



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Almairac v. The Owners, Strata Plan VR 1047*, 2024 BCCRT 345

B E T W E E N :

FRANCK ALMAIRAC

APPLICANT

A N D :

The Owners, Strata Plan VR 1047

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This strata property dispute is about a strata corporation's obligation to charge interest on strata fees and special levies paid late.
2. The applicant, Franck Almairac, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan VR 1047 (strata). Mr. Almairac is self-represented. A strata council member represents the strata.

3. Mr. Almairac says the strata must charge interest on strata fees and special levies paid late under its bylaws and that it failed to do so. He also says the strata failed to act honestly and in good faith by “waiving” interest charges.
4. Mr. Almairac asks for orders that the strata:
 - a. Charge interest for late strata fees and special levies against all strata lots and former owners under its bylaws from October 25, 2018, to the present date,
 - b. Attempt to collect any unpaid interest charges, which he estimates to be \$10,000, and
 - c. File a claim against the strata’s Director’s and Officers liability insurance policy for any amount that is not collected.
5. The strata denies all of Mr. Almairac’s allegations. In submissions, the strata did not address interest due on late-paid strata fees. It says it does not have to charge interest on late special levies and decided not to charge interest on 3 special levies approved at 3 annual general meetings (AGMs), which I discuss further below. The strata asks that Mr. Almairac’s claims be dismissed.
6. As explained below, I order the strata to charge interest against all current owners from October 3, 2020, to present. I dismiss Mr. Almairac’s remaining claims.

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.

I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the written evidence and submissions provided.

9. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

Preliminary Issues

Unopenable Evidence

10. I was initially unable to open 18 pieces of Mr. Almairac's evidence. At my request, CRT staff asked Mr. Almairac to resubmit the evidence. He did so, and I was able to view it. Staff then asked the strata to review the evidence and provide comments. The strata confirmed it had reviewed the resubmitted evidence. The only comment it provided was that the evidence appeared to address issues that were not raised in the Dispute Notice. I agree and note Mr. Almairac appears to have withdrawn 2 requested resolutions, which might explain the unrelated evidence. In any event, I have not considered any allegations or claims Mr. Almairac did not include in the Dispute Notice as to do so would be procedurally unfair.

SPA Section 31 Allegations

11. As noted, 1 of Mr. Almairac's claims is that the strata failed to act honestly and in good faith. SPA section 4 requires the strata council to exercise the strata's powers and perform its duties. SPA section 31 expressly requires strata council members to "act honestly and in good faith with a view to the best interests of the strata corporation". Based on these provisions, I infer Mr. Almairac's claim is that certain strata council members breached SPA section 31 by not acting in the strata's best interests.
12. However, the courts have found that individual strata lot owners do not have standing (legal authority) to make claims for breaches of SPA section 31. See for example, *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 and *Rochette v. Bradburn*, 2021 BCSC 1752. Therefore, I will not address Mr. Almairac's allegations involving the strata's failure to act honestly and in good faith.

Conflict of Interest

13. In submissions, Mr. Almairac alleges that the strata council president failed to disclose conflicts of interest, which is contrary to SPA section 32. The allegation was not set out in the Dispute Notice, but I note the BC Supreme Court has found the CRT has no authority to deal with the accountability of council members for actions taken while performing their duties. See for example, *Williams v The Owners, Strata Plan NW 1340*, 2021 BCSC 2058 at paragraph 66. Therefore, I will not address Mr. Almairac's allegations about conflicts of interest.

Request to Seal Evidence

14. CRT rule 12.1 addresses public requests for information. Subsection 5 of that rule says a tribunal member can order some or all information in a dispute be sealed or redacted. Mr. Almairac made notations on some of the financial evidence and submissions requesting certain financial evidence be sealed to avoid public disclosure of owners' private information. I decline to make such an order because the documents that Mr. Almairac provided already redacted (blacked out) personal information.

ISSUES

15. The issues in this dispute are:

- a. Does the *Limitation Act* (LA) apply?
- b. Is the strata obligated to charge interest for late payment of strata fees and special levies?
- c. If so, what remedies are appropriate?

BACKGROUND, EVIDENCE AND ANALYSIS

16. In a civil proceeding such as this, Mr. Almairac must prove his claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' submissions and evidence but refer only to information I find relevant to explain my

decision.

17. The strata was created in January 1982 under the *Condominium Act* and continues to exist under the SPA. It consists of 112 residential strata lots in a 9-story building.

Does the LA apply?

18. As noted, Mr. Almairac alleges the strata failed to charge interest for late monthly strata fees and special levies. He says the strata should retroactively charge interest from October 25, 2018, to present. The significance of this date is unclear. Given it was more than 2 years before Mr. Almairac applied for the CRT's dispute resolution services, I have considered whether the LA applies, even though neither party raised it.
19. CRTA Section 13 confirms that the LA applies to CRT claims. The LA applies separately to each claim. Section 1 of the LA defines "claim" to mean a claim to remedy an injury, loss or damage that occurred as a result of an act or omission.
20. The courts have determined penalties under the SPA, such as a bylaw fine, are not caught by the LA because a claim does not include a penalty. See *The Owners, Strata Plan KAS 3549 v. 0738039 B.C. Ltd.*, 2015 BCSC 2273, affirmed 2016 BCCA 370.
21. SPA section 107(2) says that interest payable on late strata fees is not a fine and forms part of the strata fees. SPA section 108(4.2) says the same thing about special levy interest. So, I find interest payable on strata fees and special levies are claims as defined under the LA.
22. In this dispute, I find the LA applies in 2 ways.
23. First, Mr. Almairac claims the strata must collect interest under its bylaws. I interpret this to mean that Mr. Almairac claims are about his proportionate share of lost interest the strata failed to collect, even though he is not entitled to receive the interest.
24. Second, if I order the strata to collect interest from its owners as Mr. Almairac requests, the LA also governs that order.
25. Section 6 of the LA says that the basic limitation period to file a claim is 2 years after

the claim is discovered. At the end of the 2-year limitation period, the right to bring a claim disappears.

26. In this dispute, Mr. Almairac filed his application for CRT dispute resolution services on October 3, 2022. Therefore, any claim for interest must relate to strata fees and special levies due October 3, 2020 or later. I find any claims for interest before October 3, 2020 are out of time under the LA and I dismiss them.
27. Based on the above, the timeframe relevant to this dispute is between October 3, 2020 and the present. As noted, one claim is about interest on late strata fees and the other is about interest on late special levies. There is no dispute that 2 special levies were approved during this timeframe. Both levies were for \$336,000 and were approved at the AGMs held April 27, 2021, and February 23, 2022.

Is the strata obligated to charge interest?

28. There is nothing in the SPA that requires the strata to charge interest. Any such strata duty must be set out in its bylaws, or in a resolution to approve a special levy.
29. I agree with Mr. Almairac that the strata council must exercise the powers and perform the duties of the strata, including enforcement of bylaws as set out under SPA section 4 and 26. I also agree that the bylaws require the strata to charge interest on strata fees and special levies. My reasons follow.
30. SPA section 107(1) allows the strata to charge interest on late strata fee payments to the maximum rate set out in the regulations if it has a bylaw that establishes a schedule for the payment of strata fees. The maximum interest rate was and is set out in *Strata Property Regulation* (regulation) section 6.8 as 10% per annum, calculated annually.
31. SPA section 108(4.1) allows the strata to charge interest by bylaw or by a resolution approving a special levy at a rate not to exceed the maximum rate set of 10% per annum, calculated annually, as set out in regulation section 6.8. I note SPA section 108(4.1) was amended slightly in November 2022, but the effect of the provision was unchanged.

32. On March 5, 2019, the existing bylaws were repealed (except for the pet and rental restriction bylaws) and replaced with a complete new set of bylaws (new bylaws). I note Mr. Almairac incorrectly states the new bylaws became effective April 27, 2021, but that is not the case according to the Land Title Office records. The new bylaws address interest for both strata fees and special levies.
33. Bylaw 2.1 said an owner must pay strata fees on or before the first day of the month to which the strata fees relate. I find this establishes a monthly schedule for payment of strata fees consistent with SPA section 107(1). Bylaw 2.2 says if an owner fails to pay strata fees in accordance with bylaw 2.1, outstanding strata fees “will be subject to” interest of 10% per annum, compounded annually. I find bylaws 2.1 and 2.2 comply with SPA section 107 noted above.
34. Bylaw 2.6 says a special levy is due and payable on the date or dates noted in the resolution authorizing the special levy. Bylaw 2.7 says if the owner fails to pay the special levy in accordance with bylaw 2.6, outstanding strata fees “will be subject to” interest of 10% per annum, compounded annually. I find bylaws 2.6 and 2.7 also comply with SPA section 108(4.1) noted above.
35. At the heart of this dispute is the interpretation of the phrase “will be subject to” contained in the strata’s bylaws about charging interest on both strata fees and special levies. Mr. Almairac says the phrase means the strata must charge interest. In particular, he argues the use of the words “will be” makes the interest charges mandatory. The strata argues the contrary and says the strata has discretion to charge interest. It argues the language is permissive in that the outstanding amounts will be subject to certain penalties, such as interest, but does not expressly state the strata must implement them. The strata also admits that it did not charge interest on special levies. I agree with Mr. Almairac for the following reasons.
36. The courts have found that the basic rules of statutory interpretation apply to strata bylaws. Bylaws should be given their plain and ordinary meaning, and when determining the meaning of an individual bylaw, the bylaws must be read as a whole preferring an interpretation which allows the bylaws to work harmoniously and coherently. See *The Owners, Strata Plan LMS 3259 v Sze Hang Holding Inc.*, 2016

BCSC 32 at paragraph 179 and *Semmler v The Owners, Strata Plan NES 3039*, 2018 BCSC 2064 at paragraph 18.

37. Applying the plain meaning rule of statutory interpretation means that if the meaning of a bylaw is plain or clear then the CRT may not interpret it but must simply apply it as written. If the text is ambiguous or vague, the CRT may resort to rules and techniques of statutory interpretation.
38. Here, I find the bylaws about interest are not ambiguous or vague. While the words “subject to” on their own in bylaws 2.2 and 2.7 do not make interest collection mandatory I find the addition of “will be” does. I find the plain and ordinary meaning of the phrase “will be subject to” means the same as “shall be subject to” or “must be subject to”. This means the strata must charge interest on late strata fees and special levies.
39. I agree with Mr. Almairac that the owners could have chosen different language when approving the new interest bylaws that would have allowed the strata discretion to charge interest, but they did not.
40. The strata admits it did not charge interest on special levies, essentially due to COVID-19. The strata did not address its obligation to collect interest on late strata fees, but I agree with Mr. Almairac that it did not charge strata fee interest based on the accounts receivable evidence before me. The strata also argues it has discretion to enforce its bylaws citing *Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 and *Abdoh v. Strata Plan KAS 2003*, 2014 BCCA 270. I do not find these cases assist the strata.
41. In *Sze Hang*, the court held a strata council has limited discretion to enforce bylaws, particularly where the owners have a reasonable expectation the strata council will consistently enforce its bylaws. While there is no argument about significant unfairness here, I find it was reasonable for Mr. Almairac to expect the strata to enforce its bylaws that about charging interest. I do not agree with the strata that *Sze Hang* permits a strata corporation discretion to enforce mandatory bylaws.
42. In *Abdoh*, the BC Court of Appeal considered the language “reasonably necessary”

under SPA section 133 when considering the actions of a strata council. The strata correctly notes the Court's comments that the SPA implies a duty for a strata corporation to enforce its bylaws even if there is no express requirement for it to do so, and that enforcement vigour must be tempered with prudence and good faith. First, section 133 does not apply here and second, the courts comments were about the strata council's actions in compliance with SPA section 31, which also does not apply here. More importantly, the strata fails to recognize the court's main finding that the bylaw contravention was so trivial as to not warrant the court's involvement. I interpret *Abdoh* to confirm a strata corporation may use its discretion not to enforce a trivial bylaw contravention. However, I find not charging interest under the strata's bylaws, especially for large special levies, was not a trivial breach.

43. Finally, I have considered the strata's argument that its strata council is made up of volunteers and will make mistakes so, within reason, some latitude is justified when scrutinizing the strata's conduct, citing *Hill v. The Owners, Strata Plan KAS 510*, 2016 BCSC 1753. Quite simply, I do not find the strata's actions not to enforce a mandatory bylaw were reasonable.

Remedy

44. What then is an appropriate remedy?
45. Based on the financial information and accountant letter submitted by Mr. Almairac, I infer the strata's fiscal year end is December 31. Mr. Almairac provided portions of monthly financial statements for the months of December 2020 through December 2023. However, there is no detailed monthly accounting information about owners' arrears before me.
46. Turning to Mr. Almairac's requested remedies, I find it appropriate to order the strata to charge interest against strata lots of current owners according to bylaws 2.2 and 2.7 from October 3, 2020. I find the strata does not have authority to collect interest from previous owners under the current bylaws or the SPA. So, in cases where a strata lot was sold after October 3, 2020, the strata must charge interest on outstanding amounts only for the time the current owner has owned the strata lot.

The strata must calculate the amount of interest due from each owner within 30 days of this decision, bearing in mind the due dates of the approved special levies and notify owners who owe interest the amount they owe within 45 days of this decision.

47. I decline to order the strata to file an insurance claim for interest due from previous owners as I find to do so would be to unreasonably interfere with the strata's operation. That being said, the strata, Mr. Almairac, or any owner, may choose to file an insurance claim for uncollected interest.

CRT FEES AND EXPENSES

48. 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. Mr. Almairac was partially successful and paid \$225.00 in CRT fees. The strata did not pay CRT fees, so I order the strata to reimburse him ½ of this amount or \$112.50.
49. Neither party claimed dispute-related expenses, so I order none.
50. Under section 189.4 of the SPA, the strata may not charge any dispute-related expenses against Mr. Almairac.

DECISION AND ORDERS

51. I order the strata:
- a. Within 15 days of this decision, to pay Mr. Almairac \$112.50 for CRT fees,
 - b. Within 30 days of this decision, to charge interest against strata lots of current owners according to bylaws 2.2 and 2.7 from October 3, 2020 to present. In cases where a strata lot was sold after October 3, 2020, the strata must charge interest only for the time the current owner has owned the strata lot, and
 - c. Within 45 days of this decision, notify owners who owe interest the amount they owe.

52. Mr. Almairac is intitled to post-judgement interest under the *Court Order Interest Act*, as applicable.
53. Mr. Almairac's remaining claims are dismissed.
54. This is a validated decision and order. 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