



# Civil Resolution Tribunal

Date Issued: July 8, 2021

File: ST-2020-003938

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wadler v. The Owners, Strata Plan VR 495*, 2021 BCCRT 748

**BETWEEN:**

EMILY WADLER

**APPLICANT**

**AND:**

The Owners, Strata Plan VR 495

**RESPONDENT**

**AND:**

EMILY WADLER

**RESPONDENT BY COUNTERCLAIM**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kate Campbell, Vice Chair

## INTRODUCTION

1. This dispute is about governance of a strata corporation.
2. The applicant, Emily Wadler, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan VR 495 (strata). The strata is the applicant in its counterclaim against Ms. Wadler.
3. In her dispute application, which was filed on November 20, 2020, Ms. Wadler said the strata had not held an annual general meeting (AGM) since 2017, contrary to the *Strata Property Act* (SPA). She said the strata council makes decisions without involving the ownership and does not hold formal council meetings. She says at the May 2017 AGM the strata ownership voted to have a depreciation report completed, but this has not yet occurred.
4. Ms. Wadler also says when she refinanced her strata lot, she had to take out a higher interest mortgage. She says the lender refused to approve a lower interest mortgage after reviewing the Form B information certificate, which showed no AGM for 2.5 years and missing documents such as proper council meeting minutes.
5. As remedy for her claims, Ms. Wadler requests the following orders:
  - The strata hold yearly AGMs and regular council meetings, as required by the SPA.
  - The strata finalize the depreciation report.
  - Reimbursement of \$24,120 for her financial losses due to higher mortgage interest.
6. The strata admits it did not hold an AGM in the period from April 2017 until August 2020, after Ms. Wadler filed this dispute. The strata also admitted it had not obtained a depreciation report at the time Ms. Wadler filed her dispute application in November 2020. In its submissions the strata says the depreciation report is now complete, has been circulated to owners, and will be finalized pending strata council approval. The

strata says a new council was elected in August 2020, and is committed to following the SPA. The strata says there are many possible reasons why Ms. Wadler did not obtain her preferred mortgage.

7. In its counterclaim, the strata says Ms. Wadler has not paid special levy contributions or a chargeback for plumbing repairs. It requests orders that Ms. Wadler pay \$4,485.79 for these special levies, chargeback, fines, and related interest. It also requests an order that Ms. Wadler agree to pay all levies, bills, strata fees, fines, and interest charges on time. The strata also requests reimbursement of \$3,489.49 in dispute-related legal fees.
8. Ms. Wadler says she has already paid the special levies and plumbing repair chargeback. She says she should not have to pay any late fees, fines, or interest, as she informed the strata she had a good reason for her late payments, and the work for which the special levy was collected had not started anyway.
9. Ms. Wadler is self-represented in this dispute. The strata is represented by a strata council member.

## **JURISDICTION AND PROCEDURE**

10. 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). CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
11. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that

includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.

12. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
13. The strata's counterclaim originally included a request for an order that Ms. Wadler comply with a prior CRT order, issued in dispute ST-2017-002145. CRT staff inform me that the strata has withdrawn this claim, so I make no findings about it. However, even if the claim were not withdrawn, I would refuse to resolve it. Under CRTA sections 57 and 58, only the BC Supreme Court and BC Provincial Court have authority to enforce CRT orders. This means the CRT does not have authority to enforce its own orders, and I have no authority to order Ms. Wadler to comply with a prior CRT order. The strata must pursue that matter in court, if it wishes to proceed.
14. In her submissions, Ms. Wadler makes various allegations against the strata, including that it has not maintained the strata building, that it has defamed her in strata council meeting minutes, and that it has not followed the *Personal Information Protection Act* (PIPA). Ms. Wadler requests no specific remedy in relation to these allegations, so I make no findings about them. I also note that previous CRT decisions, which are not binding but which I find persuasive, have said that claims about alleged PIPA breaches do not fit within the CRT's strata property jurisdiction, and are more appropriate for resolution by the Information and Privacy Commissioner: see for example *Dhanji et al v. The Owners, Strata Plan LMS 2472*, 2019 BCCRT 1194. Other decisions have said the CRT has no jurisdiction over defamation claims: *Napoleone v. The Owners, Strata Plan BCS 2460 et al*, 2018 BCCRT 246. I would therefore refuse to resolve Ms. Wadler's claims about defamation and PIPA breaches in any event.

## **ISSUES**

15. The issues in this dispute are:
- a. Should the CRT order the strata to hold yearly AGMs and regular strata council meetings?
  - b. Should the CRT order the strata to have the depreciation report finalized?
  - c. Is Ms. Wadler entitled to \$24,120 in damages from the strata due to high mortgage interest?
  - d. Must Ms. Wadler pay the strata \$4,485.79 for unpaid special levies, a plumbing chargeback, and related fines and interest?
  - e. Must Ms. Wadler reimburse the strata for legal fees?

## **BACKGROUND**

16. In a civil claim like this one, Ms. Wadler, as applicant, must prove her claims on a balance of probabilities (meaning “more likely than not”). The strata must prove its counterclaim, on the same standard.
17. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
18. The strata was created in 1977, and consists of 25 strata lots in a 3-storey building with basement.
19. The strata filed consolidated bylaws with the Land Title Office (LTO) in March 2010. The strata subsequently filed bylaw amendments in 2013, 2016, and 2017. I find that these bylaws, taken together, are the strata’s bylaws. I refer to specific bylaws in my reasons below where relevant.

## **REASONS AND ANALYSIS**

### ***Should the CRT order the strata to hold AGMs and regular strata council meetings?***

20. The documents in evidence confirm that the strata held an AGM on August 10, 2020. The strata admits it held no AGM between May 2017 and August 2020. There is no suggestion that the owners waived the AGM requirement, as permitted under SPA section 41.
21. Ms. Wadler requests an order that the strata hold yearly AGMs and regular council meetings. I decline to make those orders. The strata is already required to hold yearly AGMs, under SPA section 40, and ordering it to do so would not change that requirement or have any practical effect.
22. Also, the minutes provided in evidence shows that the strata council does meet. The SPA and bylaws do not set out a required amount or frequency of council meetings, and do not set out any required format for those meetings. Also, I find the requested order for “regular” council meetings is too vague to be enforceable.
23. For these reasons, I do not order the strata to hold AGMs or council meetings. I dismiss this claim.

### ***Should the CRT order the strata to finalize the depreciation report?***

24. The strata admits that the strata ownership voted to obtain a depreciation report at the May 2017 AGM, but the strata did not take concrete steps to get one until late 2020. The strata provided a copy of a draft depreciation report in evidence, dated February 2, 2021. The strata submitted that this draft report was circulated to owners, and would be finalized by the strata council.
25. It is unclear from the evidence before me whether the strata council ever took the necessary steps to finalize the draft depreciation report. For that reason, and given the long delay since the original vote in May 2017 to obtain a depreciation report, I

order that within 30 days of this decision, the strata must take whatever steps are necessary to finalize the depreciation report.

***Is Ms. Wadler entitled to \$24,120 in damages due to high mortgage interest?***

26. Ms. Wadler says that because of the strata's negligence in maintaining the building, preparing records, and obtaining a depreciation report, in 2019 and 2020 she was forced to take higher-interest mortgages. She says the strata is liable for the difference in interest rates, plus lender fees, for a total claim of \$24,120.

27. Based on the evidence before me, I find the strata is not liable for any damages based on Ms. Wadler's interest rate or lender fees.

28. To support this claim, Ms. Wadler provided a copy of a September 16, 2019 "Mortgage Loan Commitment" document from Equitable Bank (Equitable). That document says Equitable had approved Ms. Wadler's application for a 2 year mortgage, with an annual interest rate of 5.74%, effective November 1, 2019.

29. Ms. Wadler also provided a chain of correspondence from her mortgage broker, GP. On November 17, 2019, GP forwarded Ms. Wadler an undated email from an unnamed Equitable employee. It said:

We have strong concerns in the minutes provided regarding exterior issues and needed a structural engineer's report and a special levy etc. I have concerns on how this strata is managed as there is inconsistency in the meeting format: council takes their own minutes vs Harbourside Property Mgmt Ltd. Sorry.

30. In a September 9, 2020 email, GP wrote that the strata was "now on the right track to get projects and Depreciation Report completed". He said that at the moment, no lenders were interested to fund a mortgage until some of the work was completed.

31. In a September 16, 2020 email, GP wrote that Ms. Wadler's mortgage interest could have been lower "over the past couple years and through until the projects that have been neglected by the strata have been completed".

32. In a September 25, 2020 email, GP wrote that Equitable's earlier mortgage approval showed it was comfortable with the mortgage until it started reading the strata minutes.
33. Based on the other mortgage documents in evidence, I accept that Ms. Wadler ended up paying higher interest rates than those originally offered by Equitable. However, I find the evidence before me does not establish that the higher interest rates, and lender fees, were due to the strata's negligence, as Ms. Wadler asserts.
34. First, I do not accept that GP's emails are expert evidence, as set out in CRT rule 8.3. GP's qualifications were not provided, and Ms. Wadler only provided excerpts of GP's correspondence, rather than the full email chain. Thus, I cannot determine the full context of those emails. Second, I find GP's evidence unpersuasive. From the email excerpts Ms. Wadler provided, it appears that GP based his opinion about why Ms. Wadler's loan were denied on a one paragraph email from an unnamed Equitable employee. Without seeing the full content of that email, or more information about its source, I find GP's opinion speculative.
35. Also, GP said that part of the reason Equitable denied the mortgage application was due to the lack of depreciation report, but that is not what the email excerpt from Equitable said. Rather, that excerpt said Equitable had concerns about "exterior issues", a structural engineers' report, a special levy, and the format of the minutes.
36. Ms. Wadler did not provide a copy of the minutes Equitable reviewed, and it is unclear from the evidence before me what exterior issues, structural engineering problem, or special levy Equitable referred to. I note that in the draft depreciation report, all building components were rated as good or average based on their age, and no specific deficiencies were identified. This is consistent with the September 2019 appraisal of Ms. Wadler's strata lot that was provided in evidence, which said the building exterior and roof condition were both rated as average, and the strata lot interior was rated as good.
37. I acknowledge that the depreciation report was not available at the time of the September 2019 mortgage renewal. However, that document, and the appraisal, do



not support the conclusion that the strata was negligent in its repair and maintenance obligations, as Ms. Wadler asserts. Rather, I find Ms. Wadler has not provided evidence to establish that the strata failed to repair and maintain common property to a reasonable standard.

38. I also note that while Equitable said that the strata property manager should have created the council meeting minutes, there is no legal reason why council members cannot prepare council minutes. While Equitable may prefer this, the strata was not required to do it.
39. Finally, I find that the strata did breach the SPA by failing to obtain a depreciation report in a timely manner after it was approved at the May 2017 AGM. Specifically, SPA section 4 says the powers and duties of the strata must be exercised and performed by the council. However, I find Ms. Wadler's claimed damages for mortgage interest and lender fees is too remote for the strata to be liable. One required element of the test for negligence is that it must be reasonably foreseeable that the respondent's failure to meet the applicable standard or duty could cause the applicant's damages: see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27. I find it was not reasonably foreseeable that the strata's failure to obtain a depreciation report before 2021 could cause Ms. Wadler to pay higher mortgage interest and lender fees.
40. Also, I agree with the strata's argument that there are other factors that affect Ms. Wadler's interest rate and access to financing, such as her income, credit rating, assets, and debts. Ms. Wadler provided no evidence about these factors. She also has not proven that no other lender would provide a mortgage. So, I am not persuaded by Ms. Wadler's argument that the strata's documents were the sole determinant of her mortgage interest and fees.
41. For these reasons, I dismiss Ms. Wadler's claim for damages for increased mortgage interest and lender fees.

***Must Ms. Wadler pay the strata \$4,485.79 for unpaid special levies, a plumbing chargeback, and related fines and interest?***

42. I dismiss the strata's claim for the plumbing chargeback, as there is no evidence before me about when that charge was imposed, or why. I also note that the most recent statement showing Ms. Wadler's strata lot account, dated October 16, 2020, does not indicate any plumbing chargeback.
43. I also dismiss the strata's claim for special levy payments. In its counterclaim submission, the strata confirmed that Ms. Wadler has paid all outstanding special levies.
44. The strata seeks payment of a bylaw fine for late payment of a special levy, plus interest.
45. I find the strata is not entitled to collect the bylaw fine because it did not comply with the requirements of SPA section 135 when imposing the fine. Under section 135, before imposing a fine on an owner for a bylaw or rule breach, a strata corporation must give the owner written particulars of the complaint and a reasonable opportunity to answer the complaint, including a hearing if requested by the owner.
46. The evidence before me shows that the strata emailed Ms. Wadler on October 16, 2020, stating that her special levy payment was late. The strata wrote that pursuant to bylaw 2.6, a \$50 fine would be imposed immediately. The attached statement of account shows that the strata imposed the \$50 fine on the same day as it sent the email.
47. For this reason, I find the strata did not give Ms. Wadler any opportunity to answer the complaint before imposing the fine. The fact that bylaw 2.6 says a \$50 fine will be imposed "immediately" upon failure to pay by the due date does not negate the notice requirements of SPA section 135. First, in *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449, the BC Court of Appeal said that the requirements of section 135 must be strictly applied. Second, SPA section 121(1) says a bylaw is not enforceable

to the extent that it contravenes the SPA. To the extent that bylaw 2.6 is inconsistent with SPA section 135, I find it is unenforceable.

48. So, I dismiss the strata's claim for payment of the \$50 bylaw fine.

49. As for interest, I find the strata has not provided a clear accounting of what special levy payments were owed, when they were due, or when the amounts were paid. Because of this, I dismiss the strata's claim for interest.

### ***Legal Fees***

50. The strata claims \$3,489.59 for legal fees. I dismiss this claim, for the following reasons.

51. Strata bylaw 11.1 says that a strata lot owner in default of payment of common expenses, including special levies, interest, and fines, shall reimburse the strata for all costs and expenses required to collect such arrears, including legal costs and legal fees.

52. However, as noted above, the strata has not indicated when Ms. Wadler paid the disputed levy or levies. Also, the strata did not provide invoices showing what legal services were obtained, and for what. It provided a summary from its property manager, but I find this is unpersuasive, as it is second-hand evidence and does not include details about the legal services performed. In addition, the summary suggests that the incurred legal fees were for defending against Ms. Wadler's claims, filed in May 2020. There is no mention in the summary of the strata's December 2020 counterclaim for payment of special levy contributions.

53. For these reasons, I find the strata has not established that it paid for legal services to collect outstanding special levy payments from Ms. Wadler.

54. CRT rule 9.5(3) says the CRT will not order reimbursement of legal fees in a strata property dispute, except in extraordinary circumstances. I find the circumstances of this dispute are not extraordinary. In making this finding, I have considered the factors set out in the CRT rule 9.5(4), which include the complexity of the dispute. I find this

dispute was not unusually complex compared to typical CRT disputes, did not involve novel or complicated legal issues, and did not include a usually large amount of evidence or submissions.

55. I therefore dismiss the strata's claim for reimbursement of legal fees.

## **CRT FEES AND EXPENSES**

56. As Ms. Wadler was partially successful in this dispute, in accordance with the CRTA and the CRT's rules I find she is entitled to reimbursement of half of her CRT fees, which equals \$112.50. The strata was not successful in its counterclaims, so I order no reimbursement of its CRT fees. Neither party claimed dispute-related expenses, other than the legal fees discussed above, so none are ordered.

57. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to Ms. Wadler.

## **ORDERS**

58. I order that within 30 days of this decision:

- a. The strata must take whatever steps are necessary to finalize the depreciation report.
- b. The strata must reimburse Ms. Wadler \$112.50 for CRT fees.

59. Ms. Wadler is entitled to postjudgment interest under the *Court Order Interest Act*, as applicable.

60. I dismiss Ms. Wadler's remaining claims, and I dismiss the strata's counterclaims.

61. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under CRTA section 58, 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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Kate Campbell, Vice Chair