



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Laderoute v. The Owners, Strata Plan NW 2689*, 2023 BCCRT 705

B E T W E E N :

LARA LADEROUTE

APPLICANT

A N D :

The Owners, Strata Plan NW 2689

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This dispute is about a special levy to replace windows and patio doors. The applicant, Lara Laderoute, owns strata lot 9 (SL9) in the respondent strata corporation, The Owners, Strata Plan NW 2689 (strata).

2. In August 2012, Ms. Laderoute replaced SL9's windows and patio door at their own expense. Around the same time, the owners of 2 other strata lots did the same (together, the 2012 replacement). At the strata's May 2022 annual general meeting (AGM), the owners passed a $\frac{3}{4}$ vote resolution to replace all windows and patio doors on the strata property, including those attached to SL9 and the other 2 strata lots included in the 2012 replacement (the 2022 replacement). The project was funded by a \$185,000 special levy, and each strata lot's contribution was calculated based on unit entitlement. SL9's portion of the special levy was \$16,757.25.
3. In June 2022 the strata signed a contract with Centra Windows (Centra) for the 2022 replacement. In February 2023, Ms. Laderoute paid the strata SL9's \$16,757.25 portion of the special levy. At the time of the parties' submissions, SL9's new windows and patio door had not yet been installed.
4. Ms. Laderoute says the strata failed to notify them of the May 2022 AGM, so they could not attend the meeting to raise their concerns about the special levy. They say that since the strata granted them and the 2 other strata lot owners permission for the 2012 replacement, they should not have to pay for the 2022 replacement. Ms. Laderoute says the strata treated them and the other 2 owners unfairly by requiring them to pay for the special levy based on unit entitlement, or at all. Ms. Laderoute wants the strata to exclude them and the other 2 owners from the special levy, and to reimburse Ms. Laderoute \$17,000 for SL9's special levy payment. Ms. Laderoute did not explain the discrepancy between SL9's \$16,757.25 special levy payment and the \$17,000 claimed.
5. The strata denies that it has treated Ms. Laderoute unfairly. It says it gave Ms. Laderoute proper notice of the AGM. It also says that the owners passed the 2022 replacement resolution as required by sections 108(2)(a) and 99 of the *Strata Property Act* (SPA), so it does not have the authority to exempt Ms. Laderoute or the other 2 owners from contributing to the special levy. The strata also says it was reasonable to replace all the windows and doors on the strata property, including those installed in 2012. The strata says it does not owe Ms. Laderoute anything.

6. Ms. Laderoute is self-represented in this dispute. The strata is represented by a strata council member.

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.
11. Ms. Laderoute claims the strata's actions are significantly unfair to them and to the 2 other owners who replaced their strata lots' windows and patios doors in 2012. I find it would be procedurally unfair to address any claims of significant unfairness related to the other 2 owners who are not parties to this dispute, so I decline to do so. In this decision I only consider the strata's actions towards Ms. Laderoute.

12. In their reply submissions Ms. Laderoute says the strata treated them unfairly by putting a lien on SL9 when Ms. Laderoute first refused to pay SL9's portion of the special levy. They say another owner also refused to pay their strata lot's portion of the special levy, but the strata showed that owner favouritism by not putting a lien on their strata lot. Ms. Laderoute also says the 2021 AGM minutes are insufficiently detailed, the strata failed to distribute the 2022 AGM minutes within 2 weeks of the meeting, the strata failed to obtain sufficient quotes for the 2022 replacement, and the strata had a conflict of interest with one of the companies from which it obtained a quote. However, Ms. Laderoute did not include any of these allegations in their Dispute Notice, and they did not claim any related remedies. Since they first raised these allegations in their reply submissions, the strata did not have an opportunity to respond to them. I find these allegations are not properly before me, and I decline to address them in this decision.

13. Ms. Laderoute submitted some late evidence. The strata says the CRT should not allow the late evidence, but the strata was given the opportunity to review it and made submissions about it. Given the CRT's flexible mandate, I accept Ms. Laderoute's late evidence, and I have considered it and the strata's additional submissions in my decision.

ISSUES

14. The issues in this dispute are:

- a. Did the strata give Ms. Laderoute proper notice of the May 2022 AGM?
- b. Was it significantly unfair for Ms. Laderoute to contribute to the 2022 replacement special levy based on unit entitlement, or at all?

EVIDENCE AND ANALYSIS

15. In a civil proceeding like this one, as the applicant Ms. Laderoute must prove their claims on a balance of probabilities (meaning more likely than not). I have read all the parties' evidence and submissions but refer only to what I find relevant to

provide context for my decision. For the following reasons, I dismiss Ms. Laderoute's claims.

16. The strata was created in 1987 under the *Condominium Act* and continues to exist under the SPA. It is a residential strata with 12 strata lots in a single 3-storey building.

17. In 2009 the strata filed a set of bylaws with the Land Title Office (LTO). Given the wording of those bylaws I find they were meant to add to, and not replace, the Standard Bylaws under the SPA. The strata has filed various bylaw amendments with the LTO over the years which I find are not relevant to this dispute.

18. Though the parties do not raise it in their submissions, based on the strata plan, I find the windows and patio doors on the strata property, including those attached to SL9, are common property. Section 68(1) of the SPA says the boundary of a strata lot is the midway point in the walls between the strata lot and the common property. The strata plan shows the windows and patio doors on the strata property are all on exterior walls facing common property. The windows and patio doors exist on both sides of the strata lots' midpoint boundaries, but I find it would be unreasonable and illogical to find the windows are part of both the common property and the strata lot.

19. Under section 72 of the SPA the strata is required to repair and maintain common property. Standard Bylaw 8 requires the strata to repair and maintain exterior windows and doors no matter how often such repair and maintenance ordinarily occurs. So, I find the strata property's windows and patio doors, including those attached to SL9, fall under the strata's section 72 repair and maintenance obligations.

Did the strata give Ms. Laderoute proper notice of the AGM?

20. Ms. Laderoute says they never received notice of the May 2022 AGM, so they were unable to attend the AGM and raise their objections to the special levy. The

strata says it sent all owners the AGM package by mail and emailed it to those owners who had signed up for that service.

21. Section 45(1) of the SPA requires the strata to give owners at least 2 weeks' written notice of an AGM. Section 61 of the SPA sets out the ways in which a strata may properly notify an owner of an AGM, including by mailing it to an owner at the strata lot's address, and by emailing it to an email address provided by an owner for the purpose of receiving such notices. Under section 61(3), a mailed notice is conclusively deemed to have been given 4 days after it is mailed.
22. The minutes from the May 24, 2022 AGM state that the strata manager mailed the AGM notice to all owners at least 20 days before the AGM. The strata also submitted its strata manager's "Daily Mailing & Charge Back Records" for May 2022. This document shows that on May 2, 2022, the strata manager mailed the AGM notice to all owners. I find this timing complies with the requirements of sections 45 and 61 of the SPA because it allowed 4 days for deemed delivery and at least 2 weeks notice of the meeting once the mail was deemed to have been delivered.
23. Ms. Laderoute says this is "simply a spreadsheet" and does not prove that they received the notice. However, given the nature of regular mail, I find the strata would not have received documentary proof of delivery. In any event, given the deemed mail delivery provision in section 61(3) of the SPA, I find the strata was not required to ensure Ms. Laderoute received the mailed AGM notice. Ms. Laderoute says the strata purposely did not send them the AGM notice because it "didn't want to deal" with them, but I find there is no evidence to support this allegation. I find the AGM minutes and the spreadsheet are consistent with the strata's position. I also note the AGM notice is dated April 29, 2022, and I find this is consistent with the strata manager mailing it to owners on May 2, 2022. The AGM minutes show that 5 owners attended the AGM based on the notice the strata provided. On balance, I am satisfied that the strata mailed the AGM notice to Ms. Laderoute in accordance with sections 45 and 61 of the SPA.

24. The strata says it also emailed owners who had signed up for that service about the May 2022 AGM. It is unclear whether Ms. Laderoute provided the strata with an email address for the purposes of receiving such notices, and there is no evidence that the strata emailed Ms. Laderoute about the AGM. However, having found the strata property mailed the AGM notice to Ms. Laderoute, I find that nothing turns on whether the strata also emailed Ms. Laderoute about the AGM.
25. I find Ms. Laderoute has failed to prove that the strata did not give them proper notice of the May 2022 AGM.

Was it significantly unfair for Ms. Laderoute to contribute to the 2022 replacement special levy based on unit entitlement, or at all?

26. Ms. Laderoute says that since the strata granted them permission for the 2012 replacement, the strata treated them unfairly by requiring them to contribute to the 2022 replacement special levy based on unit entitlement, or at all.
27. The strata says it has no record of granting Ms. Laderoute permission for the 2012 replacement, but that if such permission was granted, it was contrary to section 72 of the SPA and Standard Bylaws 2 and 8. The strata says that since all owners present at the May 2022 AGM voted in favour of the 2022 replacement resolution, it does not have the authority to exempt Ms. Laderoute from paying SL9's portion of the special levy based on unit entitlement.
28. Under section 123(2) of the CRTA, the CRT has authority to make orders remedying a strata's significantly unfair act or decision. This provision uses similar language to section 164 of the SPA, which allows the BC Supreme Court to make orders remedying a strata's significantly unfair acts or decisions. In *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113, the court confirmed that the legal test for significant unfairness is the same for CRT disputes and court actions.
29. In *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173, the court confirmed that significantly unfair actions are those that are burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust, or inequitable. The use of the word "significant" means that the impugned conduct must go

beyond mere prejudice or trifling unfairness. When applying this test for significant unfairness, an owner's objectively reasonable expectations are a relevant factor, but are not determinative.

30. In rare circumstances, dividing common expenses by unit entitlement may be significantly unfair (see *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 243 and *Brown v. The Owners, Strata Plan VR 42, VR 64, VR 153*, 2022 BCSC 812). However, I find the exceptional circumstances in these cases are not present here. For the following reasons, I find Ms. Laderoute has failed to establish that the strata treated them significantly unfairly by requiring SL9 to contribute to the special levy based on unit entitlement.

31. First, I address whether the strata granted Ms. Laderoute permission for the 2012 replacement. Ms. Laderoute submitted a July 18, 2012 letter from the strata granting them permission "for window replacement at her own cost and liability". Ms. Laderoute also submitted minutes from a July 10 special general meeting (SGM). There is no year stated on the minutes, but based on the context, I find the minutes are from 2012. The minutes state that Ms. Laderoute was "paying herself to have all her aluminum windows replaced by vinyl by Centra, pending guarantee that there will be no damage or effect to the exterior of the building." Ms. Laderoute also submitted a July 10, 2012 email from Centra stating that it would ensure it installed the windows properly and would leave no damage to the exterior of the building.

32. The strata says it does not have these documents in its records and the July 18, 2012 letter is unsigned. However, the strata does not allege that these documents are fraudulent or that Ms. Laderoute altered them in any way. I find the balance of the evidence shows that the strata did in fact grant Ms. Laderoute permission for the 2012 replacement.

33. The strata also says that even if the 2012 strata council granted Ms. Laderoute permission for the 2012 replacement, such permission was contrary to section 72 of SPA and Standard Bylaws 2 and 8. However, Standard Bylaw 6 explicitly

permits the strata to allow an owner to alter common property, which I find includes replacing the windows and patio doors attached to their strata lot. I find the strata has failed to establish there was anything improper about the 2012 replacement.

34. However, I find it was not reasonable for Ms. Laderoute to expect to be exempt from contributing to the special levy based on the 2012 replacement. The minutes from the July 10, 2012 SGM indicate that another owner asked whether Ms. Laderoute would be exempt if there were future assessments relating to window replacement. The minutes state, "Although we are unable to guarantee that this would be the case, it would be possible for the owners at that time to vote to discount her assessment considering her previous expenditure." The strata says Ms. Laderoute knew or should have known in 2012 that they were not guaranteed an exemption for future window and patio door costs. I agree. Ms. Laderoute does not address this in their submissions, but I find the SGM minutes make it clear that Ms. Laderoute was not guaranteed an exemption from future expenses related to SL9's windows.

35. As noted above, Ms. Laderoute's reasonable expectations are but one of several factors to consider in determining whether the strata treated them significantly unfairly. So, I turn next to the strata's responsibility to repair and maintain common property under section 72 of the SPA, which as explained above, includes all windows and patio doors on the strata property. It is well established that a strata is required to act reasonably in exercising this responsibility.

36. The strata says, and I find the evidence shows, that the owners discussed replacing the windows and patio doors at both the 2020 and 2021 AGMs, but they wanted more time to save money for the project and to obtain more estimates. The 2020 AGM minutes indicate that there was some discussion at that meeting about 3 owners, including Ms. Laderoute, who had independently replaced their windows and patio doors in 2012. The strata says it considered limiting the window and patio door replacement project to the other 9 strata lots. I find the evidence supports this. Both the June 15, 2021 and May 11, 2022 proposals from Centra included pricing for the project based on all 12 strata lots as well as alternative pricing for

limiting the project to 9 strata lots. The strata says it ultimately decided to propose replacing the windows and patio doors on all 12 strata lots at the May 2022 AGM for several reasons.

37. First, the strata says Ms. Laderoute and the 2 other owners who independently replaced their strata lots' windows and patio doors in 2012 did not replace the window frames, which are over 30 years old, nor did they update the building envelope. The strata says Centra only offered full window and frame replacement, and this satisfied its mandate to update the building envelope. Ms. Laderoute does not dispute this.

38. Second, the strata says the independently replaced windows in the 3 strata lots do not match the rest of the building, or each other, and that some of them are visibly crooked. It submitted a photo of the building's exterior which I find shows that SL9's windows are visibly distinct from other windows on the strata property. Ms. Laderoute also does not dispute this.

39. Third, the strata says it would be beneficial to have all windows and patio doors on the same maintenance schedule moving forward and allow the strata to take full responsibility for any future building envelope issues. The strata submitted an undated letter from Centra which states that after conversations with the strata council and a site inspection in 2021, it recommended "new construction installation" on all windows, except for 4 windows above glass awnings directly above the entrances to 8 strata lots. The letter states, "The decision to replace the 10 year old retrofit windows was based solely on the benefits of a consistent look and renewed warranty the entire building" (reproduced as written). Again, Ms. Laderoute does not dispute this.

40. Fourth, the strata says that even if it had opted to replace the windows and patio doors in only 9 strata lots, the 3 owners who independently replaced their windows and patio doors in 2012, including Ms. Laderoute, would still have been required to pay approximately \$14,000 towards the special levy. This is because under the SPA the division of a special levy is based on unit entitlement subject only to a

unanimous vote otherwise. Since only 5 owners were present at the May 2022 AGM, they could not have exempted Ms. Laderoute from contributing to the special levy, even if it was not intended to replace SL9's window or patio doors.

41. Overall, I am satisfied that the strata considered the 2012 replacement in deciding how to proceed with the 2022 replacement project. I find the strata's decision to propose the 2022 replacement for all strata lots based on unit entitlement was reasonable in the circumstances.

42. Ms. Laderoute says Centra's project manager told them Centra could have given them a discount on the 2022 replacement project, since Centra had done the 2012 replacement and Ms. Laderoute was considered an existing customer. Ms. Laderoute says the strata failed to inform them of this discount. However, based on the evidence before me, I find it is not clear that Centra offered Ms. Laderoute a discount, or if they did, how such a discount would have been applied given the wording of the window replacement resolution and the calculation of the special levy.

43. It is undisputed that Ms. Laderoute will receive some benefit from having their 11-year-old windows and patio door replaced. Ms. Laderoute will undisputedly receive new window frames to replace the 30-year-old frames, as well as new windows and a patio door. An email from Centra in evidence confirms that the new windows will have better performance and waterproofing than SL9's existing ones. Ms. Laderoute does not dispute this.

44. Overall, I find Ms. Laderoute has failed to establish that the strata treated them significantly unfairly by requiring SL9 to pay the special levy fee based on unit entitlement. I dismiss this claim.

CRT FEES AND EXPENSES

45. 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. Since Ms. Laderoute was unsuccessful, I find they are not entitled to reimbursement of their CRT fees. Neither party claimed any dispute-related expenses.

46. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Laderoute.

ORDER

47. I dismiss Ms. Laderoute's claims and this dispute.

Sarah Orr, Tribunal Member