



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Champniss v. The Owners, Strata Plan VAS 2854*, 2023 BCCRT 1

BETWEEN:

MICHAEL CHAMPNISS and ANN ROGERS

APPLICANTS

AND:

The Owners, Strata Plan VAS 2854

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about a common property septic field. The applicants, Michael Champniss and Ann Rogers, own strata lots 2 and 1, respectively, in the respondent bare land strata corporation, The Owners, Strata Plan VAS 2854 (strata). The strata

includes 4 strata lots and common property, including 2 shared common property septic fields. Strata lots 1 and 4 share the septic field that is the subject of this dispute.

2. In a previous decision of the Civil Resolution Tribunal (CRT) involving different applicants, the strata was ordered to arrange for a feasibility study of the septic field's capacity. Following that study, the strata decided to upgrade the septic field. The owners could disagree about which contractors would be invited to bid on the septic field project, and the applicants filed this dispute.
3. The applicants say they have "growing concerns about the bidding and tendering process for the field, lack of any progress and council's inability to select qualified bidders." They say certain strata council members are attempting to steer the process toward their preferred contractors.
4. I paraphrase the applicants' requested remedies in this dispute as follows:
 - a. The strata bring septic field "to code",
 - b. The strata put the septic field project out to bid to a minimum of 3 qualified installers,
 - c. The successful contract be approved by special levy at a special general meeting (SGM),
 - d. "Any additional costs" be voted on at the same SGM,
 - e. SL1 reimburse the strata "the amount for any increased load capacity as determined by the qualified professional",
 - f. Contracted professional prorate the project costs between the strata and SL1,
 - g. Strata commence the project by December 31, 2022,
 - h. SL1 take responsibility for the choice of equipment, installation and costs for SL1's septic system within SL1's boundaries.
5. The strata says the applicants, who are strata council members, are attempting to subvert the strata council's decision-making process in favour of their own preferred

contractor. The strata says the septic field project could have started long ago if the applicants would stop drawing out the process.

6. Mr. Champniss represents the applicants. A strata council member, and an owner of strata lot 4, represents the strata.

JURISDICTION AND PROCEDURE

7. These are the CRT's formal written reasons. 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.
11. In submissions, the applicants state that an owner, who is not a party to this dispute, gave false evidence in the previous dispute, *Ewert-Johns v. The Owners, Strata Plan VAS 2854, 2020 BCCRT 532 (Ewert-Johns)*. The applicants ask the CRT to "follow up" on CRTA section 92, which prohibits a person from providing false or misleading

evidence in a CRT proceeding, and provides for penalties. I find that I do not have the authority to decide whether someone has committed an offence under CRTA section 92. Rather, under the *Provincial Court Act*, a BC Provincial Court judge has jurisdiction over CRTA section 92 offences because conviction carries the possibility of imprisonment. Further, this issue was not raised in the Dispute Notice, and therefore is not properly before me in any event. So, I decline to address the CRTA section 92 issue.

12. In the CRT's facilitation process, the applicants withdrew a claim about minute-taking.

ISSUES

13. The issues in this dispute are:

- a. Is the strata meeting its duty to repair and maintain the common property septic field?
- b. Have the strata council's decisions related to the septic field been contrary to the *Strata Property Act* (SPA) or its bylaws?
- c. What remedies, if any, are appropriate?

BACKGROUND EVIDENCE

14. 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 considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

15. The strata is a bare land strata corporation as defined in the SPA. The strata plan shows 4 strata lots. Strata lot 1 (SL1) is to the north and strata lot 4 (SL4) is to the east. Common property, including an access road, separates SL1 and SL4. Although the septic field is not shown on the strata plan, it is undisputed that SL1 and SL4 share a common property septic field that I infer is located on the common property to the northeast of strata lot 4. Regardless of its precise location, the septic field is

undisputedly common property. The septic field includes a shared distribution box and a series of underground perforated pipes.

16. An owner of each strata lot is on the strata council. The strata's bylaws were filed in the Land Title Office in 1992. Bylaw 4(b) says the strata must repair and maintain all facilities and equipment used in connection with the common property. Bylaw 4(c) says the strata must maintain and repair, including renewal where reasonably necessary, pipes, wires, cables, chutes and ducts existing "in the parcel" and capable of being used in connection with the enjoyment of more than 1 strata lot or common property. It is undisputed that the strata must repair and maintain the shared septic field at issue in this dispute.
17. Bylaw 8 says all council matters are determined by simple majority vote, and in the event of a tie, the chair has a "casting" or tie-breaking vote in addition to their original vote.

Previous CRT dispute

18. As noted, the strata was involved in a previous dispute about the same septic field at issue in this dispute. The applicants in the previous dispute were strata lot 4's owners, Marcus and Crystal Ewert-Johns. Crystal Ewert-Johns represents the respondent strata in this dispute.
19. The Ewert-Johns wanted to build an addition to their 3-bedroom home, but an inspection report raised questions about the capacity of the septic field to accommodate that planned addition, as well as SL1's previous addition. It is undisputed that SL1 had 3 bedrooms before Ms. Rogers added a 1-bedroom suite in 2017.
20. The Ewert-Johns sought an order that the strata expand the septic field to accommodate SL1's suite and recover the cost from SL1. The strata acknowledged that the field needed repair but said it was fulfilling its duty to repair and maintain it, and the field did not need to be expanded or upgraded.

21. The CRT issued a decision on May 14, 2020. The CRT found that the strata had not sufficiently investigated the field's capacity and ordered the strata to arrange for a feasibility study. The CRT reasoned that the study would position the strata to make a decision on how to repair and maintain the common property septic field. The CRT did not make the requested order to expand the septic field's capacity or make any orders about the responsibility for the cost of such work.

Events following previous CRT decision

22. Following the decision discussed above, the strata hired Coast Mountain Earth Sciences to conduct a feasibility study. Ron Hein, a registered onsite wastewater practitioner, produced the August 1, 2020 report (Mr. Hein's report).

23. Mr. Hein's report confirmed that SL1 and SL4 each had a "package treatment plant" and a pipe running to a shared septic field. The pipes empty into a distribution box used to ensure even distribution to the three dispersal pipes exiting the box. Mr. Hein found blockages in some dispersal pipes and an inappropriate slope in the box. He found that the "severely uneven distribution" of the septic field was a "performance malfunction." There also may have been damage when irrigation pipes were installed too close to the dispersal pipes.

24. Mr. Hein reviewed historical records and found the original design was such that each strata lot had its own distribution box and a single dispersal pipe. At some point, that design was abandoned and the shared septic field was created. Mr. Hein's report suggests that such work was not registered with the local health authority as required by provincial regulations. Mr. Hein said that despite the municipality's approval for SL1's suite construction, there was no evidence that the septic system was suitable to handle the increased load.

25. Mr. Hein's report stopped short of making clear recommendations. It said the strata could attempt to restore the existing system back to proper operation but only as permitted by current regulations. It distinguished between "major repairs" that require the system to be fully reviewed and brought up to current standards, and "minor repairs" that do not. It did not recommend specific repairs but identified some minor

and major repairs and some repairs for which Mr. Hein could not determine whether they are minor or major at the time. The report said the system would need to be upgraded to current standards in order to serve a 4-bedroom home, but not if each home had 3 bedrooms. It said returning “the usage to the original design of 3 bedrooms” would keep the design “within what the permit granted the use to be.” However, the report acknowledges that permits were issued based on each strata lot having its own distribution box and single dispersal pipe, which is not what exists today.

26. It is not clear exactly how the strata interpreted Mr. Hein’s report or decided what to do. The strata council met in October 2020 but those minutes are not in evidence. The February 18, 2021 meeting minutes included an “update on quotes from engineers to design and obtain permits” for the shared septic field “to the point of installation.” I infer that the strata resolved to upgrade or expand the septic field, involving major repairs. I find this approach is supported by Mr. Hein’s report. The applicants do not challenge the strata’s decision to proceed with the septic field project.
27. In May 2021, the strata requested a “letter of guarantee” from SL1 to pay any “additional costs incurred as a result of the construction of” SL’s 1-bedroom suite, including any expansion of the shared septic field. The idea was that all owners would share the cost of the “basic field” but SL1 would be responsible for any additional costs incurred as result of the increased capacity required by SL1’s 1-bedroom suite. Ms. Rogers agreed with that approach and wrote the letter on May 10, 2021. The applicants’ submissions indicate that Ms. Rogers remains prepared to pay this additional cost.
28. Rather than disputing the project itself or how the costs might be allocated, the applicants take issue with the identification of potential contractors.
29. As documented in the April 17, 2021 AGM minutes, the strata had difficulties establishing a short-list of potential bidders.

30. At a May 27, 2021 strata council meeting, the strata proposed 3 contractors from which to solicit bids. However, the list's approval was postponed when the chair removed a contractor from the list and took over responsibility for soliciting interested contractors from Ms. Rogers. I discuss this in more detail below.
31. The applicants started this CRT dispute on June 24, 2021.

ANALYSIS

Is the strata meeting its duty to repair and maintain the common property septic field?

32. It is undisputed that the strata has an obligation to repair and maintain the common property septic field under both its bylaws and SPA section 72. As noted in *Ewert-Johns*, the applicable standard of care to which the strata must adhere in fulfilling this duty is one of reasonableness. When deciding whether and how to repair common property, the strata has discretion to approve "good, better or best" solutions. The courts and the CRT will not interfere with a strata's decision to choose a "good," less expensive, and less permanent solution, although "better" and "best" solutions may have been available (see *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784 at paragraphs 28 and 29). The law also recognizes that strata councils are made of people volunteering their time for the good of the strata community (see *Mitchell v. The Owners, Strata Plan KAS 1202*, 2015 BCSC 2153).
33. The applicants say that since receiving Mr. Hein's report, the strata council has spent 10 months debating and arguing over procedures and potential bidders. For its part, the strata says that if the applicants had not started the CRT claim, work would already be proceeding. It says the applicants are wasting time because they disagree with council's decisions related to the septic field project.
34. The septic field is functioning for now, but the strata acknowledges that it is in the interests of all owners to upgrade the field as soon as possible. The strata agrees that it needs to bring the septic field up to the standards set out in the *Sewerage System Regulation* under the *Public Health Act*. As noted above, following Mr. Hein's

report, the strata resolved to upgrade or expand the septic field, involving major repairs. I find the strata has adopted a prudent course of action that acknowledges its responsibility to repair and maintain the common property septic field.

35. The applicants request an order that the strata start the project by December 31, 2022. This is not possible at this point. I find the strata was making progress before the applicants started this dispute. There is no evidence of intentional delay or “deliberate foot-dragging”, as was found in *Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74.
36. In summary, I find the applicants have not established that the strata is failing to meet meeting its duty to repair and maintain the common property septic field. I find the applicants have not established that an order requiring the strata to complete the work on a particular timeframe is warranted.

Have the strata council's decisions related to the septic field been contrary to the SPA or its bylaws?

37. The applicants say the 4 council members are split 2-2 on all decisions related to the septic project and are unable to agree on procedure and selection of bidders. They say it is impossible to get unanimous approval. However, as I will explain, unanimous approval is not required for strata council decisions. The strata says these decisions have been made in accordance with its bylaws.
38. The applicants specifically take issue with the use of a deciding vote by the strata council chair. They say the chair used this vote to remove a contractor, JEB, that the applicants wanted included on the list of potential bidders. JEB previously wrote a letter during the 2017 municipal permitting process stating that the existing septic field was adequate to service SL1's proposed suite. As noted above, Mr. Hein's report found no evidence to support that conclusion. For that reason, some strata council members wanted to exclude JEB from bidding on the septic project.
39. For its part, the strata says the list of 3 bidders failed to achieve majority approval as the council voted 2 in favour and 2 against. I find nothing turns on precisely what happened. Even if instead the chair made a specific motion to remove a contractor

from the list and used their casting vote to approve the motion, such use of the casting vote was not contrary to the bylaws. As noted above, the bylaws give the chair a tie-breaking vote in addition to their original vote. I note this is consistent with the SPA's standard bylaw 18, which gives strata council presidents a tie-breaking vote.

40. While I accept the applicants' submissions that their preferred bidder may be cheaper, costs are not the only consideration for a strata corporation. I find the applicants have not established any reason for the CRT to interfere with the strata's democratic process in establishing a list of potential bidders. That process appears to be ongoing, as the strata says it intends to proceed with finding 3 bidders. I find the applicants have not met their burden of proving that the CRT must intervene in the contractor selection process.
41. The applicants disagree with the strata's intention to separate the project's design or engineering phase and its installation phase. The strata says 2 special levies will be required, 1 for each phase. In contrast, the applicants say the successful qualified contractor will issue a detailed quote and scope of work for the entire project, including designing and engineering. They say the engineer is only one of the sub-trades hired by the contractor. The applicants did not provide any objective evidence to show that a single scope of work for the entire project is the only or best way to approach the project. In any event, I find that the strata council has discretion to determine whether the project should proceed in 1 or more phases.
42. The applicants ask for orders about a special levy for the project, but I find such orders would be premature. For example, the applicants ask for an order that the successful contract be approved as part of a resolution to approve a special levy. SPA section 108(3) says a special levy resolution must set out specific things. They must set out the purpose of the levy, the total amount, the method used to determine each strata lot's share, and the amount of each strata lot's share. However, identifying the contractor is not necessarily required.
43. The parties appear to agree about cost-sharing for the septic field upgrade. They agree that SL1 will pay for the additional costs of the septic field expansion to meet

the additional demand imposed by SL1's suite, as determined by the chosen contractor. Under SPA section 108(2), SL1 can be required to pay more than the other strata lots toward the special levy by unanimous vote. However, the strata will need to know the estimated costs in advance. I find it would be premature to make any order on cost apportionment because the strata has not yet obtained and considered estimates.

44. I conclude that the applicants have not shown that the strata has failed to comply with its bylaws or the SPA in making decisions about the septic field project. I find the applicants are not entitled to any of their requested orders as the orders are either premature or not supported by the evidence. The applicants' requested remedies are either things the strata has already agreed to do and was doing before the applicants started their claim, or are overly specific interventions in the strata's democratic process that the evidence does not support.

45. For all these reasons, I dismiss the applicants' claims.

CRT FEES AND EXPENSES

46. Under CRTA section 49 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 was successful but did not pay CRT fees or claim dispute-related expenses. As the applicants were unsuccessful, I dismiss their claim for reimbursement of CRT fees and \$5,000 in legal fees, which I would not have awarded in any event given there was no supporting evidence, such as an invoice.

47. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against the applicants.

ORDER

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

Micah Carmody, Tribunal Member