



# Civil Resolution Tribunal

Date Issued: July 14, 2022

File: ST-2021-006649

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan BCS3916 v. Pawluck*, 2022 BCCRT 804

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

The Owners, Strata Plan BCS3916

**APPLICANT**

**A N D :**

SUSAN PAWLUCK

**RESPONDENT**

**A N D :**

The Owners, Strata Plan BCS3916

**RESPONDENT BY COUNTERCLAIM**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This dispute is about bylaw fines, a lien, and alleged accounting errors.
2. The respondent, Susan Pawluck, owns strata lot 3 (SL3) in the applicant bare land strata corporation, The Owners, Strata Plan BCS3916 (strata). Ms. Pawluck is the applicant in the counterclaim against the strata.
3. The strata says Ms. Pawluck placed and occupied 2 recreational vehicles (RVs) on her strata lot over several years, in breach of the strata's building scheme and its bylaws. The strata claims \$59,521.16 in unpaid bylaw fines for these alleged violations.
4. Ms. Pawluck does not specifically deny that she breached the bylaws. However, she argues that the strata's decision to enforce the bylaws against her was arbitrary and significantly unfair. She says the strata should have obtained a court injunction rather than imposing continuing bylaw fines. Ms. Pawluck also says the strata did not provide her with a reasonable opportunity to respond or to request a hearing, as required under the *Strata Property Act* (SPA). For all these reasons, she says she should not have to pay any fines.
5. Further, Ms. Pawluck alleges the strata's accounting was flawed, as she says it wrongfully applied surplus refunds she was entitled to against the bylaw fines and applied some of her strata fee payments as debits on her strata lot account. She also says the strata improperly filed a lien against her property, so she was unable to obtain a mortgage. Ms. Pawluck counterclaims \$72,121.44, which includes \$7,835.73 for alleged accounting errors on her strata lot account, and \$64,285.71 for taxes paid on a Registered Retirement Savings Plan (RRSP) withdrawal she says she had to make because of the improper lien.
6. The strata admits that its strata management company, WRM, filed a lien against Ms. Pawluck's strata lot in error, but says the lien was in place for only 20 days before WRM removed it. The strata says Ms. Pawluck has provided insufficient evidence

that she incurred any tax liability as a result of the lien. The strata also denies any accounting errors on Ms. Pawluck's strata lot account.

7. Ms. Pawluck is self-represented. The strata is represented by a strata council member.

## **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.
12. Both parties submitted late evidence after the CRT's deadline. Each party was given an opportunity to comment on the other's late evidence. Therefore, I find that neither

party was prejudiced by the late evidence. The strata also filed its final reply submissions late because it says it missed the CRT's reminder email. Given the CRT's mandate that includes flexibility, informality, and accessibility, I have admitted the late evidence and considered the strata's late reply submissions.

13. In its submissions, the strata quotes an email between the parties sent during the CRT's facilitation stage, including a settlement offer. CRTA rule 1.11 says that communications made attempting to settle claims by agreement in the tribunal process are confidential and must not be disclosed during the tribunal decision process. Such settlement discussions may only be disclosed if both parties agree. Here, Ms. Pawluck expressly did not agree to disclose these communications. Therefore, I have not considered the quoted email in the strata's submissions. While Ms. Pawluck suggests that the strata also provided copies of this and other facilitation emails as evidence, I find there were no facilitation emails included in the strata's evidence before me.
14. In her submissions, Ms. Pawluck says the strata has "illegally" included her unpaid bylaw fines as an asset on its balance sheet and budget. However, this issue was not included in the Dispute Notice, and Ms. Pawluck does not specifically request any remedy related to this issue. Therefore, I will not address it further in these reasons.

## **ISSUES**

15. The remaining issues in this dispute are:
  - a. To what extent, if any, must Ms. Pawluck pay the strata \$59,521.16 for bylaw fines?
  - b. Was the strata's decision to impose bylaw fines against Ms. Pawluck significantly unfair?
  - c. Has the strata improperly "taken" money from Ms. Pawluck's strata lot account?
  - d. To what extent, if any, is the strata responsible for reimbursing Ms. Pawluck's tax liability for cashing out an RRSP?

## **BACKGROUND, EVIDENCE, AND ANALYSIS**

16. In a civil proceeding like this one, the strata must prove its claims on a balance of probabilities (meaning “more likely than not”). Ms. Pawluck bears the same burden to prove her counterclaims. I have read all of the parties’ evidence and submissions, but I refer only to what I find is necessary to explain my decision.
17. According to the bare land strata plan filed in the Land Title Office (LTO), the strata consists of 88 strata lots and was built in 5 phases. The evidence before me suggests the strata’s owner developer sold the bare land strata lots without any structures built on them, and the first owner of each strata lot had to build their own residence.
18. A Form Y Owner Developer’s Notice of Different Bylaws for the strata was filed with the LTO on August 17, 2010 (Form Y bylaws). A statutory building scheme applicable to strata lots 1 through 12 was also filed with the LTO on August 17, 2010 (building scheme). The building scheme is registered against the title to SL3.
19. Section 7 of the building scheme essentially prohibits owners from having trailers and RVs on their strata lots unless they are kept in enclosed buildings or garages or in an area with approved screening. Bylaws 4.4 and 4.5 of the Form Y bylaws say that owners must comply with the building scheme provisions, and any breach of the building scheme is considered a breach of the bylaws.
20. The strata approved a new complete set of bylaws at a December 1, 2018 annual general meeting, which were filed with the LTO on January 29, 2019. This set of bylaws added 2 new relevant bylaws (4.7 and 4.8), which had not been included in the Form Y bylaws. Bylaw 4.7 largely mirrors section 7 of the building scheme to prohibit trailers and RVs on strata lots. Bylaw 4.8(a) says that despite bylaw 4.7, a construction trailer can be placed on a strata lot during a period of construction, so long as the trailer is not used for overnight accommodation.
21. The strata then filed subsequent bylaw amendments in the LTO on June 19, 2019, including an amendment to bylaw 4.8 (amended bylaw 4.8). Amended bylaw 4.8(a) permits using trailers or RVs as overnight accommodation for visitors, only after

construction is complete and for no longer than 5 days in any 60-day period without approval.

***Did the strata comply with the SPA when it imposed the claimed fines?***

22. The parties agree that when the strata filed its application for CRT dispute resolution, the strata had imposed more than \$62,000 in continuing bylaw fines related to Ms. Pawluck keeping 2 RVs on SL3 over several years. The strata did not explain why it claims only \$59,521.16. The evidence shows the strata has continued to impose an additional \$400 in fines against Ms. Pawluck every 7 days.
23. Ms. Pawluck does not seriously dispute that she had 2 RVs located on SL3 during the relevant period, in breach of the bylaws. So, I turn to consider whether the fines are valid and must be paid.
24. Section 135 of the SPA sets out procedural requirements the strata must follow for imposing bylaw fines. Under section 135(1) of the SPA, before imposing fines for bylaw infractions, the strata must have received a complaint, given the owner written particulars of the complaint and a reasonable opportunity to answer the complaint, including a hearing if one is requested.
25. Under section 135(2), the strata must give the owner written notice of its decision to impose the fine “as soon as feasible”. Finally, under section 135(3), once the strata complies with section 135(1) and (2), it does not need to provide further notice if the bylaw contravention continues, and it can simply impose continuing fines every 7 days as permitted under section 7.21 of the *Strata Property Regulation* (Regulation).
26. The BC Court of Appeal has found that strict compliance with section 135 of the SPA is required before a strata corporation can impose fines, and fines may be found to be invalid if the procedural requirements set out in section 135 are not followed: see *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449.
27. Further, continuing fines under SPA section 135(3) are invalid if the strata has not followed section 135(1): see *Dimitrov v. Summit Square Strata Corp.*, 2006 BCSC 967 at paragraph 33.

28. The following is a summary of the evidence before me that I find establishes the relevant timeline:

- a. The strata management company, WRM, sent Ms. Pawluck a January 18, 2019 letter advising that the strata received a report that an RV was being stored on her strata lot without permission, in contravention of bylaw 4.7. The letter stated that if the violation was not remedied by February 28, 2019, fines of up to \$200 could be levied against her strata lot for each contravention.
- b. The March 5, 2019 strata council meeting minutes show the council reviewed a letter from Ms. Pawluck's lawyer, and it decided to impose a \$200 fine every 7 days for the RV storage on her strata lot in breach of bylaw 4.8. Neither party provided a copy of the lawyer's letter as evidence in this dispute.
- c. WRM sent Ms. Pawluck an April 9, 2019 letter, stating the strata council had been advised that an RV continued to be stored on her strata lot without permission. This letter referred to bylaws 4.7 and 4.8. The letter also stated the strata council had directed WRM to issue a \$200 fine every 7 days, starting immediately, and if she wanted to dispute the fine, she must request a hearing within 14 days.
- d. Ms. Pawluck's lawyer sent WRM a May 16, 2019 letter confirming the strata had advised it intended to proceed with a May 22, 2019 hearing, even though Ms. Pawluck's lawyer was unavailable. The letter suggested that if the council proceeded with the hearing, the council could accept their May 3, 2019 letter as written submissions. The letter also stated it would be unfair to issue a fine without permitting Ms. Pawluck a reasonable opportunity to obtain approval for screening from the approving agent.
- e. WRM sent a May 29, 2019 email to Ms. Pawluck's lawyer stating that Ms. Pawluck failed to attend the May 22, 2019 hearing. Despite the written submissions received from Ms. Pawluck's lawyer, the council concluded Ms. Pawluck had breached the bylaws and had made no effort to become compliant. The email also stated the strata had decided to proceed with

- imposing fines every 7 days, effective April 9, 2019, as communicated in WRM's April 9, 2019 letter.
- f. WRM sent a July 19, 2019 letter stating the council had received a complaint that the RV on her strata lot was being used as a residence during construction, contrary to bylaw 4.7(a), and that failing to address the violation could result in fines of up to \$200 being levied against her strata lot for each bylaw contravention.
  - g. WRM sent a second July 19, 2019 letter to Ms. Pawluck advising the council had received a complaint of a second RV on her strata lot without adequate approved screening in violation of bylaw 4.7. The letter stated that failing to address this bylaw violation could result in fines of up to \$200 being levied for each contravention.
  - h. The August 27, 2019 strata council meeting minutes show the council directed WRM to proceed with "additional fines" every 7 days, for a total of 4 \$200 fines to be applied every 7 days until the RVs were removed.
29. Based on the above timeline, I find that the strata did not comply with SPA section 135, and so it has not validly imposed the claimed bylaw fines against Ms. Pawluck's strata lot account. My reasons follow.
30. First, SPA section 120(1) says that bylaws are not in force until they are filed in the LTO. I find bylaw 4.7 was not in force until January 29, 2019, when it was filed in the LTO. This was after WRM sent its January 18, 2019 warning letter to Ms. Pawluck stating she was in breach of bylaw 4.7. While I acknowledge that Ms. Pawluck was arguably in breach of bylaw 4.4 for her failure to follow similar provisions in the building scheme, WRM's letter did not refer to bylaw 4.4. Therefore, I find that WRM's January 18, 2019 letter did not provide sufficient particulars of the complaint against Ms. Pawluck because it cited a bylaw that was not in force.
31. Second, even if WRM's January 18, 2019 letter did provide sufficient particulars of the complaint, I find the strata did not give Ms. Pawluck written notice of its decision to impose a fine "as soon as feasible". As noted, the strata decided to impose



continuing fines at its March 5, 2019 meeting, yet WRM's letter advising of the strata's decision was not dated until April 9, 2019. The strata provided no explanation the over one-month delay, which I find was unreasonable. Further, the letter indicates that Ms. Pawluck could dispute the fines by requesting a hearing. I find this implies the strata would not impose any fines until after Ms. Pawluck had attended a hearing, if she requested one.

32. Third, I find the strata did not provide Ms. Pawluck with a sufficient opportunity to answer the complaint. I say this because the evidence shows Ms. Pawluck requested a hearing, but the strata held the hearing when her lawyer was unavailable, despite the lawyer's objection to doing so.
33. Fourth, I find WRM's May 29, 2019 email after the May 22, 2019 hearing confirms that the strata decided to retroactively impose fines for Ms. Pawluck's bylaw breach, back to April 9, 2019. While the SPA and *Terry* do not address retroactive fines, a CRT Vice Chair has previously found that retroactive fines are not permitted under section 135 of the SPA: see *Shen v. The Owners, Strata Plan LMS 970*, 2020 BCCRT 953 at paragraph 53. While not binding on me, I agree with the Vice Chair's reasoning in *Shen* and apply it here. Given that it appears Ms. Pawluck requested a hearing before the strata had imposed any fines, I find that the strata was not entitled to start fining her until after it held the requested hearing. So, even if the strata's May 22, 2019 hearing complied with SPA section 135, I find the earliest date the strata could impose a fine was May 29, 2019. However, Ms. Pawluck's strata lot account shows the first fine was posted as of April 9, 2019.
34. Fifth, I find it is unclear whether WRM's first July 19, 2019 letter relates to the same or a different bylaw violation for Ms. Pawluck's first RV. The previous correspondence referred to storing the RV, whereas the July 19 letter referred to using the RV as a residence. However, the July 19 letter cited bylaw 4.7(a), which is about locating, keeping, and storing RVs on a strata lot. Amended bylaw 4.8(a) addresses using an RV for overnight accommodation. So, I find WRM has likely cited the wrong bylaw. Overall, I find the strata has provided insufficient particulars of the complaint against Ms. Pawluck to impose separate bylaw fines against her relating to the first RV.

35. Finally, even if WRM had provided sufficient particulars of a separate bylaw infraction relating to the first RV, I find there is no evidence that the strata provided Ms. Pawluck with written notice of its decision to impose a fine for either that bylaw violation or the alleged violation for her second RV, which was addressed in WRM's other July 19, 2019 letter. There are no letters before me to Ms. Pawluck following the August 27, 2019 council meeting where the strata decided to impose additional fines. Further, the strata has not explained its basis for imposing fines for 4 continuing bylaw breaches, every 7 days.
36. For all the above reasons, I find the strata failed to comply with SPA section 135 before imposing any of the bylaw fines relating to Ms. Pawluck's RVs, and so I find the fines are invalid. Therefore, I dismiss the strata's claim for payment of \$59,521.16 in bylaw fines.
37. I also considered asking the parties for submissions about whether the strata was out of time under the *Limitation Act* to claim payment of some of the bylaw fines. However, given my conclusions above on the merits of the strata's claim, it is unnecessary to address whether any part of its claim is expired. I find it is also unnecessary to address Ms. Pawluck's argument that imposing the bylaw fines was significantly unfair.
38. I turn to Ms. Pawluck's counterclaim.

### ***Improper accounting***

39. Ms. Pawluck alleges the strata wrongfully "took" refunds from her strata lot account that she was entitled to receive and that it applied her strata fee payments as debits instead of credits. Ms. Pawluck did not specifically address how she calculated the claimed \$7,835.73 in accounting errors on her strata lot account.
40. The strata denies any accounting errors or that it mishandled any refunds Ms. Pawluck was entitled to.
41. Ms. Pawluck provided 2 letters from Marsh & Company Chartered Professional Accountants (Marsh), dated March 11 and March 12, 2022. The March 11, 2022 letter

addresses only the bylaw fines assessed against Ms. Pawluck's strata lot account, which I find is not relevant to the issues before me on the counterclaim.

42. Marsh's March 12, 2022 letter does not provide any opinions about whether Ms. Pawluck's strata lot account showed the strata mishandled refunds or strata fee payments. Rather, I find it is a summary of the charges (other than bylaw fines), credits, and payments appearing on Ms. Pawluck's strata lot account. I generally accept Marsh's summary, as it is consistent with my own observations and review of the account.
43. Ms. Pawluck submits that the Marsh accountant was unable to do a complete analysis of her strata lot account because the strata "withheld" information. Ms. Pawluck did not explain what information she requested from the strata or what documents were withheld. As Ms. Pawluck did not make any specific claim or request any remedy for the strata's alleged failure to produce documents, I decline to make any findings about that issue.
44. From my review of Ms. Pawluck's strata lot account ledger dated October 4, 2021, and the other evidence of Ms. Pawluck's strata lot account, I find there is no indication that the strata applied any of Ms. Pawluck's strata fee payments as debits. I note the Marsh letter also did not mention any discrepancies related to Ms. Pawluck's strata fee payments. Overall, I accept the strata's evidence that Ms. Pawluck has kept her account up to date for payment of all strata fees and that none of her payments have been incorrectly applied as debits.
45. As for refunds Ms. Pawluck was entitled to, the strata says refunds from the strata's developer for annual surpluses, strata fee overpayments, and developer contributions to common facilities were automatically applied to each owner's account. I find that various such refunds totalling \$3,211.33 are reflected as credits on Ms. Pawluck's strata lot account. The strata says it issued Ms. Pawluck a \$1,823.10 cheque on June 4, 2020 to pay her directly for some of the refunds, which Ms. Pawluck does not specifically dispute. This cheque appears properly reflected as a debit on her account.

46. Overall, I find there is nothing obvious on the evidence before me that the strata misappropriated any of the refunds. The refunds that were not paid out to Ms. Pawluck on June 4, 2020 were applied against the outstanding bylaw fines, as was an apparent minor overpayment of Ms. Pawluck's strata fees in September 2021. Given that I have found above that the bylaw fines were invalid, I infer the strata will reverse those charges and the refunds will again be reflected as credits on Ms. Pawluck's strata lot account.
47. I find that Ms. Pawluck has not established the strata made any accounting errors or mishandled the refunds applied to her strata lot account. I dismiss this aspect of Ms. Pawluck's counterclaim.

### ***Improper lien***

48. Ms. Pawluck says the strata wrongfully placed a lien against her property for the outstanding bylaw fines discussed above. She says she was unable to secure a mortgage because of the lien, and so she was "forced" to collapse an RRSP to pay employees and continue construction of her home. Ms. Pawluck claims \$64,285.71 for the tax she paid when she cashed her RRSP.
49. The strata admits that WRM placed a lien against Ms. Pawluck's strata lot on November 3, 2020 in error. While neither party said why the lien was improper, I infer it was because section 116 of the SPA does not permit a strata corporation to register a lien against an owner's strata lot for unpaid bylaw fines. In any event, the strata says WRM quickly realized its mistake and released the lien on November 23, 2020. These dates are supported by documents filed in the LTO, which are in evidence.
50. The only evidence Ms. Pawluck provided in support of her alleged \$64,285.71 tax liability was her 2020 Statement of RRSP Income for income tax purposes. This document does not show the date Ms. Pawluck withdrew the RRSPs. Further, she did not provide any other supporting evidence of her attempts to secure a mortgage or of her alleged construction and payroll expenses during the short period the lien was in place.

51. Overall, I find Ms. Pawluck has provided insufficient evidence to conclude that the lien caused any unnecessary tax liability. I dismiss Ms. Pawluck's counterclaims.

## **CRT FEES AND EXPENSES**

52. 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. Here, the strata was unsuccessful in its claim, and Ms. Pawluck was unsuccessful in her counterclaim. Under the circumstances, I dismiss each party's claim for reimbursement of CRT fees and dispute-related expenses.

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

## **ORDER**

54. I dismiss the strata's claims, Ms. Pawluck's counterclaims, and this dispute.

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Kristin Gardner, Tribunal Member