



Civil Resolution Tribunal

Date Issued: March 18, 2022

File: ST-2021-002112

Type: Strata

Civil Resolution Tribunal

Indexed as: *Sandhu v. The Owners, Strata Plan VIS 3901*, 2022 BCCRT 301

B E T W E E N :

SUK SANDHU

APPLICANT

A N D :

The Owners, Strata Plan VIS 3901

RESPONDENT

A N D :

SUK SANDHU

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about strata corporation governance and common expenses in a bare land strata with 4 strata lots.
2. The applicant and respondent by counterclaim, Suk Sandhu, owns strata lot 2 (1183) in the respondent bare land strata corporation The Owners, Strata Plan VIS 3901 (strata). Mr. Sandhu says the strata fined him based on unenforceable bylaws. He seeks orders declaring the bylaws unenforceable and the “fine notices” invalid. Mr. Sandhu says the strata has never held a valid annual general meeting (AGM) and seeks orders that it hold an AGM, prepare a budget and financial statements, and establish an operating account. Mr. Sandhu also seeks orders that the strata’s requests for payment of bylaw fines, legal expenses, strata fees and utility bills are invalid and unenforceable.
3. The strata concedes that some of its bylaws were “procedurally unenforceable” but says they should be treated as rules and Mr. Sandhu should be fined for breaking those rules. The strata seeks an order that Mr. Sandhu pay \$17,000 for rule contraventions and related expenses. The strata also says Mr. Sandhu must pay his share of the strata’s legal fees and related expenses incurred defending a lawsuit about an easement, including court-ordered damages and costs, appeal expenses and costs, and subsequent expenses which it says total \$6,432.72. The strata notes these fees could increase by another \$3,000. In addition, the strata says Mr. Sandhu owes outstanding strata fees and utility bills totaling \$2,585.13 as of January 2021. Mr. Sandhu generally says the strata’s claims should be dismissed because it has not complied with the *Strata Property Act* (SPA).
4. Mr. Sandhu is self-represented. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.
8. 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.

Requests for declaratory orders

9. Mr. Sandhu seeks orders that certain bylaws are unenforceable and that certain "fine notices" and amounts the strata has demanded are invalid and unenforceable. The CRT generally does not have jurisdiction to make declaratory orders: see *Fisher v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379, which is not binding but persuasive. I find I cannot make the declarations that Mr. Sandhu seeks.

10. With respect to the fines, I find I have jurisdiction to determine whether Mr. Sandhu must pay the fines under CRTA section 121(1)(a) and (d). I find the same provisions give me jurisdiction to decide whether Mr. Sandhu must pay strata fees and utility bills, and in what amounts. I note the strata directly raises these issues in its counterclaim. So, I find I can decide the claims about bylaw fines, strata fees and utility bills.

Admissibility of evidence

11. The strata said a July 13, 2021 letter from Mr. Sandhu's lawyer was part of the CRT negotiation phase and therefore inadmissible as evidence. Mr. Sandhu says the letter was not submitted in an attempt to resolve the dispute and therefore is not a "without prejudice" communication. I find the letter was not a communication "in the tribunal process" and so was not confidential under CRT rule 1.11. The letter largely states the same positions on the issues that Mr. Sandhu takes in this dispute. I find it appropriate to admit the letter, although I consider it background evidence of Mr. Sandhu's position when the letter was sent, which is of limited relevance.

Resolution authorizing counterclaim

12. Mr. Sandhu argues the strata has not passed a resolution authorizing the counterclaim. Mr. Sandhu refers throughout his submissions to SPA sections 171 and 172. I find SPA section 171(2) is the applicable provision. It requires a resolution passed by a $\frac{3}{4}$ vote at an annual or special general meeting to authorize any "suit".

13. The CRT considered the same argument in *The Owners, Strata Plan NW 177 v. Martin*, 2020 BCCRT 285. In *Martin*, a CRT vice chair found that SPA section 171(2) only applied to "suits", defined as "any kind of court proceeding", and that because the CRT is not a court, that section does not apply to CRT claims. Although *Martin* is not binding on me, I agree with the reasoning and apply it here. I find the strata did not need a resolution passed by $\frac{3}{4}$ vote to file its counterclaim, so I will consider the counterclaim on its merits.

ISSUES

14. The issues in this dispute are:
- a. Does Mr. Sandhu owe the strata \$17,000, or any amount, for contravening the strata's bylaws or rules?
 - b. Does Mr. Sandhu owe \$2,585.13, or any amount, for strata fees and utility bills?
 - c. What, if anything, does Mr. Sandhu owe the strata for expenses related to the easement litigation?
 - d. Should the CRT order the strata to convene an AGM, prepare a budget and financial statements, and establish an operating account?

EVIDENCE AND ANALYSIS

15. As the applicant in this civil proceeding, Mr. Sandhu must prove his claims on a balance of probabilities, meaning more likely than not. The strata bears the same burden of proof in the counterclaim. While I have read all the evidence and submissions, I only refer to what is necessary to explain my decision.
16. The bare land strata plan was filed in 1996 and shows 4 strata lots and a common property access lane. Each strata lot has equal unit entitlement. Mr. Sandhu has owned 1183 since September 29, 2016, although a member of his family previously owned it and Mr. Sandhu attended strata meetings before becoming an owner. The other strata lot owners are also second owners.
17. The strata's bylaws are the SPA's standard bylaws. In August 2020, the strata filed 3 bylaw amendments at the Land Title Office addressing parking and unpaid debts, which the strata concedes were not validly approved. I return to this issue below.
18. It is undisputed that the strata has not always governed itself in accordance with the SPA or its predecessor, the *Condominium Act*. Mr. Sandhu says the strata is operating without regard to the SPA, undermining the legitimacy of its decisions and actions. It is undisputed that he stopped paying strata fees around the beginning of

2019. For its part, the strata says Mr. Sandhu is the only owner unwilling to serve on strata council. It says Mr. Sandhu demands the other owners do the work while obstructing their attempts at governance. The strata also says Mr. Sandhu's sudden refusal to contribute to strata fees has unfairly forced the remaining owners to cover his share of common expenses for the last 2 years.

19. In the past, all 4 owners informally contributed strata fees of \$25 to \$40 per month to cover the strata's only 2 common expenses – insurance premiums and landscaping costs for the common property. The strata also paid a municipal water and sewage utility bill (water bill) every 4 months, which it treated separately from the common expenses covered by strata fees. Owners reimbursed the strata directly for their own water usage, which I will address further below. In 2012, the strata established a bank account with 2-owner signing authority, although the account was in the name of the 2 owners rather than the strata. Mr. Sandhu does not dispute that he paid strata fees, water bills and other common expenses by contributing to that account until 2019.

What, if anything, does Mr. Sandhu owe for 2020 bylaw or rule contravention fines?

20. The strata held a meeting on July 25, 2020. The parties disagree about whether or not it was a valid AGM but for the purposes of this issue I find it does not matter. The strata purported to pass 2 bylaws aimed at encouraging Mr. Sandhu to promptly contribute his “strata payments”, as well as a parking bylaw (2020 bylaws). The bylaws sought to fine owners \$200 for late payment of “Strata Bills” and “legal expenses incurred by the Strata.”
21. It is not clear why the strata passed additional bylaws when standard bylaw 1 already requires owners to pay strata fees on or before the first day of the month to which the strata fees relate, and standard bylaw 23 allows the strata to fine an owner \$50 for each bylaw contravention.
22. In any event, at the 2021 AGM, the strata repealed the 2020 bylaws and cancelled all fines against Mr. Sandhu arising from the 2020 bylaws. The strata says it is no longer asking Mr. Sandhu to pay fines for contravening the 2020 bylaws, but it is

asking him to pay fines for contravening its rules. The strata relies on July 25, 2020 meeting minutes, which said if the bylaws could not be registered promptly due to the COVID-19 pandemic, they would be deemed rules until registered.

23. The strata says Mr. Sandhu owes \$16,800 for rule contraventions. I find the strata did not pass any valid rules and therefore had no authority to apply fines for rule contraventions. SPA section 125 says a strata corporation may make rules governing the use, safety and condition of common property and common assets. I find the purported rules relate to payment of strata fees and other expenses, not the use, safety or condition of common property and common assets. So, they cannot be considered rules under the SPA. I dismiss the strata's claim for payment and order the strata to remove all fines of any kind related to the 2020 bylaws or rules from Mr. Sandhu's strata lot account.

What, if anything, does Mr. Sandhu owe for strata fees and water bills?

24. As noted above, the strata's informal practice since 2005 was to provide a statement to each owner every 4 months showing the amount owing for strata fees and water bills, which the strata tracked separately. It says in 2014 the owners unanimously approved an increase in strata fees to \$40 per month. The strata fees remained \$40 per month at all times relevant to this dispute. The strata says Mr. Sandhu stopped paying strata fees and water bills at the start of 2019 and owed \$2,585.13 as of January 4, 2021. The strata does not explain how it arrived at this figure, and I am unable to determine from the evidence how it did.
25. Mr. Sandhu's position is that because the strata failed to hold a valid AGM and pass a budget, there have been no valid strata fees and he is not required to pay anything. He also says the water bills have not been appropriately accounted for as a common expense.
26. SPA section 91 says that the strata is responsible for the strata's common expenses. Section 92 says that to meet its expenses the strata corporation must establish, and the owners must contribute by means of strata fees, to an operating fund and a contingency reserve fund (CRF). Section 92 imposes an obligation on the strata and

on each owner. Section 92 does not indicate that if the strata does not meet its obligation, the owners are relieved of theirs, or vice versa. Payment of strata fees is mandatory for all owners and cannot be withheld: see *Stewart v The Owners, Strata Plan KAS 2601*, 2020 BCSC 809, at paragraph 106. I find Mr. Sandhu is not relieved of his obligation to pay strata fees simply because the strata has not established an operating fund and CRF. Payment of strata fees is mandatory for all strata owners: In addition, as noted above, bylaw 1 requires Mr. Sandhu to pay strata fees on or before the first day of the month to which the strata fees relate. Neither the bylaws nor the SPA permit Mr. Sandhu to withhold strata fees for any reason.

27. Mr. Sandhu says the strata is barred from recovering some of its claimed strata fees and water bills based on the *Limitation Act*. The *Limitation Act* applies to CRT claims. The *Limitation Act* provides for a 2-year limitation period for most claims, which I find includes the recovery of unpaid strata fees. A limitation period is a specific time period within which a person can pursue a legal claim, such as a CRT claim. If the limitation period expires, the right to bring the claim disappears.
28. Mr. Sandhu filed his dispute application on March 12, 2021 and raised the issue of strata fees and water bills. Previous CRT decisions have held that each month a strata overcharges strata fees represents a new claim for the purposes of the *Limitation Act*: see *Hartford v. The Owners, Strata Plan KAS 894*, 2021 BCCRT 452 at paragraph 38. I agree with that reasoning and apply it here, and I find it applies to the monthly water bills as well. This means that Mr. Sandhu's claim was limited to strata fees and water bills that became payable on or after March 12, 2019.
29. Under section 22(1) of the *Limitation Act*, if a legal proceeding has been started within the limitation period, the respondent in that legal proceeding may bring a related counterclaim even after the limitation period has expired. Section 22(3) says that if a claim is out of time, section 22(1) does not save an out-of-time counterclaim.
30. I find section 22 applies to the strata's counterclaim. I find the strata cannot recover strata fees and water bills from before March 12, 2019, because there was no related claim filed on time. This means the earliest possible claim is for the March 2019 strata

fees which were payable April 1, 2019, and the January 3 to May 1, 2019 water bill, which was payable May 2, 2019. I have calculated the strata fees owing to January 1, 2021, which is what the strata claimed for in the Dispute Notice. This equals 22 months at \$40 per month, for a total of \$880. I order Mr. Sandhu to pay that amount.

31. I turn to the water bills. The water bills come to the strata every 4 months. Each bill identifies fixed monthly charges for water and sewer, and variable charges based on water and sewer usage. I infer that the municipality determines the usage from a central meter for the strata. Each strata lot also has its own meter, so the owners have historically determined their own usage based on their meters and reimbursed the strata proportionately. It is not clear whether the strata itself uses any of the metered water, such as for the common property landscaping.
32. The strata says the water bills are not a common expense as they are not related to common property. The SPA defines a common expense as an expense (a) relating to the common property and common assets of the strata, or (b) required to meet any other purpose or obligation of the strata. The water bills are in the strata's name. I find the strata is obligated to pay them and therefore they are a common expense.
33. Mr. Sandhu says the strata calculating his portion of the water bill based on direct usage contravenes SPA section 99 which requires common expenses to be shared in proportion to unit entitlement. As noted above, in this strata each strata lot has the same unit entitlement. It is undisputed that the strata has not passed a resolution under section 100 to change the basis of calculating strata fees, so each strata lot should be paying an equal amount. As well, the strata should be budgeting for the water bills and paying them from its operating fund. However, I find the fact that the strata has not strictly followed the SPA does not mean that Mr. Sandhu is relieved of his obligation to contribute to the water bills. It would not be fair to reallocate the water bills to the other 3 owners.
34. It is undisputed that Mr. Sandhu has not contributed to any water bills since the beginning of 2019. I find the water bills are subject to the same limitation period as

strata fees. I calculate the total water bills from the May 2, 2019 bill to the January 6, 2021 bill to be \$8,439.35. Mr. Sandhu's ¼ share is \$2,109.84.

35. Together with the \$880 in strata fees, Mr. Sandhu owes the strata \$2,989.84. However, as noted, the strata only claimed \$2,585.13. I find it would be procedurally unfair to consider a greater claim than that set out in the Dispute Notice, especially given that the strata did not chose to amend it. So, I order Mr. Sandhu to pay the strata \$2,585.13.

What, if anything, does Mr. Sandhu owe for easement litigation expenses?

36. The strata plan shows an easement over part of the common property access lane and part of strata lot 1 (1187). The easement gives access to a neighbouring property's garage.
37. The strata says Mr. Sandhu has yet to pay his share of some of the expenses the strata incurred related to litigation over the easement. It is necessary to set out some of the history. The threat of litigation over the easement was mentioned in strata meeting minutes as early as 2013. At a June 2014 meeting with all strata lots represented, the strata discussed working with a lawyer and unanimously voted to split the costs equally with 1187's owner, DL. Mr. Sandhu was in attendance, I infer as a representative of his family member who owned 1183 at the time.
38. The July 2015 minutes note that a lawsuit about the easement had been filed against both DL and the strata.
39. On September 7, 2016, the BC Supreme Court issued reasons for judgment on the easement application (2016 BCSC decision). The plaintiffs were successful and the court issued several declarations and injunctions against DL and the strata. The court sought submissions on the assessment of the plaintiff's damages and the appropriate scale of costs.
40. On September 11, 2016, the owners met to discuss the 2016 BCSC decision and whether to appeal it and share the costs equally.

41. On September 13, 2016, representatives of each strata lot, including Mr. Sandhu, signed a “written resolution” that the strata would appeal the BCSC decision. The resolution also appointed the strata council president, AK, to coordinate and manage the appeal with the strata’s lawyer. Mr. Sandhu was not technically an owner until September 29, 2019, but I find nothing turns on this given his obligations derive from the SPA, as explained below.
42. On February 24, 2017, the BCSC issued its reasons for judgment on costs, which also included an assessment of damages (2017 BCSC decision). The court ordered the strata and DL to pay \$9,500 in damages, plus special costs to be assessed by the Registrar.
43. On July 30, 2018, the BC Court of Appeal dismissed the appeal of the 2016 BCSC decision except as to the order for special costs, which it set aside in favour of an order for “party and party” costs, which generally means costs at a lower scale.
44. On April 19, 2019, the owners met and unanimously agreed to terminate the strata’s relationship with its lawyer, LL. They also agreed to refuse to pay LL’s outstanding invoice and retain a different lawyer, NP, to represent the strata on the easement issue and against LL should they pursue payment of the invoices.
45. On June 21, 2019, the strata met and voted to dismiss NP and to refuse to pay any of NP’s bills. At this point in the meeting Mr. Sandhu and another owner had left, but 2 owners remained and concluded that the SPA’s quorum requirement was met as they had more than 1/3 of the strata’s votes. I infer that the strata treated this meeting as a special or annual general meeting, although it was not identified as such. The 2 remaining owners also voted that AK continue managing the easement legal issues and that any additional costs AK incurred would be reimbursed by the “strata or the owners responsible for those costs.”
46. On the strata’s behalf, AK attended a February 2020 hearing on costs, seeking to vary the BCCA’s order that the strata and DL pay the costs of the appeal. AK spent 44.25 hours on that issue, including drafting submissions and affidavits. The request was unsuccessful.

47. The July 25, 2020 minutes note that in 2019 the successful plaintiffs from the 2016 BCSC decision registered liens on each strata lot in the strata and sought a payment hearing for the damages and costs. The strata apparently retained a third lawyer, KH, to address that issue. The strata says it paid the plaintiffs the money owed for damages and costs, but Mr. Sandhu has yet to pay his share. In total, the strata seeks \$6,432.72 from Mr. Sandhu. The strata also says Mr. Sandhu will be responsible for LL's claimed \$6,000 to \$12,000 in legal fees that the strata is disputing. As there is no evidence the strata has budgeted for or paid those additional amounts, I have not considered them here.
48. Mr. Sandhu says his responsibility to contribute to the easement litigation expenses is not supported by any "valid strata procedure" under the SPA.
49. SPA section 167 says the expense of defending a "suit" brought against the strata is shared by the owners in the same manner as a judgment is shared under section 166. Section 166 says a judgment against the strata corporation is a judgment against all the owners, and each strata lot's share of the judgment is calculated in accordance with section 99(2) or 100(1). Accordingly, I find Mr. Sandhu was required to contribute his $\frac{1}{4}$ share of the costs of defending the BCSC application and the damages and costs the strata was ordered to pay.
50. SPA section 171 governs situations where the strata sues as a representative of all owners. It says the strata may sue about any matter affecting the strata corporation. "Sue" is defined as the act of bringing any kind of court proceeding. I find that this includes appealing a court judgment like the strata did here. The suit must be authorized by a resolution passed by a $\frac{3}{4}$ vote at an annual or special general meeting.
51. Mr. Sandhu says the strata is barred from recovering some of its litigation expenses based on the *Limitation Act*. I find the same analysis set out above for strata fees applies here. Based on that, I find the strata cannot recover litigation expenses incurred before March 12, 2019.

52. The strata says the owners were provided with copies of the pretrial legal expense invoice for the first time at the June 21, 2019 meeting. It says the strata only became aware of the exact trial damages and expenses in November 2019. I disagree. Discoverability of a claim is not dependent on knowledge of the exact extent of the loss. It is sufficient to know that some loss has occurred: see *Peixeiro v. Haberman*, 1997 CanLII 325 (SCC). I find the strata generally paid the pre-trial and trial expenses as they came due, which were all before September 2016. I find the strata discovered its claims related to these expenses either when it incurred them or when it first asked Mr. Sandhu to contribute his share. I also find the strata was aware of what it owed for damages on February 24, 2017, when the 2017 BCSC decision was issued, and no later than July 30, 2018, when the BCCA decision confirmed the damages award. So, based on the *Limitation Act*, I dismiss the strata's claim for contributions to the easement pre-trial and trial costs related to the 2016 and 2017 BCSC decisions, and the damages award.
53. The strata says Mr. Sandhu has paid his portion of the strata's legal expenses for the easement appeal to date, so I make no order about those expenses. As noted, the strata was ordered to pay costs for the appeal. The strata paid \$7,294 for the appeal costs, plus \$821.85 for related legal services. These expenses were incurred in 2020 and so are not barred by the *Limitation Act*. I agree with the strata that Mr. Sandhu is responsible for $\frac{1}{4}$ of these expenses, or \$2,028.96. I order him to pay that amount.
54. The remaining amounts the strata claims relate to Mr. Sandhu's share of compensation the strata says it must pay AK for his time managing the litigation and subsequent billing disputes with the strata's lawyers. The strata says it authorized compensating AK \$50 per hour for his time.
55. SPA section 34 says any remuneration paid to a council member for the member's performance of council duties must be approved in advance of payment either in the budget, in the bylaws, or by a resolution passed by a $\frac{3}{4}$ vote at an AGM or SGM. I find the strata did not comply with SPA section 34. The July 25, 2020 meeting minutes note that "compensation will be discussed later." The June 2, 2021 AGM minutes document approval of a motion to pay AK \$50 per hour for certain work, but I find it

was not a valid resolution. There was no notice that the strata would be voting on this resolution as required by SPA section 45(3). So, I find Mr. Sandhu is not required to contribute to the expense of compensating AK for his time. The strata is free to address AK's compensation through a resolution in compliance with the SPA.

Should the CRT order the strata to convene an AGM and otherwise comply with the SPA?

56. Mr. Sandhu seeks an order that the strata properly convene an AGM, including a proposed budget and financial statements, and establish an operating account in its name.

57. As noted above, the strata has not always governed itself in accordance with the SPA, the *Strata Property Regulation*, and its bylaws. Recently, the strata has made efforts to bring itself into compliance with the SPA, such as by providing a notice, agenda and budget for the 2021 AGM.

58. The CRT does not generally make broad orders that parties follow the law. The strata is already required to follow the SPA, the Regulation, and the bylaws. Ordering it to do so would not change this requirement. I find there is no utility in ordering the strata to convene an AGM and provide a budget and financial statements because it is already required to do so. I decline to make this order and I dismiss this claim.

CRT FEES, EXPENSES AND INTEREST

59. 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. Both parties here were partially successful, so I find it appropriate that each party bear their own CRT fees and dispute-related expenses.

60. The *Court Order Interest Act* (COIA) applies to the CRT. The strata is entitled to prejudgment interest on the unpaid strata fees and common expenses from they dates they were payable to the date of this decision. I have calculated this as \$45.79 on the \$2,585.13 claimed for strata fees and water bills and \$12.91 on the litigation common expenses. This equals \$58.70.

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

ORDERS

62. I order the strata to remove all fines related to the 2020 bylaws or rules from Mr. Sandhu's strata lot account.

63. I order that, within 30 days of the date of this order, Mr. Sandhu pay the strata a total of \$4,672.79, broken down as follows:

- a. \$2,585.13 for unpaid strata fees and common expenses,
- b. \$2,028.96 for SPA sections 166 and 167 common expenses,
- c. \$58.70 in pre-judgment interest under the COIA.

64. I dismiss Mr. Sandhu's remaining claims and the strata's remaining counterclaims.

65. The strata is also entitled to post-judgment interest under the COIA, as applicable.

66. 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.

Micah Carmody, Tribunal Member