



# Civil Resolution Tribunal

Date Issued: February 27, 2024

File: ST-2023-001284

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wang v. The Owners, Strata Plan EPS4792*, 2024 BCCRT 185

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

**FANG QI WANG**

**APPLICANT**

**A N D :**

**The Owners, Strata Plan EPS4792**

**RESPONDENT**

---

## **REASONS FOR DECISION**

---

Tribunal Member:

Kristin Gardner

## **INTRODUCTION**

1. Fang Qi Wang owns strata lot 150, known as unit 1902, in the strata corporation The Owners, Strata Plan EPS4792. Mr. Wang says the strata improperly charged him retroactive strata fees for the 3 months before he owned unit 1902. He also says that he should not be responsible for a special levy the owners approved to replenish an operating fund deficit incurred before he became an owner. Mr. Wang claims

\$1,528.88, which includes a \$474.12 refund for 3 months of retroactive strata fees and a \$1,054.76 refund of the special levy he paid.

2. The strata says that the owners approved resolutions for both a backdated strata fee adjustment and the special levy at an annual general meeting (AGM) that occurred after Mr. Wang was already an owner. So, the strata says that Mr. Wang was responsible for the approved amounts, and he is not entitled to any refund. The strata says this dispute should be dismissed.
3. Mr. Wang represents himself in this dispute. The strata is represented by a strata council member.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I have considered the potential benefits of an oral hearing. Here, I am properly able to assess and weigh the documentary evidence and submissions before me. So, any potential benefit of an oral hearing is outweighed by the CRT's mandate to provide proportional and speedy dispute resolution. I find that an oral hearing is not necessary in the interests of justice. I decided to hear this dispute through written submissions.
6. 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 inform itself in any other way it considers appropriate.

7. 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**

8. The issues in this dispute are:
  - a. Is Mr. Wang responsible for an adjustment to strata fees that were initially paid before he became an owner?
  - b. Is Mr. Wang responsible for a special levy to replenish an operating fund deficit incurred before Mr. Wang became an owner?

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, Mr. Wang as the applicant must prove his claims on a balance of probabilities (which means “more likely than not”). I have read all the parties’ evidence and submissions, but I refer only to what is necessary to explain my decision.

### ***Background***

10. The strata was created in 2019. It consists of 333 residential strata lots in a high-rise tower. The strata is part of a larger development, including 3 air space parcels (ASP): a commercial ASP consisting of retail units on the tower’s ground floor, a rental ASP on the tower’s third floor, and an artist studio ASP in a separate but connected low-rise building.
11. The strata’s bylaws are the Standard Bylaws under the *Strata Property Act* (SPA), plus amendments filed at the Land Title Office in 2019, 2020, and 2022. However, as the events giving rise to this dispute occurred before the strata filed the 2022

amendments, I find those amendments to not apply to this dispute. I discuss the relevant bylaws in my reasons below.

12. Mr. Wang provided his purchase agreement for unit 1902. It was dated November 15, 2021, and shows the sale completed on November 30, 2021, with a December 1, 2021 possession date. The agreement stated that unit 1902's monthly strata fees were \$293.35. It also included a term that the seller would pay any special levies assessed before the completion date, including any levies that were assessed but not due until after the completion date.
13. On May 13, 2022, the strata delivered notice to the owners that an AGM would be held electronically on June 2, 2022. The minutes from that 2022 AGM state the owners passed a majority vote resolution to approve the 2021-2022 operating budget as presented in the meeting notice. The budget included an increase to strata fees. The AGM minutes note that the budget (including the strata fee increase) was effective as of September 1, 2021, the start of the strata's fiscal year. So, there was a monthly "adjustment" to the strata fees that the owners had paid since September 2021. The applicable adjustment to unit 1902's strata fee was \$158.04 per month.
14. The AGM minutes also state that the owners passed Resolution #3, which was a  $\frac{3}{4}$  vote resolution to raise \$390,000 by special levy for "deficit recovery". The applicable share of that special levy for unit 1902 was \$1,054.76. The owners also approved other special levies at the 2022 AGM, but they are not at issue in this dispute. So, any reference to a special levy in this decision is a reference to the deficit recovery special levy in Resolution #3.
15. Mr. Wang paid the approved retroactive strata fees adjustment and special levy to the strata. However, Mr. Wang argues that he should not be responsible for the monthly \$158.04 strata fees adjustment for the period before he owned unit 1902 (September to November 2021), together totalling \$474.12. He also says he should not be responsible for his \$1,054.76 share of the special levy because the strata incurred the deficit the special levy was intended to remedy before he was an owner. So, Mr. Wang seeks a \$1,528.88 refund from the strata.

## **2022 AGM**

16. As noted above, the strata held its 2022 AGM on June 2, 2022. At that time, the strata's fiscal year was undisputedly September 1 to August 31. I note that at the 2022 AGM, the strata passed a  $\frac{3}{4}$  resolution to move its fiscal year end to January 31. However, at the time relevant to this dispute, the strata's fiscal year end was August 31.
17. Section 40(2) of the SPA requires the strata to hold an AGM within 2 months of its fiscal year end. So, because the strata's fiscal year end was August 31, the strata was required to hold an AGM by October 31 each year.
18. The 2022 AGM minutes state that the previous AGM was held on November 24, 2020. So, it appears the strata likely held the 2020 AGM just over 3 weeks late. However, nothing turns on the timing of the 2020 AGM, as the parties did not raise it, and I find it is not relevant to the issues in this dispute.
19. That said, the 2022 AGM minutes suggested the strata failed to hold an AGM in 2021 at all. As noted, because the strata's fiscal year end was August 31, the strata was required under SPA section 40(2) to hold an AGM by October 31, 2021. Yet, it apparently did not hold an AGM until June 2, 2022.
20. The parties did not raise this issue. However, I decided it was relevant to this dispute, and so I asked the parties to provide further submissions about the strata's possible breach of the SPA in holding a late AGM and the impact of the AGM's timing on Mr. Wang's claims. The parties provided their submissions, and I address them below.
21. The strata essentially admits that it held the 2022 AGM in breach of SPA section 40(2). However, the strata argues the breach had no impact on Mr. Wang's claims. The strata says it was permitted to hold the AGM as late as December 31, 2021, because there was a provincial state of emergency in place at the relevant time. So, the strata says it reasonably could have held the AGM sometime in December 2021, after Mr. Wang was already an owner, in compliance with the SPA and the *Strata Property Regulation* (SPR). The strata says that had it done so, Mr. Wang would have

been subject to the resolutions passed at that AGM, including the strata fees adjustment back to September 1, 2021, and the special levy.

22. I do not agree with the strata's submission about its entitlement to extend the time for holding the AGM. On July 20, 2021, the government declared a state of emergency throughout British Columbia due to wildfires, which it extended to the end of the day on September 14, 2021. See Order in Council No. 504, ordered on August 31, 2021. Section 17.23(2)(b) of the SPR says that if there is a state of emergency in place at any time during the one-month period before the last day a strata corporation must hold an AGM under SPA section 40(2), the strata has an extra 2 months to hold the AGM.
23. As noted, under SPA section 40(2), the strata had until October 31, 2021, to hold its AGM. As the state of emergency was in place until only September 14, 2021, I find SPR section 17.23(2)(b) does not apply to extend the time the strata had to hold the AGM. This is because the state of emergency ended more than one month before the strata's last date to hold the AGM.
24. So, I find the strata breached SPA section 40(2) by failing to hold an AGM within 2 months of its fiscal year end of August 31, 2021. I discuss the impact of this breach on Mr. Wang's claims below.
25. I also note that in his final reply submissions, Mr. Wang argued the resolutions passed at the 2022 AGM were invalid because the meeting did not achieve quorum. He says the AGM needed 33% of eligible voters to be present, but the minutes indicated that only 48 owners from the strata's 333 strata lots were present at the AGM. This issue was not raised in the Dispute Notice. Normally, I would decline to address an issue raised at such a late stage in the proceedings. However, I find the bylaws are determinative of Mr. Wang's argument. My reasons follow.
26. Under bylaw 36(1),  $\frac{1}{3}$  of the strata's eligible voters must be present in person or by authorized representative or by proxy for a general meeting to achieve quorum. So, assuming each of the strata's 333 strata lots has an eligible voter, 111 owners must be present at an AGM to achieve quorum.

27. However, bylaw 36(2) say that when the strata has called a general meeting, if a quorum is not present at the appointed time or within 15 minutes, then the eligible voters who are present in person, by authorized representative, or by proxy, constitute a quorum. In other words, the strata must wait 15 minutes from the meeting start time, and then it can declare that quorum is achieved by the voters who are present. The minutes from the 2022 AGM state that the strata council president waited the required 15 minutes after the meeting start time and declared the present eligible voters constituted quorum. Therefore, I do not accept Mr. Wang's argument that the 2022 AGM resolutions were invalid due a failure to achieve quorum.
28. I turn to Mr. Wang's claim about his responsibility to pay the approved strata fees adjustment.

### ***Strata fees adjustment***

29. As noted above, the owners approved an increase in strata fees at the 2022 AGM, as part of the 2021-2022 budget. This meant that owners were subject to an adjustment to the strata fees they had paid since the start of the strata's fiscal year on September 1, 2021. Mr. Wang was required to pay a \$1,580.40 adjustment for September 2021 to June 2022, based on a \$158.40 per month increase in unit 1902's strata fees.
30. The strata says that such an adjustment is permissible when a budget is passed after the strata's fiscal year end. It relies on the BC Supreme Court decision in 625536 *B.C. Ltd. v. The Owners, Strata Plan LMS4385*, 2018 BCCS 1637. In that case, the court held that a strata corporation can properly pass a budget after the previous fiscal year end and charge an "adjustment" to strata fees paid in the period between the previous fiscal year end and when the budget is passed for the next fiscal year. That decision is binding on me, and I note it has been applied in a previous CRT decision in *Voyna v. The Owners, Strata Plan NW 1849*, 2021 BCCRT 280.
31. However, in both 625536 and *Voyna*, the strata corporations held their AGM in compliance with SPA section 40(2). So, the period between the strata's previous fiscal year end and when the new budget was passed was relatively short (2 to 3

months). Further, neither decision specifically addressed a new owner's obligation to pay an adjustment for the period before they became an owner. So, I find those 2 decisions are of limited assistance.

32. Here, Mr. Wang argues that the strata's breach of SPA section 40(2) was significantly unfair to him because he says that had the strata held the AGM by October 31, 2021, as required, unit 1902's previous owner would have been responsible for the monthly strata fee adjustment between September and November 2021.
33. The CRT has authority to make orders remedying a significantly unfair act or decision by a strata corporation under section 123(2) of the CRTA. The legal test for significant unfairness is the same for CRT disputes and court actions (see *Dolnik v. The Owners, Strat Plan LMS 1350*, 2023 BCSC 113). In *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173, the court confirmed that significantly unfair actions or decisions are those that are burdensome, harsh, wrongful, lacking in probity and fair dealing, done in bad faith, unjust, or inequitable. In applying this test, the owner's objectively reasonable expectations are a relevant factor, but are not determinative.
34. I generally accept that owners and prospective owners have a reasonable expectation that a strata corporation will follow the SPA to hold AGMs within 2 months of its fiscal year end. However, in this case, I find that with reasonable diligence, Mr. Wang would or should have known when he entered into the purchase agreement for unit 1902 that the strata's 2021 AGM was already late. As noted, the strata should have held an AGM by October 31, 2021, and the purchase agreement was dated November 15, 2021. Therefore, I find that Mr. Wang could not have reasonably expected the strata to hold its 2021 AGM according to SPA section 40(2) because that time had already passed when he bought unit 1902.
35. So, what was Mr. Wang's expectation in these circumstances? Essentially, I find Mr. Wang argues that he expected if strata fees increased at the next AGM, he would not be responsible for any adjustment for the period before he became an owner. If that was Mr. Wang's expectation, I find it was not reasonably held. My reasons follow.



36. The strata submits that it was facing a “precarious” financial situation in 2021. First, it says that it is a party to an easement that requires cost-sharing with the 3 ASPs in the development. The ASP cost-sharing budget has a different fiscal year end than the strata (December 31). The strata says that because it is responsible for over 90% of the cost-sharing expenses under the easement, that budget significantly impacts the strata’s budget. This is consistent with information contained in the 2022 AGM minutes.
37. Specifically, the minutes state that the strata received the cost-sharing budget in December 2020, after the owners had already approved the strata’s 2020-2021 operating budget at the November 2020 AGM. Upon receiving the ASP cost-sharing budget, the strata discovered its operating expenses would exceed the approved budget. In other words, the strata says it operated at a deficit as of December 2020, which I find is supported by the financial information in the 2022 AGM minutes.
38. Next, the strata says its annual insurance coverage runs from June 11 to June 10, and that its premiums increased significantly in 2021. It also says it was dealing with an elevator water damage claim from April 2021, which required a \$100,000 deductible payment that it had not budgeted for. Finally, the strata says it discovered several defects with the building’s design and construction, including insufficient heating and cooling in several units, which the strata says was likely going to require expensive litigation. I find the 2022 AGM minutes support that the strata was dealing with all of these various financial pressures throughout 2021.
39. Given these issues, the strata says it acted reasonably in delaying the 2022 AGM, so that it had the ASP cost-sharing budget and the 2022 insurance premiums and could prepare a more accurate budget. I do not agree that the strata reasonably delayed the AGM. The SPA requirement to hold an AGM within 2 months of the strata’s fiscal year end is mandatory, not discretionary. Further, preparing a budget for an upcoming fiscal year necessarily requires some estimation of anticipated operating expenses. I find the strata should have prepared a budget based on the information it had available, rather than waiting to receive documentation of actual expenses. I note that

SPA section 105 addresses how a strata corporation must deal with a budget surplus or deficit, should either occur due to inaccurate budgeting.

40. Nevertheless, I find Mr. Wang has not shown he had a reasonable expectation that he would not be responsible for any strata fees adjustment for September to November 2021. I agree with the strata that Mr. Wang was free to request and review the strata's financial documentation before he purchased unit 1902, and that such financial information likely would have shown the strata was operating at a substantial deficit. I find that a prospective buyer like Mr. Wang should make those kinds of reasonable inquiries about a property they intend to purchase.
41. So, I find Mr. Wang should have been aware before he agreed to buy unit 1902 that the strata was experiencing financial challenges. I find a reasonable person in this situation would anticipate that the strata's next budget would likely include a significant increase in strata fees. As noted, I also find Mr. Wang should have known that the strata's 2021 AGM was already late when he agreed to buy unit 1902. So, I find he reasonably should have anticipated that any increase in strata fees would involve an adjustment to all monthly strata fees paid since the strata's previous fiscal year end of August 31, 2021. I find Mr. Wang could have included a provision to account for this likely event in the purchase agreement for unit 1902, but he did not do so.
42. In summary, even though I find the strata breached SPA section 40(2) by holding the 2022 AGM more than 7 months late, I find that is insufficient to conclude the strata acted in a significantly unfair manner towards Mr. Wang. He knew or should have known the AGM was already late as of the November 30, 2021 closing date to purchase unit 1902. So, whether the strata held the AGM on December 1, 2021, or any date after that, I find Mr. Wang should have known he might have to pay an adjustment to strata fees paid since the previous fiscal year end.
43. For these reasons, I find Mr. Wang did not reasonably expect he would not be responsible for any adjustment applied to unit 1902's strata fees for the period September to November 2021.

44. I also note that section 99 of the SPA says that owners “must contribute” to the strata by paying strata fees based on their strata lot’s share. Again, this provision is mandatory, not discretionary. I find there is no provision in the SPA to exempt an owner from paying their approved strata fees. So, I find the strata did not act in a significantly unfair manner by requiring Mr. Wang to pay the entire strata fee adjustment back to September 2021. I dismiss this aspect of Mr. Wang’s claim.

### ***Special levy***

45. As noted, Mr. Wang says that he should not have to pay a special levy that the owners approved for “deficit recovery”. The preamble to Resolution #3 stated that largely due to increased insurance costs over the previous 2 years, the strata had reported an unexpected deficit, and it anticipated further insurance increases. So, the strata proposed this resolution to raise \$390,000 by special levy to “capitalize the cashflow related requirements of past years’ operations and costs”.

46. Mr. Wang argues that because the deficit that the special levy was intended to remedy was incurred before he was an owner, he should not have to contribute.

47. As noted above, SPA section 105(2) says that if operating expenses exceed the total contributions to the operating fund, the deficit must be eliminated during the next fiscal year. It does not say how that must be accomplished. Here, it appears the strata chose to do so by raising money by special levy.

48. SPA section 108(2)(a) says that a special levy must be calculated in accordance with SPA section 99, which says expenses must be divided by unit entitlement. The only exceptions require either a unanimous vote (under section 108(2)(b)) or the creation of sections (under section 195). There is no suggestion that either exception applies here. So, I find that the SPA required all owners to contribute to the special levy by unit entitlement.

49. In other words, there is no provision in the SPA to exempt an owner from paying their share of an approved special levy, even if the special levy’s purpose is for something that does not relate to all owners. This is consistent with past court cases confirming

that owners in strata corporations must routinely contribute to expenses that they do not necessarily benefit from. As the court said in *Owners, Strata Plan LMS 1537 v. Alvarez*, 2003 BCSC 1085, the “general rule under the SPA is that within a strata corporation, ‘you are all in it together’”.

50. I find this general rule applies equally to new and existing owners. Mr. Wang bought unit 1902 when the strata was operating at a deficit. Regardless of the reason for that deficit, I find that Mr. Wang is “in it” with the rest of the owners to eliminate the deficit the following year. So, I find Mr. Wang was responsible under the SPA to pay unit 1902’s \$1,054.76 share of the deficit recovery special levy.
51. While not specifically argued, I also considered whether the timing of the AGM was significantly unfair to Mr. Wang, as it relates to the special levy, given the provision in unit 1902’s purchase agreement that the seller would be responsible for any special levies approved before the completion date.
52. However, for the same reasons set out above, I find that Mr. Wang knew or should have known about the late AGM and the strata’s financial challenges when he entered into the purchase agreement. So, I find he reasonably should have anticipated that the next AGM would happen after the completion date, and that the strata may choose to raise money to cure the deficit by special levy. Therefore, I find the strata did not act significantly unfairly by holding the AGM late and requiring Mr. Wang to pay unit 1902’s share of the deficit recovery special levy.
53. For all the reasons set out above, I dismiss Mr. Wang’s claims.

## **CRT FEES AND EXPENSES**

54. 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. As Mr. Wang was unsuccessful, I dismiss his claim for CRT fees. The successful strata did not pay any fees or claim dispute-related expenses.

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

## **ORDER**

56. I dismiss Mr. Wang's claims, and this dispute.

---

Kristin Gardner, Tribunal Member