



Civil Resolution Tribunal

Date Issued: November 1, 2022

File: ST-2021-009286

Type: Strata

Civil Resolution Tribunal

Indexed as: *Kim v. Section 1 of The Owners, Strata Plan LMS 1866*, 2022 BCCRT 1197

B E T W E E N :

PAUL KIM

APPLICANT

A N D :

SECTION 1 OF THE OWNERS, STRATA PLAN LMS 1866

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. The applicant, Paul Kim, owns a strata lot in the strata corporation, The Owners, Strata Plan LMS 1866 (strata). The respondent, Section 1 of The Owners, Strata Plan

LMS 1866 (Section 1) is the residential section of the strata. The strata is not a party to this dispute.

2. Mr. Kim says Section 1 placed a lien on his strata lot in November 2021 for unpaid special levy contributions. He says the lien was premature and unnecessary. Mr. Kim claims reimbursement of the \$2,685.02 he says he paid in various fees to have the lien removed.
3. Section 1 says it complied with the *Strata Property Act* (SPA) requirements and so is not responsible for reimbursing Mr. Kim any fees he paid to release the lien.
4. Mr. Kim represents himself. 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. 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.
7. 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.

8. 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.

PRELIMINARY ISSUES

Jurisdiction

9. As argued by Section 1, section 122(1)(e) of the CRTA says the CRT does not have jurisdiction in relation to a claim to remove liens and other charges under section 90 of the SPA. Section 90(1) allows an owner to apply to the BC Supreme Court (BCSC) to remove a builder's lien or "other registered charge that charges more than one strata lot from the title to the owner's strata lot". The lien registered against Mr. Kim's strata lot undisputedly related only to amounts owed by Mr. Kim, and so I find the lien did not charge more than one strata lot. The lien is clearly not a builder's lien. So, I find SPA section 90 and CRTA section 122(1)(e) do not apply here.
10. Section 122(1)(f) of the CRTA says the CRT does not have jurisdiction over claims relating to the forced sale of a strata lot to collect money owing under section 117 of the SPA. The parties agree that Mr. Kim has now paid the outstanding special levy contributions and associated fees, and Section 1 has removed the lien against Mr. Kim's strata lot. Based on the communications in evidence, I find Section 1 did not apply to the BCSC to force the sale of Mr. Kim's strata lot. Given that this dispute is not about the forced sale of the strata lot, I find SPA section 117 and CRTA section 122(1)(f) also do not apply here.
11. I find the CRT has jurisdiction to consider this dispute.

Claims against Section 1 Executive

12. In his submissions, Mr. Kim makes various allegations about the behaviour of the Section 1 executive members, including abusing their power, acting unprofessionally, and failing to be accountable to the residential owners. Sections 31 and 196(2) of the SPA require strata council (and section executive) members to act honestly and in good faith, with a view to the best interests of the strata (or section), and to exercise

the care, diligence and skill of a reasonably prudent person in comparable circumstances. I infer Mr. Kim argues the executive members failed to meet the standard of care set out in SPA section 31.

13. Our courts have found that strata council members owe these duties to the strata as a whole and not to individual owners (see *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32; *Wong v. AA Property Management Ltd.*, 2013 BCSC 1551; and *Rochette v Bradburn*, 2021 BCSC 1752). I find the same reasoning applies to section executive members. So, I find that only Section 1 has the standing (legal right) to claim that the section executive members breached the statutory duty of care. I dismiss any claim Mr. Kim makes that the Section 1 executive breached its duty to act in the best interests of Mr. Kim, or any other owners.

Late Evidence

14. Section 1 submitted its evidence after the deadline to do so had passed. However, CRT staff notified Mr. Kim of the late evidence and gave him the opportunity to respond to it in his final reply. I find Mr. Kim was not prejudiced by the late evidence and so find it would not be procedurally unfair to Mr. Kim to accept it. I also find the evidence is relevant, as it includes Section 1's communications with Mr. Kim about the special levy contributions and amounts owing. Keeping in mind the CRT's mandate for flexibility and efficiency, I accept the late evidence and consider it below.

ISSUES

15. The issues in this dispute are:
 - a. Was Mr. Kim required to pay the lien-associated fees under the SPA?
 - b. Did the strata act significantly unfairly in registering a lien against Mr. Kim's strata lot?

EVIDENCE AND ANALYSIS

16. In a civil dispute like this one the applicant, Mr. Kim, must prove his claims on a balance of probabilities (meaning “more likely than not”). I have reviewed the parties’ submissions and weighed the evidence submitted but only refer to that necessary to explain and give context to my decision.
17. In the spring of 2021, the owners in Section 1 approved 2 separate special levies for different projects. Mr. Kim’s contribution to the first special levy was \$890.11 and was due on April 30, 2021. Mr. Kim acknowledges the special levies were passed and does not dispute the amount of his contribution, or when the monies were owed. Rather, Mr. Kim assumed the contribution would be paid by his pre-authorized debit form (PAD) he provided for strata fees payment. He also says Section 1 did not notify him that the contributions were overdue before registering a lien against his strata lot.
18. Section 1 submitted copies of the April 15, 2021 special general meeting (SGM) minutes, where the 1st special levy was approved. The minutes also say that, if an owner pays their strata fees by PAD, that owner must complete and return an additional PAD form specifically for the special levy contribution. They also say that notice for the meeting was sent by mail to all owners’ last known addresses on March 25, 2021.
19. The strata says the minutes were mailed out to all owners, including Mr. Kim. As Mr. Kim does not deny it, I find he likely received the March 25, 2021 SGM notice and the April 15, 2021 SGM minutes mailed to him by Section 1, or its strata manager. So, I find Mr. Kim was likely notified that he had to pay \$890.11 for his share of the special levy, by April 30, 2021. I also find Section 1 notified Mr. Kim that he must complete a specific PAD form to pay by debit. So, I find Mr. Kim’s assumption that Section 1 would take the contribution from his account without further action from his was unreasonable.
20. Section 1 says Mr. Kim’s contribution to the second special levy was \$847.73 and was due by August 1, 2021. Neither party submitted minutes from any general meeting approving the second special levy, or any calculation of contributions.

However, as Mr. Kim does not contradict it, I accept that Section 1 also notified Mr. Kim about that general meeting, and provided meeting minutes following the meeting, as it did with the April 15, 2021 SGM.

21. Under section 112(2) of the SPA, a strata, or section, must give an owner at least 2 weeks' written notice demanding payment before registering a lien against that owner's strata lot. Mr. Kim says Section 1 failed to notify him that the special levy contributions were overdue.
22. Section 1 submitted an August 17, 2021 letter which I find was sent to Mr. Kim by mail and email from the strata manager, demanding payment of the total \$1,737.84 outstanding in special levy contributions. Mr. Kim denies receiving the email. He did not specifically deny receiving the mailed letter but argues he was never sent anything by registered mail. However, registered mail is not required to give notice. Under section 61(3) of the SPA, a strata can give notice to an owner by regular mail, and that notice is conclusively deemed received 4 days after being mailed.
23. I find the August 17, 2021 letter was addressed to the same mailing and email address Mr. Kim used in his later correspondence with the strata manager, and Section 1's lawyer. In his correspondence, Mr. Kim acknowledges receiving a later letter from Section 1's lawyer at the same email address. As Mr. Kim did not specifically deny receiving the mailed version, and as I find both addresses used are correct, I find it likely that Mr. Kim received Section 1's August 17, 2021 letter.
24. On October 25, 2021 Section 1 registered a lien for \$1,737.84, plus costs, against Mr. Kim's strata lot. Contrary to Mr. Kim's arguments, I do not find Section 1 prematurely registered the lien without notice, given its August 17, 2021 letter to Mr. Kim.

Lien-Associated Fees

25. On November 8, 2021 Section 1's lawyer advised Mr. Kim of the lien and demanded payment of \$2,546.34 in arrears and \$1,275.69 in legal costs. Based on strata lot ledgers, I find the arrears included \$1,737.84 in outstanding special levy

contributions, plus an additional \$682.50 “lien administration fee” and a further \$126 in “administration fees”, most of which predated the special levies. I will address the extra fees below.

26. Mr. Kim paid \$1,737.48 on November 19, 2021. He paid \$2,685.02 for the remaining fees (\$808.50), plus the lawyer’s legal fees and disbursements (\$1,876.52) on March 23, 2022. Section 1 has now removed the lien.
27. As noted, Mr. Kim claims reimbursement of the \$2,685.02 he paid in fees. SPA section 118 allows a strata corporation, or section, to add reasonable legal costs, land title and court registry fees and other reasonable disbursements to the amount owing under a lien.
28. In *The Owners, Strata Plan KAS 2428 v. Baetting*, 2017 BCCA 377, the court found that a strata council could collect actual legal costs under SPA section 118, provided the costs were “reasonably necessary”. This includes legal costs incurred out of court, so long as the costs are related to registering the lien.
29. Section 1’s lawyer sent Mr. Kim a demand letter on March 10, 2022, which included an undated Legal Costs memo describing legal fees and disbursements totalling \$1,876.52. This includes a fee to prepare and file the lien, registry and other fees, and a breakdown of correspondence with the parties both before and after the lien was filed, to settle the outstanding account. The law firm’s correspondence with Mr. Kim is in evidence.
30. Although Mr. Kim argues the legal fees were unnecessarily incurred, and egregious, this is based on Mr. Kim’s position that the lien was filed without notice, which I find is not the case. Mr. Kim does not otherwise explain why he believes the legal costs are too high. Absent that, I find Mr. Kim has not proven the legal costs are unreasonable. On the authority of SPA section 118, and following the BCCA’s decision in *Baetting*, I find Mr. Kim is responsible to pay Section 1’s actual legal costs for the lien, in the amount of \$1,876.52.

31. I do not make the same finding for the remaining administration fees Section 1 charged. Based on Mr. Kim's strata lot ledger, I find Section 1 charged a \$63.00 administration fee for 2 demand letters on July 1, 2020, \$31.50 for a January 1, 2021 bylaw violation notice and a further \$31.50 for a September 20, 2021 demand letter. Section 1 did not provide copies of any of these demand letters or bylaw notices as evidence in this dispute. There is no indication that any of these charged administration fees are related to the lien registered on October 25, 2021 and so I find Section 1 was not entitled to recover \$126 in administration fees as part of the lien expenses.
32. Although Section 1 charged Mr. Kim's strata account a \$682.50 "lien administration fee" on September 27, 2021, there is no explanation what that fee is for. It is clearly not part of the lawyer's legal costs, which were detailed in the Legal Costs memo. Without an explanation, I find the \$682.50 administration fee does not fall within the category of expenses a strata corporation can add to the lien cost under SPA section 118.
33. On balance, I find Section 1 must reimburse Mr. Kim \$808.50 in unrelated administration fees he paid in order to have the lien removed.

Significant Unfairness

34. The CRT can make orders to remedy a strata's significantly unfair actions or decisions under CRTA section 123(2). In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, the court interpreted a significantly unfair action as one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable. In *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342, the court confirmed that the reasonable expectations of an owner may also be relevant to determining whether the strata's discretionary decisions or actions were significantly unfair. I find the same reasoning applies in this dispute.
35. In *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, the court applied a "reasonable expectations" test when considering whether a discretionary action of strata council was significantly unfair. I find the same test applies to the section

executive. The test asks: What was the applicants' expectation? Was that expectation objectively reasonable? Did the section violate that expectation with a significantly unfair action or decision?

36. I find Mr. Kim's expectation that Section 1 not register a lien against his strata lot is not objectively reasonable in these circumstances. This is because Mr. Kim acknowledges that he owed the special levy contributions and I have found that Section 1 warned him about the outstanding amounts and gave him an opportunity to pay before registering a lien.
37. Mr. Kim also argues that Section 1 arbitrarily decided to register a lien against his strata lot, while choosing not to register liens against other strata lots with outstanding strata fees. However, Mr. Kim provided no evidence of any such differential treatment, such as statements from other owners. Further, in his submissions, Mr. Kim says that Section 1 placed liens against not only his strata lot, but the strata lots of other owners with outstanding special levy contributions. Given Section 1 registered liens against other strata lots as well, I would not have found it acted unfairly or inequitably toward Mr. Kim in placing a lien against his strata lot.

CRT 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. I see no reason in this case not to follow that general rule. As Mr. Kim was only partially successful in this dispute, I order Section 1 to reimburse him \$112.50, which is half his paid CRT fees.
39. Mr. Kim claims \$800 for reimbursement of a bank draft and for time spent dealing with this dispute. First, Mr. Kim has provided no evidence of any paid bank draft fees, or why he was required to pay the outstanding amount by bank draft. In any event, Mr. Kim was required to pay the outstanding special levy contributions and legal costs and so would have incurred any associated fees anyway.

40. Second, CRT rule 9.5(5) says the CRT will not award reimbursement of time spent on a CRT proceeding except in extraordinary circumstances, which I find do not apply here. So, I dismiss Mr. Kim's \$800 claim for expenses. As a partially successful respondent, Section 1 paid no fees and claimed no expenses.
41. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Kim is entitled to prejudgment interest on the \$808.50 administration fee reimbursement from the date he paid it (March 23, 2022) to the date of this decision. This equals \$9.79.
42. The section must comply with section 189.4 of the SPA, which includes not charging costs of this dispute against Mr. Kim.

ORDERS

43. I order Section 1 to pay Mr. Kim a total of \$930.79 within 14 days, broken down as follows:
 - a. \$808.50 as reimbursement for administration expenses,
 - b. \$9.79 in pre-judgment interest, and
 - c. \$112.50 in CRT fees.
44. Mr. Kim is also entitled to post-judgment interest under the COIA.
45. 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.

Sherelle Goodwin, Tribunal Member