense from the contingency reserve fund (“CRF”) had the owners approved the expenditure by a $\frac{3}{4}$ vote resolution. The applicant seeks

an order that the strata council members be personally liable for the cost of this work. The strata disagrees with the applicant's position, and says that the dispute has been brought outside the applicable limitation period.

2. The applicant is self-represented. The strata is represented by a member of the strata council.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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.
6. 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

7. The issues in this dispute are:

- a. whether the tribunal should have accepted additional evidence from the strata,
- b. whether the dispute was brought outside the applicable limitation period, and
- c. whether the individual strata council members should be personally liable for the cost of hallway repainting and re-carpeting under the strata's bylaws.

BACKGROUND

8. The strata is comprised of commercial strata lots, as well as residential townhouses and apartment-style strata lots. The strata contains 2 tower structures which are referred to as Tower A and Tower B. The applicant is the sole owner of strata lot 48.
9. The strata repealed its previous bylaws and filed amended bylaws at the Land Title Office in February of 2015. Bylaw 3.1 states that the strata must repair and maintain common assets, common property, and certain items of limited common property.
10. According to bylaw 3.14, a person may not spend the strata's money unless that person has been delegated the power to do so by the bylaws. Bylaw 3.15 states that a member of the strata council who acts honestly and in good faith is not personally liable because of anything done or omitted in the exercise of any power or performance of any duty of the strata council.
11. In 2014, the strata council decided that the carpeting in the hallways of several floors of Tower A and Tower B needed to be replaced. It obtained and considered a variety of quotes in 2014, and proceeded with this work.
12. As part of what it described as "maintenance", the council later decided to replace the carpeting and to repaint the hallways and ceilings on all other floors in Tower A and Tower B. As documented in the minutes of a June 3, 2015 strata council meeting, the strata decided to approach this work in stages to avoid the necessity for special levies and the possibility of associated financial burden to the owners.

13. At a December 29, 2015 annual general meeting (AGM), the owners approved an operating budget that included \$68,424 for repairs and maintenance. Of this amount, \$9,905 was identified as being for the residential portion of the strata and \$1,000 for the commercial portion. The remainder of the repair and maintenance budget was not allocated to a specific area or expense. It is not clear whether any particular maintenance projects were discussed at the meeting, but the operating budget was approved with 93.22% of the votes.
14. The strata proceeded with its incremental approach to hallway updates. It obtained quotes for the next phase of work. At an October 24, 2016 meeting, the strata council reviewed these quotes and decided to “make a provision in the proposed operating budget for the owners and the next council to consider”.
15. The hallway upgrades were discussed at an AGM on November 30, 2016. At that meeting, the owners approved an operating budget that showed \$70,000 for repair and maintenance, with \$9,900 for the residential and \$1,000 for the commercial portion of the strata. The remaining \$59,100 was not allocated. The budget was approved by the ownership.
16. The applicant formed the view that the repainting and carpet replacement project should have been approved by a $\frac{3}{4}$ vote. She determined that the members of the strata council should be punished for failing to obtain the ownership’s approval for these expenses, and should be found 100% liable for all costs of the project. The applicant sent an email to this effect to the property manager and strata council on February 23, 2018. The applicant sent subsequent messages reiterating the same position.
17. At an October 10, 2018 meeting, the strata council discussed a variety of correspondence, including communication from the applicant that the repainting and carpeting work required a $\frac{3}{4}$ vote resolution. The minutes go on to describe this work as a “recurring budget expense”.
18. The applicant requested a hearing about this matter, which took place on November 27, 2018. In a December 4, 2018 letter, the property manager communicated the

strata council's decision that it did not violate the *Strata Property Act* (SPA), and that they had acted honestly and in good faith such that they should not be held personally liable for the expenses of the project.

19. The applicant commenced her dispute with the tribunal on April 2, 2019.

POSITIONS OF THE PARTIES

20. The applicant says that the costs of the repainting and carpet replacement should not have come from the operating fund, and would have been an allowable CRF expense had it been approved by a $\frac{3}{4}$ vote resolution. She states that the strata council is aware that these types of expenses are consistent with CRF expenditures as set out in section 92 of the SPA. She also says that there were sufficient funds in the CRF to fund this project. The applicant says that she has, through an inspection of the strata's financial records, determined that the strata spent \$74,183.25 from the operating fund for this project. Based on what she says are violations of the SPA and bylaw 3.15, the applicant says that the strata council members should be personally liable for these costs.

21. The strata says that it acted within the SPA and the bylaws as the ownership voted to proceed with the carpet and painting work as a line item in the operating fund budget. The strata says that the applicant was present at the November 30, 2016 AGM and was aware that the project would be undertaken. Its position is that the applicant's claim is barred by the *Limitation Act*. In any event, the strata says that the carpet replacement and painting were ongoing maintenance items that were common expenses as part of the strata's operating budget rather than the CRF. The strata says that the applicant's claim should be dismissed.

EVIDENCE AND ANALYSIS

Additional Evidence

22. Rule 8.1 states that a party must include in the Tribunal Decision Plan all evidence in their possession that may prove or disprove an issue in the dispute, even if the

evidence does not support the party's position. Rule 1.15 provides that a tribunal officer can extend or shorten any timeline for any step or phase of the tribunal process.

23. Here, the parties were given a deadline of June 19, 2019 to submit their evidence. Both parties submitted minutes from the November 30, 2016 AGM as part of their evidence.
24. The applicant provided her submissions, and the strata made its submissions in response. Along with its submissions, the strata included a new item of evidence, namely an audio recording of the November 30, 2016 AGM. The applicant objected to this late evidence and asked for a preliminary decision as to whether the tribunal should accept it. The tribunal declined to provide a preliminary decision, but extended the applicant's time to submit her reply in order that she may address the new evidence. The applicant did not provide any further submissions.
25. In her correspondence with the tribunal, the applicant raised the possibility of unfairness as the strata had the opportunity to see her submissions before providing the additional evidence. She did not explain how the late acceptance of the audio recording was unfair to her given that the item of evidence was related to a meeting for which she had provided minutes. Further, the strata says (and the applicant did not dispute) that she was present at the AGM in question. I am satisfied that the new evidence did not raise a new issue or contain unexpected information.
26. Although the late acceptance of evidence could have the potential to create a lack of procedural fairness in some circumstances, I find that it did not create an unfair situation in this case. I am satisfied that the evidence before me does not establish any prejudice to the applicant or her claims as a result of the late acceptance of the audio recording. Even if such prejudice existed, I find that it would have been remedied by the opportunity to address the new evidence in reply submissions, particularly as the applicant was offered additional time to do so.

27. I find that the tribunal's decision to accept additional evidence was appropriate and within the scope of rule 1.15. However, given my conclusion about the limitation period below, nothing turns on this finding.

Limitation Period

28. As discussed above, the strata says the applicant did not bring her claims within the applicable limitation period. The applicant did not address the limitation issue in her submissions.

29. A limitation period is a specific time period within which a person may pursue a claim. If that time period expires, the claim may not be brought even if it may have been successful. The *Limitation Act* applies to the tribunal and, in section 6, sets out a basic limitation period of 2 years. I find that this 2-year limitation period applies to the applicant's claims.

30. A limitation period begins to run the day after a claim is discovered. In this case, the strata made a decision to fund the hallway updates through the operating budget rather than through special levies at the June 3, 2015 meeting of the strata council. This decision was communicated to owners in the associated minutes. Although she owned her strata lot in 2015, it is not clear whether the applicant became aware of the funding decision through those minutes or at the 2015 AGM. However, I am satisfied that the evidence establishes that the applicant had discovered the issue by the 2016 AGM. Therefore, the limitation period expired 2 years after November 30, 2016.

31. The applicant filed her Dispute Notice on April 2, 2019, approximately 2 years and 5 months after the November 30, 2016 AGM. As the applicant's claim was filed more than 2 years after it was discovered, I find that it is statute-barred under the *Limitation Act*. I therefore dismiss the claim.

TRIBUNAL FEES AND EXPENSES

32. 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. As the applicant was unsuccessful, I dismiss her claim for reimbursement of tribunal fees.
33. The strata corporation must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicant.

ORDERS

34. I dismiss the applicant's claims and this dispute.

Lynn Scrivener, Tribunal Member