Civil Resolution Tribunal

Date Issued: May 17, 2021

File: ST-2020-006871

Type: Strata

Civil Resolution Tribunal

Indexed as: *Sparacio v. The Owners, Strata Plan LMS 4383*, 2021 BCCRT 528

B E T W E E N :

MARY SPARACIO

APPLICANT

A N D :

The Owners, Strata Plan LMS 4383

RESPONDENT

REASONS FOR DECISION

Tribunal Member: David Jiang

INTRODUCTION

1. This dispute is about who should pay for certain utility expenses. The applicant, Mary Sparacio, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 4383 (strata). The strata has strata lots in 2 towers and several townhouse

strata lots. Ms. Sparacio says the strata unfairly pays for hot water for the tower strata lots but not the townhouse strata lots. She says the strata historically addressed this inequity by using a "hot water tank rebate" account. She seeks orders for the strata to 1) re-establish the rebate account to reimburse townhouse strata lot owners $500 annually as adjusted for inflation, and 2) reimburse Ms. Sparacio $8,500 for "missed" rebates since 2004, either from the rebate account or as a direct payment.

2. The strata disagrees. It says the equipment and infrastructure used to provide hot water to the tower strata lots is common property it must repair and maintain. It submits the townhouse strata lots use individual hot water tanks that are not common property. The strata says it is not obligated to repair or maintain those water tanks and it has therefore not acted in a signficantly unfair manner.

3. Ms. Sparacio represents herself. A strata council member represents the strata.

4. For the reasons that follow, I dismiss Ms. Sparacio's claims.

JURISDICTION AND PROCEDURE

5. 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.

6. 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.

7. 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.

8. 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.

The Limitation Act

9. As noted above, Ms. Sparacio claims for missed rebates dating from 2004. I considered whether some of Ms. Sparacio's claims might be out of time under the *Limitation Act*. Ultimately, I find I do not need to consider this issue because I have dismissed her claims on the merits.

ISSUES

10. The issues in this dispute are as follows:

    a. Must the strata repair and maintain the hot water tanks in the townhouse strata lots?

    b. Has the strata allocated utility expenses for hot water in a signficantly unfair manner, and if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Ms. Sparacio must prove her claims on a balance of probabilities. I have read all the parties' submissions and evidence but only refer to them to the extent necessary to explain my decision.

12. The background facts are largely undisputed. The strata includes 324 residential strata lots spread across 2 high-rise towers and 20 townhouse-style strata lots. Ms. Sparacio owns a townhouse strata lot.

13. The tower strata lots obtain hot water by using infrastructure that is common property. In contrast, each townhouse strata lot uses an individual hot water tank to provide hot

water for that strata lot alone. The strata says these tanks are not common property or common assets under the SPA. I discuss this below.

14. The strata registered a complete set of bylaws in the Land Title Office in 2004. Since that time there have been numerous amendments that I find are irrelevant to this dispute. There are no specific bylaws about the maintenance, repair, or operating costs of the hot water tanks in the townhouse strata lots.

15. Under SPA section 191, a strata corporation may have sections for the purposes of representing the different interests of owners of residential strata lots, different types of residential strata lots, and non-residential strata lots. The strata lacks any such sections. Some strata corporations allocate certain operating costs by type of strata lot. The strata does not have any "types" bylaws.

16. The strata's tower and townhouse strata lots were completed in 2002. Ms. Sparacio says that at the time, the strata established a "hot water tank rebate" account as part of the budget. She says the account was used to compensate the townhouse strata lot owners for the cost of 1) servicing and replacing their hot water tanks and 2) the cost of electricity to operate the tanks. For the following reasons, I find Ms. Sparacio's submissions unsupported by any evidence.

17. The hot water tank rebate account appears on a budget for the 8 months ending on June 30, 2003 and had a budgeted amount of $10,000. There are no minutes or other documents before me to explain what it was for or whether it was intended to persist. The strata's bylaws do not mention it. The parties agree that the strata ceased funding the account from 2004 onwards. There is no evidence that any owners complained at the time. The strata says, and I accept, that it has no access to records from that time and the rebate account no longer exists. Given this, I find the evidence before me does not prove that the strata ever paid for the maintenance, repair, or operating costs, including electricity, of the townhouse hot water tanks.

18. I turn to more recent events. On February 19, 2020, the strata held its annual general meeting (AGM). According to the AGM minutes, the owners voted and approved by a 3/4 vote a resolution to replace a boiler in each tower at a combined cost of $30,000.

At the time, the townhouse strata lot owners said they did not benefit from these repairs, as they had their own hot water tanks. However, only 1 owner opposed the resolution to replace the 2 tower boilers.

Issue #1. Must the strata repair and maintain the hot water tanks in the townhouse strata lots?

19. Under SPA sections 3 and 72 and bylaw 11.1, the strata must repair and maintain common property and common assets. Section 72(3) permits the strata, by bylaw, to take responsibility for repair and maintenance of specified parts of a strata lot, but I find there are no relevant bylaws to that effect.

20. Ms. Sparacio says the strata should repair and maintain the hot water tanks in the townhouse strata lots and pay for electricity to run them. Ms. Sparacio says that, regardless of whether the hot water tanks in the townhouse strata lots are common property or assets, the strata has an obligation to provide hot water to the townhouse strata lots. I disagree, as there is no such obligation under the SPA or the bylaws.

21. SPA section 1 defines common property as

    a. that part of the land and buildings shown on a strata plan that is not part of a strata lot, and

    b. pipes, wires, cables, chutes, ducts and other facilities for the passage or provision of water, sewage, drainage, gas, oil, electricity, telephone, radio, television, garbage, heating and cooling systems, or other similar services, if they are located

        i. within a floor, wall or ceiling that forms a boundary (A) between a strata lot and another strata lot, (B) between a strata lot and the common property, or (C) between a strata lot or common property and another parcel of land, or

        ii. wholly or partially within a strata lot, if they are capable of being and intended to be used in connection with the enjoyment of another strata lot or the common property.

22. The strata says that the townhouse hot water tanks are “installed in the unit”. Ms. Sparacio did not disagree or provide any evidence about the location of the hot water tanks. Given the strata’s undisputed submissions, I find the tanks are wholly within each townhouse strata lot. As stated earlier, the tanks only provide hot water to each individual strata lot. Given this, I do not find them capable of being and intended to be used in connection with the enjoyment of another strata lot or the common property. I therefore find the townhouse hot water tanks are not common property.

23. I note that in *Fudge v. Owners, Strata Plan NW 2636*, 2012 BCPC 409, the court found that a component of a piping system was common property because it was part of an “integrated whole”. However, I do not find this to be the case here. In *Fudge* the component at issue was a discharge pipe that was part of the entire complex’s wastewater piping infrastructure. In contrast, in this dispute there is no evidence that the piping between the townhouse strata lots are connected to form such a system.

24. Ms. Sparacio says the hot water tanks were not included as listed equipment in a property disclosure statement, so they are common property or assets. I do not find this to be determinative. The listed equipment was for all strata lots, and not specific to the townhouse strata lots.

25. I have found that the townhouse hot water tanks are not common property and there is nothing before me to show it is a common asset. I therefore find the strata has no obligation to repair and maintain them.

Issue #2. Has the strata allocated utility expenses for hot water in a signficantly unfair manner, and if so, what is the appropriate remedy?

26. The strata is obligated to pay for common expenses under SPA section 91. These are expenses that relate to common property and assets or are required to meet any other purpose or obligation of the strata corporation. The strata must also repair and maintain common property and assets, as discussed above. This is the basis for the organizing principle that in a strata corporation, “you are all in it together”: *The Owners, Strata Plan LMS 1537 v. Alvarez,* 2003 BCSC 1085 (*Alvarez*) at paragraph 35.

27. Based on that principle, the courts have found that common expenses of a strata corporation must be allocated in proportion to unit entitlement under SPA section 99, unless:

    a. the strata corporation has by a unanimous vote agreed to use a different formula for the allocation of contributions to the operating fund and contingency reserve fund, other than those set out in section 99 and the regulation (SPA section 100),

    b. the strata corporation has by a unanimous vote established a "fair division" of expenses for a special levy (SPA section 108(2)),

    c. "sections" have been created under Part 11 of the *Strata Property Regulation* (SPR) or

    d. the strata corporation has by a unanimous vote changed the unit entitlement of one or more strata lots (SPA section 261).

    (See *Coupal v. Strata Plan LMS 2503*, 2004 BCCA 552 at paragraph 34, citing *Alvarez* at paragraph 55, and *Poloway v. Owners, Strata Plan K69*, 2012 BCSC 726 at paragraph 54.)

28. As noted in the non-binding decision of *Trinden Enterprises Ltd. v. The Owners, Strata Plan NW 2406*, 2020 BCCRT 807 at paragraph 38, other exceptions include the creation of different types of strata lots and limited common property (LCP) expenses (SPR section 6.4), and expenses of some but not all strata lots for which the strata has taken responsibility (SPR section 6.5). As noted earlier, the strata has no sections, "types bylaws", or specific bylaws about hot water tanks. I do not find any of the above-noted exceptions to apply.

29. Ms. Sparacio alleges the strata has acted in a significantly unfair manner. 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. Signficantly unfair

conduct is conduct that is 1) oppressive in that it is burdensome, harsh, wrongful, lacking in probity or fair dealing, or done in bad faith, or 2) conduct that is unfairly prejudicial in that it is unjust or inequitable: *Kunzler v. The Owners, Strata Plan EPS 1433,* 2021 BCCA 173 at paragraph 88.

30. In *Kunzler*, the Court of Appeal confirmed that an owner's expectations should be considered as a relevant factor. I therefore use the test from *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, 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?

31. Ms. Sparacio notes that the townhouse strata lot owners contribute strata fees that will pay for the replacement boilers for the tower strata lot owners. She says it is unfair that the tower strata lot owners do not similarly contribute to paying the costs of maintaining and operating the townhouse hot water tanks. I find her expectation is that the common property boiler expenses should be allocated by usage or benefit, rather than unit entitlement.

32. I do not find Ms. Sparacio's expectation reasonable in the circumstances. She has not tried to seek an amendment of the strata's bylaws under SPA sections 43, 46, and 126 to 128, or a different allocation of common expenses through a unanimous vote. In some circumstances it is appropriate to order a remedy without a vote. I do not find this to be the case here where there has been no attempt to do so.

33. If I found Ms. Sparacio's expectations reasonable, I would still find that they were not violated by an action that was signficantly unfair. First, the evidence before me indicates the strata has appropriately allocated expenses by unit entitlement. While not determinative, I find that complying with the prescribed cost allocation scheme in the SPA suggests the strata has not engaged in a significantly unfair action or decision for SPA section 164 purposes. See *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851,* 2020 BCCA 342 at paragraph 69.

34. Second, as noted earlier, I am not persuaded that the strata changed its allocation scheme or that the owner developer intended for a different cost allocation scheme. I have found that the strata did not previously pay for repairs, maintenance, or operation of the townhouse hot water tanks. Ms. Sparacio provided a disclosure statement from the owner developer, but I do not find its contents helpful to her.

35. Third, I accept that this arrangement disproportionately benefits the tower strata lots. However, I do not find the evidence shows that the disproportionate allocation is significant. By my calculation and based on the unit entitlement tables in evidence, each townhouse strata lot would pay an average of $135.80 to contribute to the replacement of the tower boilers. There is no evidence about how often the tower boilers would need to be replaced, but I infer they would last several years. There is no evidence as to how much the townhouse strata lots must contribute to otherwise operate the towers' boilers. Ms. Sparacio provided an estimate of $1,800 to replace a hot water tank in a townhouse strata lot. She says this must be done every 6 years, but I do not find this proven by evidence. Without more evidence I do not find the disparity to be significant.

36. For those reasons, I find the strata has not acted in a significantly unfair manner. I dismiss Ms. Sparacio's claims.

CRT FEES AND EXPENSES

37. 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.

38. The strata is the successful party. It paid no CRT fees and claims no dispute-related expenses. I therefore do not order reimbursement for any parties.

39. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Sparacio.

ORDER

40. I dismiss Ms. Sparacio's claims and this dispute.

David Jiang, Tribunal Member