



# Civil Resolution Tribunal

Date Issued: December 7, 2020

File: ST-2020-001606

Type: Strata

Civil Resolution Tribunal

Indexed as: *Roberts v. The Owners, Strata Plan LMS 1901*, 2020 BCCRT 1387

B E T W E E N :

DEBORAH L. ROBERTS and RONALD F. RUSSELL

**APPLICANTS**

A N D :

The Owners, Strata Plan LMS 1901

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Lynn Scrivener

## INTRODUCTION

1. This dispute is about a strata corporation's finances. The applicants, Deborah L. Roberts and Ronald F. Russell, own a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 1901 (strata). The applicants say that the strata's finances are not managed properly, resulting in an inaccurate operating fund and an

insufficient contingency reserve fund (CRF). The applicants ask for orders that the strata conduct a financial review from July 1, 2015 to June 30, 2019, that the strata re-do the budget for the fiscal year starting July 1, 2019, and that there be a discussion with the owners about the CRF. The strata denies that there are any problems with its bookkeeping or its CRF.

2. Ms. Roberts represents the applicants. 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 (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.
4. 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.
5. 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.
6. 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.

## ISSUES

7. Several issues about document production and strata governance were part of this dispute initially, but were addressed by another tribunal member in *Roberts v. The Owners, Strata Plan LMS 1901*, 2020 BCCRT 854 (Previous Decision). I will address the impact of the Previous Decision further below.
8. The issues in this dispute are:
  - a. Whether the strata's operating fund and CRF comply with the *Strata Property Act* (SPA),
  - b. Whether a review of the strata's finances between July 1, 2015 and June 30, 2019 is necessary,
  - c. Whether the strata's budget for the fiscal year starting July 1, 2019 should be "redone", and
  - d. Whether the CRT should order that the strata have a discussion with every owner about the CRF.

## EVIDENCE AND ANALYSIS

9. In a civil dispute like this, the applicants bear the burden of proof on a balance of probabilities. The parties provided evidence and submissions in support of their positions. While I have considered all of this information, I will refer to only what is necessary to provide context to my decision.
10. According to the strata plan filed at the Land Title Office in 1995, the strata is a bare land strata with 14 strata lots. The strata's common assets and common property (CP) include a parking area for recreational vehicles, fencing, a private road, lighting, and a mechanical gate.
11. The strata was created under the previous *Condominium Act*. Under section 17.11(3) of the *Strata Property Regulation* (Regulation), effective January 1, 2002, the Standard Bylaws under the SPA were deemed to be the bylaws for all strata

corporations created under the *Condominium Act*, except to the extent that bylaws are filed in the Land Title Office. The strata filed bylaw amendments in 2006 and 2011 that prohibited rentals and restricted the occupancy of strata lots to persons over age 55. With the exception of these issues, the Standard Bylaws apply to the strata.

12. The applicants' claims appear to be related, at least in part, to events that occurred when Mr. Russell served on the strata council. The evidence before me shows that, during his time on council, some owners were concerned about rising expenses and the conduct of the strata council, including allegations about money being removed from the CRF without approval. This situation resulted in Mr. Russell and other members resigning from the strata council, and created what is described in the evidence and submissions as a "negative atmosphere" and "heated divide" among owners. According to letters in evidence, some owners are concerned about the amount of information they have about the strata's finances and about whether the strata is complying with the requirements of the SPA when voting, documenting its decisions, and calling and conducting meetings. The applicants have not requested remedies about these specific issues.
13. The applicants say that the operating budget combines operating and contingency expenses, and that this results in the approval of expenses without real discussion. They also say that the lack of monthly transfers to the CRF allows for a greater amount of money in the operating fund and the transfer of "extra" money at the end of the year does not "add up". According to the applicants, not enough money is going into the CRF, which is a concern due to the age of the property and upcoming expenses for CP maintenance. The applicants say that they have asked for a hearing about their view that the CRF is too low and the operating expenses are too high, but the strata did not grant them one within the time frame set out in the SPA. I note that the hearing issue was dealt with in the Previous Decision.
14. The strata says it manages its affairs in a diligent and conscientious manner. It says there are 2 separate accounts for the operating budget and the CRF. The strata says it does not move money into the CRF on a monthly basis, but votes to move any surplus to the CRF at each annual general meeting (AGM). The strata identifies one

of its “major concerns” as growing the CRF, and says its current balance is sufficient given the size of the complex and maintenance schedule.

### ***The Operating Fund and the CRF***

15. Section 91 of the SPA says that the strata is responsible for its common expenses. Section 1 of the SPA defines “common expenses” as expenses relating to the CP and common assets or required to meet any purpose or obligation of the strata corporation.
16. Section 92 of the SPA requires a strata to use an operating fund for expenses that usually occur either once a year or more often than once a year and a CRF for expenses that occur less often than once a year or that do not usually occur. According to section 96, a strata must not spend money from the CRF unless the expenditure is consistent with the purposes of the fund, approved by a majority vote if related to a depreciation report, or approved by a  $\frac{3}{4}$  vote at an AGM or special general meeting (SGM). Similarly, section 97 says that the strata must not spend money from the operating fund unless the expenditure is consistent with the purposes of the fund and approved by a  $\frac{3}{4}$  vote or authorized in the budget. However, section 98 of the SPA permits unapproved expenditures from the operating fund or CRF if an immediate expenditure is necessary to ensure safety or prevent significant loss or damage. This is consistent with the spending restrictions set out in Standard Bylaw 21.
17. The thrust of the applicants’ argument is that the strata is not acting appropriately by holding funds in, and making payments from, the operating account that should involve the CRF. The applicants do not take issue with recurring or emergent expenses (such as those made to address broken pipes and fallen fences), but rather for planned repairs that occur less than once a year.
18. The minutes of the 2015 to 2019 AGMs show that, on occasion, the owners discussed expenditures for items such as tree trimming, gate repairs, and streetlight replacements. Some of these items had estimated costs attached to them at the time of the discussion, while others did not. The AGM minutes are quite brief. Although

the minutes document unanimous votes on most issues, it is not entirely clear whether expenses approved by the owners were actually included in that year's approved budget as the evidence before me does not include all of the budgets for these years. The budgets that are in evidence show anticipated expenditures as line items.

19. Based on the evidence before me, I find that the applicants have not established that the strata has failed to comply with the SPA's requirements. I will not make an order that the strata comply with the SPA as it is already required to do so. However, the strata must ensure that, if it intends to pay for an expense out of the operating fund, the expense must be specifically included in the budget and approved by the ownership. If there is an expense that is not included in the budget, the strata must not pay it from the operating fund even if it was discussed by the owners at an AGM or SGM. Such an expense must be paid from the CRF as set out in section 96 of the SPA. The requirements of this section apply even if there is a desire for expediency or the expenditure is a minor amount (see *Mitchell v. The Owners, Strata Plan KAS 1202*, 2015 BCSC 2153 at paragraph 59).
20. Turning to the issue of contributions to the CRF, documents in evidence show that the CRF increased from approximately \$17,000 in 2014 to just over \$28,000 in May of 2020. The strata's practice is to set aside 25% of the annual strata fees and transfer that amount, plus any excess, to the CRF at the end of each fiscal year.
21. There is no requirement in the SPA or the Standard Bylaws that these contributions be made on a monthly basis. Section 93 of the SPA says that the strata must determine the amount of the annual contribution to the CRF, subject to the requirements in section 6.1 of the Regulation. This section sets a minimum contribution to the CRF, and allows for additional contributions as part of the annual budget approval process, after consideration of the depreciation report. Based on the evidence before me, I find that the strata is in compliance with the SPA and the Regulation.

## ***Financial Review***

22. The applicants say there have been “repeated errors, omissions in income and discrepancies in invoices, the operating budget, contingency funds, maintenance fees”. The alleged omissions in income appear to relate to how the fees the strata charged for forms were recorded in the past, and the alleged errors appear to involve items such as insurance costing more than the budgeted amount.
23. The applicants say that they want clarity in the strata’s finances, but they receive information in the form of “pages and pages and figures are hard to deal with”. I infer that the applicants want an explanation of the strata’s finances and financial plan.
24. The strata says it has a small budget with few expenditures and “simple” books, so it is not necessary to have a financial review. However, the strata arranged for a strata lot owner’s spouse, who is an accountant, to conduct a review of the strata’s finances between 2015 and early 2020. This individual reported that he found no significant errors and no indication that the CRF had been mismanaged. I find that the accountant meets the requirements for expert evidence set out in CRT rule 8.3, and I accept his opinion on that basis. I also note that the applicants did not dispute the accountant’s findings or conclusion, or provide contrary expert evidence.
25. Although the complete records are not before me, I find that the strata’s available budgets and financial statements meet the requirements set out in section 6.6 and 6.7 of the Regulation. The evidence also contains various lists of expenditures, but it is not clear who produced all of these documents. If they were produced by the strata, they could be books of account that need to be prepared by the strata under section 35 of the SPA. “Books of account” is not a defined term in the SPA. The courts have found that books of account do not require a particular form, but must show money received and spent (see *Kayne v. Strata Plan LMS 2374*, 2007 BCSC 1610 at paragraph 15).
26. I find that the financial documents produced by the strata meet the requirements of the SPA. I also find that the applicants have not met their burden of proof to establish the presence of widespread errors, omissions or discrepancies as they allege.

Accordingly, I find that it is not necessary to order the strata to conduct a review of its finances between July 1, 2015 and June 30, 2019. Given my conclusion, I will not consider whether a portion of such a remedy would be outside of the applicable limitation period and therefore statute-barred under the *Limitation Act*.

### ***The 2019 Budget***

27. The applicants ask for an order that the 2019 budget be “redone”. They do not question the amount assigned to each line item, but say that the current budget “distort[s] the amounts that should have been deposited to the contingency fund monthly”.
28. As discussed above, I have found that the strata’s CRF contributions comply with the SPA and the Regulation and that it is not necessary to make monthly contributions to the CRF. Given my findings and the applicants’ submission that they agree with the amounts in the budget, I find that it is not necessary to make an order in this regard.
29. The applicants also raise a concern that the 2019 budget was not approved unanimously. This is not required under the SPA. According to section 102 of the SPA, a budget must be passed by a  $\frac{3}{4}$  vote resolution. I note that the minutes of the June 27, 2019 AGM identify some issues as having received a unanimous vote, but the budget is listed simply as having been “carried”. Based on the available evidence, I find that the 2019 budget was approved as required by the SPA.

### ***Discussion about the CRF***

30. The applicants ask for an order that the owners discuss the CRF and how to increase it. The strata says the CRF is adequate for its size, but did not comment on the need for any sort of discussion of the matter.
31. In the Previous Decision, the other tribunal member denied the applicants’ request for an order that the strata hold “special meetings” to address “finance, insurance, common property and bylaws”. The other tribunal member also found that the strata had failed to provide the applicants with hearings about “10 separate topics for



discussion". It does not appear that the CRF was specifically contemplated in the Previous Decision.

32. I agree with the other tribunal member's reasoning that it is not necessary to order a meeting as the owners will have the opportunity to raise their issues with the strata council through the hearing process. Based on the outcome of the Previous Decision, such a hearing may have occurred already. Further, if they have the agreement of persons holding at least 20% of the strata's votes, it would be open to the applicants to propose an agenda item for discussion at an AGM or SGM about this or any other topic, as permitted by sections 43 and 46 of the SPA.
33. I dismiss the applicants' claim for an order to discuss the CRF.

## **CRT FEES AND EXPENSES**

34. 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. As the applicants were not successful, I dismiss their claim for reimbursement for CRT fees.
35. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicants.

## **ORDER**

36. I dismiss the applicants' claims and this dispute.

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Lynn Scrivener, Tribunal Member