



Civil Resolution Tribunal

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File: ST-2020-004290

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wong's Management (1990) Enterprises Ltd. v. The Owners, Strata Plan LMS 3259*, 2021 BCCRT 70

B E T W E E N :

WONG'S MANAGEMENT (1990) ENTERPRISES LTD.

APPLICANT

A N D :

The Owners, Strata Plan LMS 3259

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Wong's Management (1990) Enterprises Ltd. (WM) owns a strata lot in the respondent strata corporation The Owners, Strata Plan LMS 3259 (strata), a commercial-use strata. The strata contains a shopping mall with a food court.

2. In fall 2019, Technical Safety BC required the strata to shut down a direct fired make-up air unit (MUA) because it posed a hazard. With the MUA shut down, no heat is supplied to the food court. The strata has yet to repair the MUA.
3. The parties agree that the MUA is common property (CP) which the strata must repair and maintain. WM seeks an order that repairs to the MUA are required. WM also seeks orders requiring the strata to:
 - a. repair the MUA, pursuant to *Strata Property Act* (SPA) section 165,
 - b. adhere to the recommendations of an engineering firm and the “Order” from Technical Safety BC in making the repairs, and
 - c. fund an energy study and engineered design for the MUA through a special levy not to exceed \$35,000, payable as directed by strata council.
4. The strata agrees that it is obliged to repair the MUA. The strata agrees that a maximum \$35,000 special levy for an energy study and engineered design is appropriate.
5. WM is represented by owner John Wong. The strata is represented by a strata council member.

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.
10. WM did not request a strata council hearing, as required under SPA section 189.1(2). The strata was aware that WM was bringing this dispute and, in its Dispute Response and submissions, agreed with the substance of the relief sought. I find it was not necessary for WM to request a strata council hearing, because strata council would have been unable to take meaningful action, because a $\frac{3}{4}$ vote to start and fund the MUA repairs failed, as I discuss further below. I therefore use my discretion under SPA section 189.1(2)(b) to waive the hearing requirement in this dispute.

ISSUES

11. The issues in this dispute are whether the CRT should order the strata to:
 - a. repair the MUA, and
 - b. obtain an energy study and engineered design for the MUA, according to Technical Safety BC specifications, funded by a \$35,000 special levy?

BACKGROUND

12. The facts are not contested in this dispute. To summarize, the MUA is part of the strata building's HVAC system, providing fresh air, both heated and cooled, to the food court area to offset air that leaves the food court through other mechanical fans.

The strata replaced the MUA in late 2018 but then found the new MUA was malfunctioning.

13. On September 27, 2019, the MUA failed a Technical Safety BC Gas Inspection. Technical Safety BC reported that the MUA needed air balancing or a new re engineered flow design before being placed back into service, recording a series of “non-compliances” in the MUA’s operation. On December 27, 2019 and October 5, 2020, the MUA failed repeat Technical Safety BC gas inspections on the same basis.
14. Having looked at Technical Safety BC Certificates of Gas Inspection, I find that the reports are compliance notices, not orders as WM suggested. Practically speaking, the compliance notices are binding and restrict the strata’s ability to use the MUA.
15. Because the MUA cannot be used due to safety concerns, Technical Safety BC locked out the gas supply to the MUA. The result is that the shopping mall food court is not receiving any heated air supply, and the strata cannot operate the MUA without a pass on the inspection. Since September 2019, the MUA has not been repaired or operated.
16. On January 17, 2020, Prism Engineering (Prism) provided the strata with a Proposal for HVAC System Upgrade (Proposal) for the shopping mall food court.
17. On February 28, 2020, the strata held an annual general meeting (AGM) where council proposed a special resolution to finance work outlined in the Proposal using \$17,500 from that year’s budget surplus, and a further \$17,500 funded by special levy. Specifically, the monies were proposed to fund an energy study, engineering design, tender and project management services to repair the MUA. The parties agree that this work is a required initial step to proceed with full MUA repairs. Although 64% of the owners voted in favour of the resolution, it failed because it did not receive the $\frac{3}{4}$ vote required for special levies under SPA section 108.
18. The MUA has yet to be repaired.
19. WM seeks a CRT order imposing a special levy of up to \$35,000 to carry out engineering review, design and an energy study of the MUA.

REASONS AND ANALYSIS

20. Section 72 of the SPA provides that the strata has a duty to repair and maintain common property (CP) and common assets. The parties agree that the MUA is CP that the strata is obliged to repair and maintain. The strata agrees to the substance of the owner's claim for an order requiring the strata to repair the MUA, with funding for initial steps through a special levy.
21. Under section 165(c) of the SPA, a court may order a strata to repair CP, where the strata is unable to obtain the necessary $\frac{3}{4}$ vote resolution approving the repairs. For the courts, this authority includes the ability to impose a special levy. This type of order is sometimes called a *Tadeson* order, after the decision in *Tadeson v. Strata Plan NW 2644*, 1999 CanLII 6999 (BCSC).
22. The CRT does not have the authority to issue orders under SPA section 165(c). That section is specifically headed "Other Court Remedies" and sets out certain orders the BC Supreme Court may make. This authority does not extend to the CRT.
23. However, CRTA section 123 confers some similar powers on the CRT, including the power to order a party to "do something". There are some previous cases where the CRT has ordered a special levy for repairs, in limited circumstances where SPA section 173(2) does not apply. See for example *Dickson et al v. The Owners, Strata Plan K 671*, 2018 BCCRT 147 and *James MacArthur v. The Owners, Strata Plan K588*, 2016 BCCRT 2.
24. In *MacArthur*, the CRT relied on what were then *Civil Resolution Tribunal Act* sections 48.1(a) and (c), allowing it to issue an order requiring a party to do something, or to pay money. The CRT member held that building foundation repairs were required, and that the strata had not met its SPA section 72 obligation to repair and maintain CP. The CRT member ordered a special levy of \$100,000 to fund the repairs.
25. I apply the persuasive but non-binding analysis in *MacArthur* to the strata's repair obligation. However, as discussed below, I find that the CRT cannot impose a special levy in this dispute due to the application of SPA section 173(2).

26. A finding of significant unfairness is not a prerequisite to order that the strata conduct CP repairs. Here, the strata did not wilfully neglect its duty to repair and maintain the MUA. Instead, I find that the strata was unable to meet its SPA section 72 obligation to repair and maintain CP, because the owners defeated the $\frac{3}{4}$ vote resolution.
27. I agree with the strata's submission that a breach of a safety standard is an item requiring urgent attention. The ability to provide heated and cooled air to the food court is a key element of the strata's ventilation system.
28. SPA section 83 requires a strata to comply with a notice or order from a public or local authority requiring it to do work on CP. The terms public or local authority are not defined in the SPA. Technical Safety BC is established as an "authority" under the *Safety Authority Act*, with responsibility for inspecting, permitting and licensing certain technical systems, including some natural gas and propane systems, under the *Safety Standards Act*. I find that Technical Safety BC is an authority under SPA section 83, meaning the strata must comply with its notices about the MUA repairs.
29. I find it unnecessary to order the strata to follow the Prism recommendations, provided the strata adheres to Technical Safety BC's notices in its repair.
30. I find that the strata must repair and maintain the MUA to fulfil its section 72 and 83 SPA obligations.
31. Neither party suggested a date by which the MUA repairs should be completed. The strata submitted that an order requiring it to complete the MUA repairs was unnecessary, because it is aware of its obligations. However, considering the strata's SPA obligations, and for clarity and efficiency, I find it reasonable to order that the MUA be repaired by no later than November 1, 2021, before next winter sets in.

Can the CRT impose a special levy in these circumstances?

32. I now turn back to the question of whether I can order the \$35,000 special levy WM seeks.
33. SPA Section 173(2) states as follows:

(2) If, under section 108 (2) (a),

(a) a resolution is proposed to approve a special levy to raise money for the maintenance or repair of common property or common assets that is necessary to ensure safety or to prevent significant loss or damage, whether physical or otherwise, and

(b) the number of votes cast in favour of the resolution is more than 1/2 of the votes cast on the resolution but less than the 3/4 vote required under section 108 (2) (a),

the strata corporation may apply to the Supreme Court, on such notice as the court may require, for an order under subsection (4) of this section.

34. The February 28, 2020 special levy resolution obtained a majority of votes, but not the required 3/4 of votes in support. I find that the MUA repairs are a safety issue, based on Technical Safety BC's inspections. Thus, the circumstances match the criteria in section 173(2)(a) and (b): see also *Montgomery v. The Owners, Strata Plan NW 3032*, 2020 BCCRT 295 at paragraphs 14-17.
35. The *Dickson* and *MacArthur* decisions are distinguishable from this dispute, as in those cases the applicants were not seeking an order to impose a special levy that had obtained a majority vote but not a 3/4 vote.
36. CRTA section 122(1)(h) says the CRT does not have jurisdiction in relation to a claim under SPA section 173(2). For this reason, I find the CRT does not have jurisdiction to decide the claim for the special levy and I refuse to resolve it.
37. Given my order requiring the MUA repairs, the strata may consider an application to the British Columbia Supreme Court under SPA section 173(2), if it cannot implement another funding mechanism.

DECISION AND ORDERS

38. For these reasons, I order the strata to repair the MUA, in accordance with Technical Safety BC's notices, by November 1, 2021.
39. Under CRTA section 10(1), I refuse to resolve the claim regarding the \$35,000 special levy, given *Strata Property Act* section 173(2) and CRTA section 122(1)(h).
40. 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. WM was substantially successful in this dispute. I therefore order the strata to reimburse WM \$225 for tribunal fees. WM did not claim dispute-related expenses.
41. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owner.
42. 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.

Julie K. Gibson, Tribunal Member