



# Civil Resolution Tribunal

Date Issued: October 19, 2021

File: ST-2021-001618

Type: Strata

Civil Resolution Tribunal

Indexed as: *Lloyd v. The Owners, Strata Plan NW2502*, 2021 BCCRT 1104

**B E T W E E N :**

PERRY LLOYD and LESLEY LLOYD

**APPLICANTS**

**A N D :**

The Owners, Strata Plan NW2502

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Eric Regehr

## **INTRODUCTION**

1. This dispute is about bulk services for cable and internet. The respondent strata corporation, The Owners, Strata Plan NW2502 (strata), entered into a 5-year contract for cable service for every strata lot in the strata (bulk contract). The applicants, Perry Lloyd and Lesley Lloyd, own a strata lot. They say that the strata did not have legal authority to enter into the bulk contract. They ask for an order that the strata stop

billing them for the cable service, which they have never used. They also ask to be reimbursed the \$1,047.74 they have paid since the strata signed the bulk contract.

2. The strata says that the owners have been paying for bulk cable service since 2001, when the owners voted in favour at a special general meeting (SGM). The strata says that every year since then, the owners have approved an operating budget that includes bulk cable service. They ask me to dismiss the Lloyds' claim.
3. Perry Lloyd represents the applicants. A strata council member represents the strata.

## **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 tribunal 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.

## **ISSUES**

8. The issues in this dispute are:
  - a. Did the strata have legal authority to enter into the bulk contract?
  - b. If not, what remedy is appropriate?

## **BACKGROUND AND EVIDENCE**

9. In a civil claim such as this, the Lloyds as the applicants must prove their case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. The strata consists of 58 townhouse-style residential strata lots. The Lloyds have owned strata lot 3 since 2015. The strata filed a complete set of bylaws in the Land Title Office on March 28, 2008, which repealed and replaced the Standard Bylaws under the SPA. The strata filed several amendments since then. As discussed in more detail below, there is no bylaw about bulk cable service.
11. The facts are mostly undisputed. The strata first entered into a bulk cable contract in 2000 or 2001. The strata says that the owners approved of the contract at an SGM. The strata says that it no longer has records of this vote, but I find nothing turns on it. The strata signed the bulk contract at issue in this dispute on May 28, 2019, and it took effect on July 1, 2019. The bulk contract has a 5-year term. Despite the strata lots having different unit entitlements, the strata has divided the cost of cable equally among the strata lots. There is no evidence of a unanimous resolution as required under section 100 of the SPA to authorize the strata to divide the cost in a way other than by unit entitlement. However, I find that this issue is not before me.
12. The bulk contract requires the strata to maintain a minimum service level of 58 accounts, which as noted above is the number of strata lots in the strata. This means that the cost to the strata is the same no matter how many strata lots use the service.

13. The Lloyds have never used the service and do not want it. They say that they have still paid their monthly share, which the strata does not dispute, so I accept that this is true.

## **ANALYSIS**

### ***Did the strata have legal authority to enter into the contract?***

14. The Lloyds say that the strata had no legal authority to enter into the bulk contract because the wiring that provides the cable service within each strata lot is not common property. As a result, they say that the strata has no legal authority to compel any owner to contribute to the cost of the contract. The Lloyds rely on the BC Supreme Court case *Owners of Strata Plan LMS 2223 v. Tsubota*, March 5, 2012, Court File No. S111992, which I discuss more below.
15. The strata argues that the owners have approved the bulk contract every year by approving its operating budget at its AGM. The strata provided the most recent budget for 2021, which includes an expense line of \$40,612 for cable. The strata says that there are other examples of services that the strata provides and charges to owners that are not strictly related to common property, such as garbage and recycling. The strata also says that a bulk contract is the best option for the strata because many owners are elderly and benefit from the simplicity. The strata notes that the provider gives the strata free internet for its social common room, which benefits all owners.
16. The strata also says that the wiring for the cable runs on common property and that both the wiring and hardware belong to the provider under the contract's terms. The strata says that this is no different than natural gas or water.
17. The strata did not directly address the Lloyds's legal argument or *Tsubota*, although I infer that the strata believes that the wiring providing cable is common property. Because it is a BC Supreme Court case, the legal reasoning in *Tsubota* is binding on me.

18. In *Tsubota*, the strata corporation entered into a contract for bulk cable and internet services for all strata lots. The strata corporation then charged each owner for cable and internet as a common expense. An owner, Ms. Tsubota, questioned whether the strata corporation had legal authority to enter into the bulk contract.
19. In *Tsubota*, strata corporation relied on section 38 of the SPA, which allows a strata corporation to enter into contracts “in respect of its powers and duties” under the SPA and its bylaws. Section 3 of the SPA says that a strata corporation’s duty includes managing and maintaining common property. However, the court concluded that under the definition of common property in section 1 of the SPA, the wiring for cable and internet within each strata lot was not common property. So, the court found that the SPA did not give the strata corporation authority to enter into a contract for cable and internet on the owners’ behalf, because under the SPA the strata has no power or duty to manage or maintain a strata lot. The court also found that the strata corporation had no bylaw authorizing it to enter into a bulk contract for cable and internet. Therefore, the strata corporation had no legal authority to enter into the contract at the time it was signed. The court reached this conclusion even though the owners had approved a budget including the bulk contract every year and had passed a special resolution to retroactively approve it.
20. I find that the wiring at issue in this dispute is essentially the same as in *Tsubota*, so I must reach the same conclusion. I find that the wiring within each strata lot that connects their individual service to the provider’s network is not common property. It is part of the strata lot. This is true even though there is wiring on common property that connects the individual service to the network.
21. This means that the strata had no authority under the SPA to enter into the contract. I recently applied *Tsubota* in *Sweett v. The Owners, Strata Plan EPS606*, 2021 BCCRT 1090. In *Sweett*, unlike in *Tsubota*, the strata had a valid and enforceable bylaw that specifically granted the strata council authority to enter into a bulk contract for cable and internet. So, I concluded that the strata corporation had legal authority to enter into the contract under its bylaws.

22. With that, I find that the strata must have a valid bylaw authorizing it to enter into the bulk contract. The strata does not allege that it has such a bylaw, and on my review, it does not. As in *Tsubota*, I find that the owners cannot approve or adopt the bulk contract simply by passing a budget that includes it as a line item. This means that the strata had no legal authority to enter into the bulk contract and no legal authority to require each individual owner to pay their share. I turn then to the appropriate remedy.

### ***What remedy is appropriate?***

23. As mentioned above, the Lloyds ask for an order that the strata stop billing them for the cable service, which they have never used. They also ask to be reimbursed the \$1,047.74 they paid from July 1, 2019, when the contract took effect, until February 2021, when the Lloyds started this dispute. This claim is based on monthly charges of \$45.80 in 2019, \$54.56 in 2020, and \$59.11 in 2021. I note that the Lloyds used the monthly charge for the first half of 2019 and did not account for the increase in cost when the new contract took effect on July 1, 2019. However, I find that it would procedurally unfair to award the Lloyds more than they claimed, so I have not adjusted their claim to account for this increase.

24. In *Tsubota*, the court faced the same issue although in slightly different circumstances. There, Ms. Tsubota had refused to pay for the cable and internet services and the strata corporation sued her to force payment. The court concluded that without legal authority to enter into the bulk contract in the first place, the strata corporation had no right to require individual owners to pay for it. The court dismissed the strata's case, in effect permitting Ms. Tsubota to opt out of the bulk service. The court did not consider the impact of its order on the remaining owners in that strata corporation.

25. As noted above, the contract requires the strata to pay for a minimum of 58 units of service, whether the owners use it or not. I acknowledge that allowing the Lloyds to opt out of the service would mean that the other owners' cable costs will increase slightly because the cost will now be divided between 57 instead of 58 strata lots. The

Lloyds provided letters from 2 other owners indicating that they wish to make their own choice for cable service, so it may increase further if more owners opt out. This assumes that the contract itself is enforceable, which it may not be given the strata's lack of capacity to enter into the contract in the first place. However, the validity of the contract as between the strata and the provider is not before me, so I make no finding on that issue.

26. Notwithstanding the potential impact on the strata's other owners, I find that the appropriate remedy is to allow the Lloyds to opt out of the cable service. The strata had no right to charge the Lloyds for the cable service if they did not want it. The Lloyds would therefore have been well within their rights to refuse to pay: See *Mancuso v. York Condominium Corp. No. 216*, 2008 CanLII 20343 (ON SC), at paragraph 20, cited in *The Owners, Strata Plan VIS4686*, 2016 BCSC 90, at paragraph 58. Having paid, I find that they are entitled to be reimbursed.
27. I therefore order the strata to pay the Lloyds \$1,047.74 as claimed, which again represents the cost of the cable service from July 2019 through February 2021. I have no evidence about whether the Lloyds continued to pay for the cable service after starting this dispute, so I find that I cannot order the strata to reimburse any amount the Lloyds may have paid after February 2021. I do, however, order the strata to reverse the charges for cable service on the Lloyds' strata lot account from March 1, 2021 through October 1, 2021. I leave it to the parties to decide how to address any amount owing as a result of that order. I order the strata to stop charging the Lloyds for cable service. For clarity, the combined effect of these orders should be that the Lloyds do not pay anything for cable service under the bulk contract, which again took effect on July 1, 2019.

## **TRIBUNAL FEES, EXPENSES, AND INTEREST**

28. 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 therefore order the strata to reimburse Lloyds \$225 for CRT fees. They did not claim any dispute-related expenses.

29. The *Court Order Interest Act* (COIA) applies to the CRT. The Lloyds are entitled to pre-judgement interest from the date they made each cable payment to the date of this decision. This equals \$11.62.
30. The strata must comply with the provisions in section 189.4 of the SPA, which includes not charging dispute-related expenses against the Lloyds.

## **DECISION AND ORDERS**

31. I order that:

- a. Within 30 days of the date of this order, the strata pay the Lloyds \$1,284.36, broken down as follows:
  - i. \$1,047.74 as reimbursement for cable service from July 1, 2019, to February 1, 2021,
  - ii. \$11.62 in prejudgment interest under the COIA, and
  - iii. \$225 in CRT fees.
- b. The strata immediately reverse the charges for cable service on the Lloyds' strata lot account from March 1, 2021 through October 1, 2021.
- c. The strata immediately stop charging the Lloyds for cable service under the bulk contract.

32. The Lloyds are also entitled to post judgement interest under the COIA.



33. 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.

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Eric Regehr, Tribunal Member