



Civil Resolution Tribunal

Date Issued: December 29, 2021

File: ST-2021-001372

Type: Strata

Civil Resolution Tribunal

Indexed as: *Metcalf v. The Owners, Strata Plan LMS 278*, 2021 BCCRT 1346

B E T W E E N :

FREDERICK METCALFE

APPLICANT

A N D :

The Owners, Strata Plan LMS 278

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This strata property dispute is about strata corporation finances.
2. The applicant, Frederick Metcalfe, co-owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 278 (strata).

3. In his dispute application, Mr. Metcalfe alleges the following:
- The strata breached section 6.3(1) of the *Strata Property Regulation* (Regulation) by borrowing funds from the strata's contingency reserve fund (CRF) without giving notice to the owners, and by failing to repay borrowed funds back into the CRF.
 - When the strata sent out the June 2020 annual general meeting (AGM) notice package, it failed to advise owners that \$82,924 was owed back to the CRF as of April 30, 2020.
 - As of April 30, 2020, the strata had not repaid \$8,625 that was taken from the CRF but not used for the purpose approved by the owners, contrary to *Strata Property Act* (SPA) section 96(a).
 - The strata removed \$10,000 from the CRF for fencing projects, without proper approval by owners, contrary to SPA section 96.
4. I discuss Mr. Metcalfe's requested remedies below.
5. The strata denies Mr. Metcalfe's claims, and says they should be dismissed. The strata requests reimbursement of its legal fees.
6. Mr. Metcalfe is self-represented in this dispute. The strata is represented by a strata council member.
7. For the reasons set out below, I do not grant Mr. Metcalfe's requested orders. I also deny the strata's claim for reimbursement of legal fees.

JURISDICTION AND PROCEDURE

8. 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.

9. 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.
10. 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.
11. 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.

Remedies

12. The only remedy Mr. Metcalfe requested in his dispute application was an order that the strata follow the intent of the SPA and Regulation. However, during the facilitation phase of this dispute, Mr. Metcalfe amended his requested remedies, and now requests the following orders:
 - The strata repay all funds borrowed from the CRF back into the CRF, including funds borrowed to pay the 2021 insurance premium.
 - The strata provide all owners with copies of revised year end financial statements for the fiscal year that ran from May 1, 2020 to April 30, 2021.
 - As part of the revised financial statements, the strata ensure the pre-paid insurance account is cleared to the insurance expense account.

13. I find the documents before me confirm that the strata had notice of these new requested remedies, and an opportunity to provide evidence and submissions in response. Specifically, the remedies were entered into the CRT's online portal under the heading "Claims & Requested Resolution Summary", and the strata responded to them in its submissions. So, I find it is procedurally fair to address Mr. Metcalfe's revised remedy requests in this decision.
14. The strata submits that Mr. Metcalfe's requested remedy of a revised year end financial statement for 2020-21 was raised too late, as it was not included in the Dispute Notice. I find that the strata had notice of this remedy request during the CRT's facilitation phase, before either party provided evidence or submissions. I therefore find the strata had sufficient notice of the remedy, and a reasonable opportunity to respond to it. I also note the CRT's mandate in CRTA section 2, which includes flexibility and informality rather than court-like procedures.
15. The strata says Mr. Metcalfe's final reply submission was not a "proper reply" because it included new arguments. I note that the rules of court do not apply to the CRT, and the CRT rules do not contain guidelines about what may be included in a reply submission. However, principles of procedural fairness require that the respondent strata have an opportunity to respond to all arguments and evidence raised by Mr. Metcalfe. The strata was given the option of providing additional arguments and evidence after Mr. Metcalfe's final reply, so I find there was no breach of procedural fairness.

ISSUES

16. The issues in this dispute are:
 - a. Are there outstanding funds borrowed from the CRF that have not been repaid?
 - b. Must the strata produce and circulate revised year end financial statements for the 2020-21 fiscal year?
 - c. Is the strata entitled to reimbursement of legal fees?

REASONS AND ANALYSIS

17. In a civil claim like this one, Mr. Metcalfe, as applicant, must prove his claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision.
18. Mr. Metcalfe provided evidence and submissions about his allegation that the strata borrowed funds from the CRF without proper notice to owners. However, he requested no remedy about that. Also, the strata is already required to follow Regulation 6.3(2), which requires notice to owners “as soon as feasible” of the amount and purpose of any loan from the CRF to the operating fund. So, I make no findings or order about notice to owners of CRF loans.
19. Mr. Metcalfe submits that the strata council acted in bad faith in various ways in its management of the strata's finances. SPA section 31 sets out the standard of care that strata council members must meet. It says that in exercising the powers and performing the duties of the strata corporation, each council member must act honestly and in good faith with a view to the best interests of the strata corporation, and must exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.
20. Mr. Metcalfe does not request a specific remedy about this alleged bad faith, but instead relies on it as a argument in support of his other claims. In a recent decision, *Williams v The Owners, Strata Plan NW 1340*, 2021 BCSC 2058, the BC Supreme Court confirmed that the CRT does not have jurisdiction to decide claims under SPA section 31. For these reasons, I make no findings about alleged bad faith by the strata council.

Are there outstanding funds borrowed from the CRF that have not been repaid?

21. The strata says that all funds borrowed from the CRF have now been repaid in full. Mr. Metcalfe admits this in his submissions. Also, in his final reply submission, Mr.

Metcalf does not request an order for repayment of any CRF funds, and instead says the proper remedies for his claims are revised financial statements and a change in how pre-paid insurance premiums are accounted for.

22. Since Mr. Metcalf does not say there are current unpaid CRF loans, I dismiss this claim, and make no repayment order.

Must the strata produce and circulate revised year end financial statements for the 2020-21 fiscal year?

23. Mr. Metcalf requests an order that the strata prepare and circulate revised year end financial statements for the 2020-21 fiscal year (year ending April 30, 2021). Mr. Metcalf says this remedy is necessary for the following reasons:

- The financial statement shows an unpaid loan from the CRF, which was used to pay the strata's insurance premium. This loan should have already been repaid by year end, but was not.
- The balance sheet shows prepaid insurance as an asset. This is misleading because it has no cash value that could be used to pay for strata expenses.
- Because of these errors, the \$47,636.01 surplus shown on the April 30, 2021 balance sheet was really a \$9,181.31 deficit, after adjusting for the \$56,817.32 loan owed to the CRF for the insurance premium.
- The \$47,636.01 surplus (which does not exist) was carried forward into the 2021-22 budget, which resulted in incorrect calculations of strata fee contributions from owners.
- Due to the incorrectly reported "surplus", the council and owners do not understand the strata's real financial position, and cannot budget accurately.
- Retroactively revising the financial statement is the only way to show the correct financial starting point for the 2020-21 fiscal year, so it will be understood by the owners and current council.

24. In its submissions, the strata does not specifically respond to these arguments. Rather, the strata says Mr. Metcalfe's request for a revised year-end financial statement is a request for strata documents under SPA sections 35 and 36. The strata says Mr. Metcalfe is not entitled to make such a request on behalf of all owners.
25. I find that Mr. Metcalfe is not requesting copies of existing financial statements, which would be covered by sections 35 and 36. Instead, he requests an order that the strata revise the previously circulated year end financial statement for the 2020-21 fiscal year because he says the current document is inaccurate. This is not a claim under SPA sections 35 or 36. Also, as an owner in the strata, I find Mr. Metcalfe has standing to make claims about whether the strata met its financial reporting obligations under the SPA and Regulation.
26. The strata also says Mr. Metcalfe requests a detailed reconciliation of the CRF balance from April 2019 to February 2021. Again, I do not agree. Rather, he specifically requests an order about revising the 2020-21 year end financial statement. This is not the same as a CRF balance reconciliation starting in 2019, although that material may be relevant in creating an accurate financial statement.
27. Having considered the parties' submissions, I find it is not reasonable in the circumstances to order the strata to revise its 2020-21 year end financial statement. Retroactively revising the past fiscal year's financial statement would not change the 2021-22 budget and strata fee allocations, which were already approved at the June 2021 AGM. Also, the strata says the surplus from insurance premium loans will not be reflected in future budgets, as the strata will ensure there are no outstanding loans at the end of the fiscal year.
28. Essentially, Mr. Metcalfe objects to the fact that there were unpaid CRF loan balances at the end of the 2020-21 fiscal year. The strata essentially admits this was incorrect, and has repaid the loans and agreed to follow SPA requirements for CRF loans in the future. I find that showing the loan balances on the 2020-21 year end financial statement accurately reflected the strata's financial position at that time. Even though

the loans should have already been repaid, that was not the case in late April 2021 when the statement was prepared.

29. For these reasons, I find it is not reasonable or necessary to order the strata to retroactively revise its 2020-21 year end financial statement. I dismiss this claim.

Is the strata entitled to reimbursement of legal fees?

30. The strata requests an order of “costs”. Costs orders are available in BC Supreme Court proceedings, but not at the CRT. However, CRT rule 9.5(1) says the CRT will usually order the unsuccessful party to pay the successful party’s CRT fees and reasonable dispute-related expenses.
31. CRT rule 9.5(3) says the CRT will not order a party to pay another party’s legal fees in a strata property dispute unless there are extraordinary circumstances that make it appropriate to do so.
32. The strata has not argued that there are extraordinary circumstances in this dispute, and based on the factors set out in CRT rule 9.4(4), I find this dispute is not extraordinary. I find the issues in dispute were not unusually complex, there was no conduct that caused unnecessary delay or expense, and the strata did not have approved legal representation. Although not determinative, I also note that the strata’s use of CRF loans was likely contrary to the SPA, and the final unpaid loan was not repaid until after Mr. Metcalfe filed this dispute.
33. For these reasons, I dismiss the strata’s claim for reimbursement of legal fees.

CRT FEES AND EXPENSES

34. Mr. Metcalfe was not substantially successful in this dispute. However, as noted above, the strata did not repay the final CRF loan until after Mr. Metcalfe filed this dispute. So, I find Mr. Metcalfe is entitled to reimbursement of half his CRT fees, which equals \$112.50.

35. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to Mr. Metcalfe.

ORDERS

36. I order that within 30 days of this order, the strata must reimburse Mr. Metcalfe \$112.50 for CRT fees.

37. Mr. Metcalfe is entitled to postjudgment interest, under the *Court Order Interest Act*, as applicable.

38. I dismiss Mr. Metcalfe's remaining claims, and the strata's claim for legal fees.

39. 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.

Kate Campbell, Vice Chair