



Civil Resolution Tribunal

Date Issued: August 23, 2021

File: ST-2021-001236

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wu v. The Owners, Strata Plan VR2197, 2021 BCCRT 928*

B E T W E E N :

SHENG WU

APPLICANT

A N D :

The Owners, Strata Plan VR2197

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This is a strata property dispute about unspent special levy funds.
2. The applicant, Sheng Wu co-owns a strata lot (SL3) in the respondent strata corporation, The Owners, Strata Plan VR2197 (strata).

3. Ms. Wu claims a refund of unused special levy funds. She says the strata did not use the special levy funds to hire a mediator as required under the *Strata Property Act* (SPA). Ms. Wu seeks orders requiring the strata to both refund her \$250 special levy contribution and to refund all of the \$1,000 special levy funds to the owners.
4. The strata says that Ms. Wu is not entitled to a refund of the special levy funds. The strata admits that it has not hired a mediator yet. However, the strata argues that it still plans to hire a mediator and there is no deadline to do so.
5. Ms. Wu is represented by MA, who is not a lawyer. The strata is represented by DB, the strata council president.

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 by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
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 submitted late evidence consisting of property disclosure statements, real estate brochures, and real estate forms with its submissions. Ms. Wu was given an opportunity to respond and she provided evidence consisting of emails relating to electrical issues. I find that neither party's late evidence is relevant to any issues in this dispute. So, I do not accept either party's late-submitted documents as evidence and I have not considered these documents in my decision.

ISSUES

11. The issues in this dispute are:
 - a. Is Ms. Wu entitled to a refund of her strata lot's \$250 contribution to the August 13, 2020 special levy for mediation under the SPA?
 - b. Is the strata required to refund the owners' entire contribution of \$1,000 to the August 13, 2020 special levy for mediation under the SPA?

EVIDENCE AND ANALYSIS

12. The strata was created in September 1988 under the *Condominium Act* and continues to exist under the SPA. It consists of 4 townhouse-style strata lots in a 3-storey building.
13. Other than several bylaw amendments filed at the Land Titles Office in 1989 that are not relevant to this dispute, I find that the strata's bylaws are the Standard Bylaws under SPA section 120.
14. The strata sent the owners notice of a resolution to approve a \$1,000 special levy at the August 13, 2020 special general meeting (SGM). The notice said that the special

levy would be used to hire a mediator to improve relationships between the owners. The resolution said the strata would prefer to hire a specific mediator, but another mediator could be selected if they were not available.

15. Ms. Wu provided an audio recording of the August 13, 2020 SGM. Based on the audio recording, I find that 3/4 of the strata lot owners voted to amend the resolution. The resolution was amended to say that the \$1,000 special levy would be used to hire a mediator to review past strata council decisions and provide advice to improve the strata's compliance with the SPA and bylaws. Based on the audio recording of the SGM, I find that 3/4 of the strata lot owners approved the amendment to the special resolution before it was voted on. Further, I find that the amendment did not substantially change the resolution because both the noticed resolution and the amended resolution proposed a \$1,000 special levy to hire a mediator. So, I find that the resolution amendment was valid under SPA section 50(2). Further, based on the audio recording, I find that 3/4 all of the owners approved the amended resolution at the SGM. For the above reasons, I find that the mediation special levy was properly approved under SPA section 108(2).
16. It is undisputed that all of the owners, including Ms. Wu, paid the special levy and the strata received \$1,000 in special levy contributions.
17. Ms. Wu generally claims that the special levy money should be refunded because the strata has not hired a mediator. Specifically, she argues that the special levy money should be refunded for the following reasons:
 - a. The special levy has not raised sufficient funds to complete its purpose.
 - b. The special levy funds were not used within the intended time frame.
 - c. The special levy funds are not being used in manner consistent with the strata's past practices.
 - d. The special levy funds are not being used for the purpose set out in the resolution approving the special levy.

18. I will address each of Ms. Wu's arguments separately.

Insufficient special levy funds

19. Ms. Wu claims that the special levy has not raised sufficient funds to complete its purpose. Since the preferred mediator identified in the resolution approving the special levy was unable to participate, the strata contacted several other potential mediators. The strata contacted a lawyer, EM, who quoted rates of \$425.00 per hour for mediation services and an additional \$200 per hour for assistance from their articulated student, plus disbursements. The strata hired another lawyer LP to provide 4 hours of mediation time, which I infer was billed at \$250 per hour. However, LP withdrew on October 14, 2020, before providing any services, because LP said they lacked sufficient SPA expertise. The strata did not hire another mediator.

20. Ms. Wu argues that the strata is unable to hire a qualified mediator with a \$1,000 budget. Further, Ms. Wu says that, since the special levy's stated purpose is to review past strata council decisions, the mediator will need to review every strata council decision for the past 32 years. Ms. Wu says this is impossible with the \$1,000 budget. However, I do not find that the special levy resolution requires the mediator to review every past strata decision. The resolution only says that the mediator will review past decisions, not necessarily **all** past decisions (my bold emphasis added). I find the mediator could comply with the terms of the resolution approving the special levy by reviewing a limited number of significant strata council decisions without reviewing every decision.

21. Further, even if the special levy funds are insufficient to perform the special levy's stated purpose, I find that this is not an adequate basis to order the strata to refund the money. In the CRT decision in *Friedland v. The Owners, Strata Plan NW195*, 2020 BCCRT 294, a tribunal member considered a request for a special levy refund for a non-performed repair project. The tribunal member found that increased project costs did not require the strata to refund the special levy contributions. The tribunal member noted that it is not unusual for a project's costs to exceed the initial budget and that more money could be raised through another special levy. Although non-

binding, I find the reasoning in *Friedland* persuasive and I find that, even if the special levy is too small to perform its stated purpose, this does not entitle the owners to a refund.

Expiration of deadline

22. Ms. Wu also argues that the special levy should be refunded because the funds were not used in the intended timeframe. Specifically, she argues that the strata council president intended to hire a mediator in preparation for the October 29, 2020 annual general meeting (AGM). In support, Ms. Wu provided an August 24, 2020 email sent from the strata council president to the strata council members saying that funding was approved to hire a professional to provide advice for improving strata compliance with the SPA, regulations and bylaws before the AGM. However, I find that the strata council president's intentions are irrelevant. SPA section 108(1)(c) says the strata must use the money collected for **the purpose set out in the resolution** (my bold emphasis added). So, the strata must comply with the purpose stated in the special levy's resolution, not the strata council president's intention. Since the approved resolution does not say that the mediation services were to be complete before the AGM, I find that the special levy project's performance was not limited to this deadline.
23. In the non-binding decision in *Friedland* discussed above, the tribunal member found that SPA section 108 does not establish any timeframe or deadline by which the strata must proceed with the work authorized by the resolution or refund the owners' money collected. The tribunal member found that as long as the strata council is still of the opinion that the project was necessary and was still pursuing it, that it does not need to refund the money. I find the reasoning in *Friedland* persuasive and apply it. Here, the strata says that it still intends to proceed with mediation and that mediation is still necessary and the resolution itself included no time frame or deadline. Further, the strata says that increased conflicts between owners and the strata council makes mediation even more necessary. I find that Ms. Wu has failed to provide sufficient evidence to prove that the strata no longer intends to pursue mediation or that it is no longer necessary. So, I find that the strata is not out of time to use the special levy funds for mediation.

Past practices

24. Ms. Wu also claims that the strata has not used the special levy funds in a manner consistent with the strata's past practices. Ms. Wu says that, because the strata is small with only 4 strata lots, the strata's past practice has been to impose special levies as unplanned financial issues arose. Ms. Wu says that it is inconsistent with the strata's past practices to hold special levy funds "indefinitely" after unplanned financial issues have passed. However, Ms. Wu has not provided any legal authority, and I could not find any, for her position that the strata is bound by its past practice. I find that the strata is not required to follow its "past practices" under SPA or the bylaws.
25. Although Ms. Wu does not specifically say that the strata has treated her in a significantly unfair manner, I find that the allegations in her application for dispute resolution raise this issue.
26. Section 164 of the SPA sets out the authority of the British Columbia Supreme Court to remedy significantly unfair actions. Under section 123(2) of the CRTA, the CRT has jurisdiction to consider whether an action enumerated under s. 121(1) (e) to (g) of the CRTA is significantly unfair (see *Time Share Section of The Owners, Strata Plan N 50 v. Residential Section of The Owners, Strata Plan N 50*, 2021 BCSC 486). I find the strata's decision to deny Ms. Wu's request for a special levy refund to defer mediation indefinitely is within CRTA section 121(1)(f), as it concerns a decision of the strata council in relation to an owner.
27. The courts have interpreted "significantly unfair" to mean conduct that is oppressive or unfairly prejudicial. "Oppressive" conduct has been interpreted as conduct that is burdensome, harsh, wrongful, lacking fair dealing or done in bad faith. "Prejudicial" conduct means conduct that is unjust and inequitable (*Reid v. Strata Plan LMS 2503*, 2001 BCSC 1578, affirmed 2003 BCCA 126).
28. The test for significant unfairness was summarized by a CRT Vice Chair in *A.P. v. The Owners, Strata Plan ABC*, 2017 BCCRT 94, with reference to *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44: what is or was the expectation of the

affected owner or tenant? Was that expectation on the part of the owner or tenant objectively reasonable? If so, was that expectation violated by an action that was significantly unfair?

29. The British Columbia Court of Appeal recently confirmed that consideration of the reasonable expectations of a party is “simply one relevant factor to be taken into account” (see *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342 at paragraph 89).
30. Ms. Wu says that it is unfair for the strata to hold the special levy funds indefinitely, without performing the special levy’s stated purpose. However, I find that Ms. Wu has not proved that the strata acted oppressively by refusing to refund the special levy funds. As discussed above, Ms. Wu has not proved that the strata no longer intends to hire the mediator or that mediation is no longer necessary. Further, I find that Ms. Wu has not proved that the strata acted significantly unfairly by treating her differently from other owners since it is undisputed that the special levy funds have been raised from all of the strata lots and none of the strata lot accounts have received a refund.
31. For the above reasons, I find that Ms. Wu has not proved that the strata’s refusal to refund the special levy funds is significantly unfair.

Misappropriation

32. Ms. Wu also alleges that the special levy funds have been misappropriated. She provided a February 2, 2021 email she received from the council president saying that the special levy funds had already been spent. The strata says that the strata president “misspoke” and that the funds are still held for future mediation services.
33. The strata provided financial records, including a March 31, 2021 reconciliation of its contingency reserve fund (CRF), special assessment account (SAA), and bank statements. The strata’s reconciliation records say that \$1,000 was credited to the SAA in relation to the mediation special levy on August 31, 2020 and that this money has not been withdrawn. The reconciliation records also say that the SAA had a \$5,569.93 balance on March 31, 2021, which matches the balance stated on the

account's March 31, 2021 bank statement. Ms. Wu admits that the strata's special levy accounting records do not show misappropriation. Based on the strata's accounting reconciliation records, the bank records, and Ms. Wu's admission, I am satisfied that the strata's president's February 2, 2021 email was inaccurate and that the special levy funds are still held by the strata. So, I find that Ms. Wu has not proved that the strata misappropriated the special levy funds.

34. Given my findings above, I dismiss Ms. Wu's claims.

CRT FEES AND EXPENSES

35. 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. Since Ms. Wu was not successful, I dismiss her request for reimbursement of CRT fees. The strata did not request reimbursement of dispute-related expenses.

36. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owners of SL3.

ORDER

37. I dismiss Ms. Wu's claims and this dispute.

Richard McAndrew, Tribunal Member