



# Civil Resolution Tribunal

Date Issued: December 21, 2020

File: ST-2020-004618

Type: Strata

Civil Resolution Tribunal

Indexed as: *McRae v. The Owners, Strata Plan NW136*, 2020 BCCRT 1441

**B E T W E E N :**

DEMIAN MCRAE and JENNIFER COCKE

**APPLICANTS**

**A N D :**

The Owners, Strata Plan NW136

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Julie K. Gibson

## INTRODUCTION

1. This dispute is about how a strata corporation reports special levy expenditures for a building renewal project to its owners.
2. The applicants Demian McRae and Jennifer Cocke jointly own a strata lot in the respondent strata corporation The Owners, Strata Plan NW136 (strata).

3. The strata owners approved a \$5,087,000 special levy for a building renewal project (Project).
4. The applicants say that the Project budget was \$3,771,341.95, with a contingency of \$783,442.19. The applicants seek an order that the strata provide full details about whether and how the \$783,442.19 was spent. I infer that the applicants want an order that the strata disclose accounting records relevant to the special levy.
5. The strata says the *Strata Property Act* (SPA) does not require it to provide underlying bills, invoices, receipts or the “full details of all expenditures” that the applicants seek. The strata says it has complied with SPA disclosure requirements.
6. For the reasons set out below, I dismiss the applicants’ claims, except with regard to production of any Project contracts to which the strata is a party.
7. The applicants represent themselves. The strata is represented by a strata council member.

## **JURISDICTION AND PROCEDURE**

8. 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.
9. 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.
10. 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.

11. 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.

## **ISSUE**

12. The issue is whether the strata is required, by the SPA or otherwise, to provide the applicants with more details of expenditures under the Project special levy.

## **POSITIONS OF THE PARTIES**

13. The applicants say the strata has not provided sufficient details of special levy expenditures to them.
14. The applicants submit that the combined effect of SPA sections 108(4)(a) and 35(1)(d) is that the strata must keep books of account for special levy funds and make them available for owners to inspect.
15. The strata agrees that SPA section 35(1)(d) requires it to provide books of account showing money received and spent, and the reason for the receipt or expenditure. However, the strata says the SPA does not require it to provide underlying bills, invoices, receipts or “full details of all expenditures”.

## **EVIDENCE AND ANALYSIS**

16. In this civil dispute, the applicants bear the burden of proof of their claims. This means the applicants must prove their claims on a balance of probabilities. I have read the parties’ evidence and submissions but have only addressed them as I find necessary to explain my decision. I summarize the background facts below.
17. On February 27, 2019, the strata held an Annual General Meeting (AGM). At the AGM, the Project’s scope was described as general building renewal including work

on walls, walkways and breezeways. The AGM Minutes include a “Project Scope Budget” for a total cost of \$5,087,000, made up of \$4,552,000 in construction costs and the balance for engineering, permits and taxes. The Minutes include written answers to owner questions about the scope of work.

18. On March 26, 2019, the strata held a “Property/Asset Walkabout” for owners. During the session, a “Renewal Committee” of owners was available to answer questions about the structural engineer’s findings and the proposed Project.
19. On April 11, 2019, the strata held a special general meeting (SGM). At the SGM, the owners passed a  $\frac{3}{4}$  vote resolution approving a special levy to spend up to \$5,087,000 for the Project. The resolution also stated that owners could be involved in construction management and design decisions so long as that did not slow Project progress.
20. The  $\frac{3}{4}$  vote resolution also provides that its secondary purpose was to “augment the CRF” and states that “...therefore, any funds remaining upon completion of the work will be transferred to or retained in the CRF.”
21. In an August 2019 project update (Project Update), the strata reported that \$98,419.84 in work had been completed against the \$5,087,000.00 budget.
22. On October 22, 2019, RDH Building Science Inc. (RDH), construction manager for the project, provided an “Owners Construction Information” document, outlining the Project’s scope.
23. In an October 2019 Project Update that strata reported that \$127,065 in permits, legal fees and pre-construction design fees had been spent. The strata also reported that RDH had reviewed bid packages with strata council, and vendors were selected to best meet the overall requirements within budget. A list of the successful vendors was provided.
24. On November 21, 2019, the strata entered into a contract with RDH to provide engineering and rehabilitation services and act as construction manager of the Project (RDH Contract). The RDH Contract was provided in evidence in this dispute.

25. In a November 2019 Project Update, the strata provided a cost summary, schedule update, information about an owner meeting set to take place on December 16, 2019 for owners who wished to meet with RDH for “additional project details”.
26. The strata’s property manager hosts a website on which various strata records are posted for the owners' information, including monthly financial statements (Monthly Statements) about the Project, and council meeting minutes (owners-access website).
27. On December 10, 2019, the applicants emailed strata council asking for copies of the contracts involved in the Project to be posted to the owners-access website.
28. On January 23, 2020 the applicants emailed strata council to inquire about drains being added around the complex and again asked that any relevant contracts be posted to the owners-access website.
29. In a January 2020 Project Update, the strata reported a budget of \$4,554,784.14 comprised of (a) \$3,771,341.95 in construction costs and (b) \$783,442.19 as a contingency for the Project. I find that the \$783,442.19 was reserved for contingencies on the Project, as opposed to being set aside to return to the CRF.
30. Within the January 2020 Project Update, the strata reported that while the Project contingency had not been used, strata council had approved applying it to podium re-sloping at the above grade walkways, face sealed stucco at base of walls in the 2nd level and podium level walkways and to repair the end beams at Buildings A- D.
31. The strata reported that the approximate contingency spent for those items would be \$219,000, with a cost summary table for those expenditures to come.
32. The strata prepared Monthly Statements for January 2020 to August 2020 inclusive. These Monthly Statements provide details of Project disbursements, including details of payments made to each trade or subcontractor.
33. As an example of the level of detail provided in the Monthly Statements, the February 2020 statement includes a “Detail of Disbursements” spreadsheet listing all

disbursements from the special levy that month. The disbursements are listed by date and include the amount, name of each payee and a memo of explanation for each payment. Disbursements are listed for carpentry expenses, stairway renewal construction management, and banking services charges, among others.

34. In February 2020 the applicants emailed the strata asking about the expenditure of the \$783,442.19 and to review any underlying documents. In particular, the applicants requested details of the cost of podium level walkways, repairs to end beams, cost of face sealed stucco and additional drains.
35. The applicants also inquired about podium level re-sloping, which they submit was included in the expenditure but excluded from the scope of work based on the February 27, 2019 AGM minutes. Having reviewed those minutes, I find that the February 2019 AGM Minutes do not expressly exclude podium level re-sloping. Given that the Project's magnitude and its general scope of strata building renewal, I find that these changes could be reasonably expected. Such changes are not each subject to advance review by individual owners. I find such changes fell within the purview of the strata council and RDH under the Project's scope.
36. On February 24, 2020, the strata council replied via an email from the property manager, saying that the Monthly Statements were being provided to all owners.
37. The strata continued to provide Project Updates from February 2020 to July 2020 inclusive. These Project Updates reported the amount of Project funds expended, the amounts remaining, and the percentage of work completed.
38. On April 30, 2020, the applicants requested a strata council hearing seeking to have the strata provide "full detail of all expenditures of the \$783,442.19 contingency fund for the renewal project."
39. Strata council's July 2020 Project Update reported that the Project will finish "under budget" with a remaining contingency of \$215,000, with the work 95% complete.

40. Strata council's July 28, 2020 meeting minutes indicated that the Project was winding down, and that a walk-through would be conducted to identify areas of concern or outstanding deficiencies.
41. On July 28, 2020, the applicants' attended a strata council hearing on these issues, via teleconference.
42. On July 31, 2020, the strata wrote to the applicants that it declined to address their request for further details of the Project financials, explaining it was not obligated to provide this information under the SPA.
43. In September 2020, the applicants emailed strata council asking for a report of the Project finances reporting on each component (stairs, walkways, urethane coating, new base of wall, concrete and metal inserts, end walls, scaffold, permits, legal fees, construction, design fees, RDH fees) with the budget, accepted bid and actual expenditure, broken down by component.
44. The strata's responded that it was not required to customize reports for individual owners.

***What documents is the strata required to produce regarding special levy expenditures?***

45. SPA section 35(1)(d) requires a strata to prepare books of account showing funding received and spent, and the reason for the expenditure or receipt.
46. The SPA does not define the term "books of account". The Courts have held that books of account must show money spent and received, but are not required to be kept in a particular form, nor to include production of every receipt or invoice reflected in the books of account summary: *Kayne v. The Owners Strata Plan LMS 2374*, 2007 BCSC 1610 at paragraph 15. In *Kayne*, the Court wrote that the purpose of the SPA is to "...ensure that members of the strata corporation are informed of the decisions taken and money spent on their behalf."

47. Section 35(2) requires the strata to retain copies of various documents, including the books of account described in section 35(1)(d), the budget and financial statement for the current year and for previous years, “written contracts to which the strata corporation is a party”, bank statements, cancelled cheques and certificates of deposit and any reports the strata obtains respecting repair and maintenance of major items, including engineers’ reports.
48. SPA Section 36 provides that a strata must make the section 35 records available for inspection by an owner, and provide an owner with copies of them, within 2 weeks of a written request. Such requests must be reasonable: *Bowie v. The Owners, Strata Plan VIS 5766*, 2020 BCCRT 733 at paragraph 58. I find that a reasonable document request must provide enough detail to allow the strata to respond. I find the applicants’ general request for “full details” is not reasonable. If the applicants wish to review section 35 documents pertaining to the Project, they may itemize the types of documents they want to review and make a request accordingly. Under *Strata Property Regulation* (SPR) 4.2(2), no fee may be charged to an owner for inspecting records or documents under SPA section 36. SPR 4.2(1) allows a strata to charge 25 cents per page for copies of section 36 documents.
49. SPA section 108(4) provides a strata must account for the money collected under a special levy separately from other strata money, inform owners about the expenditure of special levy funds, and use the money for the purpose set out in the resolution.
50. Regulation 6.7 requires the strata to provide an annual financial statement including income and expenditures made by special levy under SPA section 108.
51. Looking at section 35 and section 108(4) together, I find that the SPA does not require the authorizing resolution or the books of account for a special levy to list every expenditure that may arise during this type of large building renewal. That is, the SPA does not require the strata to break down expenditures by component to the level the applicants have requested.
52. As noted in *Kayne*, the purpose of the SPA is to provide information as to how money has been spent, and the books of account must show money received and spent.



While they are not in the precise form the applicants' wish, I find that the strata's books of account comply with the SPA.

53. I find that the Monthly Reports meet SPA requirements laid out in section 108(4)(d), because they inform the owners about the expenditure of the money collected.
54. The applicants also submit that the strata contravened SPA section 108(4)(a) by failing to separate the special levy funds from the other money. I disagree and find that the Monthly Statements regularly reported the special levy funds expenditures separately from other strata money.
55. The applicants' submission reveals their frustration that the strata did not specifically address each of their inquiries about the Project. While open communication between owners and strata is a best practice, the SPA does not oblige a strata to answer every question from an owner: see the non-binding but persuasive reasoning in *Harvey v. The Owners, Strata Plan VR 390*, 2019 BCCRT 944, paragraph 112.
56. In their materials, the applicants also mentioned deficiencies in Project work, and objections to the choice of materials both in terms of appearance and function. I find that those issues are not before me, because this dispute is confined to the question of financial document disclosure.
57. I find that the applicants are not entitled to underlying invoices or receipts for all special levy fund expenditures. However, I find that the applicants made a reasonable and specific request for any contracts to which the strata is a party, which should have been produced under SPA section 36. The evidence did not prove that the strata addressed this request.
58. If there are any written Project contracts to which the strata is a party, aside from the RDH contract that has already been produced, I order the strata to make those available to the applicants to review, through the owners-access website, within 30 days of this decision. Given the pandemic, the website provides a practical option for document production.
59. I dismiss the applicants' remaining claims.

## **CRT FEES and DISPUTE-RELATED EXPENSES**

60. 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. Because applicants were largely unsuccessful, I order no reimbursement of CRT fees. The applicants did not claim dispute-related expenses.
61. The strata provided a receipt for \$446.25, for 5 hours of its property manager's time spent addressing this dispute. The tribunal does not generally award compensation for time spent on a dispute, consistent with CRT Rule 9.5(5) against awarding reimbursement of legal fees except in extraordinary cases. I see no reason to deviate from that rule as I find that this is not an extraordinary case. I dismiss the strata's claim for compensation for time spent.
62. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicants.

## **ORDERS**

63. I order that, within 30 days of this decision, the strata upload any written contracts involving the April 11, 2019 special levy building renewal project, to which it is a party, to the owners-access website, or inform the applicants in writing that there are no such contracts.
64. I dismiss the applicants' remaining claims.

65. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

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Julie K. Gibson, Tribunal Member