Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Griffiths v. Section 1 of The Owners, Strata Plan VR2266*, 2022 BCCRT 1164

B E T W E E N :

FAYE GRIFFITHS and JASON HILL

APPLICANTS

A N D :

Section 1 of The Owners, Strata Plan VR2266

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Eric Regehr

INTRODUCTION

1. Faye Griffiths and Jason Hill are the former owners of strata lot 22 (SL22) in the strata corporation, The Owners, Strata Plan VR2266 (strata). The strata has a residential and a commercial section. Section 1 of The Owners, Strata Plan VR2266, is the

residential section. I will refer to it as the section. SL22 is a residential strata lot. Neither the strata nor the commercial section are parties in this dispute.

2. The applicants claim that they are entitled to a refund of their portion of a special levy (which was $3,334.14) because the resolution approving the special levy was invalid. They ask for an order that the section refund this amount. Ms. Griffiths represents both applicants.

3. The section denies that it is legally obligated to refund the special levy to the applicants. It asks me to dismiss the applicants' claim. The section is represented by an executive member.

JURISDICTION AND PROCEDURE

4. 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). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.

5. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.

6. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.

7. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the tribunal 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.

8. This is one of 2 CRT disputes involving the same respondent section about the same special levy. The other is ST-2022-001038, which had different applicants who, like the applicants in this dispute, sold their strata lot after paying the special levy. The 2 disputes were linked throughout the CRT's process. The issues, evidence, and submissions are identical in the 2 disputes other than certain factual details like the strata lot numbers, special levy contributions, and sale dates. Because these different facts affected the outcomes of the disputes, I have issued separate decisions even though large portions of them are identical.

Preliminary Issue

9. The applicants initially claimed against the strata, not the section. The strata said in its submissions that the applicants should have named the section. On my initial review of the materials, and in particular the minutes of the annual general meeting (AGM) in question, I agreed with the strata. The strata also said that it had provided submissions on its own behalf and on the section's behalf. The strata council member representing the strata was also on the section executive. I inferred from this that the section and the strata did not oppose substituting the section for the strata as the respondent.

10. Bearing in mind that the CRT's mandate includes flexibility and informality, I invited the applicants to make submissions about this issue. The applicants accepted that their claim was against the section, not the strata. Under section 61 of the CRTA, I ordered that the section be added as a respondent and the strata be withdrawn as a respondent. I also ordered that the style of cause be amended accordingly.

11. The CRT then served the amended Dispute Notice on the section. The section adopted the Dispute Response, evidence, and written submissions that the strata had already provided.

ISSUES

12. The issues in this dispute are:

a. Was the 2020 AGM valid?

b. If not, are the applicants entitled to a refund of the special levy they paid?

c. If so, how much does the section owe them?

EVIDENCE AND ANALYSIS

13. In a civil claim such as this, the applicants must prove their case on a balance of probabilities, which means "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.

14. The facts are not disputed. This dispute arises from the section's 2020 AGM, which took place on November 10, 2020. According to the October 22, 2020 notice, owners could only participate by appointing a proxy approved by the section. Owners could not attend in person, by telephone, by other electronic means, or by selecting their own proxies. This practice for holding meetings, often referred to as "restricted proxy", was a relatively common practice in 2020 when gathering restrictions related to the COVID-19 pandemic were in place.

15. At the 2020 AGM, the owners passed a resolution for a $330,000 special levy for pool and hot tub repairs (pool project). As mentioned above, the applicants' contribution was $3,334.14, which they undisputedly paid on March 1, 2020. I note that the section incorrectly says that there was also a resolution for a $21,000 special levy for elevator upgrades. According to the 2020 AGM minutes, the money for the elevator upgrades came from the section's contingency reserve fund (CRF).

16. In February 2021, another owner raised concerns about the validity of the 2020 AGM, in part because of the use of restricted proxies.

17. While the section did not agree about the validity of the 2020 AGM, it held a special general meeting on April 19, 2021 (2021 SGM) to "ratify" the results of the 2020 AGM. The owners considered a single resolution that would "ratify and approve" the business conducted at the 2020 AGM, including the pool project's special levy. However, the resolution failed. The owners also elected a new section executive.

18. The applicants sold SL22 on April 22, 2021.

19. On May 14, 2021, Ms. Griffiths emailed the strata manager for a refund of the special levy, based on the outcome of the 2021 SGM. The strata manager said that the section had not yet decided what to do about the 2020 AGM.

20. In June 2021, the section paused work on the pool project. After paying its contractors for work performed to that point, the section had spent $42,973 of the special levy funds. The section also deferred collection of any outstanding special levy payments.

21. At the section executive meeting on August 17, 2021, the section "officially cancelled" the pool project. The section executive voted to refund the remaining levy funds, a decision the section calls "misguided" in its submissions in this dispute. I note that there has been a new section executive since February 2022, which has a different view about the 2020 AGM and special levy refunds. In any event, at the time, the section paid SL22's portion to its current owners, not the applicants. Again, none of this is disputed.

ANALYSIS

Was the 2020 AGM invalid?

22. The section does not directly address the question of whether the 2020 AGM was valid. Numerous CRT decisions have concluded that restricting an owner's proxy choice offends section 56 of the *Strata Property Act* (SPA), which permits owners to vote through a proxy of their choosing. The BC Supreme Court recently endorsed this reasoning in *The Owners, Strata Plan LMS 992 (Re)*, 2022 BCSC 1829, at paragraph 83. I find that the section's use of restricted proxies breached section 56 of the SPA. I find that the 2020 AGM was invalid on that basis.

23. The section argues that the 2021 SGM was invalid because there is nothing in the SPA about ratifying previous votes. Since the resolution failed at the 2021 SGM, I find that nothing ultimately turns on its validity. That said, I note that in *Hearn v. The Owners, Strata Plan NWS 3411*, 2021 BCCRT 3411, the CRT ordered the strata

corporation to hold an SGM to vote again on the resolutions from an invalidly held AGM to remedy the AGM's deficiencies. While "ratification" might be the wrong term, I find nothing wrong with a strata corporation or section holding a general meeting to revote on resolutions from a previous, invalid general meeting.

Are the applicants entitled to a refund of the special levy?

24. The section makes several arguments about why it should not have to provide the applicants with a refund.

25. First, the section relies on its repair and maintenance obligations under section 72 of the SPA. The section notes these obligations are "not optional" and that the pool deck must be repaired. It is unclear why the section makes this argument given that the special levy has already been refunded. The section is free to pursue the repairs by putting the matter to the owners again. If the owners do not approve necessary repairs, there are other legal avenues the section may pursue. I find this has nothing to do with the applicants' refund claim.

26. Second, the section argues that it complied with the mandatory requirements of section 108(5) of the SPA when it gave the refund to the current owners instead of the applicants. In other words, the section argues that it has already refunded the applicants' special levy contribution.

27. Section 108 of the SPA sets out how a strata corporation must refund unused special levy funds. It says that if money collected from a special levy exceeds the amount required, "or for any other reason is not fully used for the purpose set out in the resolution", the strata corporation must refund each owner their proportional share of the unused money. Section 190 says that the SPA's provisions generally apply to sections, so I find that section 108(5) also applies to the section.

28. The parties disagree about whether section 108(5) applies to the refund of the pool project's special levy. The applicants say that it is not a "typical" refund of a special levy because the resolution raising the special levy was never valid. The section

argues that the words “any other reason” are broad enough to include situations where the resolution raising the special levy was invalid.

29. I agree with the section on this point. Even though the resolution raising the special levy was passed at an improperly constituted general meeting, it was still the reason that the applicants (and other owners) paid the section their share of the special levy. I find that an expansive interpretation of section 108(5) is appropriate because it protects the rights of owners. This is consistent with section 8 of the *Interpretation Act*, which requires a “fair, large and liberal” interpretation of statutes. If section 108(5) did not apply to special levies raised under invalid resolutions, owners would have no clear legal recourse for refunds.

30. The next question is whether the section complied with section 108(5). The section argues that section 108(5) required it to provide the special levy refund to SL22’s current owners, even though the applicants paid it. They rely on *Gaudin v. The Owners, Strata Plan LMS 2140*, 2020 BCCRT 607. While previous CRT decisions are not binding on me, I agree with the reasoning in *Gaudin* that section 108(5) makes current owners entitled to special levy refunds.

31. However, I find that the section did not correctly apply section 108(5), which is silent about *when* it applies. I find that the most reasonable interpretation is that it applied when the section became legally obligated to refund the special levy, not on the arbitrary date the section decided to do so. Typically, section 108(5) operates when a project ends up costing less than expected. The relevant date in those instances would be when the project is complete and paid for, which would crystallize any surplus. Here, I find that the operative date is, at the latest, April 19, 2021. Given the uncertainty before that date, I find that it was reasonable for the section to retain any special levy funds pending the outcome of the 2021 SGM. After the vote failed, I find that the section was legally obligated to refund the owners’ special levy contributions. I find that this is true even though there had been no formal legal determination of the validity of the 2020 AGM. As of April 19, 2021, the applicants still owned SL22, so I find that they were the owners who were entitled to a refund under section 108(5).

32. Finally, the section argues that it should not have to give refunds to the applicants because it would be prejudicial to the other owners. The section relies on previous CRT disputes where the CRT declined to make orders about invalid resolutions. For example, in *Wonch v. The Owners, Strata Plan LMS 3227*, 2019 BCCRT 929, a vice chair concluded that the strata corporation had given insufficient notice for an AGM. However, the vice chair did not invalidate all the resolutions made at that AGM because some of them related to spending for periods that had by then ended. Along similar lines, in *Ross v. Residential Section of The Owners, Strata Plan EPS2516*, 2022 BCCRT 1014, the same vice chair declined to order the strata corporation to return funds to its CRF that had been spent under an invalid resolution. The vice chair noted that the work was complete and the money was gone. I agree with the section that these disputes generally indicate that the CRT will not make orders that are impractical, pointless, or both.

33. However, I find that the CRT disputes the section relies on are different from this dispute because here only a small portion of the special levy was spent before the section cancelled the pool project. In that sense, this dispute is more like *Heidary v. The Owners, Strata Plan BCS 2143*, 2021 BCCRT 1176. There, a vice chair ordered the strata corporation to refund a special levy because there was no evidence the strata corporation had started the associated project or spent any of the funds.

34. The section also argues that finding in favour of the applicants would lead to uncertainty and chaos in strata governance. The section says that owners should not be empowered to demand refunds of special levies based on a mere allegation that a general meeting was invalid. Instead, the section argues that owners should seek a court or CRT order first. Otherwise, the section fears that owners will use “creative” interpretations of the SPA to avoid their financial obligations. I do not agree with this argument. I find that the section acted appropriately in 2021 when it considered, and ultimately agreed with, the other owner’s allegation about the validity of the 2020 AGM. Contrary to the section’s argument, I find that it would be needlessly burdensome and impractical for a strata corporation (or section) to have to wait for a court or CRT finding before acting to correct past errors in its governance.

35. In summary, I find that section 108(5) of the SPA required the section to refund the applicants, not the current owners. Given that conclusion, I find it unnecessary to address the applicants' arguments about unjust enrichment. That said, I note that the CRT does not have the authority under its strata property jurisdiction to consider equitable claims like unjust enrichment: see *Hakemi v. The Owners, Strata Plan VR 457*, 2022 BCCRT 1075.

How much does the section owe the applicants?

36. As mentioned above, the applicants claim a full refund of their $3,334.14 contribution to the special levy.

37. Unlike in *Heidary*, the section spent some of the special levy funds ($42,973 of $330,000). The applicants do not say why they should receive a full refund when everyone else shared in these sunk costs. As mentioned above, the section was operating under a common misapprehension about the SPA's voting requirements during the pandemic. I find that the owners must share the burden of the section's error. This is consistent with section 108(5) of the SPA and with the general principle running through the SPA that the owners are "all in it together": *The Owners, Strata Plan LMS 1537*, 2003 BCSC 1085. I find that the applicants are entitled to be refunded $2,899.96, which is their proportionate share of the remaining special levy funds when the section cancelled the pool project. I order the section to pay the applicants this amount.

TRIBUNAL FEES, EXPENSES, AND INTEREST

38. 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. While I did not award the applicants the exact amount they asked for, I find that they are the successful party in this dispute. I therefore order the section to reimburse the applicants for $225 in CRT fees. The applicants did not claim any dispute-related expenses.

39. The *Court Order Interest Act* (COIA) applies to the CRT. The applicants are entitled to pre-judgement interest on the refund from April 19, 2021, to the date of this decision. This equals $31.29.

DECISION AND ORDERS

40. I order that within 30 days of this order, the section pay the applicants a total of $3,156.25, broken down as follows

    a. $2,899.96 as a special levy refund,

    b. $31.29 in prejudgment interest under the COIA, and

    c. $225 in CRT fees.

41. The applicants also entitled to post judgement interest under the COIA.

42. 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.

Eric Regehr, Tribunal Member