



Civil Resolution Tribunal

Date Issued: August 5, 2022

File: ST-2021-003721

Type: Strata

Civil Resolution Tribunal

Indexed as: *Joyce v. The Owners, Strata Plan EPS3046*, 2022 BCCRT 891

BETWEEN:

THOMAS JOYCE

APPLICANT

AND:

The Owners, Strata Plan EPS3046

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This strata property dispute is about alleged invalid general meeting to elect a strata council and reimbursement of a special levy.

2. The applicant, Thomas Joyce, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan EPS3434 (strata).
3. Dr. Joyce says the strata held an invalid special general meeting (SGM) on September 9, 2020 (September 2020 SGM) to consider the strata council election using a “restrictive” proxy. He says the strata council was improperly elected at this meeting and that the strata did not accept his “vote”. Dr. Joyce also says the proposed \$40,000 special levy to “top up” the contingency reserve fund (CRF), which was allegedly passed at a January 13, 2021 SGM (January 2021 SGM), is invalid, essentially because the strata did not properly follow the *Strata Property Act* (SPA) and bylaws.
4. As remedy, Dr. Joyce seeks orders that the strata:
 - a. Pay him damages of \$3,000.00 for “disenfranchising” his vote at the September 2020 SGM, and
 - b. Reimburse him \$1,462.86 for his portion of the special levy improperly passed at the January 2021 SGM.
5. The strata disagrees with Dr. Joyce. It says Dr. Joyce could have voted in person at the September 2020 SGM, but chose not to. The strata also says a new strata council was elected at an annual general meeting (AGM) held May 31, 2021, so Dr. Joyce’s claim is now moot. The strata says it complied with the SPA and strata bylaws when it approved a special levy to top up the CRF. The strata asks that the CRT dismiss Dr. Joyce’s claims.
6. Dr. Joyce is self-represented. A strata council member represents the strata.
7. For the reasons that follow, I find the September 2020 SGM is invalid and order the strata to hold an SGM to reconsider the \$40,000 special levy proposed at the January 2021 SGM.

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 section 123 of the CRTA and the CRT rules, 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 Decisions

Named Respondents

12. The Dispute Notice was originally issued naming the strata and 6 individuals (personal respondents) as respondents in this dispute. Dr. Joyce raised numerous allegations about the personal respondents' conduct as strata council members, including approving emergency repair expenses, forcing owners to vote by restricted proxy, imposing a special levy, being unduly elected, and acting in conflict of interest.

13. In a December 16, 2021 preliminary decision, a tribunal member agreed with the personal respondents and refused to resolve Dr. Joyce's claims against the personal respondents. The tribunal member found that the claims fall under SPA sections 31 and 32 which the courts have found is outside the CRT's jurisdiction, citing *Dockside Brewing Co. Ltd. v. Strata Plan LMS 3837*, 2007 BCCA 183 and *Williams v. The Owners, Strata Plan NW 1340*, 2021 BCSC 2058. She also found that claims under SPA section 33 are expressly outside the CRT's jurisdiction as set out under CRTA section 122(1). The member refused to resolve Dr. Joyce's claims against the personal respondents under CRTA section 10(1), which she was required to do because the claims were outside the CRT's jurisdiction.
14. As a result, on January 6, 2022, the personal respondents were removed as respondents and the Dispute Notice was amended to reflect the strata as the only named respondent in this dispute.
15. I agree with the tribunal member's preliminary decision and accept removal of the personal respondents from this dispute. Accordingly, I have amended the style of cause above to reflect the strata as the only named respondent.

The Strata's Request for Legal Representation

16. In a February 8, 2022 preliminary decision, a different tribunal member considered the strata's request for legal representation. The tribunal considered CRTA section 20(1) that states parties are generally expected to represent themselves in a CRT proceeding such as this, but also considered CRTA section 20(2) allows the CRT to permit representation if it is in the interests of justice and fairness. The tribunal member reviewed the factors set out in CRT rule 1.16(8) about allowing a representation request, together with court decisions in *The Owners, Strata Plan BCS 1697 v. Hugo*, 2021 BCSC 2030 and *The Owners, Strata Plan NW 2575 v. Booth*, 2020 BCCA 153. She found it was not in the interest of justice and fairness to allow the strata's request for legal representation. I agree with the tribunal member and therefore, I have not considered the strata's request further.

Additional Claims Raised in Submissions

17. Dr. Joyce raised numerous other claims in his submissions which were not included in the Dispute Notice. I find it would be procedurally unfair for me to consider these additional claims because the strata did not have an opportunity to properly reply. Therefore, I decline to consider any of Dr. Joyce's claims that were not included in the amended Dispute Notice.

ISSUES

18. I find the only issues before me in this dispute are:

- a. Did the strata comply with the SPA and bylaws when it elected its strata council members at the September 2020 SGM?
- b. Must the strata pay Dr. Joyce \$3,000 in damages for not considering his "vote" at the September 2020 AGM?
- c. Is the \$40,000 special levy allegedly approved at the January 2021 SGM valid?
- d. Should the CRT order the strata to reimburse Dr. Joyce \$1,462.86 for his portion of the special levy allegedly passed at the January 2021 SGM?

BACKGROUND, REASONS AND ANALYSIS

19. As applicant in a civil proceeding such as this, Dr. Joyce must prove his claims on a balance of probabilities, meaning "more likely than not". I have reviewed all the submissions and evidence provided by the parties, but I refer only to information I find relevant to give context for my decision.

20. The strata plan shows the strata was created in September 2015 under the SPA. It consists of 28 townhouse-style residential strata lots in 12 3-level buildings.

21. The strata filed a complete new set of bylaws with the Land Title Office (LTO) on December 21, 2021, which I find are the strata's bylaws applicable to this dispute. I find a bylaw amendment filed on February 8, 2022 does not apply here because it was

filed after the Dispute Notice was issued and, in any event, is not relevant to Dr. Joyce's claims. I infer the Standard Bylaws do not apply and address relevant bylaws applicable to this dispute below, as necessary.

22. I briefly summarize pertinent background information, which is not contested. At the September 2020 SGM, held by restricted proxy, the strata allegedly elected its strata council.
23. In October 2020, sanitary sewer lines backed up into the basements of 2 or 3 strata lots. It is undisputed that the sanitary sewer lines are common property and therefore the strata's responsibility under SPA section 72 and the strata's bylaws.
24. The decision to repair the sewer lines and add a sump was made by members of a strata council that were elected at the contested September 2020 SGM. The strata council voted that expenses of approximately \$42,000 were to be paid from the strata's CRF, on an emergency basis. In December 2020, after the sewer line repair expenses were generally known, the same strata council called the January 2021 SGM to propose a special levy to top up the CRF.

Did the strata comply with the SPA and bylaws when it elected its strata council members at the September 2020 SGM?

25. It is undisputed that the strata usually holds its annual general meeting (AGM), and therefore its strata council elections, in May of each year. An AGM was held on May 26, 2020 (May 2020 AGM) by conference call due to the COVID-19 pandemic. The minutes show that the owners present voted to "re-elect the council that just retired until such time as a general meeting can be called and held in person". This is contrary to a statement in the strata's newsletter of June 2020 that said that "previous council members agreed to extend their terms until a secret vote can be conducted", on which Dr. Joyce relies. However, I find the minutes to be the most accurate evidence of what took place at the May 2020 AGM. I accept the owners voted to extend the strata council members' terms as set out in the minutes. I also note the May 2020 AGM minutes were approved at the next SGM held July 21, 2020 so I find the strata council members terms were properly extended at the May 2020 AGM.

26. The July 21, 2020 SGM was conducted by conference call because strata owners holding 20% of the strata's votes demanded a general meeting under SPA section 43 to consider a resolution about another matter. The strata council election was not a matter demanded by the owners and was not an agenda item. However, the minutes show there was discussion about the challenges of arranging an in-person meeting to elect a strata council because of COVID-19 cases rising. The discussion resulted in a "straw poll" taken to determine if the owners wanted to have a restricted proxy meeting to elect a strata council or wait and appoint replacement council members as needed. The minutes show the results of the straw poll were that 16 of the 27 owners present at the meeting, or 59% of the strata's votes, wanted the strata to hold a restricted proxy meeting to elect the strata council.
27. Dr. Joyce says the July 21, 2020 SGM minutes reflect an inaccurate discussion about the owners' preference for electing a strata council. In particular, he says the words "restrictive proxy" were not used in the discussion and the owners simply wanted to vote to elect strata council members rather than appoint them. He also says the method of electing a strata council by restrictive proxy was a "radical departure from election formats" previously used by the strata and one would have expected the matter to be a formal agenda item for the SGM. I find Dr. Joyce has not proven his assertions about the discussion that took place at the SGM surrounding the owners' desires, such as providing supporting witness statements. However, I find nothing turns on this given my conclusion below.
28. As for the strata council election process not being included on the agenda, I find it is likely the matter of the strata council election was a discussion that was raised at the meeting and not contemplated by the strata in advance. The more important matter is whether the September 9, 2020 SGM, to vote on a strata council, was properly held and what might be an appropriate remedy if it was not. I turn to these issues now.
29. The September 2020 SGM was held solely for the purpose of electing a strata council. Dr. Joyce says the meeting was held by restrictive proxy, where owners were required to appoint 1 of 2 strata council members as their proxy. He says this process deprived him of his right to appoint a proxy of his choosing, did not allow discussion among

owners, and was contrary to the SPA. The strata does not dispute the use of a restrictive proxy process, but says any owner, including Dr. Joyce, was also able to attend the meeting in person if they did not want to provide a restricted proxy.

30. For the reasons that follow, I find the September 2020 SGM was held contrary to the SPA.
31. On April 17, 2020, the BC government issued Provincial Government Ministerial Order M114 (Ministerial Order) under the *Emergency Program Act*. Section 2(2) of Ministerial Order allowed a strata corporation to hold a strata meeting by electronic means even if the strata corporation did not have a bylaw permitting electronic attendance at its meetings, as required under SPA section 49. It is undisputed that the strata did not have a bylaw that permitted electronic attendance at general meetings during the time of this dispute.
32. The Ministerial Order became a provision of the *COVID-19 Related Measures Act* (CRMA) when the CRMA was enacted on July 8, 2020. Under section 3(5)(a) and Schedule 1 of the CRMA, the electronic attendance at strata property meetings provision remained in effect until December 31, 2021: see B.C. Reg. 181/2021.
33. SPA section 54 sets out a person's right to vote at a general meeting. Generally, all owners, and in some cases tenants and others, can vote. In this dispute, Dr. Joyce, as owner, had the right to vote. Section 56 says a person who may vote under section 54 may vote in person or by proxy. Nothing in the SPA gives a strata corporation the power to restrict a person's choice of proxy. Under section 56, a person may appoint any proxy of their choosing and limit such an appointment at their discretion.
34. The strata's "restricted proxy form" did not ask the owner to name a proxy, as implicitly required by section 56. Rather, the proxy form attached to the September 9, 2020 SGM notice required an owner to appoint 1 of 2 strata council members if they wanted to vote by proxy. There was also an alternative method of voting on the proxy form that permitted an owner to attend the meeting in person if absolutely necessary, but the attending owner was still required to provide a completed restricted proxy form at the meeting so their vote could be counted. While the process may have permitted an

owner to attend the SGM in person as the strata suggests, it did not allow such an owner to exercise their vote or participate in discussion. Further, I find subsequent written instructions provided to the strata owners in an undated notice from the strata manager before the SGM was held did not change the voting process.

35. Based on the proxy form attached with the September 2020 SGM notice in evidence, I agree with Dr. Joyce that he was deprived of his right to appoint a proxy of his choosing and the restricted proxy process used by the strata did not allow discussion among owners. I find the process used by the strata to elect a council was contrary to the SPA section 56. It follows, and I find, the September 2020 SGM was invalid.
36. The CRT has consistently found that general meetings that employed restricted proxies are invalid. See for example, *Shen v. The Owners, Strata Plan EPS3177*, 2020 BCCRT 1157, *Balayewich v. The Owners, Strata Plan LMS317*, 2021 BCCRT 110 and *Hodgson v. The Owners, Strata Plan LMS 908*, 2021 BCCRT 463. I agree with that approach as it aligns with my findings above that Dr. Joyce was deprived his right to appoint a proxy of his choosing at the September 2020 SGM, among other things.

Must the strata pay Dr. Joyce \$3,000 in damages for not considering his “vote” at the September 2020 AGM?

37. The evidence shows that Dr. Joyce submitted an incomplete restricted proxy form. The form he provided did not authorize the strata council members to act as his proxy, but Dr. Joyce did tick the box beside the name of a strata council member he wanted to see elected to the strata council. I infer the form he submitted containing a ticked box beside a potential strata council member’s name is what Dr. Joyce means by his “vote”. An email exchange with the strata manager prior to the meeting on September 8, 2020 shows Dr. Joyce intentionally did not complete the requested proxy form in full by not filling in his name to appoint the strata council members as his proxy. The strata manager informed him that they could not count his “vote” for the strata council election unless he completed the restricted proxy, which he did not.
38. Dr. Joyce has provided conflicting arguments. He says the September 2020 SGM was invalid as I have found, but also claims \$3,000 in damages because his proxy vote

was not accepted. Dr. Joyce cannot have it both ways. He has successfully argued the September 2020 SGM was invalid, so I find he cannot also argue his vote was not counted at the invalid meeting. For this reason, I dismiss Dr. Joyce's claim for damages.

39. Having reached this conclusion, I see no need to consider Dr. Joyce's arguments about the strata's alleged significant unfairness in not counting his alleged vote.

Is the \$40,000 special levy allegedly approved at the January 2021 SGM valid?

40. Dr. Joyce's main argument is that an "illegal council elected by a restrictive proxy" cannot raise special levies and spend strata corporation monies. He says the strata council was improperly elected at the September 2020 SGM, so it had no authority to address the sewer line repairs or call the January 2021 SGM to consider the \$40,000 special levy.

41. The strata does not expressly disagree that general meetings using restricted proxies are invalid. However, it focuses its argument on repairing the harm caused by such actions and cites 2 CRT decisions that found decisions made by an improperly elected strata council should not be nullified or reversed. This is what strata says I should follow here. I briefly review the strata's cited decisions, but find they are not helpful to the strata as they can be distinguished from this dispute.

42. In *Neville-Hadley v. The Owners, Strata Plan EPS 1177*, 2019 BCCRT 12, an owner sought to have the CRT nullify the actions taken by the strata council, which was made up of some individuals who were not legally able to serve on the strata council. In particular, spouses of strata lot owners and tenants who had not been assigned their landlord's right to serve on the strata council. My interpretation of the decision and why I distinguish it, is that the CRT found there was insufficient evidence to prove the applicant's allegations, so the CRT declined to nullify the decision made by the strata council. Here, I have found Dr. Joyce has proved the meeting was invalid.

43. In *Williams v. The Owners, Strata Plan LMS 1067*, 2018 BCCRT 547 a strata corporation failed to obtain the proper approval to impose a special levy. Instead of

ordering the strata corporation to repay the owners the amounts it collected through the improper special levy, the CRT in *Williams* followed the approach outlined in *MacArthur v. The Owners, Strata Plan K588*, 2016 BCCRT 2 and ordered that new special levies be assessed, and the amount collected for the improper special levy be applied to the new levy. I do not agree that *Williams* addresses improperly elected strata council members. Rather, I find *Williams* deals with an improperly assessed special levy by a properly elected strata council. Further, the CRT ordered special levy was for repairs and it was likely unclear how much of the improper levy had already been spent. Here, the special levy was for “topping up” the CRF and not for repairs. I find it is unlikely the strata has spent the special levy as its purpose was for the special levy funds to be added to the CRF.

44. I have found that the September 2020 SGM was invalid. It follows, and I find, that the decision made to elect a strata council, the only decision made at that meeting, was also invalid. Taking the progression a step further, I find an improperly elected strata council does not have authority to make decisions on behalf of the strata, including calling an SGM to consider a special levy. This is what has occurred here, so I agree with Dr. Joyce and find the January 2021 special levy was not properly passed. It follows that the special levy is therefore invalid.

45. I note that Dr. Joyce provided several arguments about the sewer line repairs suggesting they were not emergency repairs under SPA section 98(2). He also says the repair expenses were made contrary to bylaw 29 that permits a maximum expense of \$5,000 for unapproved expenditures under section 98(2). I understand Dr. Joyce’s argument about unapproved expenses to be that if the strata council did not approve the sewer line expenses as an emergency from the CRF under SPA section 98(2), there would have been no need for it to propose a special levy to “top up” the CRF. Both parties provided significant evidence on this issue.

46. However, given I have already found the January 13, 2021 special levy to be invalid, I will not dwell on Dr. Joyce’s argument about unapproved emergency expenses. I say this because I find it would have lead Dr. Joyce to a similar position. That is, a special levy would have likely been required to pay for the sewer line repairs if the expense

was not paid as an emergency from the CRF, given unapproved budget expense requirements under SPA section 98. Also, the same strata council members I have found were improperly elected would have made the decision to call an SGM to consider a special levy in a similar amount for the sewer line repairs. All this to say that it does not matter if the sewer line repairs were an emergency or not, because whatever decision was made, an improperly elected strata council would have made it. Further, the sewer line repair expenses have been paid and I find it would not be practical to undo the sewer line repairs, thus causing more expense for the strata.

47. Dr. Joyce's only requested remedy for this aspect of his claim is whether he is entitled to a reimbursement of his portion of the special levy. This is the focus of my analysis, which I find is supported by the BC Supreme Court's decision in *SWS Marketing Inc. v. Zavier*, 2021 BCSC 312, upheld by the BC Court of Appeal in 2021 BCCA 201 at paragraph 34. Briefly, *SWS Marketing* was a decision involving 2 competing groups of owners that each believed their group was operating as the strata council. The court was concerned about unintended consequences if it simply declared one group's actions were void or invalid. Key to this dispute, is the court's finding at paragraph 33:

...that any remedy should be narrowly and carefully crafted to address solely those questions presently at issue between the parties.

48. Given, Dr. Joyce has only requested a refund of his portion of the special levy, I find that is only question at issue between the parties. With *SWS Marketing* in mind, I turn now to whether I should make the order requested by Dr. Joyce.

Should the CRT order the strata to reimburse Dr. Joyce \$1,462.86 for his portion of the special levy allegedly passed at the January 2021 SGM?

49. There is no dispute that Dr. Joyce paid his portion of the January 13, 2021 special levy. While I have found the special levy was not properly passed, I do not agree an appropriate remedy is to order the strata reimburse Dr. Joyce his portion of the levy. The difficulty with such an order is that the strata's current financial status is unknown. In particular, I do not know the amount of the strata's CRF, which is where the January 13, 2021 special levy funds were to be placed. I find the most appropriate remedy is

to order the strata to call an SGM to reconsider the $\frac{3}{4}$ vote resolution to increase the CRF, which was proposed at the January 2021 SGM.

50. In reaching this conclusion, I find it necessary to consider Dr. Joyce's argument that had the special levy been validly approved, it would have been contrary to SPA section 108 because according to Dr. Joyce, that section does not allow special levies for the purpose of "topping up" the CRF. I do not agree.
51. There have been 2 CRT decisions involving whether SPA section 108 permits a strata corporation to contribute to its CRF by special levy. Both were cited by the parties and each CRT decision reached a different conclusion.
52. In *Miller v. The Owners, Strata Plan 248*, 2020 BCCRT 828, an owner requested the CRT order the strata to call an SGM to repeal special levy resolutions which were passed to augment the CRF. The owner argued that the strata corporation violated SPA section 108 in passing the special levies. However, the CRT member in *Miller* found that the resolutions for the special levy met the requirements of the SPA section 108 and dismissed the owner's claim (at paragraphs 40 and 41).
53. In *Morin v. The Owners, Strata Plan VR 279*, 2021 BCCRT 122, the CRT member considered an owner's argument that the strata breached SPA section 108(4) by approving a number of significant repair projects from its CRF, and at the same meeting approving a special levy to "replenish" the CRF. The owner argued the approval for the repair projects were funded by a special levy, but the CRT member found the resolutions clearly authorized an expense from the CRF and not a special levy, so she dismissed the owner's claims. The member went on to say that even if she found the repair expenses were indirectly funded through the replenishment special levy, she would have found the special levy to be inconsistent with SPA section 108(4), which requires a strata corporation to account for special levy money separately from CRF money. In the member's view, it is not possible to account for special levy money separate from CRF money if the sole purpose of the special levy is to contribute to the CRF. The member relied on *Strata Plan VR386 (The Owners) v. Luttrell*, 2009 BCSC 1680, where the court found a strata corporation could not pass

a special levy to deposit surplus funds directly into the CRF. After considering comments made by the court, the CRT member found the SPA only permits special levy funds to be deposited into the CRF when all owners are entitled to less than \$100 per owner of the unspent special levy funds under SPA section 108(6).

54. Not surprisingly, Dr. Joyce relies on *Morin* and the strata relies on *Miller*, stating the CRT member in *Morin* misinterpreted *Luttrell*. For the reasons that follow, I find the SPA does not restrict a strata corporation from funding its CRF by way of special levy.
55. The conclusion reached in *Miller* did not include any detailed analysis. The CRT member simply reviewed the requirements of SPA section 108 and found the resolutions passed by the strata met those requirements, stating at paragraph 40 in part:

... [The resolutions] included the levy's purpose, total amount, method to determine each strata lot's share, amount of each strata lot's share, and payment dates as required under SPA section 108(3). The ...[payment] schedule shows that each strata lot's share was to be calculated by unit entitlement. The [SGM] meeting minutes show that both special levy resolutions passed by a $\frac{3}{4}$ vote as required under SPA 108(2)(a).

56. As noted, the CRT member in *Morin* set out a secondary analysis relying on *Luttrell*. In *Luttrell*, the court considered whether a resolution for a special levy, which was raised for the primary purpose of paying for common property repairs, could also include a provision that any surplus funds raised from the special levy be transferred into the CRF instead of being distributed back to the owners, as required under SPA sections 108(5) and (6). The court found that such a resolution was contrary to the SPA.
57. The court also considered the strata council president's suggestion that a retroactive special levy to approve the surplus funds, which had already been placed in the CRF and spent on other things, be placed in the CRF rather than reimbursed to owners. The court found such a retroactive resolution was also contrary to SPA section 98(3),

which requires approval of the strata corporation owners to expend funds out of the CRF except in cases of emergency.

58. Finally, the court in *Luttrell*, commented in *obiter dicta* (incidental to the issues decided) that SPA sections 92 and 93 provide for how the CRF is to be funded, noting that section 93 requires a strata corporation to fund its CRF by “means of strata fees”. It is this finding in *Luttrell* that that is relied upon in *Morin* and also by Dr. Joyce to conclude that a strata corporation cannot fund its CRF by way of a special levy. While I agree *obiter* comments made by a court should generally be followed, I do not agree that the court’s comments in *Luttrell* can be interpreted to mean a strata corporation may only contribute to its CRF by way of strata fees. My reasons follow.
59. SPA section 92 requires a strata corporation to establish an operating fund and a CRF to meet its common expenses. Section 93 references the “amount of the annual contribution a strata corporation must make to its [CRF]” and is subject to *Strata Property Regulation* (Regulation) section 6.1. Regulation 6.1 sets out minimum annual contributions that must be made to the CRF. I emphasize annual contributions because I find that the only reasonable interpretation of sections 92 and 93 is that they govern what a strata corporation must contribute to its operating fund and CRF on an annual basis to meet its anticipated common expenses. In other words, sections 92 and 93 only relate to a strata corporation’s budget. I also note that section 93 and Regulation 6.1 do not say a strata corporation may **not** contribute to its CRF by way of special levy.
60. As earlier noted, SPA section 108 deals with special levies. Subsection 1 says a strata corporation may raise money from its owners by means of a special levy. Subsection 3 says a resolution to approve a special levy must set out certain things including the purpose of the levy, the total amount of the levy, each owner’s share and how it was calculated, and the date (or installment dates) the levy is due. Subsection 4 requires a strata corporation to account for special levy money separately from other money and subsections 5 and 6, discussed in *Luttrell* and *Morin*, require a strata corporation to refund any surplus special levy money to each owner unless no owner is entitled to receive more than \$100.

61. As for whether special levy funds can be accounted for separately if a special levy is raised for the sole purpose of increasing the CRF, I find the accounting would be a very simple matter. I say this because the entire amount of the special levy collected would simply be transferred to the CRF and become part of the CRF. I find this would be no different than transferring special levy surplus monies to the CRF under section 108(6), or operating surplus monies to the CRF under section 105(1)(a). Once the surplus funds are placed in the CRF and they become CRF funds, there is no requirement to continue to account for them separately.
62. Based on the foregoing, I find there is nothing in the SPA that prohibits a strata corporation from raising a special levy for the purpose of increasing or “topping up” its CRF.
63. For all of these reasons, I order the strata to hold an SGM to reconsider the $\frac{3}{4}$ vote resolution proposed at the January 2021 SGM to raise \$40,000 by way of a special levy for the sole purpose of increasing the CRF. If the vote fails, I order the strata to reimburse the special levy it has collected to the owners who paid it, in the proportion it was paid.

CRT FEES AND EXPENSES

64. 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 not to follow this general rule in this dispute. Dr. Joyce was partially successful, so I find it appropriate to order the strata to reimburse him 50% of the \$225 CRT fees he paid or \$112.50. The strata paid no CRT fees.
65. Dr. Joyce claims \$2,000 in dispute-related expenses for time spent to research and prepare his claims. He says the strata should pay him this amount despite the CRT’s rule 9.5 that governs recovery of expenses. As set out in CRT rule 9.5(5), the CRT will not award reimbursement of time spent except in extraordinary circumstances, which I find do not exist here. I also note that Dr. Joyce did not provide any information on

how he arrived at \$2,000 or any other evidence to identify the amount of time he spent or how much his time was worth. Therefore, I dismiss Dr. Joyce's claim for reimbursement for time spent.

66. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Dr. Joyce.

ORDERS

67. I order the strata:

- a. Within 15 days of the date of this decision, pay Dr. Joyce \$112.50 for CRT fees, and
- b. Within 90 days of the date of this decision, hold an SGM to reconsider the $\frac{3}{4}$ vote resolution proposed at the January 2021 SGM to raise \$40,000 by way of a special levy for the sole purpose of increasing the strata's CRF. If the vote fails, I order the strata to reimburse the special levy it has collected to the owners who paid it, in the proportion it was paid.

68. Dr. Joyce is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.

69. 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.

J. Garth Cambrey, Vice Chair

