



Civil Resolution Tribunal

Date Issued: May 22, 2020

File: ST-2019-007893

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VAS 2844 v. Poole*, 2020 BCCRT 562

B E T W E E N :

The Owners, Strata Plan VAS 2844

APPLICANT

A N D :

IRENE POOLE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. The respondent, Irene Poole (owner), owns strata lot 15 in the applicant strata corporation, The Owners, Strata Plan VAS 2844 (strata).
2. The strata says it incurred legal costs because the owner did not pay a special levy by its due date.

3. The strata now seeks payment of \$3,471.34 in legal fees for the cost of registering and removing a lien. Although the strata initially sought fines for late payment of the special levy, it clarified in its submissions that it was seeking legal fees and interest only.
4. The owner says the strata should not charge legal costs because it placed the lien on her strata lot on the same day she made the payment.
5. The owner is self-represented in this dispute. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.
8. 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.
9. 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.

10. Tribunal documents incorrectly show the name of the respondent as The Owners, Strata Plan, VAS2844. Based on section 2 of the SPA, the correct legal name of the strata is The Owners, Strata Plan VAS 2844. Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, I have exercised my discretion under section 61 to direct the use of the strata’s correct legal name in these proceedings. Accordingly, I have amended the strata’s name above.

ISSUE

11. The issue in this dispute is whether the owner must pay the legal costs related to the owner’s failure to pay the special levy by the due date.

BACKGROUND

12. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.

13. The strata says it needed to repair the building envelope but was unable to pass a ¾ vote resolution to approve a special levy. The applicant commenced an application in the British Columbia Supreme Court. On May 31, 2018 the court approved the ¾ vote resolution for a special levy. The court also ordered that \$10,000 in legal costs be added to the special levy.

14. The applicant’s lawyer sent a demand letter dated August 9, 2018 to the owner seeking \$152,295.01, broken down as follows:

- a. \$150,242.98 for “Strata fees and other amounts owing pursuant to s. 116 of the *Strata Property Act*”,
- b. \$1,252.03 for “Fines and other charges”,
- c. \$800 for “Legal Costs”

(strata charges)

15. The letter also stated that if the owner did not pay within 21 days, the strata could commence legal proceedings without further notice, including registering a certificate of lien against title to the owner's strata lot under section 116 of the SPA. I find this meant the payment was due by August 30, 2018.
16. The owner says she provided the strata with a bank draft for \$150,242.98 on September 11, 2018. She says despite the payment, the strata still placed a lien on her strata lot the same day she delivered the bank draft. The owner did not explain why she did not pay the full amount of the strata charges. I accept the owner made the payment on September 11, 2018 since the strata did not dispute the owner's statement.
17. The strata provided a June 14, 2019 account statement for the owner for \$3,471.34 (account statement). The strata did not clarify if it sent the account statement to the owner. It listed 5 invoices from July 31, 2018 to September 20, 2018. However, the strata only provided a copy of the September 20, 2018 invoice for \$956.85 in legal fees. The remaining 4 invoices listed in the account statement were dated from July 31, 2018 to August 31, 2018. They were described as either "FineLegFee718" or "FineBERP718". The strata did not explain what these terms meant.

ANALYSIS

Should the owner pay the legal costs related to her failure to pay the special levy by the due date?

18. Section 116 of the *Strata Property Act* (SPA) allows a strata to register a lien against an owner's strata lot by registering a certificate of lien at the Land Title Office for failure to pay a special levy, as well as for other items that do not apply here.
19. Section 118 of the SPA states that the costs of registering a lien against an owner's strata lot may be added to the amount owing under a certificate of lien. Those costs include (a) reasonable legal costs (b) land title and court registry fees and (c) other reasonable disbursements.

20. In *The Owners, Strata Plan KAS 2428 v. Baettig*, 2017 BCCA 377, the Court of Appeal found that a strata could collect actual legal costs under section 118 of the SPA, provided the costs were “reasonably necessary.”
21. Since the strata did not provide a copy of 4 of the 5 invoices listed in the account statement, I find the strata has not shown they are for legal costs or that they are reasonably necessary. The account statement provided by the strata suggests that the remaining amounts were for fines, which are not lienable under SPA section 116, and therefore not collectable under section 118.
22. The remaining September 20, 2018 invoice was for legal services provided from August 9, 2018 to September 14, 2018. I have reviewed the lawyer’s invoice and I am satisfied that the charges are generally related to registering a lien against the owner’s strata lot.
23. However, I cannot determine whether the legal costs were reasonably necessary since the strata did not provide the time spent on each service or explain how the lawyer’s \$755 fee was calculated. There is also no explanation for why the lawyer’s invoice states that multiple demand letters to the owner were prepared on August 9, 2018 or foreclosure proceedings were commenced on August 30, 2018. Under the circumstances, I find 50% of the September 20, 2018 is reasonable and I award \$478.43 to the strata.
24. For the reasons discussed above, I dismiss the strata’s claims for the rest of the legal costs.

TRIBUNAL FEES AND EXPENSES

25. 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. I see no reason in this case not to follow that general rule. I find the strata was only partially successful in this dispute and therefore is entitled to have 15% of its tribunal fees or \$33.75 reimbursed. There was no claim for expenses.

26. The strata requests pre-judgement interest based on the *Court Order Interest Act* (COIA). The interest on the \$478.43, which accumulated from the date of the account statement, or June 14, 2019, until the date of this decision, equals \$8.37.
27. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owner.

DECISION

28. I order that within 30 days of this decision, the owner pay the strata a total of \$520.55 broken down as follows:
 - a. \$478.43 for legal fees,
 - b. \$8.37 in pre-judgement interest under the COIA, and
 - c. \$33.75 for tribunal fees.
29. The strata is also entitled to post-judgement interest under the COIA.
30. Under section 57 of the CRTA, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia (BCSC), a validated copy of the order which is attached to this decision. Once filed, a tribunal order has the same force and effect as a BCSC order.

31. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia (BCPC). However, the principal amount or the value of the personal property must be within the BCPC's monetary limit for claims under the Small Claims Act (currently \$35,000). Under section 58 of the CRTA, the owner can enforce this final decision by filing a validated copy of the attached order in the BCPC. Once filed, a tribunal order has the same force and effect as a BCPC order.

Rama Sood, Tribunal Member