



Civil Resolution Tribunal

Date Issued: September 4, 2020

File: ST-2020-001168

Type: Strata

Civil Resolution Tribunal

Indexed as: *Hedjazi v. The Owners, Strata Plan VR399*, 2020 BCCRT 999

BETWEEN:

SEYED MADJID HEDJAZI, IZABELLA PIEKUT, NAYER
GOSHAYESHI, BEHYAR GHAREMANI, HAYEDEH LASHAI, MINA
RAEIS-SAMIEI and NATALIYA BUTENKO

APPLICANTS

AND:

The Owners, Strata Plan VR399

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about funding for repairs to a parkade. The respondent, The Owners, Strata Plan VR399 (strata), is a strata corporation. The applicants, Seyed Madjid Hedjazi, Izabella Piekut, Nayer Goshayeshi, Behyar Ghahremani, Hayedeh Lashai,

Mina Raeis-Samiei and Nataliya Butenko (owners), each own a strata lot in the strata.

2. On January 16, 2020, strata owners voted in favour of a 3/4 vote resolution to fund parkade repairs through a special levy. The owners seek an order for the strata to stop collection of the special levy until the strata agrees with the neighboring strata corporations on how to share the costs of repairs to the strata's parkade and 2 neighboring parkades. The owners also seek an order to "nullify" the resolution.
3. The strata disagrees and says the resolution is valid and binding, regardless of what the neighboring strata corporations decide to do.
4. Mr. Hedjazi represents the owners. A strata council member represents the strata.
5. This dispute is 1 of 3 related to the disputes about parkade repairs, discussed in my reasons in ST-2019-010627 and ST-2020-003377. I have written 3 separate decision for these disputes because they have no parties in common. My findings are based on the evidence before me in each separate dispute, though I will refer to my orders in ST-2019-010627.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.
7. The CRT 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 CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT 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 CRT rules, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

New Allegations about Statements by the Strata

10. In their final submission, the owners say the January 16, 2020 resolution is invalid because it was based on false information distributed by the strata in a December 2019 newsletter. The newsletter describes the parkade project and in one section it says the District of North Vancouver could “condemn the parkade” and force the strata to repair it. The owners say the District cannot do this.
11. The strata objects to the owners raising this issue because it was not mentioned in the Dispute Notice and it was raised after facilitation.
12. I acknowledge that the owners raised a new allegation late in the proceeding. However, CRT staff provided the strata an extension to provide evidence and submissions. Given this, I will consider this allegation on the merits below.

ISSUES

13. The issues in this dispute are as follows:
 - a. Must the strata rescind the January 16, 2020 resolution to raise funds for parkade repairs?
 - b. Must the strata stop collection of the special levy for parkade repairs?

BACKGROUND, EVIDENCE AND ANALYSIS

14. In a civil claim such as this, the applicant owners bear the burden of proof on a balance of probabilities. Although I have reviewed all the evidence and submissions, I have only addressed them to the extent necessary to explain my decision.
15. I will begin with the undisputed background facts. The strata is part of 5 strata corporations known collectively as the Woodcroft Estates. The 5 strata corporations are parties to a November 28, 1977 cost-sharing agreement. The shared costs include maintenance and administration of landscaping and the repair of parking lots.
16. The Woodcroft Estates obtained a July 14, 2015 parkade assessment report from Read Jones Christoffersen Ltd. (RJC Report). As documented in the RJC Report, the Woodcroft Estates has a total of 6 high-rise residential buildings constructed over 3 underground parkades. The 3 parkades were built in 3 phases between 1973 and 1977. Each phase involved building 2 residential towers and an associated 3-level underground parkade.
17. The strata consists of 1 of these buildings and part of 1 of the parkades. The strata's parkade is the easternmost of the 3 parkades. The strata plan and the RJC Report show it extends below both the strata's building and a neighboring building, which is part of another strata corporation. The strata therefore owns part of 1 of the parkades and shares its use with another strata corporation. The evidence indicates the other strata corporation is The Owners, Strata Plan VR460 (VR460). The strata plan shows which part of the parkade is the strata's common property.
18. In its report, RJC concluded that all 3 parkades were in poor condition. In particular, RJC noted that the moisture protection system covering the parkade plazas appeared to have failed. The parkade plaza is the portion of each parkade that is most exposed to the exterior. There was active water leakage throughout the parkades. RJC noted that it wrote the system/membrane had likely reached the end of its expected service life in its 1996 evaluation. RJC concluded that the moisture

protection system had to be restored, otherwise the concrete and steel elements could not be protected in all 3 parkades.

19. RJC recommended many other measures, including adding waterproofing to the interior parkade slab (which currently had none). RJC recommended repairs totaling \$13,700,000 to take place over the next 6 years to the concrete and steel elements and waterproofing systems in all 3 parkades.
20. There is no evidence before me that contradicts the RJC Report and I accept its findings as fact.

Raising Funds for Repairs

21. The Woodcroft Estates decided to enlist RJC to obtain bids for plaza and parkade restoration work. As documented in its October 8, 2019 letter to the Woodcroft Estates, RJC subsequently obtained bids from 4 contractors and recommended Polycrete Restorations Ltd. (Polycrete) for an estimated contract price of \$14,176,849. Accounting for allowances, contingencies and GST, RJC recommended budgeting \$20,500,000 in total. RJC explained that allowances include consulting fees, permits, and testing. Contingencies are for unforeseen circumstances. The work was planned for 3 phases with each phase lasting about 1 year.
22. Each of the 5 strata corporations of the Woodcroft Estates had its owners vote on approving repairs and raising funds through a special levy.
23. The strata held a special general meetings (SGM) on November 26, 2019 for the owners to vote on approving and funding the parkade project. The 3/4 vote resolution failed to obtain the necessary number of votes. At the January 16, 2020 SGM, the owners approved a 3/4 vote resolution for approving and funding the parkade project. The minutes show that 105 voted in favour and 24 opposed, with no abstentions.

24. The approved resolution says the work would be undertaken in 3 phases over 3 years. Phase 3 would involve work on the eastern parkade that is used and shared by the strata.
25. The resolution said the proposed work included the following: 1) removing plaza landscaping, overburden, asphalt and existing waterproofing; 2) installing new waterproofing, landscaping, asphalt and overburden on plaza slabs; 3) conducting concrete repairs within the parkades; 4) installing traffic deck coatings on suspended parking surfaces within the parkades (traffic coating work); and 5) repair of drains and/or installation of new drains to allow appropriate drainage of waterproofed slabs.
26. The resolution says the total estimated cost for all work at all 3 parkades was \$21,000,000. The resolution authorized the strata to pay for its part of the parkade project through a special levy totaling \$2,939,774. This was to meet the strata's share under the cost-sharing agreement.
27. A key part of the resolution states that if all the members of the Woodcroft Estates do not approve funding resolutions that include the traffic coating work (defined above), the strata is authorized to proceed separately with such work.

Issue #1. Must the strata rescind the January 16, 2020 resolution to raise funds for parkade repairs?

28. As noted above, the owners say the voting results at the January 2020 SGM are invalid because the strata provided allegedly misleading comments in a December 2019 newsletter. I find that the owners' argument is based on substantial unfairness as it concerns expectations about the content of the December 2019 newsletter.
29. SPA section 164 sets out the BC Supreme Court's authority to remedy significantly unfair actions. The CRT has jurisdiction over significantly unfair actions under CRTA section 123(2), which has the same legal test as cases under SPA section 164. See *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164. The test, from *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, is as follows:

- a. What is or was the expectation of the affected owner?
 - b. Was that expectation on the part of the owner objectively reasonable?
 - c. If so, was the expectation violated by an action that was significantly unfair?
30. In *Reid v. Strata Plan LMS 2503*, 2001 BCSC 1578, the Court defined a significantly unfair action as one that is “burdensome, harsh, wrongful, lacking in probity or fair dealing, or has been done in bad faith”.
31. I find the owners expected the December 2019 newsletter to contain no misleading statements. I find this expectation was objectively reasonable given that the newsletter’s purpose was to inform the owners in the strata about the parkade.
32. However, I am not persuaded the strata violated this expectation through an action that was significantly unfair. This is because I find that the December 2019 newsletter contained no misleading statements.
33. Sections 72 and 73 of the *Community Charter* provide a municipal council the ability to address hazardous buildings or other structures. The municipality may impose remedial action requirements on the owner of a structure or building which creates unsafe conditions. The actions could include removing or demolishing it or bringing it up to a standard specified by a bylaw, or otherwise deal with it as directed by council.
34. I find the District of North Vancouver has the powers described in section 72 and 73 of the *Community Charter*. The strata therefore provided a reasonably accurate statement when it said the District could “condemn the parkade” if the strata did not act in accordance with the recommendations in the RJC Report. The RJC Report shows that the condition of the strata’s parkade had deteriorated over time and left unaddressed would indeed pose a hazard. The strata made its comments in the context of what could happen if the parkade remained neglected.
35. The owners also say the strata said if the parkade were condemned, this could affect the market value of the strata lots. On its face, this statement appears

plausible. The owners provided no evidence that it is untrue. Overall, I find the strata's wording sufficient in these circumstances to not be misleading. I dismiss the part of the owners' claim about misleading statements.

36. The owners also say that the vote obtained at the January 2020 SGM is invalid because an underlying assumption was that all the members of the Woodcroft Estates would approve the project before any parkade work started. It says that this assumption no longer holds because another member of the Woodcroft Estates, The Owners, Strata Plan VR 437 (VR437), has voted against funding the parkade project. The owners say the strata should not move forward with repairs without VR437's participation.
37. As discussed in my reasons in ST-2019-010627, I have ordered VR437 to repair its parkade. I have also authorized the VR437 to impose a special levy to fund its part of the project. I find this answers the owners' concern that the other members of the Woodcroft Estates will not participate in the parkade project. I dismiss this part of the owners' claim for this reason.
38. Alternatively, I would also dismiss the owners' claims because the approved resolution explicitly states that the strata is authorized to proceed with the traffic coating work on its own. The resolution is worded to account for the possibility that the other strata corporations would vote against the parkade project.
39. I acknowledge that the strata shares the use of the parkade with VR460. The contemplated work would affect the interior of the parkade. However, there is no evidence from VR460 in this proceeding that it would oppose or otherwise stop the repairs.
40. I note the terms of the November 28, 1977 cost-sharing agreement suggest that all the members of Woodcroft Estates share in the cost of parkade repairs. However, the parties did not say that this necessarily made it impractical for the strata to do the traffic coating work.

41. The owners also complain that the January 2020 vote had 67 proxies. In comparison, the SGM votes on August 2018 involved 30 proxies and the November 2019 SGM involved 34 proxies. The owners find this objectionable. I disagree, as SPA section 56 allows for a person to vote by in person or by proxy. The number of proxies does not make the January 2020 vote or resolution at issue invalid in these circumstances.
42. The owners also say there was “a lack of transparency in terms of the names of absentee voters”. They also argued that the strata needed to obtain new cost estimates before proceeding with repairs. I disagree as the owners did not provide details or evidence to support these submissions.
43. In summary, I conclude the January 16, 2020 resolution for parkade repairs and funding should not be rescinded. I dismiss the owners’ claim.

Issue #2. Must the strata stop collection of the special levy for parkade repairs?

44. Given my above determinations, I see no reason why the strata should not collect the special levy for the parkade repairs. I dismiss this claim.

CRT FEES AND EXPENSES

45. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule.
46. The strata is the successful party. It paid no CRT fees and claims no dispute-related expenses. I therefore do not award them to any party.
47. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owners.

ORDER

48. I dismiss the owners' claims and this dispute.

David Jiang, Tribunal Member