



# Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Jamalov v. The Owners, Strata Plan EPS 1286*, 2022 BCCRT 1214

**B E T W E E N :**

JAMAL JAMALOV

**APPLICANT**

**A N D :**

The Owners, Strata Plan EPS 1286

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

David Jiang

## **INTRODUCTION**

1. The applicant, Jamal Jamalov, co-owns strata lot 73 (SL73) in the respondent strata corporation, The Owners, Strata Plan EPS 1286 (strata). Mr. Jamalov claims reimbursement of \$4,345.50 for a combination of strata fees and legal fees paid to the strata. He says the strata should return the funds because he paid them after the 2-year limitation period expired for the paid amounts.

2. The strata disagrees. It says the limitation period did not expire for these amounts.
3. Mr. Jamalov represents himself. A strata council member represents the strata.
4. For the reasons that follow, I dismiss Mr. Jamalov's claims.

## **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.

## ISSUE

9. The issue in this dispute is whether the strata must reimburse Mr. Jamalov up to \$4,345.50 for a combination of strata fees and legal fees paid to the strata.

## BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Mr. Jamalov as the applicant must prove his claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision. Mr. Jamalov chose not to provide final reply submissions in response to the strata, though he had the opportunity to do so.
11. I begin with the undisputed background. As noted above, Mr. Jamalov became a co-owner of SL73 in April 2018. The strata's ledger, which is undisputed, shows that he was responsible for paying monthly strata fees of \$189.70 on the first of each month. The ledger also shows that Mr. Jamalov missed his first strata fee payment due on May 1, 2018 and numerous consecutive payments after that.
12. Between July 29, 2020 and March 17, 2021, the strata manager 1) accidentally reduced the amount owing on Mr. Jamalov's account to zero, then 2) reversed this error. The strata says, and I accept, that the errors were inadvertent and were part of efforts to cancel certain bylaw fines discussed in a previous CRT decision indexed as *The Owners, Strata Plan EPS 1286 v. Jamalov*, 2020 BCCRT 1285. I find nothing turns on the errors as they were fixed, and I conclude they do not affect the reliability of the ledger. I also find the events described in the 2020 CRT decision are essentially irrelevant to this dispute.
13. On March 16, 2021, the strata manager wrote a letter to Mr. Jamalov. They requested payment of \$2,845.50 in strata fees for the period of May 1, 2018 to July 1, 2019 inclusive. This is exactly equal to 15 months' worth of strata fees, without any additional fees or interest. Based on the ledger, I find Mr. Jamalov did not make the required strata fee payments for this date range at the time. The strata manager wrote

that if Mr. Jamalov failed to pay this sum within 21 days, the strata would file a certificate of lien against SL73 under section 116 of the *Strata Property Act* (SPA).

14. I note that SPA section 116 says a lien can be registered against the tile of an owner's strata lot for outstanding strata fees. SPA section 118 allows a strata corporation to add reasonable legal fees to the amount owing to it under a lien. See *The Owners, Strata Plan KAS 2428 v. Baettig*, 2017 BCCA 377.
15. It is undisputed that Mr. Jamalov did not immediately pay the amount owing. On April 20, 2021, the strata's lawyer wrote to Mr. Jamalov. The lawyer advised that the strata had filed a certificate of lien on SL73 on April 15, 2021. He said the strata was now claiming a total of \$4,345.50. In submissions, the strata says this amount was comprised of \$2,845.50 in strata fees, \$525 for the lien, and \$975 in legal fees, inclusive of disbursements. The lien fee appears on the ledger as an April 15, 2021 entry. There is no indication that the strata ever added the legal fees of \$975 as an amount owing to SL73's strata lot account.
16. There is no suggestion the lien is invalid or that the \$525 lien fee was unreasonable. The ledger shows that Mr. Jamalov paid the lien fee and the outstanding strata fees on June 7, 2021, through a \$3,370.50 cheque to the strata's lawyer. I note that Mr. Jamalov says his bank paid this amount without his permission, but this is not supported by any evidence. There is no indication Mr. Jamalov ever paid the legal fees of \$975 to the strata. Given this, I find that if Mr. Jamalov had been successful, I would have limited his claim to \$3,370.50. Ultimately, nothing turns on this.

***Must the strata reimburse Mr. Jamalov up to \$4,345.50 for a combination of strata fees and legal fees paid to the strata?***

17. Mr. Jamalov says that the first of the monthly strata fees at issue were due on May 1, 2018, "which is past the 2-year limitation". He did not further elaborate or provide a legal basis for his claims. I find that Mr. Jamalov essentially alleges he legally owed nothing when he paid the strata, so he made the payment under a mistake of fact or law. I find he relies on the law restitution, as restitution provides relief for a mistake of fact or law under certain situations.

18. Categories of restitution include 1) restitution for wrongdoing and 2) restitution for unjust enrichment. See *Kingstreet Investments Ltd. v. New Brunswick (Finance)*, 2007 SCC 1 at paragraph 33 or the non-binding decision of *Dankiewicz v. Sullivan*, 2022 ONSC 4324 at paragraph 46 for a thorough list of authorities in the footnotes. I find it unproven that the strata was a “wrongdoer” in this dispute. For example, there is no indication it acted in bad faith about the money at issue. So, I consider restitution for unjust enrichment below.
19. Case law historically held that money paid under a mistake of fact could be recovered under the law of restitution. In contrast, money paid under a mistake of law could not. However, the modern inclination of the law of restitution is to refrain from distinguishing between mistakes of fact or law. See *Community Savings Credit Union v. Bodnar*, 2022 BCCA 263 (*Bodnar*) at paragraphs 105 to 110. So, I find nothing turns on whether Mr. Jamalov paid the strata under a mistake of fact or law.
20. I return to the facts of this dispute. I have found that Mr. Jamalov paid the strata on June 7, 2021. For the reasons that follow, I find that at the time of Mr. Jamalov’s payment, the strata’s claims for strata fees before June 7, 2019 were out of time.
21. Section 6 of the *Limitation Act* says that the basic limitation period is 2 years. This means a claim may not be started more than 2 years after the day on which it is discovered. A claim is discovered when the applicant knew or reasonably should have known they had a claim against the respondent and a court or tribunal proceeding was an appropriate remedy. I note that under section 24 of the *Limitation Act*, a payment towards a debt that is more than 2 years old does not reset the limitation period.
22. I find the basic limitation period applies for strata arrears, and the strata discovered its claim separately for each monthly payment when it was added to the ledger. So, I find that the strata’s claims for strata fees due within 2 years of Mr. Jamalov’s payment of June 7, 2021 were within time. The rest before then were not.
23. The strata says none of its claims were out of time because of Ministerial Order No. M098 or its predecessor, M086. These orders were issued under the *Emergency*

*Program Act* on April 8 and March 26, 2020, respectively, to suspend mandatory limitation periods for actions and claims commenced in the Provincial Court, Supreme Court, or Court of Appeal. However, the order suspending limitation periods does not apply to disputes commenced in a tribunal such as the CRT. The applicable portion for both orders is section 3, which provides the CRT discretion to waive, suspend, or extend a mandatory time period. That did not happen here. However, as discussed below, nothing turns on this.

24. As I find Mr. Jamalov paid at least some strata fees under a mistake of fact or law, the law of restitution for unjust enrichment applies. To prove unjust enrichment Mr. Jamalov must show that 1) the strata was enriched, 2) Mr. Jamalov suffered a corresponding deprivation, and 3) there is no juristic or valid reason for the enrichment of one at the expense of the other. See *Bodnar* at paragraph 12 and *Dankiewicz* at paragraph 46.
25. The third factor requires a 2-stage analysis. At the first stage, the applicant must demonstrate the lack of any established category of juristic reason to show unjust enrichment. These categories include a contract, a disposition of law, a donative intent, and other valid common law, equitable or statutory obligations. If the applicant shows none of these established categories apply, the respondent must rebut the applicant's *prima facie* case by showing there is some residual reason to deny recovery. In determining whether this is the case, the court should have regard to 2 considerations: 1) the parties' reasonable expectations and 2) public policy. See *Bodnar* at paragraph 36.
26. I find that the strata was enriched as it received Mr. Jamalov's payment of \$3,370.50. I find that Mr. Jamalov suffered a corresponding deprivation. I find that most of this amount was paid for validly claimed amounts, under the established category of a statutory obligation, for claims that were within time. In particular, SPA sections 92 and 116 allow the strata to collect strata fees and reasonable legal fees in connection with a lien.

27. For the remaining strata fees that were out of time, I find that public policy and the parties' reasonable expectations both support my conclusion that the strata has a residual reason to deny recovery. SPA section 91 says that the strata is responsible for the strata's common expenses. In general terms, section 92 says that owners must fund such expenses through strata fees. Payment of strata fees is mandatory for all owners and cannot be withheld. See *Stewart v The Owners, Strata Plan KAS 2601*, 2020 BCSC 809, at paragraph 106. I find these sections of the SPA and the case law both demonstrate a reasonable expectation and public policy reason for the strata to retain Mr. Jamalov's paid strata fees. This is because the strata requires such funds to pay for common expenses for the benefit of all owners, including Mr. Jamalov.
28. In contrast, Mr. Jamalov breached his obligation to pay strata fees almost immediately after he became owner of SL73. He provided no explanation for this. Given all of the above, I find it proven that the strata should retain the money as it has a legal and equitable right to do so.
29. I note that in *Kornylo v. The Owners, Strata Plan VR 2628*, 2018 BCCRT 599, a CRT member ordered the strata to reimburse an owner strata fees paid for arrears that were out of time. I find this dispute distinguishable on the facts. Unlike *Kornylo*, the strata in this dispute filed a certificate of lien for the strata fees. Mr. Jamalov could have disputed the lien and the amount owing under it in the BC Supreme Court under SPA section 90. He did not do so. Instead, he paid the lien amount to have it removed. He then started a new proceeding in the CRT about the same amounts. I find these circumstances reinforce my conclusion that the parties' reasonable expectations were the strata would keep the funds, rather than have further disputes over it.
30. For all those reasons, I dismiss Mr. Jamalov's claims.

## **CRT FEES AND EXPENSES**

31. 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. The strata paid no CRT fees. The parties did not claim for any specific dispute-related expenses. So, I decline to order reimbursement for any party.

32. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Jamalov.

## **ORDER**

33. I dismiss Mr. Jamalov's claims and this dispute.

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David Jiang, Tribunal Member