



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Lutz v. The Owners, Strata Plan VIS 6781*, 2022 BCCRT 1301

B E T W E E N :

RODGER LUTZ

APPLICANT

A N D :

The Owners, Strata Plan VIS 6781

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This is a dispute about spending from a strata's contingency reserve fund (CRF).
2. The applicant, Rodger Lutz, co-owns a strata lot in the respondent strata corporation, The Owners, Strata Plan VIS 6781 (strata).

3. Mr. Lutz says the strata breached the *Strata Property Act* (SPA) when it failed to repay a \$65,000 loan from the CRF to the strata's operating fund, allegedly to cover the strata's 2020-2021 insurance premium shortfall. He says the strata breached the SPA again when it re-characterized the loan as an expenditure that did not require repayment. He asks that I order the strata to repay \$65,000 to the CRF.
4. The strata argues the \$65,000 expenditure was made pursuant to the SPA, and that it is not obliged to return it to the CRF. It asks that I dismiss the dispute.
5. The applicant is self-represented. The strata is represented by a strata council member.
6. For the following reasons, I find in favour of the strata in this dispute.

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. 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:
 - a. Whether the strata breached SPA section 95(4) by failing to repay a \$65,000 loan to the CRF,
 - b. Whether the strata breached SPA section 98(3.1) by making a CRF expenditure that was not immediately necessary or exceeded the minimum amount necessary to prevent significant loss or damage, and
 - c. If so, what are the appropriate remedies?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicant Mr. Lutz must prove his claims on a balance of probabilities (meaning 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.

Background

13. Under SPA sections 149 and 150, a strata must have property and liability insurance. It is undisputed that the strata budgeted \$127,000 for its insurance premium for the 2020-21 fiscal year, and that the owners approved this at the November 25, 2020 Annual General Meeting (AGM). The parties also agree the actual insurance premium was higher than the budgeted \$127,000 but disagree on the higher amount. Mr. Lutz

says the insurance premium was \$151,303. The strata says it was \$160,032. More on this below.

14. The strata says it did not have sufficient time to address the premium increase before the AGM, but does not explain why. Mr. Lutz relies on a November 17, 2020 \$151,303 invoice for the higher premium and says the strata could have increased the budget and strata fees before the AGM. I find nothing turns on this disagreement because as explained below, the strata would still have had to pay the higher premium before collecting any increased strata fees the owners may have agreed to at the AGM. In other words, the strata would have faced the same shortfall when the insurance premium became due in January 2021.
15. The strata says it had money in its operating fund to cover part of the 2020-2021 insurance premium, and the strata's January 2021 bank statement in evidence showed a positive opening balance. The strata says, and Mr. Lutz does not dispute, that it arranged to pay the insurance premium in January 2021. The evidence indicates the strata paid the insurance premium in 2 installments of \$51,032 each on January 13, 2021 and 1 installment of \$51,030 on February 2, 2021, for a total of \$153,094. I find this is most likely the amount paid for the strata's insurance premium for the 2020-2021 fiscal year. Mr. Lutz acknowledges that after the second installment was paid, the cash balance in the strata's operating fund was low and that the third installment in February was yet to come. However, he points out that strata fees would also be collected in February.
16. At the January 27, 2021 strata council meeting, the strata approved a \$65,000 loan from the CRF to the operating fund to cover the insurance premium shortfall.

Did the strata breach SPA section 95(4) by failing to repay a \$65,000 loan to the CRF?

17. SPA section 95(4) allows a strata to lend money in the CRF to the operating fund as permitted by the *Strata Property Regulation* (Regulation). The Regulation section 6.3(1) says

(a) the loan is to be repaid by the end of that fiscal year of the strata corporation;

(b) the loan is for the purpose of covering temporary shortages in the operating fund resulting from expenses becoming payable before the budgeted monthly contributions to the operating fund to cover these expenses have been collected.

18. The January 27, 2021 strata council meeting minutes recorded the CRF loan would be repaid “over the coming months” and that it was a “cash flow timing issue”. In its submissions, the strata explains the insurance premium covered the period December 1, 2020 to November 30, 2021 and that most of the monthly strata fees to cover the premium only became payable after the premium was due. I find this a reasonable explanation for the strata’s borrowing from the CRF, and I find the loan was to cover a temporary shortage in the operating fund in connection with the strata’s \$153,094 payment for its insurance premium in January and February 2021. So, I find the strata borrowed the \$65,000 from the CRF in accordance with section 95(4).

19. It is undisputed the strata did not repay the loan by its October 31, 2021 fiscal year end contrary to the Regulation. The strata says it did not have enough money in the operating fund to repay the CRF and offers no explanation for this. Mr. Lutz says the strata had time to complete an accurate cash flow projection that would have identified the under-budgeting and to plan a special levy to correct the deficit before year end. In these circumstances, I find the strata breached SPA section 95(4) and Regulation section 6.3(1)(a) by failing to repay the \$65,000 CRF loan.

20. However, the January 26, 2022 strata council minutes recorded a successful motion to approve the \$65,000 from the CRF under a different section of the SPA, section 98(3.1). Mr. Lutz says the strata’s resolution to repay the loan could not unilaterally be altered in this way but he did not provide any support for this argument. I find there is nothing that prevented the strata council from passing a new resolution and changing its mind about the SPA section it used for the \$65,000 CRF expenditure,

provided it met the requirements of that section. So, I find even though the strata breached SPA section 95(4) and Regulation section 6.3(1)(a) by not repaying the \$65,000 CRF loan by the fiscal year end it attempted to remedy the situation by passing a new resolution. I turn now to whether it was successful in this attempt.

Did the strata breach SPA section 98(3.1) by making a CRF expenditure that was not immediately necessary or exceeded the minimum amount necessary to prevent significant loss or damage?

21. SPA section 98 is about unapproved expenditures, and says, in part:

- (1) If a proposed expenditure has not been put forward for approval in the budget or at an annual or special general meeting, the strata corporation may only make the expenditure in accordance with this section [...]
- (3) The expenditure may be made out of the operating fund or contingency reserve fund if there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage, whether physical or otherwise.
 - (3.1) For the purposes of subsection (3), the prevention of significant loss includes, without limitation, the obtaining and maintaining by the strata corporation of insurance that is required under section 149 or 150 or the strata corporation's bylaws [...]
- (5) Any expenditure under subsection (3) must not exceed the minimum amount needed to ensure safety or prevent significant loss or damage.

22. Mr. Lutz argues a CRF expenditure under SPA section 98 must be urgently needed to prevent significant loss or damage. He points to the roughly 2 months from mid-November 2020 when he says the strata became aware of the higher insurance premium to January and February 2021 when it paid the premium, in support of his position that an immediate expenditure was not necessary. He also says the strata's expenditure exceeded the minimum amount needed to ensure safety or prevent significant loss or damage. The strata says this interpretation of SPA section 98 is

too narrow. It says the words “without limitation” in section 98(3.1) mean the expenditure does not have to be immediate or even the minimum amount necessary to prevent significant loss or damage.

23. In *Thurlow & Alberni Project Ltd. v. The Owners, Strata Plan VR 2213*, 2022 BCCA 257 (CanLII), the BC Court of Appeal recently considered the interpretation of SPA section 98(3.1). At paragraph 73, the court said “Section 98(3.1) by including, without limitation, the obtaining of insurance as an expense to prevent loss, suggests that such losses are defined liberally, to include losses that are uncertain but foreseeable and not necessarily imminent.” The court went on to say that expressly including the SPA section 98(3) and (5) requirements suggests that without them stratas might have broader powers to make unauthorized expenditures that go beyond the minimum amount needed to ensure safety or prevent significant loss or damage.
24. I apply the court’s reasoning here. I find I do not have to decide if the strata’s \$65,000 CRF expenditure was immediate because the words “without limitation” in SPA section 98(3.1) do not require it to have been immediate. Even if I had decided otherwise, I would have found the \$65,000 was an immediate expenditure because it was used to cover a temporary shortage in the operating fund in connection with payment of the strata’s insurance premium in January and February 2021.
25. By extension, I find that inclusion of the words “without limitation” means I also do not have to decide if the strata’s expenditure exceeded the minimum amount necessary to prevent significant loss or damage.
26. If I am wrong and SPA section 98(3.1) expenditures must not exceed the minimum amount needed to prevent significant loss or damage, I find the strata’s \$65,000 CRF expenditure came within that limit in any event. I say this because the strata is entitled to make an expenditure under SPA section 98(3.1) to obtain and maintain insurance required under section 149 or 150 or the strata’s bylaws. Though the parties disagree on the amount of the actual insurance premium, it is undisputed the premium included at least \$151,303 for mandatory property and liability coverage. That amount is set out in an invoice in evidence, and there is no evidence before me of any cheaper,

alternative property and liability coverage. So, I find \$151,303 was the minimum amount needed under SPA section 98(3.1). The \$65,000 CRF expenditure was well below the \$151,303 minimum. So, I find the \$65,000 CRF expenditure came within the minimum amount necessary to prevent significant loss or damage. Overall, I find the strata did not breach SPA section 98(3.1) as Mr. Lutz alleges.

27. In summary I find the strata breached SPA section 95(4) and Regulation 6.3(1)(a) by failing to repay its \$65,000 CRF loan by the fiscal year end. However, I also find the strata council later passed a resolution to approve the \$65,000 from the CRF under SPA section 98(3.1) that remedied the situation. So, I dismiss Mr. Lutz's claims.

CRT FEES AND EXPENSES

28. 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. The strata seeks to recover its legal expenses on the ground that this dispute involved a novel question of law. I find the strata relies on CRT rule 9.5(3)(b), which says the CRT will not order reimbursement of a lawyer's fees unless there are extraordinary circumstances.
29. Although this dispute involved SPA section 98(3.1) which is a recent amendment to the SPA, I find the factual and legal issues were not especially complex. The parties simply disagreed about the strata's CRF spending under the SPA. While I found the strata's interpretation of the SPA was correct, there is no evidence before me Mr. Lutz's conduct during this proceeding was improper or somehow deserving of rebuke. I find there were no extraordinary circumstances here. I dismiss the strata's claim for legal expenses. Even if I had come to a different conclusion, I would not have ordered reimbursement as the strata did not provide evidence of its legal expenses.
30. As Mr. Lutz was unsuccessful in this dispute, I find he is not entitled to reimbursement of CRT fees or dispute-related expenses. The strata paid no CRT fees and claimed no dispute-related expenses apart from legal expenses which I already dismissed.

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

ORDERS

32. I dismiss Mr. Lutz's claims, the strata's claim for dispute-related legal expenses, and this dispute.

Megan Stewart, Tribunal Member