



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Kosi v. The Owners, Strata Plan KAS1471*, 2022 BCCRT 1122

B E T W E E N :

MARJAN KOSI and DARRIN GRAMS

APPLICANTS

A N D :

The Owners, Strata Plan KAS 1471

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about strata governance and funding of common property maintenance.

2. The applicants, Marjan Kosi and Darrin Grams, each own strata lots in the respondent strata corporation, The Owners, Strat Plan KAS 1471 (strata).
3. At the strata's 2021 annual general meeting (AGM), the owners approved by majority vote a 2021-22 budget providing for a substantial increase in the contribution to the Contingency Reserve Fund (CRF). The CRF contribution increase was primarily to fund an exterior recoating project (painting project).
4. The applicants say there was procedural confusion at the 2021 AGM. They also say the painting project should have been funded through a special levy, requiring a $\frac{3}{4}$ vote. The applicants seek an order that the 2021-22 budget be "rescinded" and a new budget be brought forth at a new special general meeting (SGM). In submissions, the applicants add that they want the strata to return owners' CRF contributions and hold a vote on funding the painting project with a special levy.
5. The strata says it provided accurate information to owners and complied with the *Strata Property Act* (SPA). It says the majority of owners expressed their view that the painting project is necessary and overdue. The strata says the claim should be dismissed.
6. Darrin Grams represents the applicants. A strata council member represents the strata. For the reasons set out below, I dismiss the applicants' claim.

JURISDICTION AND PROCEDURE

7. 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.

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. Based on the evidence and submissions provided, I am satisfied that I can fairly decide this dispute without an oral hearing.
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 the parties and witnesses questions of 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:
 - a. Did the strata comply with the SPA with respect to the 2021 AGM, including the 2021-22 budget and CRF contribution increase?
 - b. If not, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities, meaning more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
13. The strata was created in 1994 and includes 67 strata lots. There are 59 detached homes, 4 duplexes and 1 clubhouse. The buildings are finished with stucco and wood trim.
14. The strata's 2013 depreciation report found that the stucco should last 45 years and should be painted at 25-30 year intervals. It said the stucco, wood trim and fascia

boards should all be painted or repainted in the next 6-8 years. In 2018, the strata attempted to paint the stucco but failed to obtain the owners' approval.

15. The strata's most recent depreciation report, dated December 3, 2020, found that the stucco itself was in fair condition, but the exterior coatings (paint) were in "poor" condition. The report said that stucco is not designed to effectively drain water, so maintenance of "stucco surface and sealants is imperative." The exterior coatings had an expected service life of 25 years, with 0 years of estimated remaining life. The report estimated that the strata would need to spend \$305,000 over the next 4 years to do a "wholesale re-coat of the stucco cladding" and accents, as well as re-painting of the fascia boards.
16. It is undisputed that some owners wanted new paint colours, and the strata assumed that changing colours would be a significant change in appearance of common property, requiring a $\frac{3}{4}$ vote from the owners. At a July 22, 2021 SGM, a resolution to change the appearance of the common property by painting the buildings' exteriors did not achieve the required $\frac{3}{4}$ approval and was defeated. This made it unnecessary to consider a related resolution to fund the painting project with a \$400,000 special levy. The owners approved a resolution to spend up to \$2,000 from the CRF to hire a colour consultant to develop a palette for the painting project.
17. The December 1, 2021 AGM agenda included item 7, a $\frac{3}{4}$ vote resolution to change the appearance of common property by approving the consultant's colour palette. The agenda also included item 11, approval of the budget, and item 12, a majority vote resolution on a CRF expenditure to fund the painting project. The preamble to item 11 said that if the colour palette change was approved by $\frac{3}{4}$ vote, then there would be a majority vote on Budget "A". Budget "A" involved a \$525,000 contribution to the CRF. If the colour palette change was not approved, there would be a vote on budget "B". Budget "B" involved a \$45,000 contribution to the CRF. Otherwise, the budgets were identical.
18. The $\frac{3}{4}$ vote resolution to approve the colour palette for painting the common property was defeated. When it came time to vote on the budget, the strata council initially

proposed to vote on budget “A”. After a motion from an owner, the strata conducted a vote on budget “B”, which was defeated. After a motion to vote on budget “A”, the owners approved budget “A” by majority vote. The owners later approved, also by majority vote, spending up to \$525,000 from the CRF on the painting project.

19. The strata has continued to collect strata fees under the approved budget “A”. There is no evidence that the strata has commenced painting or expended CRF funds on the painting project.

Did the strata comply with the SPA?

20. The applicants say the strata’s 2021 AGM budget included a “calculated” and “deceptive” contribution to the CRF that contravenes the SPA’s intent. Specifically, they say the SPA requires projects like the painting project to be funded by a special levy, which requires a $\frac{3}{4}$ vote, rather than from the CRF, which in some cases requires only a majority vote.
21. The strata corporation is responsible for the strata’s common expenses. SPA section 92 says to meet these expenses, the strata must establish, and the owners must contribute by means of strata fees, to an operating fund and a CRF. The CRF is for common expenses that usually occur less often than once a year or that do not usually occur.
22. SPA section 96 says the strata must not spend money from the CRF unless the expenditure is (a) consistent with the purposes of the fund set out in SPA section 92, and (b) approved or authorized in certain ways. Aside from emergency and minor expenditures set out in SPA section 98, which do not apply here, CRF expenditures must generally be authorized by a $\frac{3}{4}$ vote. The exception the strata relies on here, where only a majority vote is required under section 96(b)(i)(A)(II), is where the expenditure is “related to the repair, maintenance or replacement” of common property “as recommended in the most current depreciation report obtained under section 94.”

23. It is undisputed that the 2020 depreciation report met the requirements of SPA section 94 and contained the required information set out in the *Strata Property Regulation* (Regulation). I accept the 2020 depreciation report's findings that the strata's exterior coatings were in "poor" condition and had no life remaining. I find the depreciation report identified the need for the painting project, so approval of the CRF expenditure for the painting project by majority vote was permitted under SPA section 96(b)(i)(A)(II).
24. I do not agree with the applicants' argument that funding repairs using expenditures from the CRF goes against the intent of the SPA. The clear purpose of the exception identified above is to permit strata corporations to carry out their common property repair and maintenance obligations where such expenditures are identified in a depreciation report.
25. The applicants argue that a significant project like the painting project should be funded by CRF contributions years in advance, not CRF contributions voted on at the same meeting where the CRF expenditure for the project is approved. The Regulation establishes minimum contributions to the CRF based on the operating fund, but does not establish maximum contributions. Section 3.4 of the Regulation says once the minimum CRF contribution is met, additional contributions may be made as part of the annual budget approval process after consideration of the depreciation report, if any. So, I find nothing prohibited the strata's large CRF contribution increase.
26. The applicants say the strata acted against a legal opinion that supported the applicants' position. A strata corporation is free to ignore legal advice it receives. There is no legal opinion in evidence, but rather what appears to be the strata manager's summary of a legal opinion. In any event, a lawyer's opinion about the issues in a CRT dispute carries no evidentiary weight. Rather, it is essentially admissible as form of submission under the CRT's flexible rules (see *Nicholson v. The Owners, Strata Plan KAS 1137*, 2020 BCCRT 1117, at paragraph 37). Accepting the legal opinion summary as a submission, I find it unpersuasive. It simply says that a large increase in CRF contribution could be challenged as circumventing the

“flavour of the [SPA]” and the strata should “air on the side of caution” by using a special levy to fund the project. I considered those arguments above.

27. The applicants say the strata council was negligent in not having a strata manager or a representative from the Condominium Home Owners Association of BC (CHOA) attend the 2021 AGM. However, there is no requirement in the SPA or the strata’s bylaws to have such persons attend general meetings. Further, on review of the 2021 AGM notice package and the minutes, I find the strata’s procedures at the 2021 AGM were reasonable, appropriate, and not unfair to any owners.
28. The applicants say the 2021 AGM notice had incorrect information that was later corrected in an addendum, causing confusion. However, I find the AGM notice complied with SPA section 45 by including a budget and describing the matters that would be voted on at the meeting. The addendum provided additional information about the colour palette for the painting project and minor budget changes unrelated to the CRF. I am satisfied that owners had sufficient information about the resolutions considered at the 2021 AGM.
29. In summary, the applicants have not shown that the strata failed to comply with the SPA, so I dismiss the applicants’ claim.
30. For clarity, nothing in this decision gives the strata authority to make a significant change in the use or appearance of common property without a $\frac{3}{4}$ vote under SPA section 71.

CRT FEES AND EXPENSES

31. Based on the CRTA and the CRT’s rules, as the applicants were unsuccessful, I find they are not entitled to any reimbursement. The strata did not pay CRT fees or claim any dispute-related expenses.
32. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicants.

ORDER

33. I dismiss the applicants' claims and this dispute.

Micah Carmody, Tribunal Member