



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VIS6386 v. Verbin*, 2021 BCCRT 482

B E T W E E N :

The Owners, Strata Plan VIS6386

APPLICANT

A N D :

BLAIR VERBIN

RESPONDENT

A N D :

The Owners, Strata Plan VIS6386

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about unpaid strata fees and who should pay for boiler repairs. The applicant and respondent by counterclaim is a strata corporation known as The Owners, Strata Plan VIS6386 (strata). The respondent and applicant by counterclaim, Blair Verbin, owns 3 strata lots in the strata.
2. The strata seeks \$5,900 in unpaid strata fees and reimbursement for \$2,210 in legal fees. Mr. Verbin disagrees and says the strata's claims are out of time under the *Limitation Act*. He also disputes that the strata ever hired a lawyer.
3. Mr. Verbin counterclaims for \$6,600 as reimbursement for boiler repairs and \$200 for legal fees. The strata disagrees and says Mr. Verbin's claims are also out of time under the *Limitation Act*, because the repairs took place from December 2013 to August 2015.
4. A strata council member represents the strata. Mr. Verbin is self-represented.
5. As discussed below, I find that the strata's claims for strata fees are out of time under the *Limitation Act* and dismiss them. I find the strata's claims for legal fees are in time and order Mr. Verbin to reimburse the strata the amounts set out below. I find that Mr. Verbin's counterclaims for boiler repairs are in time under the *Limitation Act* as "related claims" to the strata's claims for legal fees. However, I dismiss Mr. Verbin's counterclaims for other reasons, including his claim for legal fees.

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.

Late Evidence

10. The strata provided late evidence in this dispute. I also asked Mr. Verbin to resubmit evidence that did not appear uploaded correctly, and he did so. The parties did not object and had the opportunity to review the evidence and provide submissions and evidence in response. Consistent with the CRT's mandate that includes flexibility, I find there is no actual prejudice to the parties in allowing their late evidence.

ISSUES

11. The issues in this dispute are as follows:
 - a. Are the parties' claims out of time under the *Limitation Act*?
 - b. Must Mr. Verbin pay the strata's claimed strata or legal fees?
 - c. Must the strata reimburse Mr. Verbin for repairs done to the boiler?

BACKGROUND, EVIDENCE AND ANALYSIS

12. In a civil claim such as this one, the strata and Mr. Verbin must prove their respective claims and counterclaims on a balance of probabilities. While I have read all the

parties' evidence and submissions, I only refer to what is necessary to explain my decision.

13. The strata was created in 2007. It consists of 7 residential strata lots located in a 2-storey building. Since December 2010, Mr. Verbin has owned strata lots 5, 6 and 7 in the strata.
14. The strata has no bylaws or amendments filed in the Land Title Office. I find that under section 120 of the *Strata Property Act* (SPA), the strata's bylaws are those found in the SPA's Schedule of Standard Bylaws.
15. Of note, bylaw 1 says an owner must pay strata fees on or before the first day of the month to which the strata fees relate.
16. In July 2011, the strata replaced a boiler, as shown in an invoice. Mr. Verbin says that in December 2013 the boiler broke down and he paid to replace it. He claims for the following related invoices: a December 2, 2013 invoice for \$2,200, an undated invoice for \$1,563, an invoice dated "January – October 2014" for \$2,310, an invoice dated December 31, 2014 for \$510, and an invoice dated March 9, 2015 for \$63. These invoices total \$6,646, which is slightly more than Mr. Verbin's claimed amount of \$6,600.
17. In a June 3, 2015 letter, Mr. Verbin asked the strata to reimburse all the invoices save the one dated December 2, 2013. He did not mention that invoice at that time. The September 29, 2015 strata council meeting minutes show that the council refused Mr. Verbin's request because they were unaware of the boiler work and would not have authorized it. In 2016 Mr. Verbin asked the strata to reimburse him for the December 2, 2013 invoice. The September 15, 2016 strata council meeting minutes show that the council again refused because it had not authorized the work. The council was also concerned that the hired contractor was not licensed to operate in BC.
18. Mr. Verbin stopped paying strata fees starting in January 2017. Correspondence shows that Mr. Verbin decided to withhold payment due to the strata council's decisions about the boiler. For example, in his June 19, 2017 email, Mr. Verbin wrote

to a strata council member that he was contemplating withholding strata fees until they equalled the repair costs he paid.

19. Contrary to Mr. Verbin's submissions, I find the strata did hire a lawyer, as proven by the correspondence in evidence. The strata's lawyer sent a May 24, 2018 demand letter for the strata fee arrears, which I find fulfills the notice requirements of SPA section 112. That section requires the strata to give the owner at least 2 weeks' written notice before applying for dispute resolution at the CRT.
20. Mr. Verbin sent a partial payment of \$2,500 on June 13, 2018. The date of payment is documented in the lawyer's June 18, 2018 account for services rendered. This left \$5,900 owing, which equals the strata's claim for strata fees in this dispute.
21. On August 9, 2018, the strata's lawyer filed 3 certificates of lien against Mr. Verbin's 3 strata lots. Each lien was for \$1,996.67 plus costs allowable under SPA section 118. I discuss this provision below. The strata claims \$2,210 in legal fees for statements of account dated June 18 and August 8, 2018. I note these statements total \$2,218.51 but I have restricted my decision to the strata's slightly lesser claimed amount. The statements show the legal work was related to collecting strata fees and registering the liens.

Issue #1. Are the parties' claims out of time under the Limitation Act?

22. The *Limitation Act* applies to disputes before the CRT. A limitation period is a period within which a person may bring a claim. The basic limitation period under section 6 of the *Limitation Act* is 2 years from the date a claim is discovered. If that period expires, the right to bring the claim ends, even if the claim would have otherwise been successful. CRTA section 13.1 says the limitation period stops running after an applicant requests the CRT to resolve a claim.
23. Section 8 of the *Limitation Act* provides that a claim is discovered by a person when they knew, or reasonably knew, they had a claim against the respondent and that a court or tribunal proceeding was an appropriate remedy.

24. In a September 24, 2020 preliminary decision, a CRT Vice Chair considered whether the parties' claims were out of time. The Vice Chair determined that the evidence before her was insufficient to determine whether the strata's claims were out of time. The Vice Chair also noted that Mr. Verbin's counterclaims were outside the applicable limitation period but could potentially be saved as a "related claim" under section 22 of the *Limitation Act* if the strata's claims were in time. Now, with the benefit of all the parties' evidence, I will discuss whether the parties' claims are out of time.

The Strata's Claims for Strata Fees

25. The strata's claims for strata fees are outlined in the May 24, 2018 demand letter. The strata alleged that Mr. Verbin owed it \$8,400 as of June 1, 2018, which was composed of the following amounts: 1) \$2,400 for 12 months of strata fees from July 1, 2017 for unit 205, 2) \$2,400 for 12 months of strata fees from July 1, 2017 for unit 206, and 3) \$3,600 for 18 months of strata fees from January 1, 2017 for unit 207.

26. The current version of the *Limitation Act* came into force on June 1, 2013. I find the current version applies to the strata's claims. This is because the strata claims for strata fees which became due from 2017 onwards.

27. It is undisputed that the strata fees were \$200 per month per strata lot. I find that each charge of \$200 was a new claim, which is consistent with the non-binding decision of *1009727 B.C. Ltd. v. The Owners, Strata Plan BCS 1454*, 2019 BCCRT 1071. The strata therefore had 42 separate claims for strata fees as of May 2018. I find that the strata discovered its earliest claim on July 1, 2017 and all its claims by June 1, 2018. I find that the strata had until July 1, 2019 to request dispute resolution with the CRT to preserve all its claims and June 1, 2020 to preserve its last claims.

28. The strata filed its application for dispute resolution on June 15, 2020. On its face, the strata's claims are out of time. However, section 24 of the *Limitation Act* says that a limitation period may be extended if a person acknowledges liability before the expiry of the limitation period. Payment or partial payment of a "liquidated sum" is considered an acknowledgment of liability. A liquidated sum is one which is already

determined or capable of being determined as a matter of arithmetic: *Sawry v. Rohsanagh*, 2006 BCSC 470.

29. Mr. Verbin paid \$2,500 on June 13, 2018. I find the strata applied the partial payment to the oldest amounts owing for each strata lot first, so that each strata lot account owed \$1,966.67. This supported by the 3 certificates of lien, mentioned earlier, and comments in a document labelled “14” by the strata. The author wrote the cheque would be “applied to first incurred debts” and I find it was likely written by unnamed strata council member. This means that Mr. Verbin paid all strata fees owing up to the end of August 2017 and partially paid strata fees for the month of September 2017 for all 3 strata lot accounts.
30. I find that only the limitation period applicable to the strata fees for September 2017 was extended by the partial payment, to June 13, 2020. These claims only total \$500. As the strata applied for dispute resolution on June 15, 2020, I find that, despite the partial payment, all the strata’s claims are still out of time.
31. For these reasons, I dismiss all the strata’s claims for strata fees as out of time.

The Strata’s Claims for Legal Fees

32. As stated above, the strata claims \$2,210 for statements of account dated June 18 and August 8, 2018. Although the strata’s claims for strata fees are out of time, I find this is not the case for the claimed legal fees. I find that the strata discovered its claims for legal fees on the invoice dates. The strata therefore had until June 18, 2020 to claim for both invoices. As the strata applied for dispute resolution on June 15, 2020, I find its claims for legal fees are in time.

Mr. Verbin’s Claim for Reimbursement of Boiler Replacement and Repairs

33. Mr. Verbin says that in December 2013 the boiler broke down and he paid to replace it. He claims reimbursement for invoices dated from December 2013 onwards. I find the 1 undated invoice, mentioned above, was also created on or after December 2013, since this is when the boiler troubles began. As stated earlier, the current

version of the *Limitation Act* came into force on June 1, 2013. Given these dates, I find the current version applies to Mr. Verbin's counterclaims.

34. Section 22 of the *Limitation Act* says that if a claim is started within the basic limitation period, a "related claim" such as a counterclaim can be started even if the limitation period for the counterclaim has expired.
35. As noted above, Mr. Verbin did not pay the strata fees because the strata did not reimburse him for boiler repair costs. The legal fees at issue relate to collection of those strata fees. The relationship between the boiler and the legal fees is less strong than the connection between the boiler and the withheld strata fees. Nonetheless, I find that Mr. Verbin's claims involve the same issues and facts and are therefore related claims. Given this, I find Mr. Verbin's claims are not out of time. I discuss the merits of his claims below.

Issue #2. Must Mr. Verbin pay the strata's claimed legal fees?

36. As stated earlier, the strata claims for legal fees totaling \$2,210. The strata lacks any bylaws for collection of legal fees. However, SPA section 116(1) says a strata corporation may register a lien against an owner's strata lot for, among other things, strata fees. SPA section 118 says that certain costs of registering the lien may be added to the amount owing, including reasonable legal costs, land title and court registry fees, and other reasonable disbursements.
37. In *The Owners, Strata Plan KAS 2428 v. Baettig*, 2017 BCCA 377 (*Baettig*), the Court of Appeal concluded that SPA section 118 entitles a strata corporation to add the actual legal costs it incurs from registering and enforcing a lien to the amount owing under the lien, provided those costs are reasonable: paragraphs 5, 34, and 74.
38. As referenced above, the strata registered certificates of lien against Mr. Verbin's 3 strata lots under SPA section 116. I find the strata added actual reasonable legal costs to the lien amount claimed in this dispute. This is because the liens say the strata added "costs permitted under section 118" of the SPA to the lien amount.

39. In the nonbinding but persuasive decision of *Circle B Estates Ltd. v. The Owners, Strata Plan 1474*, 2019 BCCRT 417 at paragraphs 64 to 65, a CRT Vice Chair determined the amount of actual reasonable legal costs under SPA sections 116 and 118. The Vice Chair found the strata corporation reasonably retained legal counsel to demand payment of a special levy and secure payment by registering a lien against the owner's strata lot under SPA section 116. However, he ordered the strata to reimburse the owner \$350 in unreasonable legal fees. The Vice Chair found these particular fees were unreasonable because they were for duplicate demand letters. Accordingly, I find that I may determine actual reasonable legal costs owing to the strata under SPA sections 116 and 118 and order it paid by Mr. Verbin.
40. The strata lawyer's statements of account describe the tasks completed and includes disbursements such as photocopying, long-distance phone calls, and postage. I find the tasks and disbursements were related to registering and enforcing the 3 liens. These include sending the demand letter and preparing the liens for registration.
41. While I have decided the strata's claim for strata fees is out of time, I find the strata acted reasonably in retaining a lawyer. I find the fees charged to be reasonable. I therefore order Mr. Verbin to reimburse the strata \$2,210.

Issue #3. Must the strata reimburse Mr. Verbin for repairs done to the boiler?

42. Under SPA sections 3 and 72 and bylaw 8, the strata must repair and maintain common property and assets. It is undisputed that the owners in the strata paid to install the boiler through a special levy, so I find it was either common property or a common asset the strata had to maintain.
43. The evidence indicates that Mr. Verbin decided on his own to hire contractors to replace and repair the boiler. As noted above, the strata council minutes from September 2015 and September 2016 show that the strata council did not authorize its replacement or repairs.
44. Numerous CRT decisions have held that, in general, owners cannot unilaterally decide to repair common property and expect reimbursement. This is because such

actions would usurp the strata corporation's ability to prioritize repair and maintenance for the benefit of all the owners and within a budget. See, for example, *The Owners, Strata Plan NW 1017 v. Ahern et al*, 2019 BCCRT 617, *Ciesek v. The Owners, Strata Plan VIS 4542*, 2019 BCCRT 312 at paragraphs 38 to 42 and *Zhang v. The Owners, Strata Plan 375*, 2019 BCCRT 1146 at paragraphs 24 to 31.

45. Mr. Verbin says he carried out repairs because the situation was an "emergency". I disagree, as the meeting minutes do not mention this and there is no other evidence to support Mr. Verbin's assertion. The invoices show that the repairs took place over the course of many months. I find from this that Mr. Verbin had time to ask the strata council to authorize repairs, but he chose not to do so.
46. The minutes indicate the strata was unaware of any issues affecting the boiler until Mr. Verbin requested reimbursement. I therefore find it unproven that the strata failed in its duty to repair or maintain common property or common assets.
47. For those reasons, I dismiss Mr. Verbin's claims for reimbursement of boiler repairs.

CRT FEES, EXPENSES AND INTEREST

48. The *Court Order Interest Act* applies to the CRT. The strata is entitled to pre-judgment interest on the award of \$2,210, calculated from the dates of the underlying statements of account. The total pre-judgment interest equals \$87.10.
49. 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.
50. The strata succeeded on 1 of its 2 claims. I find it was partially successful, so I order Mr. Verbin to reimburse the strata half its CRT fees, which equals \$112.50.
51. As mentioned earlier, Mr. Verbin claimed \$200 as reimbursement for legal fees as a dispute-related expense. I dismiss this claim because Mr. Verbin was not a successful party. I would also dismiss it because it was unsupported by any evidence, such as an invoice or statement of account.

52. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Verbin.

ORDERS

53. Within 14 days of the date of this order, I order Mr. Verbin to pay the strata a total of \$2,409.60, broken down as follows:

- a. \$2,201 as reimbursement for legal fees,
- b. \$87.10 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$112.50 in CRT fees.

54. The strata is entitled to post-judgment interest, as applicable.

55. I dismiss each of the parties' remaining claims and counterclaims.

56. 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.

David Jiang, Tribunal Member