



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Jackson v. The Owners, Strata Plan KAS 2583*, 2021 BCCRT 792

B E T W E E N :

HOWARD JACKSON

APPLICANT

A N D :

The Owners, Strata Plan KAS 2583

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about payment for a strata corporation's water use. The applicant, Howard Jackson, co-owns strata lot 12 in the respondent strata corporation, The Owners, Strata Plan KAS 2583 (strata). The strata lot 12 owners pay the city for the strata lot's metered water use. Some of the strata's common property (CP) lawn sprinklers use water from strata lot 12's water supply. Mr. Jackson says that the strata

failed to reimburse him for the cost of the strata's sprinkling water drawn from strata lot 12. He claims \$264.62 for the cost of the strata's water use in 2019 and 2020. Mr. Jackson also requests an order for the strata to follow a bylaw that says strata lot owners do not have to pay for common irrigation. Mr. Jackson says CP irrigation is a common expense that should be shared among strata lot owners.

2. The strata says that the strata's CP irrigation system is plumbed into several different strata lots' water supplies, and dates to a time before the city installed individual water meters on those lots. The strata says the strata ownership decided not to install multiple additional water meters to measure the strata's actual sprinkler water use from each strata lot's water supply. The strata says its investigations show that strata lot owners each pay similar amounts for their metered water use. So, the strata says in 2017, the ownership voted to neither reimburse strata lot owners for the strata's use of their metered water, nor to charge strata lot owners an amount for CP sprinkling water in their strata fees. The strata says this is fair and appears to be acceptable to all strata lot owners except Mr. Jackson.
3. Mr. Jackson is self-represented in this dispute. The strata is represented by the strata council president.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.

6. 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.
7. 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.
8. The strata submitted some evidence late, including correspondence between the parties and an annotated map of some of the strata's land. I find the evidence is relevant, and that Mr. Jackson had an opportunity to comment on it and does not object to its admission. I allow the late evidence, because I find it is not unfair to Mr. Jackson to do so.

ISSUES

9. The issues in this dispute are:
 - a. Whether strata irrigation water costs must be paid directly by Mr. Jackson, or collectively through the strata's operating fund.
 - b. Whether the strata used \$264.62 of strata lot 12's water in 2019 and 2020 for CP irrigation, and if so, must the strata reimburse Mr. Jackson that amount?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Mr. Jackson must prove his claims on a balance of probabilities. I have read and weighed the parties' evidence and submissions, but I refer only to that which I find necessary to explain my decision.
11. The strata was formed in 2003 under the *Strata Property Act* (SPA). The strata consists of 43 strata lots in a single apartment building, and 30 strata lots in townhouse-style buildings each containing 1 or 2 strata lots. Strata lot 12 is the only

strata lot in its townhouse-style building. The strata buildings are generally surrounded by CP that is not limited common property designated for the exclusive use of the owners of 1 or more strata lots.

12. The strata's owner developer filed strata bylaws with the Land Title Office (LTO) in October 2003, including former bylaw 8 that was intended to assign each strata lot a type. The 43 apartment building strata lots were the type "Condo Strata Lot", and the 30 townhouse-style strata lots were the type "Detached Strata Lot". Beginning with a 2007 strata bylaw amendment, the apartment building strata lots were essentially renamed "Apartment Type" and the townhouse strata lots were renamed "Townhouse Type" or "Town House Type." These are also the type names used in the May 30, 2013 amendment that repealed and replaced the strata's bylaws. I find the bylaws applicable to this dispute are those filed with the LTO on May 30, 2013.
13. Strata bylaw 40 says that common expenses will be allocated from the strata's operating fund in accordance with *Strata Property Regulation* (SPR) 6.4(2). The bylaw also says that if a common expense relates to and benefits only one type of strata lot, then that expense will be allocated and shared "among those owners of the strata lots to which the expense relates". This is similar, but not identical, to SPR 6.4(2), which provides that if a common expense relates to and benefits only one type of strata lot, the contribution is shared "only by owners of strata lots of that type." I note that a strata's bylaws cannot override the SPR, although I find nothing in this dispute turns on whether bylaw 40 conflicts with SPR 6.4(2), so I make no findings on that issue. Regardless, if a common expense is not attributable to only one type of strata lot, the expense will be shared among all owners (see *Ernest & Twins Ventures (PP) Ltd. v. Strata Plan LMS 3259*, 2004 BCCA 597 at paragraph 18).

Must Mr. Jackson directly pay for the strata's irrigation water costs?

14. The strata's landscape irrigation system undisputedly connects to the fresh water supply in several Townhouse strata lots, and to the Apartment building's fresh water system. The parties agree that the water usage of individual buildings and strata lots

was not metered at the time the strata was built, and that the irrigation system was not segregated from other strata lot plumbing.

15. After the strata was built, the city installed water meters for each Townhouse and for the Apartment building. It is not clear from the available evidence whether there is a separate water meter for each Townhouse building, some of which contain 2 strata lots, or a separate water meter for each Townhouse strata lot. In Mr. Jackson's case, his strata lot 12 is the only strata lot in that Townhouse building, which is known as unit #1 or house #1 and has 1 water meter. I find that there is at least 1 water meter on every other Townhouse building and 1 meter on the Apartment building. These water meters measure the total fresh water consumed at the corresponding strata lots, which includes both the occupants' personal consumption and the sprinkler water drawn by the irrigation system at that location.
16. It is undisputed that the city charges each Townhouse water user a flat fee for basic water services, regardless of the volume consumed. It also charges a metered fee, which is a fee for the volume of water used. This dispute is about the metered fee, because like the other Townhouse strata lots, the city charges Mr. Jackson for the amount of water he uses, which includes the strata's sprinkler water use.
17. The strata admits that its irrigation system sprinkles CP. I find this is consistent with the strata plan, which shows that essentially all outdoor areas that are not part of a building are CP. Under SPA section 3, the strata is responsible for managing and maintaining the strata's CP for the benefit of the owners. It is not disputed that the strata is responsible for irrigating this CP.
18. The SPA defines "common expense" to include expenses relating to the strata's CP and common assets. I find that charges for the strata's sprinkler water consumption are common expenses, despite the fact that the city bills these charges to Townhouse strata lot owners because that water flows through those strata lots' meters.
19. SPA section 91 says that the strata is responsible for the strata's common expenses. Section 92 says that to meet the strata's common expenses, owners must contribute

strata fees to an operating fund. Strata fees for a strata lot's share of the budgeted operating fund are normally calculated based on the strata lot's unit entitlement and the total unit entitlement of all strata lots, under SPA section 99.

20. However, as noted, SPR 6.4(2) and bylaw 40 say that if a common expense relates to and benefits only one type of strata lot, then that expense will not be shared by all owners, but only by owners of that type of strata lot. The strata says that water costs for the sprinklers attached to Townhouse plumbing should be shouldered by the Townhouse type strata lot owners only, not the Apartment type strata lot owners. The parties disagree about whether the strata has valid strata lot types. I find it is not necessary to address that issue because I find that the sprinkler water costs do not relate to and benefit only Townhouse type strata lots, for the following reasons.
21. As noted, the irrigated areas are all CP, and are not limited common property designated for the exclusive use of particular strata lot owners. Some of this CP is adjacent to Townhouse strata lots and, I presume, is often used by residents of those lots. However, this does not change the fact that those areas are CP and are owned collectively by all strata lot owners, regardless of where those owners' strata lots are located. Also, the evidence before me does not show that Townhouse-connected sprinklers irrigate only Townhouse-adjacent property, or that Apartment strata lot owners do not benefit from the strata's CP landscaping being sufficiently watered and cared for, including by Townhouse-connected sprinklers.
22. So, given that the sprinkler water common expense does not relate to and benefit only Townhouse type strata lots, that expense cannot be paid only by Townhouse strata lot owners, but must be allocated among all strata lot owners. The strata does not have sections, and there is no evidence that the owners unanimously approved a non-standard calculation of contributions to the operating fund under SPA section 100. So, I find the sprinkler water common expense for the sprinklers attached to strata lot 12's water system must be shared among all strata lot owners based on unit entitlement, as set out in SPA section 99. See, for example, paragraph 32 of *Section*

1 of The Owners, Strata Plan BCS 3495 et al v. The Owners, Strata Plan BCS 3495, 2019 BCCRT 707, which is not binding on me but which I find persuasive.

23. The strata admits that in 2019 and 2020, it did not budget for Townhouse sprinkler water common expenses by collecting strata fees for those expenses from all strata lot owners based on unit entitlement. The strata says that at a November 15, 2018 strata council meeting, the council agreed that in principal, irrigation watering costs should be allocated based on unit entitlement. However, the strata says the council had no way to measure irrigation water usage, and considered installing separate sprinkler water meters to be “cost prohibitive.”
24. Correspondence between the parties shows that in past years, the strata reimbursed some Townhouse strata lot owners an amount from the operating fund, to compensate them for their increased water bills due to the strata’s sprinkling. The reimbursement was based on estimated sprinkler water usage. The strata says that after measuring water use at 4 Townhouse strata lots and considering water bills submitted by Townhouse owners, it appeared that there was not much difference between the amounts paid by each Townhouse owner for sprinkler water. Correspondence in evidence suggests that Mr. Jackson’s water bill was often higher than average, and the strata investigated strata lot 12’s water usage and took steps to minimize the sprinkler water drawn from that strata lot’s water supply. However, the strata says that on average, the amount each Townhouse strata lot owner paid to the city for sprinkler water was very similar to the amount that would be paid if all of the sprinkler water charges were paid collectively through strata fees calculated on a unit entitlement basis for the Townhouse strata lots only.
25. So, instead of going through the administrative work of budgeting for sprinkler water costs in the operating fund and having strata lot owners submit their water bills for reimbursement, the strata says the owners voted to simply pay their own water bills rather than have sprinkler water meters installed at a cost of approximately \$15,000. There are no general meeting minutes or strata council meeting minutes in evidence showing the outcome of any such vote, although these outcomes are not disputed.

26. I acknowledge that the strata tried to adopt a workable sprinkler expense scheme that balanced fairness with overall cost and administrative convenience. However, even if the ownership voted for the Townhouse strata lot owners to pay their own water bills, I find the chosen scheme violates the SPA. I find the strata's sprinkler water consumption costs are common expenses that must be contributed to by all strata lot owners, not just Townhouse owners, in accordance with SPA section 99. Further, by choosing not to pay Townhouse strata lot owners for strata sprinkler water consumption, I find that the strata effectively required Mr. Jackson to pay for the strata's sprinkler water common expense directly, rather than through strata fees.
27. The strata says that it presently has no way of measuring exactly how much water is used for sprinkling, and therefore how much it would owe each Townhouse strata lot owner for sprinkling water. However, as an alternative to extensive sprinkler plumbing upgrades, the strata acknowledges that sprinkler water meters could be installed in each Townhouse strata lot. I find that the expense of installing separate sprinkler water meters does not necessarily "prohibit" their use, and neither does the need to read the meters occasionally.
28. So, I find that the strata is responsible for reimbursing Mr. Jackson for the common expense of CP sprinkler water drawn through the strata lot 12 water system in 2019 and 2020. However, as discussed below, Mr. Jackson bears the burden of proving how much water the strata used, and in turn how much it owes him, if anything.
29. Mr. Jackson requested an order for the strata "to enforce the bylaw that states, individual home owners do not have to pay for common irrigation." I find there is no bylaw that directly states this. However, I have found that the strata's sprinkler water common expense has not been allocated in accordance with the SPA, and that the strata has left Mr. Jackson to pay those common expenses directly and not in proportion to his unit entitlement. So, I order the strata to pay any future sprinkler water common expenses incurred by strata lot 12 from the operating fund in accordance with the SPA and SPR. I leave it to the parties to determine how to

accurately measure and value any sprinkler water drawn through strata lot 12's water system.

Does the strata owe Mr. Jackson \$264.62 or another amount for an irrigation common expense?

30. It is undisputed that Mr. Jackson's strata lot is only occupied from July through September each year, and that the strata only uses its sprinklers from April until September each year. Mr. Jackson claims \$264.62 as reimbursement for the amount he paid the city for sprinkler water in 2019 and 2020. He does not clearly explain how he arrived at that amount.
31. Although Mr. Jackson says that the strata installed an additional water meter in his strata lot in 2011 to measure sprinkler water consumption, the evidence indicates this was not a permanent installation. On balance, the evidence before me indicates that there was no sprinkler-specific water meter in strata lot 12 in 2019 or 2020. Mr. Jackson does not say that he was able to measure how much water the strata's sprinkler system used. He assumes that his personal, non-sprinkler water consumption in each 3-month billing period was 46 cubic metres, citing what he says is a government statistic for average personal water consumption. Mr. Jackson says that all the metered water in excess of 46 cubic metres must have been used for sprinkling. I find that Mr. Jackson has not proven his actual personal water consumption, and the 46 cubic metre statistic is unproven on the evidence before me.
32. Mr. Jackson says that his strata lot was unoccupied for the April through June billing period, so all water consumption at that time must have been for sprinkling. However, he does not say how he knows all of strata lot 12's water consumption during that time of year was from sprinkling, and not because of other purposeful uses or leaks. I note the parties agree that there was a water leak in strata lot 12 in 2019 when it was unoccupied. In any event, there are no strata lot 12 water bills in evidence for the April through June period in any year, or for July through September of 2019, although I find Mr. Jackson almost certainly received those bills. A strata summary of Townhouse water consumption indicates that strata lot 12's "2nd Quarter Apr-June

2020” water consumption charge was \$22.57, but I find the evidence fails to confirm whether that amount is accurate. Mr. Jackson submitted graphs of what he says was the strata lot 12 metered water consumption each quarter, but with the exception of July through September 2020 I find these consumed amounts are unsupported by evidence. I find Mr. Jackson has not met his burden of proving how much he paid for water consumption in 2019, or from April to June 2020.

33. Mr. Jackson provided a copy of his water bill for the period July 1, 2020 to September 30, 2020. It showed a consumption of 157 cubic metres, resulting in a usage charge of \$79.75. However, Mr. Jackson admits that the strata lot was occupied by an unspecified number of persons during that period, and I find it is impossible to determine how much of that water they personally consumed and how much was drawn by the strata’s sprinklers. I find Mr. Jackson has not proven how much water the sprinklers consumed during that period.
34. So, I do not order the strata to pay Mr. Jackson for sprinkler water consumption in 2019 and 2020. Going forward, I note that Mr. Jackson is not required to provide water that he pays for to the strata’s sprinkler system without reimbursement, although as noted the strata may collect strata fees to fund its sprinkler water expenses. It appears the strata must either find a way to calculate the true amount of water used by the CP sprinklers and reimburse Mr. Jackson for it, or stop drawing water from strata lot 12’s metered water system.
35. I dismiss Mr. Jackson’s claim for \$264.62 for water consumed by the strata as unproven.

CRT FEES AND EXPENSES

36. 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. I find Mr. Jackson was substantially successful here, in that the strata was not

correctly allocating sprinkler water costs, so I find he is entitled to reimbursement of the \$225 he paid in CRT fees. Neither party claimed CRT dispute-related expenses.

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

ORDERS

38. I order that:

- a. Within 15 days of the date of this Order, the strata pay Mr. Jackson \$225 in CRT fees, and
- b. The strata pay future sprinkler water common expenses charged to strata lot 12's owners from the operating fund in accordance with the SPA and SPR.

39. Mr. Jackson is also entitled to post-judgment interest, as applicable, from the date of this Order.

40. 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.

Chad McCarthy, Tribunal Member