



Civil Resolution Tribunal

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File: ST-2019-002571

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wang v. The Owners, Strata Plan LMS 2970*, 2022 BCCRT 931

BETWEEN:

YI WANG

APPLICANT

AND:

The Owners, Strata Plan LMS 2970

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about funding for repair and maintenance projects in a strata corporation.
2. The applicant, Yi Wang, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 2970 (strata). Ms. Wang says the strata improperly used

operating funds to pay for hallway repainting and carpet replacement projects. Ms. Wang says the strata should have used the contingency reserve fund (CRF) to pay for these projects, which requires the expenses to be approved by a ¾ vote resolution. Ms. Wang seeks an order that the strata council members be personally liable for the amount spent on the projects, which Ms. Wang says was \$75,000.

3. The strata says the repair and maintenance projects were properly paid for through the operating fund, as the expenses were incurred over a number of years and were included in the budgets the owners approved at each annual general meeting (AGM). In any event, the strata says Ms. Wang brought this claim out of time under the *Limitation Act*. The strata asks that this claim be dismissed.
4. Ms. Wang 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. A CRT member initially issued a decision on this dispute on September 16, 2019, dismissing Ms. Wang's claims for being statute-barred under the *Limitation Act*. Ms. Wang filed a petition for judicial review of that decision with the BC Supreme Court (BCSC). On August 4, 2021, the BCSC ordered the CRT's September 16, 2019 decision set aside and remitted the dispute back to the CRT.
7. This is a new final decision on the merits of this dispute. The parties were given the opportunity to provide new evidence and submissions as part of this process, which is a re-hearing on the merits of the dispute.

8. 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.
9. 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.
10. 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.

ISSUES

11. The issues in this dispute are as follows:
 - a. Are Ms. Wang's claims out of time?
 - b. Did the strata use operating funds for projects that should have been paid out of the CRF with ownership approval?
 - c. If the answer is yes, what is the appropriate remedy?

BACKGROUND

12. The strata consists of 171 strata lots made up of commercial strata lots, residential townhouses, and apartment-style residential strata lots. The strata has 2 17-storey tower structures which are referred to as Tower A and Tower B. Ms. Wang owns strata lot 48, which is located in Tower A.

13. The strata repealed its previous bylaws and filed amended bylaws at the Land Title Office in February 2015. I find these are the bylaws applicable to this dispute. The strata also filed subsequent bylaw amendments, which I find are not relevant to this dispute. I discuss the relevant bylaws as required below.
14. In 2014, the strata council decided that the hallway carpeting on the second and third floors in both Tower A and Tower B needed to be replaced. The strata obtained a variety of quotes and considered them at an August 2014 council meeting. The council later decided that the carpeting in all other floors of Tower A and Tower B also needed replacement, and that all the hallway walls and ceilings needed repainting. The minutes from the council's June 3, 2015 meeting show the council decided to approach this work in stages, by completing a few floors each year to avoid a financial burden on owners associated with a special levy.
15. At the December 29, 2015 AGM, the owners approved an operating budget that allocated \$68,424 for repairs and maintenance under "common expenses". The budget allocated an additional \$9,905 towards repairs and maintenance related solely to the residential strata lots and another \$1,000 related solely to the commercial strata lots. There is no indication in the minutes that any particular maintenance projects were discussed at the AGM, including the hallway painting and carpet replacement, or that those items would be paid from the common expenses repair and maintenance budget. The operating budget did not include any increase in owners' strata fees. The minutes show the operating budget was approved with 93.22% of the votes.
16. The strata commenced its incremental approach to the Tower A and Tower B hallway updates. The hallway wall and ceiling painting on floors 1 to 3 in both towers was completed in December 2015. The hallway carpets were also replaced on the second and third floors of the towers in March 2016. Expense registers and invoices in evidence show the strata paid \$3,150 for the hallway painting and \$7,600 for the carpet replacement.
17. The council obtained quotes for the next phase of work, which it reviewed at an October 24, 2016 meeting. The meeting minutes state the council decided to "make

a provision in the proposed operating budget for the owners and the next council to consider”.

18. At the November 30, 2016 AGM, the strata proposed an operating budget that allocated \$70,000 for repairs and maintenance under “common expenses”. A further \$9,900 repair and maintenance budget was allocated solely for the residential strata lots and a \$1,000 repair and maintenance budget solely for the commercial strata lots. The budget did not include a specific line item for the hallway upgrades. Again, there was no increase in strata fees. The AGM minutes state that the owners unanimously approved the proposed operating budget.
19. The minutes from a March 9, 2017 council meeting indicate the interior wall and ceiling repainting and recarpeting for floors 5 to 9 in both towers was completed in January 2017. Expense registers and invoices in evidence show the strata paid \$6,300 for the repainting and \$20,883.56 for the recarpeting.
20. The next AGM was held on January 11, 2018. Again, the proposed budget did not include a separate line item for the hallway upgrades, and there was no increase in strata fees. The budget allocated \$80,000 to common repair and maintenance expenses, with a further \$5,000 repair and maintenance budget solely for the residential strata lots and a \$1,000 repair and maintenance budget solely for the commercial strata lots. The budget was approved with 84.96% of the vote.
21. The final phase of the hallway repainting and recarpeting project for floors 10 to 17 was completed in March 2018. Expense registers and invoices in evidence show the strata paid \$8,190 for the repainting and \$28,059.69 for the recarpeting. So, the total project cost was \$74,183.25 (\$17,640 for painting + \$56,543.258 for carpets).
22. At some point, Ms. Wang formed the view that the repainting and carpet replacement project should have been approved by a $\frac{3}{4}$ vote resolution. She believes the strata council members should be punished for failing to obtain the ownership’s approval for these expenses and should be found 100% liable for the project’s costs. Ms. Wang emailed the strata manager and strata council to this effect on February 23, 24 and March 20, 2018.

23. The strata council's October 10, 2018 meeting minutes refer to Ms. Wang's correspondence about the project requiring a $\frac{3}{4}$ vote, and note that the work was a "recurring budget expense".
24. Ms. Wang requested a hearing about her position, which took place on November 27, 2018. In a December 4, 2018 letter, the strata manager advised her that the strata council decided it did not violate the *Strata Property Act* (SPA), and that the council members had acted honestly and in good faith such that they should not be held personally liable for the project expenses.
25. Ms. Wong commenced this CRT dispute on April 2, 2019.

EVIDENCE AND ANALYSIS

26. In a civil proceeding like this one, the applicant Ms. Wang must prove her claims on a balance of probabilities (meaning "more likely than not"). I have read all of the parties' evidence and submissions, but I refer only to what I find is necessary to explain my decision.

Are Ms. Wang's claims out of time?

27. As noted, the strata says that Ms. Wang is out of time to make her claim under the *Limitation Act*. Section 13 of the CRTA states that the *Limitation Act* applies to the CRT as if it were a court. Section 6 of the *Limitation Act* says the basic limitation period is 2 years from the date a claim is discovered.
28. The strata says Ms. Wang was present at the November 30, 2016 AGM, where the strata discussed funding the painting and carpeting projects from the operating fund budgets over several years. I infer it is the strata's position that Ms. Wang discovered her claim at the 2016 AGM, and so her claim expired 2 years later, on November 30, 2018.
29. The *Limitation Act* applies to claims, and it defines a claim as "a claim to remedy an injury, loss or damage that occurred as a result of an act or omission".

30. In previous strata property decisions, the CRT has found that the *Limitation Act* does not apply where the applicant is not claiming for injury, loss or damage. For instance, the CRT has found the *Limitation Act* did not apply to a claim about reinstalling a balcony railing, a claim about accessing a strata corporation's common property, or a claim about powering a common property gate with electricity (see *The Owners, Strata Plan K82 v. Hunchak*, 2020 BCCRT 1164, *Creasy v. The Owners, Strata Plan BCS 4064*, 2020 BCCRT 724, and *Musial v. The Owners, Strata Plan BCS 3017*, 2019 BCCRT 1431).
31. Further, several previous CRT decisions have followed *The Owners, Strata Plan KAS 3549 v. 0738039 B.C. Ltd.*, 2015 BCSC 2273 (affirmed 2016 BCCA 370) to find that bylaw fines are a penalty, and so claims to enforce bylaw fines are not subject to the *Limitation Act* because they are also not claims to remedy an injury, loss or damage. See for example *Bright Smile Enterprises Ltd. v. The Owners, Strata Plan LMS 1490*, 2019 BCCRT 752. While previous CRT decisions are not binding on me, I find the reasoning in the above decisions persuasive, and I apply it here.
32. In this dispute, Ms. Wang alleges the strata council failed to follow the SPA in deciding how to fund certain repair and maintenance expenses. It is essentially a claim about strata corporation governance and financial management. While Ms. Wang seeks an order that the strata council be personally penalized for failing to have the expenses approved by a $\frac{3}{4}$ vote, I find her claim is not for any injury, loss, or damage. Specifically, Ms. Wang does not claim any monetary compensation related to the alleged error. So, I find the *Limitation Act* does not apply to Ms. Wang's claims, which means she has not brought her claims out of time.

Did the strata use operating funds for projects that should have been paid out of the CRF with ownership approval?

33. Ms. Wang says the strata failed to comply with sections 96 to 98 of the SPA by using operating funds to pay for the hallway upgrades, which she says were expenses that occur less often than once per year. She says the strata should have used the CRF and obtained owner approval for these expenses through a $\frac{3}{4}$ vote resolution.

34. Section 92 of the SPA says that strata owners must contribute, through strata fees, to an operating fund and a CRF, which are each used for different common expenses of the strata. "Common expenses" is defined in SPA section 1(1) as expenses relating to common property and common assets of the strata corporation, or expenses required to meet any other purpose or obligation of the strata. It is undisputed that the hallway walls, ceilings, and carpets in both towers were common assets or on common property, so I find the subject painting and recarpeting were common expenses of the strata.
35. Section 92(a) of the SPA says that the operating fund is for common expenses that usually occur either once per year or more often than once per year, or are necessary to obtain a depreciation report. There is no indication in the evidence that the repainting and recarpeting projects were related to obtaining a depreciation report, so I find that provision is not relevant to this dispute. SPA section 97(a) says the strata must not spend money from the operating fund unless it is consistent with the purposes of the fund as set out in section 92(a).
36. SPA section 92(b) says the CRF is for common expenses that usually occur less often than once a year or that do not usually occur. SPA section 96 requires that an expenditure from the CRF must be pre-approved by a $\frac{3}{4}$ vote at an AGM or special general meeting, unless it is related to a depreciation report, which does not apply here.
37. Section 98(3) of the SPA allows unapproved spending from the CRF or the operating fund, if there are reasonable grounds to believe that the immediate expense is reasonably necessary to ensure safety or prevent significant loss. I find there are no such emergency circumstances here.
38. The strata does not dispute that had it completed the repainting and recarpeting all at once, it would have been an expense that occurred less often than once per year, requiring a $\frac{3}{4}$ vote approval to fund the expense through the CRF or by special levy. The strata argues that because it decided to split the repainting and recarpeting projects into phases to be completed over several years, they became ongoing

maintenance items that occurred once per year. On that basis, the strata says it properly paid for the projects from the operating fund, as they were part of the “repair and maintenance” line item on the budgets approved at each AGM.

39. I note that even if owners authorize a particular repair or maintenance project in an approved budget, the expense must still be consistent with the purpose of the operating fund as set out in SPA section 92. In other words, approving the budget alone is insufficient to justify operating fund expenditures if they are for expenses that usually occur less often than once per year or that do not usually occur. Such expenditures must be made from the CRF with owner approval by a $\frac{3}{4}$ vote.
40. However, in the circumstances here, I find the strata’s decision to complete the repainting and recarpeting in the towers in phases over several years is relevant. Because the same work was being completed each year, it became an expense that usually occurred once per year. I acknowledge that the strata completed the work on 3 floors in the first year, then 5 floors the following year, and 8 floors in the final year. It is not entirely clear why the strata accelerated the timeline for the project’s completion. Nevertheless, I find that does not fundamentally change the fact that the ongoing nature of the project means it was a recurring maintenance expense. Therefore, I find the strata properly paid for the repainting and recarpeting from the operating fund, and the strata did not breach SPA section 92.

Remedy

41. Given my conclusion above, it is unnecessary to consider the appropriate remedy for the strata’s failure to obtain approval for funding the painting and carpeting expenses from the CRF through a $\frac{3}{4}$ vote resolution. However, even if I had found the strata breached SPA section 92, I would not have granted Ms. Wang’s requested remedy for the council members to be personally liable for the costs of the project. My reasons follow.
42. First, Ms. Wang did not individually name any council members as respondents in this claim. It is also unclear whether Ms. Wang wanted all individuals elected as council members in each of 2015, 2016, and 2017 to be responsible, even though

certain individuals were council members for only one of those years. In any event, because no individual council members have been named as parties to this dispute, they have not had any opportunity to respond to the allegations against them. I find it would be procedurally unfair to make orders against individuals who are not parties to the dispute, and so I do not have jurisdiction to make the requested order.

43. Further, the basis for Ms. Wang's request that the council members be personally liable for the expenses is their alleged breach of SPA section 31 and bylaw 3.15. Section 31 of the SPA sets out the standard that strata council members must meet in performing their duties. It says that each council member must act honestly and in good faith, with a view to the best interests of the strata, and exercise the care, diligence, and skill of a reasonably prudent person in comparable circumstances.
44. In *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 at paragraph 267, the BCSC found that the duties of strata council members under SPA section 31 are owed to the strata corporation, and not to individual strata lot owners. In *Rochette v. Bradburn*, 2021 BCSC 1752, the BCSC confirmed that an owner does not have standing, or a legal right, to bring a claim against a strata corporation because they believe that the strata council breached section 31. These BCSC decisions are binding on the CRT.
45. Additionally, bylaw 3.15 states that a strata council member who acts honestly and in good faith is not personally liable because of anything done or omitted in the exercise of any power or performance of any duty of the strata council. I find there is no evidence to suggest the strata council members were acting dishonestly or in bad faith when they decided to pay for the painting and carpeting projects from the operating fund. Specifically, I find the evidence does not support Ms. Wang's allegation that the strata council was deliberately attempting to avoid a $\frac{3}{4}$ vote on the projects. So, I find the council members cannot be held personally liable for the project costs.
46. For all the above reasons, I dismiss Ms. Wang's claims.

CRT FEES AND EXPENSES

47. 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. As Ms. Wang was unsuccessful, I dismiss her claim for CRT fees. The strata did not pay any fees and neither party claimed any dispute-related expenses, so I make no order.

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

ORDER

49. I dismiss Ms. Wang's claim, and this dispute.

Kristin Gardner, Tribunal Member