



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Baker v. The Owners, Strata Plan LMS 898*, 2023 BCCRT 606

B E T W E E N :

NOEL BAKER

APPLICANT

A N D :

The Owners, Strata Plan LMS 898

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute about alleged unapproved expenses and related accounting practices.
2. The applicant, Noel Baker, co-owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 898 (strata). Mr. Baker is self-represented. A strata council member represents the strata.

3. The strata replaced 156 exterior light fixtures at a cost of about \$17,610 (lighting project) during its fiscal year that ended September 30, 2021. The cost breakdown was approximately \$11,000 for material and \$6,610 labour for the installation of the light fixtures. Mr. Baker argues that the strata failed follow the *Strata Property Act* (SPA) when it sought the owners' approval and paid for the lighting project. Specifically, he says the entire project cost was improperly approved as an operating expense and should have been approved as a contingency reserve fund (CRF) expense. He also says the manner in which the \$6,610 installation expense was initially recorded in the strata's financial statements was improper because it was recorded as a cash expense in the following fiscal year rather than an accrued expense in the September 30, 2021 fiscal year. Mr. Baker also says the strata manager later amended the financial statements through an adjusting journal entry that moved the expense to the 2021 fiscal year, which increased the operating deficit. He says that these improprieties resulted in the strata exceeding its budgeted expenses for the 2021 fiscal year, and the \$6,610 installation expense being paid without any approval by the strata ownership.
4. As remedy, Mr. Baker seeks orders that the \$6,610 expense be moved into September 30, 2021 fiscal year with a corresponding increase in the approved CRF expense to eliminate the 2021 deficit for the "full unapproved lighting costs". He also seeks direction from the Civil Resolution Tribunal (CRT) on the strata's alleged violation of the SPA about unapproved expenses.
5. The strata essentially says it relied on the advice of its strata manager. It says the strata owners approved the lighting project expenses from the operating fund, but in hindsight, concedes it was properly a CRF expense. The strata also says it uses a cash basis accounting system, which does not accrue expenses. So, it says the financial statements are accurate because the \$6,610 expense was recorded in the fiscal year it was paid. The strata argues that the requested retroactive accounting changes are not necessary, so I infer they ask that Mr. Baker's claims be dismissed.
6. As explained below, I find the strata acted contrary to the SPA, but I find the breach does warrant any orders.

JURISDICTION AND PROCEDURE

7. These are the formal written reasons of the 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. Under section 123 of the CRTA and the CRT rules, 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

10. The issues in this dispute are:
 - a. Did the strata contravene the SPA or its bylaws when it paid for the lighting project from the operating fund, and was the expense approved by the owners?
 - b. Did the strata contravene the SPA or its bylaws in how it recorded the \$6,610 lighting installation expense?
 - c. What remedies are appropriate, if any?

BACKGROUND, EVIDENCE AND ANALYSIS

11. As applicant in a civil proceeding such as this, Mr. Baker must prove his claims on a balance of probabilities, meaning more likely than not. I have considered all the submissions and evidence provided by the parties, but refer only to information I find relevant to explain my decision.
12. The strata plan shows the strata was created in June 1993 under the *Condominium Act* (CA). It continues to exist under the SPA and includes 52 residential townhouse-style strata lots in several buildings.
13. The strata filed bylaw amendments with the Land Title Office (LTO) on February 22, 2002 that repealed all Part 5 CA bylaws and the Standard Bylaws under the SPA, but kept certain previously filed bylaws, such as for rental restrictions. The February 2002 amendments consist of a consolidated version of the strata's bylaws. I find these bylaws are applicable to this dispute. The only relevant bylaw here is bylaw 26, which deals with spending restrictions. I discuss bylaw 26 in greater detail below. Subsequent bylaw amendments filed with the LTO after February 22, 2002 are not relevant. The amendment filed April 6, 2022 would not apply in any event because it was filed after the Dispute Notice was issued.

Did the strata contravene the SPA or its bylaws when it paid for the lighting project from the operating fund, and was the expense approved by the owners?

14. For the reasons that follow, I agree with Mr. Baker that the strata contravened the SPA, specifically sections 97 and 98. I also find the strata contravened parts of bylaw 26.
15. SPA section 92 requires a strata corporation to establish an operating fund to pay for common expenses that “usually occur either once a year or more often than once a year”. It also requires the strata to establish a CRF to pay for common expenses that “usually occur less often than once per year or that do not usually occur”.

16. The relevant parts of section 97 say a strata corporation must not spend money from its operating fund unless the expenditure is consistent with the purpose of the fund as set out in section 92, **and**
 - a. first approved by passing a $\frac{3}{4}$ vote,
 - b. authorized in the budget, or
 - c. authorized under section 98.
17. SPA section 98 addresses unapproved expenses. In essence, section 98 allows unapproved expenditures from the operating fund in the lesser amount of \$2,000 or 5% of the total contribution to the operating fund, unless a greater amount is set out in the bylaws. The amount applies to the total unapproved expenses for the fiscal year, but does not apply to emergency-type expenses as defined in the section.
18. Bylaw 26 includes provisions that mirror SPA section 98 and sets a maximum limit for unapproved expenses of \$2,500 per fiscal year. It also requires the strata to inform the owners as soon as feasible of any unapproved expense greater than \$1,500.
19. The strata argues the lighting project was a general repair and maintenance expense to address failing light fixtures. It does not consider the light replacement to be a “special project, or beautification”. However, that is not the test to determine whether an expense can be paid from the operating fund. As mentioned, except for unapproved expenses, an expense may only be made from the operating fund if it is consistent with the purposes of the fund. In other words, if the expense usually occurs once a year or more often than once a year, it is a valid operating expense.
20. I find replacement of 156 light fixtures was likely not an annual expense. I also find the expense was not an emergency-type expense as set out in section 98. I say this because there is no evidence to suggest there were reasonable grounds to believe an immediate expenditure was necessary to ensure safety or prevent significant loss or damage, which is what section 98 requires for an emergency-type expense.
21. I find the lighting project expenses were more likely to occur less often than once per year and are therefore special levy or CRF expenses, as the strata later admits in its

submissions. In any event, I find the approval of the expenses as part of the budgeted operating expenses was a violation of SPA sections 97 and 98.

22. I turn now to Mr. Baker's argument that the strata owners were not properly notified of the lighting project expense. I disagree with this argument. The August 2020 strata council meeting minutes discuss the lighting project and note a preliminary estimated expense of between \$10,000 and \$15,000. The minutes state the upcoming 2021 budget would include a lighting project expense. I understand the minutes are distributed to the owners. This meeting was held prior to the December 1, 2020 annual general meeting (AGM), at which the proposed budget was approved. Although the AGM minutes do not include any detailed discussion about the proposed budget, they do show a "virtual townhall meeting" to discuss the proposed budget was held on November 25, 2020. The strata also provided a "budget worksheet" that indicates the approximate \$17,610 total lighting project cost was included in the proposed budget. In comparing the proposed budget and worksheet to the approved budget, I find the approved budget includes the total lighting cost.
23. Based on the overall evidence and submissions, I find it likely that the November 25, 2020 townhall meeting included discussion on the lighting project as an expense from the operating fund. On this basis, I find the owners were informed of the proposed expense before they approved the budget, and had at least 2 opportunities to ask questions about what was included in the budget before they voted. All 8 owners who attended the AGM approved the budget. Therefore, even though the lighting expense was improperly approved as an operating expense, I find the owners knew they were voting to approve the full lighting expense at the AGM.
24. As a result, I find the strata contravened SPA sections 97 and 98 as well as bylaw 26. I discuss an appropriate remedy below.
25. I decline to address Mr. Baker's request for the CRT's direction on unapproved expenditures as I find this is request for legal advice, which is something the CRT cannot provide.

Did the strata contravene the SPA or its bylaws in how it recorded the \$6,610 lighting installation expense?

26. As discussed earlier, the strata did not initially record the \$6,610 installation expense in its September 2021 year end financial statements. According to the strata, this is because the invoice was not received until later in October 2021, even though it is undisputed the work was completed before the fiscal year end. The strata says it operates on a cash basis accounting system, where expenses are posted to the month they are paid. This is different to an accrual system, which is what Mr. Baker says is the accepted accounting system for strata corporations. In an accrual system, I understand expenses are posted to the month and year when the work was completed.
27. However, I find there is no specific accounting method required under either the SPA or the bylaws, Therefore I find the strata has discretion to determine which accounting method it wishes to use. In this case, I find it followed the recommendations of its strata manager. Therefore, I conclude the strata did not contravene the SPA or its bylaws. However, that is not the end of the matter.
28. My review of the correspondence between the strata and its strata management company indicates the strata does not use a cash or accrual accounting system. In an email dated December 19, 2022 from a Senior Director of Strata Operations of the management company, the director essentially said the strata uses a modified accrual system. Specifically, for monthly financial statements no accruals are typically made, but for year-end statements accruals are made up until the year-end statements are produced, which for September 2021 was on October 19, 2021. The director explained the lighting installation invoice not accrued because it was received on October 21, 2021, after the statements were finalized. I accept the director's explanation about how the strata accounted for the lighting invoice as it is in line with the balance of the documentary evidence.
29. As a result of Mr. Baker's concerns, the strata put him in direct contact with its management company. Correspondence between Mr. Baker and the management company's accounting staff resulted in the strata manager making a prior year

adjusting entry to move the \$6,610 installation expense from the 2022 fiscal to the 2021 fiscal year, apparently without the strata's permission. Mr. Baker agrees the prior period adjusting entry puts the expense in the correct fiscal year. However, he expects there is "a requirement" for the strata to inform the owners of the change to an approved set of financials. Mr. Baker's expectation is incorrect because there is no requirement for the strata or its owners to approve financial statements. There is a requirement that financial statements be included in AGM notice packages, but the owners are not required to vote on, or otherwise approve the statements.

30. I understand that Mr. Baker also claims the prior year adjusting entry increased the operating deficit, which is why he claims the CRF transfer approved at the September 2021 AGM to cover the operating deficit must be increased by the amount of the adjusting entry, which was \$6,610. I do not agree with this argument.
31. While I agree the prior year posting of the invoice created a larger deficit, SPA section 105(2) allows for operating deficits to be recaptured within 1 year. The evidence shows the strata had an operating surplus at its 2021 fiscal year, even after the increased September 2021 operating deficit resulting from the prior year posting of the lighting installation invoice.
32. For these reasons, I find the strata did not contravene the SPA or its bylaws in how it recorded the \$6,610 lighting installation expense. I dismiss Mr. Baker's claim that further approval is needed to correct the 2021 operating deficit, and specifically that approval for an additional CRF expense is required.

What is an appropriate remedy, if any?

33. In summary, I have found the strata contravened SPA sections 97 and 98 and bylaw 26 by approving an expense from the operating fund that should have been approved from the CRF or by special levy. I have also found the owners approved the expense on the strata's recommendation not realizing it was contrary to the SPA and bylaws. However, the expense occurred over 1½ years ago and any harm that may have been done to the strata's operation appears to be trivial.

34. Further, the money has been spent and I find an attempt to correct the improper expense could potentially create more harm than good. For example, if I order the strata to consider a $\frac{3}{4}$ vote resolution to approve the lighting project expense other than by an operating expense and the proposed resolution failed, that would leave the strata in a worse position than it is in now. Therefore, I find it appropriate to make no order to correct the breach of the SPA and bylaw in these circumstances. I trust the reasons in this decision will be sufficient for the strata to properly follow the SPA in future in similar circumstances.

CRT FEES, EXPENSES AND INTEREST

35. 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. Success was mixed in this dispute. Even though I made no order for the strata's breach of SPA sections 97 and 98 and its partial breach of bylaw 26, I find Mr. Baker was successful in his claim. However, he was not successful in his claim about how the strata accounted for the lighting installation expense. Therefore, I order the strata to reimburse Mr. Baker one-half of the \$225.00 CRT fees he paid, or \$112.50. The strata did not pay CRT fees.

36. The strata did not claim dispute-related expenses. Mr. Baker claimed \$13.00 for the of sending the Dispute Notice to the strata by registered mail. However, he did not provide proof of his expenses, such as receipt, so I make no order for dispute-related expenses.

37. Under section 189.4 of the SPA, the strata may not charge any dispute-related expenses against Mr. Baker.

ORDERS

38. I order the strata, within 15 days of the date of this decision, to reimburse Mr. Baker \$112.50 for CRT fees.

39. Mr. Baker's remaining claims are dismissed.

40. Mr. Baker is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.
41. 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.

J. Garth Cambrey, Vice Chair