



# Civil Resolution Tribunal

Date Issued: December 11, 2023

File: ST-2022-008915

Type: Strata

Civil Resolution Tribunal

Indexed as: *Sato v. The Owners, Strata Plan BCS 3364*, 2023 BCCRT 1087

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

MICHAEL SATO

**APPLICANT**

**A N D :**

The Owners, Strata Plan BCS 3364

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This dispute is about strata governance and strata fees.
2. The applicant is Michael Sato. He is a former co-owner in the respondent strata corporation, The Owners, Strata Plan BCS 3364. Mr. Sato says the strata did not properly pass its budgets in 2020 and 2021, and so he says the strata fees in the

budgets were invalid. He says the invalid strata fees were excessive, and so he did not pay them. Mr. Sato says that when he sold his strata lot in 2022, the strata refused to provide a Form F unless he paid the allegedly outstanding strata fees. Mr. Sato seeks a \$2,560.84 refund of paid strata fees.

3. The strata denies Mr. Sato's allegation that its budgets were not properly passed. It says Mr. Sato had an opportunity to participate in the 2020 and 2021 annual general meetings (AGMs), but he chose not to do so. The strata says it had no choice but to issue the Form F during the sale of Mr. Sato's strata lot to recover the lost revenue from his refusal to pay strata fees.
4. Mr. Sato is self-represented. The strata is represented by a strata council member.

## **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). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
6. 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.

8. As noted, Mr. Sato is a former owner in the strata. Under section 189.1 of the *Strata Property Act* (SPA), an owner may request that the CRT resolve a dispute about any strata property matter within the CRT's jurisdiction. The CRT has previously found in numerous decisions that the reference to owners in SPA section 189.1 includes former owners, relying on *Downing v. Strata Plan VR2356*, 2019 BCSC 1745. I agree and find the CRT has jurisdiction to decide this dispute even though Mr. Sato is a former owner.

## **ISSUES**

9. The issues in this dispute are:
  - a. Did the strata properly pass its 2020 and 2021 budgets?
  - b. If not, what is the appropriate remedy?

## **BACKGROUND, EVIDENCE, AND ANALYSIS**

10. In a civil proceeding like this one, the applicant Mr. Sato must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read all of the parties' evidence and submissions, but I refer only to what I find is necessary to explain my decision.
11. The strata was created in 2009. The strata plan shows it consists of only 3 strata lots. The strata's bylaws are the standard bylaws in the SPA, as the strata has not filed any bylaw amendments in the Land Title Office (LTO).
12. Mr. Sato purchased strata lot 2 (SL2) in March 2020. The strata provided Mr. Sato with a February 12, 2020 Form B, which stated SL2's monthly strata fees were \$277 and that SL2's previous owners did not owe the strata any money.
13. Mr. Sato later sold SL2 in May 2022. An April 19, 2022 Form B stated that SL2's strata fees were \$282.33. It also stated that the current owner of SL2 (Mr. Sato) owed the strata \$2,645.54. The associated Form F (Certificate of Payment), also dated April 19, 2022, included a handwritten note showing a breakdown of the \$2,645.54 owing

as: \$1,016.22 owed by SL2, \$500 for estimated retaining wall repair, and \$1,129.32 for 2022 strata fees (\$282.33 x 4). More on this below. The strata does not dispute that Mr. Sato paid the \$2,645.54 when the sale of SL2 completed.

14. As noted, Mr. Sato seeks a \$2,560.84 refund of paid strata fees. He did not explain the difference between the claimed amount and the \$2,645.54 he paid the strata, though nothing turns on the difference given my findings below. Mr. Sato argues that the owners did not properly vote on or approve the 2020 and 2021 budgets, and so the strata fees were invalid. I infer it is his position that he was not obligated to pay any strata fees as a result.

***Did the strata properly pass its 2020 and 2021 budgets?***

**2020 Budget**

15. The strata held an AGM on February 27, 2020 (2020 AGM). The minutes from the 2020 AGM are titled “Annual General Meeting 2018, 2019, 2020”. It appears that the strata did not hold an AGM in 2018 or 2019. I note that section 40 of the SPA requires a strata corporation to hold an AGM unless it has complied with specific requirements set out in SPA section 41. There is no evidence before me about whether the strata met those requirements. However, Mr. Sato has not raised the strata’s failure to properly hold AGMs in 2018 and 2019 in this dispute, so I do not need to consider that issue further.
16. In any event, the minutes from the 2020 AGM state that the 2 owners of strata lot 3 (SL3), GJ and DJ, were present at the meeting. However, the owners of strata lot 1 (SL1) and SL2 were not. As noted, Mr. Sato’s purchase of SL2 did not complete until March 2020, but his offer to purchase SL2 had been accepted, and so he attended the AGM as an observer.
17. RL was also present at the 2020 AGM as an observer. The strata provided a November 13, 2019 letter from SL2’s previous owners, confirming that RL (their realtor) would attend strata meetings as an observer until one of the following

occurred: 1) RL was no longer able to attend, 2) SL2's previous owners withdrew the appointment in writing, or 3) SL2's new owners were elected to the strata council.

18. The 2020 AGM minutes state that a quorum for the meeting was achieved. Section 48(2) of the SPA says that quorum for an AGM of a strata with fewer than 4 strata lots is eligible voters holding 2/3 of the strata's votes, present in person or by proxy. That means that owners from at least 2 of the 3 strata lots had to attend the 2020 AGM to achieve quorum.
19. The strata says it achieved quorum using the "proxy vote" that SL2's previous owners provided in their November 13, 2019 letter. However, I find that the letter was insufficient to appoint RL as SL2's proxy. Section 56(4) of the SPA says a proxy stands in the place of the person appointing the proxy, and can do anything that person can do, including vote, propose and second motions, and participate in the discussion, unless specifically limited in the documents appointing the proxy. The November 13, 2019 letter does not say that RL was appointed as SL2's proxy. It also says that RL will attend meetings only as an observer. So, I find the strata was not entitled to rely on that letter to achieve quorum or permit RL to vote at the 2020 AGM on SL2's behalf.
20. I also note that Mr. Sato provided a February 27, 2020 email from SL1's owner (BE) to GJ, which stated BE wanted to attend all AGMs, but that GJ had not provided adequate notice of the 2020 AGM set for that evening. BE also noted the strata had only distributed the proposed budget that morning. Section 45 of the SPA says that the strata must give every owner at least 2 weeks' written notice of an AGM, and the notice must include the budget accompanied by a financial statement. Given BE's February 27, 2020 email, I find the strata likely did not provide proper notice of the AGM to every owner, in breach of the SPA.
21. Given the strata failed to comply with the SPA by providing inadequate notice of the 2020 AGM and not achieving quorum for that meeting, I find the AGM and the votes held at it were invalid. That includes the vote purporting to pass the 2020 budget.

22. Notably, I also find there were numerous SPA compliance issues with the budget itself. First, as with the 2020 AGM minutes, the budget was titled “2018, 2019, 2020 Budget”. So, I infer that the strata did not prepare any budgets in 2018 and 2019. SPA section 103(1) requires a strata to prepare a budget for the coming fiscal year for approval by a majority vote resolution at each AGM. In other words, the strata must prepare a budget each year. I find it failed to do so.
23. Next, there is no evidence before me that the strata prepared a financial statement to accompany the 2020 budget, as required under SPA section 103(2). As the budget included expenses allegedly paid in 2018 and 2019, it is possible the strata intended the 2020 budget to also serve as a financial statement. However, even if that was the case, I find it did not comply with the SPA. Section 103(3) of the SPA says the budget and accompanying financial statement must contain the information required by the *Strata Property Regulation* (Regulation). The 2020 budget did not set out the opening balances of the operating fund and contingency reserve fund (CRF), nor did it set out whether any of the stated 2018 and 2019 expenses were paid out of the operating fund or the CRT, as required for financial statements under section 6.7 of the Regulation. So, I find the budget was non-compliant as a financial statement.
24. Further, the budget did not include each strata lot’s monthly contribution to the operating fund and contingency reserve fund for the 2020 fiscal year, as required under section 6.6 of the Regulation. It stated only that each strata lot owed an estimated \$7,890.38, but it did not say exactly what that amount was based on or how that amount was to be paid. It appears that it included amounts owing from the previous 2 years as well as the coming fiscal year. So, even if the strata had followed the proper procedure at the 2020 AGM to pass the budget, I would have found the 2020 budget invalid in any event for failing to comply with the SPA.
25. Given my findings that the 2020 AGM and budget were invalid, I find the owners did not approve any strata fees for 2020. I address the appropriate remedy below, but first I turn to the 2021 AGM and budget.

### 2021 Budget

26. In a March 16, 2021 email, GJ provided a draft 2021 AGM agenda and budget to SL1 and SL2. The scheduled date for the 2021 AGM is not before me. SL1's owner responded by email that they did not approve the draft budget, though they did not explain why. Mr. Sato responded by email with several suggestions to amend the draft agenda, but there is no evidence he commented on the draft budget.
27. Neither party explained what occurred after that. Nevertheless, I find the strata likely did not hold a 2021 AGM. I say this because Mr. Sato stated in a January 22, 2022 email to GJ, that there was no AGM in 2021 and that "none of us agreed on the draft budget". I note that, again, there is no evidence the strata prepared a financial statement to accompany the draft 2021 budget. There are also no minutes from a 2021 AGM before me. Overall, I am satisfied that the 2021 budget was not approved by a majority vote, and so I find it was invalid.
28. I note that it appears the strata may have decided not to hold a 2021 AGM or vote on the proposed budget because it did not believe it was necessary to do so. In an April 17, 2022 email, GJ advised Mr. Sato that because SL3 was the only strata lot that had paid strata fees, they were the only one who could vote at the 2022 AGM. GJ also stated that because Mr. Sato had declined any officer position on council, the strata was entitled to continue using the proxy vote provided by SL2's prior owners to achieve a majority vote on the budget.
29. While this email referred to the 2022 AGM, I find from the context that GJ likely held this same view about the 2021 AGM and budget vote. That is, I find the strata likely considered the 2021 budget was valid and had been approved using GJ's vote and the so-called proxy vote.
30. While not specifically argued, I find the strata likely took the position that Mr. Sato was not entitled to vote based on one of the motions purportedly passed at the 2020 AGM. It said that any owner who does not pay strata fees within a month will be prohibited from being a strata council member or voting on resolutions requiring a  $\frac{3}{4}$

vote at a general meeting. As noted above, I have found the 2020 AGM and all motions passed at it were invalid.

31. Further, SPA section 53(2) says a strata corporation may make a bylaw preventing an owner from voting at an AGM or special general meeting, if the strata is entitled to register a lien against their strata lot under section 116(1). In other words, the strata must have a bylaw that permits it to prevent owners from voting at general meetings for failing to pay strata fees. There is no such bylaw in the standard bylaws, and the strata has not filed any bylaw amendments. To pass a valid bylaw amendment, the strata must comply with section 128 of the SPA. That section requires a proposed amendment to be approved by a resolution passed by a  $\frac{3}{4}$  vote, and then filed in the LTO before it has any effect. So, I find the motion the strata attempted to pass at the 2020 AGM would have been insufficient to prevent Mr. Sato from exercising his right to vote at subsequent general meetings in any event.
32. As I agree with Mr. Sato and find that the strata did not validly pass the 2020 and 2021 budgets, I turn to the appropriate remedy.

### ***Remedy***

33. It appears on the evidence before me that Mr. Sato did not pay any monthly strata fees while he owned SL2. There is no evidence that Mr. Sato took the position at the time that the budgets were invalid, and so he did not have to pay any strata fees. Rather, it appears he simply thought the strata fees being charged were excessive because GJ had not shown that the strata incurred the various expenses contained in the budgets.
34. It is undisputed that the strata is responsible for managing and maintaining the common property. SPA section 92 says that to meet its responsibility for common expenses, the owners must contribute to both an operating fund and a CRF by means of strata fees. Similarly, section 99 of the SPA says that owners “must contribute” to the strata by way of payment of strata fees based on their strata lot’s share. I find these provisions are mandatory, and not discretionary. I also find there is no provision in the SPA to exempt an owner from paying strata fees.



35. So, I find that Mr. Sato was obligated under the SPA to pay something for strata fees. The question is how much?
36. The strata says that based on both the 2020 and 2021 budgets, each strata lot owed \$282.33 per month. This was the monthly fee the strata undisputedly used to calculate the amount Mr. Sato owed. However, I have found those budgets invalid and unenforceable.
37. Under section 104(2) of the SPA, if a fiscal year to which a budget relates ends before a new budget is approved, the owners must continue to pay the same monthly strata fees that they were required to pay under the previous budget, until the new budget is approved. I find this section applies here, and that the owners were required to pay the monthly strata fees from the last approved budget until a new valid budget was passed.
38. Part of the difficulty is that there are no budgets or financial statements before me that pre-date the proposed 2020 budget. I accept Mr. Sato's evidence that he never received any prior budgets or financial statements from the strata, despite his requests for them. The strata says only that \$282.33 is a "reasonable contribution" to maintain common property and provide for future contingencies. It provided no other supporting evidence of its actual operating expenses, or the strata fees charged before 2020. I note that the 2020 budget stated the strata did not collect any strata fees in 2018 or 2019 from any of the 3 strata lots. The strata provided no explanation for this other than an existing conflict and ongoing legal proceedings with the owners of SL1, which I infer distracted the strata from its governance obligations.
39. So, the only evidence before me about prior strata fees is the February 12, 2020 Form B the strata provided to Mr. Sato, stating that SL2's monthly strata fees were \$277. In the absence of any other evidence, I find the last approved budget before 2020 likely provided for monthly strata fees of \$277. Therefore, that is what I find Mr. Sato was obligated to pay while he owned SL2.
40. As set out above, the strata broke down the \$2,645.54 Mr. Sato paid in strata fees as follows:

- a. \$1,016.22 owed by SL2,
  - b. \$500 for estimated retaining wall repair, and
  - c. \$1,129.32 for 2022 strata fees (\$282.33 x 4).
41. I find the \$1,016.22 amount was what the strata said Mr. Sato owed for 2020 strata fees. The 2021 budget shows this amount was calculated based on strata fees of \$282.33 per month for the 9 months and 14 days that Mr. Sato owned SL2 in 2020 (\$2,672.72), less a \$1,656.50 credit because Mr. Sato paid for half of SL1's contribution to the strata's 2021 insurance policy.
42. As I have found Mr. Sato was only obligated to pay \$277 per month, I find he owed \$2,622.27 for 9 months and 14 days in 2020. Accounting for the \$1,656.50 credit, I find the strata owes him a \$50.45 refund. Similarly, for the 2022 strata fees charged, I find Mr. Sato was only obligated to pay \$1,108, and so the strata must refund him \$21.32 for 2022 fees.
43. There is no evidence the strata charged Mr. Sato for strata fees in 2021, and Mr. Sato did not claim any refund for paid 2021 fees. As neither party raised it, I decline to address whether Mr. Sato owes 2021 strata fees, or if the strata owes any refund.
44. The parties also did not explain or provide any evidence about the \$500 estimate for a retaining wall repair. I find a retaining wall repair is likely a common expense that usually occurs less often than once a year or that does not usually occur. Therefore, the strata was required to obtain the owners' approval to either pay the expense out of the CRF under SPA section 96 or by special levy under SPA section 108. There is no indication that the owners voted to approve this alleged expense before Mr. Sato sold SL2, and I find they likely did not do so, given the strata's position on Mr. Sato's and SL1's eligibility to vote on resolutions.
45. Overall, I find the strata likely considered the \$500 charge for a retaining wall repair to be a strata fee contribution Mr. Sato was obligated to pay. However, absent a valid special levy, I find Mr. Sato was not obligated to contribute more than his monthly \$277 strata fees. Therefore, I find the strata must refund Mr. Sato the \$500 charge.

46. In summary, I find the strata must refund Mr. Sato \$571.77.
47. Mr. Sato did not specifically request any other orders flowing from the invalid 2020 AGM and invalid 2020 and 2021 budgets. However, I find the strata's lack of compliance with the SPA relating to AGM procedures and preparing budgets and financial statements to be concerning. While it is a small strata and a strata council comprised of lay people is entitled to certain degree of latitude, compliance with the SPA is still required. I would strongly encourage the strata to consider joining a strata association, such as the Condominium Home Owner's Association, to assist it in operating the strata within the requirements of the SPA and its bylaws.

## **CRT FEES, EXPENSES, AND INTEREST**

48. 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 find that Mr. Sato was partially successful, and so I order the strata to reimburse him for half his paid CRT fees, which equals \$112.50.
49. The strata did not pay any fees and neither party claimed any dispute-related expenses.
50. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Sato is entitled to prejudgment interest on the \$571.77 from May 9, 2022, the date Mr. Sato's sale of SL2 completed, to the date of this decision. This equals \$30.61.

## **ORDERS**

51. Within 30 days of the date of this order, I order the strata to pay Mr. Sato a total of \$714.88, broken down as follows:
- a. \$571.77 in debt for a refund of improperly collected strata fees,
  - b. \$30.61 in pre-judgment interest under the COIA, and
  - c. \$112.50 for CRT fees.

52. Mr. Sato is also entitled to post-judgment interest under the COIA, as applicable.

53. 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.

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Kristin Gardner, Tribunal Member