



# Civil Resolution Tribunal

Date Issued: April 15, 2024

File: ST-2022-009776

Type: Strata

Civil Resolution Tribunal

Indexed as: *Vasvari v. The Owners, Strata Plan K436, 2024 BCCRT 355*

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

PETER VASVARI

**APPLICANT**

**A N D :**

The Owners, Strata Plan K436

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Christopher C. Rivers

## INTRODUCTION

1. This dispute is about a loan agreement to facilitate strata building repairs.
2. Peter Vasvari owns a strata lot in the respondent strata corporation, The Owners, Strata Plan K436. On December 16, 2020, he says the owners approved a resolution for building envelope and exterior repairs, a loan agreement, and a special levy.

3. The applicant says the resolution contravenes the *Strata Property Act* (SPA) because it waives owners' rights. He also says the strata changed the scope of work after the owners approved the resolution. The applicant seeks a declaration that the resolution is illegal and asks the strata to provide various documents setting out its agreement with a finance company. He also asks the CRT to order the strata honour the original plans and the BC Building Code, per the original work contracts.
4. The applicant also says the strata failed to disclose requested records as required under sections 35 and 36 of the SPA. He seeks orders for the strata to disclose various records, including bank statements, scope of work documents, depreciation reports, and building envelope assessment reports.
5. Finally, he asks for orders that a subcontractor provide the name of its insurance provider and that the strata pay him damages for two months of delay caused by the contractor leaving work on his lot incomplete.
6. The strata denies breaching the SPA. It says the special levy and resolution are valid and that it will complete the repair project based on the advice of its professional consultant. The strata says it has provided the applicant with all requested documents he is entitled to under the SPA, but that he is not entitled to any invoices.
7. The strata also argues that the applicant's claim is an attempt to establish a defence against a petition the strata has filed in the BC Supreme Court to recover the applicant's special levy contribution.
8. The applicant is self-represented. The strata is represented by a strata council member.
9. For the reasons that follow, I dismiss the applicant's claims.

## **JURISDICTION AND PROCEDURE**

10. 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.

11. 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.
12. 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.

## **PRELIMINARY ISSUE**

13. In its Dispute Response, the strata argues the applicant is out of time to bring his application under the *Limitation Act*. In an August 18, 2023 preliminary decision, a CRT vice chair considered that argument and found the applicant had brought his application within the necessary 2-year period. Although the preliminary decision is not binding on me, I agree with it, and I address this dispute on its merits below.

## **ISSUES**

14. The issues in this dispute are:
  - a. Did the strata's resolution violate the applicant's rights as a strata owner under the SPA?
  - b. Did the strata's resolution change the scope of work in such a way that I should set it aside?

- c. Did the strata provide the applicants with documents as required under the SPA?

## **EVIDENCE AND ANALYSIS**

15. In a civil proceeding like this one, the applicant must prove his claims on a balance of probabilities, meaning more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find necessary to explain my decision.
16. The strata is a 58 unit townhouse complex consisting of 5 two-story buildings with basements. In December 2020, the strata passed resolutions to fund repairs to all 5 buildings' exterior walls and balconies with an estimated repair cost of \$3,828,000 (the repair project). The applicant does not raise any procedural arguments about the way the strata council passed those resolutions.
17. Under those resolutions, the strata set a special levy of \$3,828,000 to fund the repair, due on February 1, 2021. As set out in Schedule A of the resolutions, each of the strata's 58 owners was required to pay an equal share of \$66,000.
18. To allow the owners flexibility in making their payment, the strata entered a credit agreement with a third-party lender to loan funds to a maximum of \$3,700,000. Any owner who did not to pay \$66,000 by the due date could, upon signing a deferred payment agreement with the strata, access the available loan and pay the strata back, with interest, over the following 61 months.
19. The terms of the deferred payment agreement were set out in Schedule B, attached to the resolutions.
20. The applicant argues that paragraphs 8 and 11 of the deferred payment agreement are illegal, as he alleges they give away certain SPA-protected rights of the strata owners. Paragraph 8 addresses what the strata will do with any refund of the special levy. Paragraph 11 says that an owner who enters the agreement consents to the strata filing a lien against the owner's strata lot, even though satisfactory

arrangements for payment have been made. This clause provides that the strata could file a lien notwithstanding the protections offered by SPA section 116(3).

21. Under SPA section 116(1), a strata corporation may register a lien against an owner's strata lot if the owner fails to pay, among other things, a special levy. SPA section 116(3) says that if the owner has made payment arrangements satisfactory to the strata corporation, section 116(1) does not apply.
22. I find that the optional deferred payment agreement does not violate the SPA. No strata lot owner, including the applicant, was obligated to enter into the deferred payment agreement. To the contrary, it was an option the strata made available for owners. The strata's resolution did not bind any specific owner, including the applicant, to the terms of the deferred payment agreement.
23. In this case, the applicant undisputedly did not sign the deferred payment agreement or access any of the related funds. So, their lot is not subject to the terms of the deferred payment agreement.
24. To the extent the loan provided security by granting the lender a general security agreement over the strata corporation's assets, I find the resolution explicitly permitted the loan to do so. The applicant does not allege that the strata breached SPA section 111, which governs the strata's borrowing powers. Since the applicant acknowledges the resolution passed with a three-quarter vote, there are no grounds to set it aside.
25. Since the agreements' impugned terms do not apply to the applicant, I do not need to consider the agreement further. I dismiss that part of his claim.

### ***Scope of Work***

26. The applicant asks for an order that the strata council be bound to the "Architecture Plans and Tender" approved by the owners. The applicant says the owners approved the original scope of work and the strata should be ordered to proceed on the basis of that approval. He argues the current scope of work is less comprehensive and does not address what he says is necessary waterproofing of the strata lot's decks.

27. In December 2018, the strata obtained a building envelope assessment report to determine what work may be necessary for the exteriors of its buildings.
28. The owners passed a resolution to make repairs on February 28, 2019. The resolution did not contain specific detail. It approved a “patch and repair” renewal project to cost no more than \$2,400,000 to be funded by a special levy and strata financing package. The resolution did not set out any specific project obligations or goals beyond that.
29. The December 2020 resolution, which is the subject of this dispute, included Schedule C. Schedule C was a variety of blueprints and plans that provided context for the resolutions. However, I note the resolutions at that time were limited to approving funding for the repair project and were not about the scope of the repair project itself. Schedule C was provided as reference, but nothing in the resolution’s text shows it was specifically approved by the owners as the final or conclusive scope of work.
30. Contrary to the applicant’s submissions, there is no evidence that the owners ever approved any specific details of the repair project. Since the resolution was broad, the owners never bound the strata to a specific scope of repair.
31. While the applicant did not specifically raise the strata’s obligation to repair and maintain common property under SPA section 72 or any specific strata bylaw, I find that is the basis of his argument. While the applicant argues that the work set out in Schedule C is not as broad as suggested by the building envelope report prepared in 2018, I note that is not necessarily a breach of the strata’s obligations under the SPA or its bylaws to repair and maintain common property.
32. The strata’s obligation to repair and maintain such property is measured by the test of what is reasonable in all circumstances. The standard is not one of perfection. The strata has discretion to approve “good, better or best” solutions. The CRT will not interfere with a strata’s decision to choose a “good”, less expensive, and less

permanent solution although “better” and “best” solutions may have been available.<sup>1</sup> To that end, I find the strata is not bound to any specific plan but must proceed by balancing cost and importance. Further, the strata is entitled to rely on professionals in making repair and maintenance decisions, and it specifically says it depends upon the advice and recommendations of its contractors and consultants.<sup>2</sup>

33. The applicant did not provide any expert evidence that the strata’s approach is unreasonable or otherwise in violation of its SPA obligations. He acknowledges that the initial assessment report contained a variety of recommendations. He did not provide any evidence that the strata has failed in its obligations by considering those recommendations and then focusing on what it deemed to be the most critical.
34. The applicant also alleges the repair work violates the BC Building Code (the Code). Where a matter is outside of ordinary knowledge, expert evidence is typically required. Here, I find whether or not a repair project complies with the Code is a matter outside of ordinary knowledge. The applicant did not provide any expert evidence.
35. While the applicant asks for an order pursuant to SPA sections 83 and 84 that the strata honor the original architecture plans, I note there are no work orders that apply to the strata within the meaning of those sections. Specifically, there is no evidence the strata has been issued a work order by a public or local authority.
36. So, I find no reason to order the strata to deviate from its current approach and I dismiss that element of the applicant’s claim.

### **Documents**

37. SPA section 35 requires the strata to prepare and keep specific records and documents. Section 36 requires the strata to make those specific records and documents available for inspection or copying within 2 weeks of an owner’s request,

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<sup>1</sup> See: *Ricci v. The Owners, Strata Plan LMS 3940*, 2021 BCCRT 755 at paragraph 40, citing *The Owners of Strata Plan NWS 254 v. Hall*, 2016 BCSC 2363 and *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784.

<sup>2</sup> See: *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113, at paragraph 69

except bylaws and rules where the deadline is one week. The applicant alleges the strata has failed to provide him with copies of “interim notes” that he says would show the borrowed and repaid amounts. He does not explain what he means by these records or how he knows that they exist.

38. However, the strata provided sworn evidence from its strata manager that says they compiled a package of documents for the applicant that included “all documents relating to the loan.” The strata manager says the applicant’s spouse reviewed at least some of the documents but did not collect the document package.
39. The applicant does not address this allegation. I would expect that if the applicant had collected the documents and found them deficient, he would have explained so.
40. The applicant also says the strata took more than 2 years after his “repeated request” to provide a variety of documents, but acknowledges that he received them on July 17, 2023. If true, the delay was a significant breach of SPA section 36. However, the remedy for breaching section 36 is typically an order that the strata comply with outstanding document requests. Since the applicant has now received those documents, there is nothing left to remedy. I therefore find no order is necessary, and I dismiss that element of his claim.

### ***Other Orders***

41. The applicant asked for an order requiring a subcontractor to provide the name of its third-party insurance provider. As the strata correctly argues, the subcontractor is not a party to this proceeding, so I dismiss this part of the applicant’s claim.
42. In his application, the applicant also asked for damages for two months’ delay caused by the strata’s contractor leaving work in his lot unfinished. The applicant did not pursue this issue in his argument. However, for completeness, I note that a strata corporation is not liable for its contractors’ negligence or breach of contract.<sup>3</sup> I dismiss this part of the applicant’s claim.

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<sup>3</sup> See, eg: *Wright v. The Owners, Strata Plan #205*, 1996 CanLII 2460 (BCSC), aff’d 1998 CanLII 5823 (BCCA), at paragraph 30.



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

43. 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. The applicant was unsuccessful, so I dismiss his claim for CRT fees and dispute-related expenses. The strata did not claim any dispute-related expenses or pay any CRT fees, so I make no order.
44. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owner.

## **ORDERS**

45. I dismiss the applicant's claims, and this dispute.

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Christopher C. Rivers, Tribunal Member