



Civil Resolution Tribunal

Date Issued: September 29, 2021

File: ST-2020-008959

Type: Strata

Civil Resolution Tribunal

Indexed as: *Gut v. The Owners, Strata Plan NW1799*, 2021 BCCRT 1050

B E T W E E N :

LILIANNA GUT

APPLICANT

A N D :

The Owners, Strata Plan NW1799

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicant, Lilianna Gut, owns strata lot 164 in the respondent strata corporation, The Owners, Strata Plan NW1799. Ms. Gut says the strata made unauthorized expenditures on electrical expenses for a storage room and failed to obtain the required municipal permits for the storage room. She also says the strata made 4

unauthorized payments to a council member, Juan Miguez, for his repair work on the strata property. She asks for the following orders:

- a. A declaration that the strata built the storage room without the required owner authorization under section 71 of the *Strata Property Act* (SPA) and the bylaws.
 - b. A declaration that the storage room electrical expenses were unauthorized, in contravention of the SPA and bylaws.
 - c. The strata must obtain retroactive owner approval for the storage room electrical expenses within 3 months of this decision or take steps to seek reimbursement of the electrical expenses.
 - d. The strata must obtain the required City of Richmond (City) permits for the storage room.
 - e. The strata must audit all invoices for Mr. Miguez's repair work.
 - f. A declaration that the strata made 4 payments to Mr. Miguez totalling \$59,897.91 (the 4 payments) in violation of sections 97 and 98 of the SPA and bylaw 40.
 - g. The strata must obtain retroactive owner approval for the 4 payments under sections 97 or 98 of the SPA or bylaw 40 within 3 months of this decision or seek reimbursement of the payments.
2. The strata denies Ms. Gut's claims. It says the storage room electrical expenses were necessary to ensure safety and prevent damage so it did not require prior approval for them. It says it has applied for a City permit for the storage room and has stopped work on it until further notice from the City. It says 1 of the 4 payments was not to Mr. Miguez and was approved in the budget. It says council approved the other 3 payments to Mr. Miguez's company, JM Designs, for repair work he completed.
 3. Ms. Gut represents herself in this dispute, and the strata is represented by a strata council member, Mr. Miguez.

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). 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.
5. 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 and fairness.
6. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Under CRTA section 123, 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.

PRELIMINARY ISSUES

Declaratory Orders

8. Several of Ms. Gut's requested remedies are for declaratory orders. In *Seeman v. The Owners, Strata Plan NW2085*, 2019 BCCRT 1315, the CRT determined that it does not have jurisdiction to make declaratory orders unless they are incidental to a claim for relief over which the CRT has jurisdiction. While that decision is not binding

on me, I find its reasoning persuasive and I adopt it here. One of the orders Ms. Gut seeks is a declaration that the construction of the storage room was unauthorized, in breach of section 71 of the *Strata Property Act* (SPA) and the bylaws. However, I find such a declaration is not incidental to any of the remedies Ms. Gut requests in this dispute, so I find I do not have jurisdiction to make this declaratory order.

9. Ms. Gut also asks for declarations that both the storage room electrical expenses and the 4 payments were unauthorized. I also find I have no jurisdiction to make these declaratory orders, as explained further below.

Late Evidence

10. Ms. Gut submitted one piece of late evidence, and the strata was given an opportunity to respond to it in its submissions. However, I find the evidence is a duplicate of a document Ms. Gut already submitted into evidence before the deadline, so I find it is unnecessary for me consider the late evidence.

Other Procedural Issues

11. In a May 19, 2021 email to a CRT staff member, Ms. Gut provided some new information about Mr. Miguez and asked if this information was relevant to her claims. The CRT staff member informed Ms. Gut that since the dispute was already at the adjudication stage, the CRT member assigned to her dispute could decide whether to accept her email. I find none of the matters Ms. Gut raised in her May 19, 2021 email are relevant to her claims or requested remedies in this dispute, so I have not considered her email in this decision.
12. Ms. Gut's initial Dispute Notice was issued on December 14, 2020, and her amended Dispute Notice was issued on March 23, 2021. In some of her reply submissions, Ms. Gut raises new allegations that she did not previously raise in her amended Dispute Notice or initial submissions. The strata provided unsolicited additional submissions and 2 pieces of evidence in response. However, I find the new allegations Ms. Gut raised in her reply submissions and to which the strata responded are not relevant to her claims or requested remedies in this dispute, as set out in the amended Dispute

Notice. So, I have not considered the new allegations or the strata's response to them in this decision.

ISSUES

13. Ms. Gut initially named Mr. Miguez as a respondent in this dispute and made several claims against him related to his alleged conflict of interest as a council member. However, during the facilitation process, Ms. Gut withdrew her claims against Mr. Miguez and revised her requested remedies against the strata.
14. The remaining issues in this dispute are:
 - a. Were the strata's storage room electrical expenses unauthorized, and if so, what is an appropriate remedy?
 - b. Should the CRT order the strata to obtain a City permit for the storage room?
 - c. Were the strata's 4 payments for repair work totalling \$59,897.91 unauthorized, and if so, what is an appropriate remedy?

EVIDENCE AND ANALYSIS

15. The strata was created in 1982 under the *Condominium Act* and continues to exist under the SPA. It consists of 282 strata lots in 4 separate buildings. In 2017 the strata filed a set of consolidated bylaws at the Land Title Office. It filed subsequent bylaw amendments in 2019 and 2020, both of which I find are not relevant to this dispute.
16. Ms. Gut was previously a strata council member until the April 28, 2021 annual general meeting (AGM). She was a council member at the time she started this dispute.

Were the strata's storage room electrical expenses unauthorized, and if so, what is an appropriate remedy?

17. It is undisputed that at some point in 2019 the strata converted an outdoor common property (CP) area into an indoor storage room. The strata says, and Ms. Gut does

not dispute, that the original outdoor common area was enclosed on 3 sides and had a roof. The strata says it built 2 non-structural walls to fully enclose the area on the remaining fourth side, removed a window to the adjacent hallway, and installed a door on the interior of the newly enclosed space to access the hallway. It is undisputed that the strata installed lighting, heating, and electrical connections in the storage room, as well as an exhaust fan.

18. Ms. Gut says the strata paid Mr. Miguez for the storage room electrical work, in breach of section 34 of the SPA. That section requires that any remuneration paid to a council member for that member's exercise of council powers or performance of council duties be approved before payment by either the budget, a bylaw, or a $\frac{3}{4}$ resolution passed at an AGM or special general meeting (SGM). Ms. Gut also says that neither the owners nor the strata approved the electrical expenses. She wants the CRT to declare that the expenses were unauthorized. She also wants the CRT to order the strata to obtain retroactive owner approval for the electrical expenses within 3 months of this decision, or else seek reimbursement of the electrical expenses.
19. Ms. Gut submitted a December 3, 2019 invoice to the strata from Vancouver Static Industries Ltd. (VSI) for electrical, lighting, and electric heating installation in the storage room for \$1,950.85. Though she does not explicitly say so in her submissions, I infer that these are the electrical expenses Ms. Gut refers to in her claim.
20. The strata says Mr. Miguez did not perform the storage room electrical work and received no remuneration related to the electrical work. It says Mr. Miguez voluntarily supervised the framing and electrical contractors working on the storage room, and he did not seek remuneration for this supervisory work. There is no indication, and Ms. Gut does not allege, that Mr. Miguez owns or is otherwise connected to VSI. I find Ms. Gut has not established that the strata paid Mr. Miguez the storage room electrical expenses. However, I must still determine whether the strata's payment to VSI was authorized.
21. The strata says the storage room expenses, including the electrical expenses, were necessary to ensure safety and prevent damage to the building, so advance approval

was not required. It says that in September and October 2019, drug paraphernalia and clothing were found in the partially enclosed outdoor common area which had no light at night. The strata says anyone loitering in that area could have easily gained access to the building through the window into the adjacent hallway. It says the newly constructed storage room is not accessible from the building's exterior, and there is no longer a partially enclosed outdoor common area in that location.

22. It is undisputed that the electrical expenses were not approved in advance in either the strata's budget or at an AGM or SGM. Section 98(1) of the SPA states that if a proposed expenditure has not been approved through one of these procedures, the strata may only make the expenditure in accordance with section 98.
23. Section 98(3) allows an unauthorized expenditure out of the operating fund or contingency reserve fund if there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage, whether physical or otherwise. Bylaw 40(3) contains almost identical language to section 98(3) of the SPA but specifies that the significant loss or damage the expenditure is intended to prevent may also be financial. Section 98(5) of the SPA limits the amount of an unauthorized expenditure made under section 98(3) to the minimum amount required to ensure safety or prevent significant loss or damage.
24. Ms. Gut disputes the strata's security concerns about the outdoor common area. She says she has lived on the ground floor since 2007 and neither she nor her neighbours have ever seen an intruder or any abandoned clothing in the original outdoor common area. However, I find that even if the strata's security concerns about the common area were valid, it has not explained how the electrical expenses fall within the minimum amount required to ensure safety or prevent significant loss or damage as required by section 98(3). Based on the strata's description of the work, I find it could have reasonably blocked or removed the window, put up a barrier or wall, or taken some other minimal measure to ensure safety and prevent loss or damage before spending money to convert the area into an indoor storage room.

25. On balance, I am not satisfied that the electrical expenses fell within section 98(3) of the SPA, so I find they were not authorized. However, I find the remedies Ms. Gut requests are problematic, as the strata has already spent the money. It is undisputed that VSI completed the work it was paid for, so there does not appear to be any legal basis on which the strata could seek reimbursement from VSI. Even if I did order the strata to seek reimbursement from VSI, there is no guarantee VSI would comply with the strata's request. Ordering the strata to seek retroactive approval for electrical expenses would serve no practical purpose as there would be no remedy if the owners voted not to approve the expenses. Without ordering these requested remedies, based on *Seeman*, I find I have no jurisdiction to declare that the electrical expenses were unauthorized, and in any event, I find such a declaration would serve no purpose. For these reasons, I dismiss this claim.

Should the CRT order the strata to obtain a City permit for the storage room?

26. Ms. Gut says the strata failed to obtain the required City permits for the storage room in violation of bylaw 6(b). There is no bylaw 6(b), but I infer that Ms. Gut refers to bylaw 6(3)(b), which requires an owner applying for the strata's approval to alter CP to obtain all applicable permits, licenses, and approvals from the appropriate governmental authorities and provide copies to the strata. Ms. Gut wants the CRT to order the strata to obtain the required City permits for the storage room.
27. Since bylaw 6(3)(b) sets out an owner's obligation when applying to the strata to alter CP, I find it is not applicable in these circumstances. However, for the following reasons, I decline to grant Ms. Gut's requested order.
28. The evidence shows that the strata applied and paid for a City permit in January 2020, but the City did not accept the application because it required "extra items." In an undated email to Ms. Gut, a City inspector said they inspected the storage room with Mr. Miguez on May 12, 2020 and instructed Mr. Miguez to stop all construction on the project until the permit was granted. The inspector said occupancy could only be granted once the permit was approved. The strata says it stopped work on the project

as instructed by the City inspector and has heard nothing further from the City about the status of its permit application.

29. The City's inspection of the storage room was well over a year ago, and it is unclear what, if anything, has happened since that time. However, since it is undisputed that the strata has already applied for and paid for a City permit, I find ordering it to do so again would serve no purpose. I dismiss this claim.

Were the strata's 4 payments for repair work totalling \$59,897.91 unauthorized, and if so, what is an appropriate remedy?

30. Ms. Gut says the strata made 4 unauthorized payments to Mr. Miguez's company JM Designs totalling \$59,897.91 for repair work he completed in 2019 and 2020. On the evidence before me, I find the 4 payments Ms. Gut refers to in her claim are for the following invoices:

- a. An October 7, 2019 Galaxy Paving Ltd. invoice for \$37,438.41 (Galaxy invoice)
- b. A June 4, 2020 JM Designs invoice for \$5,974.50 for 284.5 hours of work at \$20 per hour completed between April 1, 2020 and June 3, 2020
- c. An August 19, 2020 JM Designs invoice for \$6,552.00 for 312 hours of work at \$20 per hour completed between June 4 and August 19, 2020
- d. An October 12, 2020 JM Designs invoice from JM Designs for \$9,933.00 for 473 hours of work at \$20 per hour between August 20 and October 12, 2020

31. Ms. Gut says these 4 payments were unauthorized and in breach of section 34 of the SPA. She also says that since the total payments exceeded \$5,000, they required the owners' approval, which the strata did not obtain in breach of the SPA and bylaws. She wants the CRT to order the strata to audit all invoices related to Mr. Miguez's repair work and declare that the 4 payments were unauthorized. She also wants the CRT to order the strata to obtain retroactive approval for the 4 payments within 3 months of this decision, or else seek reimbursement of the 4 payments. The strata denies Ms. Gut's claims.

The Galaxy Invoice

32. The strata says it paid the Galaxy invoice to Galaxy Paving Ltd. (Galaxy), not JM Designs or Mr. Miguez, as Ms. Gut alleges. Ms. Gut provided no evidence that Mr. Miguez received any payment from the strata related to this invoice. She also provided no evidence to show that Mr. Miguez has any connection to or financial interest in Galaxy. I find the strata did not pay Mr. Miguez for the Galaxy invoice. However, I must still determine whether the payment was authorized.
33. The strata says the 2019 budget, which was approved at the December 13, 2018 AGM, allowed it to pay the Galaxy invoice out of the budget's "Planned Maintenance - Improvements" line item. Ms. Gut does not dispute this. It seems Ms. Gut's main concern about this invoice is that the initial quote from Galaxy was for approximately \$25,000 and she implies that Mr. Miguez improperly suggested that the council should accept this quote over another quote. The strata says the initial Galaxy quote was \$24,535 plus tax for "preparation and asphalt paving through the complex." It says that at the May 2019 council meeting the council voted to select Galaxy for this work, as it was the more competitive quote. Ms. Gut does not specifically dispute this.
34. The strata says the initial Galaxy quote did not include all of the paving work the strata wished to complete, because it wanted to ensure it stayed within its budget. The strata says later in the year it determined there were sufficient funds remaining in the budget to complete all the required paving work, which is why the cost increased from approximately \$25,000 to \$37,438.41. Ms. Gut does not dispute that the budget allowed for this increased expenditure. I find the Galaxy invoice supports the strata's explanation, as it states the "extra" expenses were for asphalt overlay from the driveway to the parkade, and for repaving additional walkways.
35. On balance, I find Ms. Gut has not established that the strata's payment of the Galaxy invoice was unauthorized.

The JM Designs Invoices

36. I note here that in her submissions, in addition to her concern that the strata's payments for the JM Designs invoices were unauthorized, she raises some concerns about the oversight of Mr. Miguez's work. She says his work was never verified or approved by a third party, and the property manager never signed off on the description or quality of his work or the amount of time he spent completing it. However, Ms. Gut does not specifically allege in this dispute that any of Mr. Miguez's work was unsatisfactory, outside the intended scope, or took longer than it should have. I find her claim is related solely to the approval of the strata's expenditures, so I limit my analysis below to whether the expenditures were properly approved.
37. The strata says that at its February 12, 2020 council meeting it approved hiring Mr. Miguez to complete various repair work on the strata property through his company JM Designs. It says Ms. Gut attended that meeting as a council member and agreed with the payment approval. Ms. Gut does not specifically dispute this but says Mr. Miguez and the council president at the time "imposed" their view on the rest of council. It is undisputed that the council's approval to hire JM Designs was not recorded in the minutes of that meeting.
38. The strata says that in response to Ms. Gut's subsequent concerns about payments to JM Designs in 2020, council discussed the issue at its October 21, 2020 meeting. The minutes from that meeting state that at the February 12, 2020 meeting, council approved by majority vote hiring Mr. Miguez to complete repair work on the strata property for \$20 per hour plus GST. The minutes state, "This was not noted on the February 12, 2020 council meeting but was discussed and approved. Council Member Juan did not participate in the approval vote. Official Vote Count – 4 in favour, 1 against, and 1 abstain" (reproduced as written).
39. The strata submitted a November 5, 2020 email statement from its property manager in which they said they recalled that council approved paying JM Designs at the February 12, 2020 council meeting but they did not record that approval in the minutes. The property manager did not explain why they failed to do so.

40. Ms. Gut says Mr. Miguez persuaded the other council members to vote in favour of paying JM Designs in exchange for him providing them repair and maintenance favours in their strata lots and paying their cell phone bills. However, she provided no evidence to support these allegations.
41. The strata says Mr. Miguez disclosed his interest in being paid by the strata for repair work and abstained from voting on the approval as required by section 32 of the SPA. It says payment of the 3 JM Designs invoices is reflected in the strata's financial statements, which Ms. Gut has received. The financial statements are not in evidence, but Ms. Gut does not dispute receiving them or that they include the 3 JM Designs invoices.
42. On balance, I am satisfied that the strata council approved hiring Mr. Miguez for repair work at its February 12, 2020 meeting, and confirmed the approval at the October 21, 2020 meeting. However, as noted above, section 34 of the SPA requires that any remuneration paid to a council member for that member's exercise of council powers or performance of council duties to be approved before payment through either the budget, a bylaw, or a $\frac{3}{4}$ resolution passed at an AGM or special general meeting (SGM). In *Hoover v. The Owners, Strata Plan KAS 1984*, 2018 BCCRT 620, a Vice Chair said that a council member's "exercise of council powers or performance of council duties" in section 34 of the SPA differs from a situation where a council member is paid for completing repairs and maintenance. *Hoover* is not binding on me but I find its reasoning persuasive and I adopt it here. I say this because it is not a strata council's duty to complete repair or maintenance work, rather it is the council's duty to ensure that repair and maintenance work is completed as required.
43. I find that portions of each of the 3 JM Designs invoices appear that they may be for work that reasonably falls under a council member's exercise of council power or performance of council duties. Specifically, each of the 3 invoices include time spent meeting with contractors. However, none of the invoices indicate the number of hours Mr. Miguez devoted to these tasks compared to the total hours of work on each invoice.

44. I note here that in her reply submissions Ms. Gut says a resolution at the April 2021 AGM for owners to retroactively approve the payments to JM Designs failed, but the minutes from that meeting, including the specific wording of the resolution, are not before me.
45. I find the strata council's approval in February and October 2020 to pay JM Designs for repair work did not include approval to pay him to perform council duties, and even if it did, the strata council's approval would not meet the requirements of section 34. So, I find part of the strata's payments for the 3 JM Designs invoices appear to be unauthorized. However, despite this finding, for the following reasons I decline to grant Ms. Gut's requested remedies.
46. As with her claim about storage room electrical expenses, the remedies Ms. Gut requests related to the JM Designs invoice payments are problematic because the strata has already spent the money. It is also unclear what amount of the 3 JM Designs invoices were unauthorized. Ordering the strata to request reimbursement from either Mr. Miguez, or JM Designs does not guarantee the strata will be reimbursed. Similarly, ordering the strata to seek retroactive owner approval for the 3 JM Designs invoice payments would serve no practical purpose as there would be no remedy if the owners voted against approving them. Ms. Gut wants the strata to audit the JM Designs invoices, but it is unclear what that audit would entail, or what purpose it would serve based on her other requested remedies. Without ordering these requested remedies, based on *Seeman* I find I have no jurisdiction to declare that any of the JM Designs payments were unauthorized, and in any event, I find such an order would serve no purpose. For these reasons, I dismiss this claim.

CRT FEES AND EXPENSES

47. 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. Gut was unsuccessful, I find she is not entitled to reimbursement of her

CRT fees. The strata did not pay any CRT fees, and neither party claims any dispute-related expenses.

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

ORDERS

49. I dismiss Ms. Gut's claims and this dispute.

Sarah Orr, Tribunal Member