



Civil Resolution Tribunal

Date Issued: May 8, 2024

File: ST-2022-006597

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wu v. The Owners, Strata Plan VR 2197*, 2024 BCCRT 437

B E T W E E N :

SHENG WU

APPLICANT

A N D :

The Owners, Strata Plan VR 2197

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute about a strata corporation's insurance coverage for legal expenses and a special levy for legal expenses.
2. The applicant, Sheng Wu, co-owns strata lot 3 (SL3) in the respondent strata corporation, The Owners, Strata Plan VR 2197 (strata). The strata is comprised of 4 strata lots. Ms Wu is self-represented. A strata council member represents the strata.

3. Ms. Wu makes 2 claims against the strata. In her first claim, she says the strata incorrectly made insurance claims against the strata's Director's and Officers (D&O) insurance policy for \$76,848. She says the insurance claims were about legal matters involving Ms. Wu, which have resulted in higher insurance premiums for the strata, for which she has had to pay her proportionate share. She says the strata's D&O claims, and that she has had to contribute to higher D&O insurance premiums, are contrary to the *Strata Property Act* (SPA).
4. Ms. Wu seeks an order for the strata to collect \$76,848 in legal expenses from the remaining 3 strata lot owners and reimburse its insurer those expenses. If the strata's insurer refuses the refund, Ms. Wu seeks an order that the strata distribute the \$76,848 equally among all 4 owners, including Ms. Wu. She says this will offset the higher insurance premiums.
5. In her second claim, Ms. Wu says the strata passed a \$10,000 special levy at a special general meeting (SGM) held August 15, 2022, to fund legal services for the strata's proceeding against her. She said this is contrary to the SPA because she is not required to contribute to the strata's legal costs for proceedings she has initiated against the strata. Ms. Wu seeks orders that the August 2022 special levy was illegal and that the strata refund her \$2,500, which she says is her proportionate share of the special levy that she paid to the strata in trust.
6. The strata denies any wrongdoing. It says it had no role in deciding whether its insurer would, or would not, provide coverage under the strata's D&O policy for its legal expenses. As for the special levy, the strata says it was intended to fund legal advice about the strata's general governance to ensure it complies with its statutory obligations under the SPA and bylaws. It says the special levy was not related to Ms. Wu's litigation against the strata. The strata also says the issue of the legal special levy is a duplication of the strata's counterclaim in Civil Resolution Tribunal (CRT) dispute ST-2021-008094, which was in the final adjudication phase when Ms. Wu filed her Dispute Notice in this dispute. I find the strata alleges Ms. Wu's claim is *res judicata* (already decided). In submissions, the strata also alleges Ms. Wu's claim is an abuse of process. The strata asks the CRT to dismiss Ms. Wu's claims.

7. As explained below, I find in favour of the strata and dismiss Ms. Wu's claims and this dispute.

JURISDICTION AND PROCEDURE

8. These are the CRT's formal written reasons. 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.
9. 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.
10. 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.
11. Under section 123 of the CRTA and the CRT rules, 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.
12. I note the parties have been involved in several previous CRT disputes, including ST-2021-008094 discussed below, and 1 B.C. Supreme Court (BCSC) civil proceeding about SL3's roof deck. The BCSC proceeding is ongoing.

Preliminary Decisions

13. Ms. Wu's original CRT application included individual owners as respondents. On December 1, 2022, before the Dispute Notice was issued, another tribunal vice chair considered whether Ms. Wu had standing (legal authority) to make a claim for repayment of legal expenses paid by the strata's insurers. The tribunal vice chair found that Ms. Wu had authority to bring her claim that the strata erred in claiming legal costs under its D&O policy but did not have authority to bring a claim against individual owners. As a result, the vice chair directed the CRT to issue the Dispute Notice identifying only the strata as a respondent.
14. In a second preliminary decision issued June 28, 2023, the same tribunal vice chair considered whether Ms. Wu had standing to make a claim against the strata on behalf the strata's insurer. The vice chair found the strata's characterization of Ms. Wu's D&O claim was incorrect and that her claim was against the strata, so it could proceed.
15. The vice chair also considered whether Ms. Wu's legal fee special levy claim was an abuse of process or *res judicata*, given the strata's allegation that Ms. Wu's claim was a duplicate of its counter claim in CRT ST-2021-008094, which was not decided at the time. The vice chair found it was unclear whether the legal special levy was part of ST-2021-008094 and allowed both of Ms. Wu's claims to continue.
16. I accept the preliminary decisions and have considered Ms. Wu's claims below.

Late Evidence

17. Ms. Wu submitted late evidence consisting of various documents that I find are unrelated to this dispute. The documents appear to relate to the BCSC action or the parties' previous CRT disputes. The strata also submitted late evidence consisting of an updated witness statement from 1 of its representatives. Each party essentially objects to the other party's late evidence. I have reviewed all of the late evidence and find it is not relevant to this dispute. It largely addresses previous or ongoing issues other than those I have identified here, so I have not considered any of the late evidence in my decision.

Additional Claims and Remedies

18. In her reply submissions, Ms. Wu asks the CRT to reduce strata fees by \$25,000, which she says is the amount of the increased D&O insurance premium for the 2022-2023 fiscal year. She also asks that the CRT address the strata's alleged unauthorized financing used to pay for the increased insurance premiums. The strata was unable to respond to these additional claims and remedies because they were not included in Ms. Wu's original Dispute Notice and the Dispute Notice was not amended. Therefore, I find it would be procedurally unfair for me to address these matters in this decision and I decline to do so.

ISSUES

19. The issues in this dispute are:

- a. Did the strata make improper claims against its D&O policy?
- b. If so, what is an appropriate remedy?
- c. Is the matter of the August 2022 special levy *res judicata* or an abuse of process?
- d. If not, did the strata act contrary to the SPA when it approved the August 2022 special levy?

BACKGROUND

20. As applicant in a civil proceeding such as this, Ms. Wu must prove her claims on a balance of probabilities, meaning more likely than not. I have considered all the submissions and evidence provided by the parties but refer only to information I find relevant to explain my decision.

21. The strata plan shows the strata was created in July 1988 under the *Condominium Act*. It continues to exist under the SPA.

22. I have reviewed the strata's bylaws filed with the Land Title Office and find there are no bylaws relevant to this dispute.

23. Ms. Wu is not a strata council member, but I find the parties agree all 3 remaining strata lots were represented on the strata council during the relevant time of this dispute.

EVIDENCE AND ANALYSIS

Did the strata make improper claims against its D&O policy?

24. SPA sections 149 and 150 requires the strata to obtain and maintain property insurance and liability insurance for property damage and bodily injury. This is a mandatory requirement as Ms. Wu correctly states.
25. Section 151 permits the strata to obtain errors and omissions insurance, also known as D&O insurance, “for council members against their liability and expenses for errors and omissions made in the exercise of their powers and performance of their duties as council members.” The evidence shows the strata maintained D&O insurance since at least 2018.
26. It is undisputed that by June 8, 2021, the strata’s insurer paid legal defence expenses under the D&O policy of \$76,848.29. The strata’s insurance broker provided a Claims Submissions Report dated July 28, 2022, that confirms this. The report also confirms the paid expenses related to the strata’s legal expenses for the BCSC proceeding and 3 CRT proceedings Ms. Wu initiated in 2021, including this dispute. This is the amount that forms the basis of Ms. Wu’s first claim.
27. In particular, as I have mentioned, Ms. Wu says the strata incorrectly made insurance claims against the strata’s D&O insurance policy for \$76,848. She says the insurance claims were about legal matters involving Ms. Wu, which have resulted in higher insurance premiums for the strata, which she has had to pay. She says the strata breached the SPA by making the D&O claims and by requiring her to contribute to higher D&O insurance premiums. She makes a number of arguments.
28. First, Ms. Wu says the strata was not authorized to obtain the D&O coverage. I disagree for the following reasons. As earlier noted, section 151 authorizes the strata to obtain and maintain D&O insurance. The process to approve the insurance is for

the strata to approve the premium expense through its operating budget. The parties agree that the D&O insurance was included in the basic insurance coverage when the strata's policy was renewed in September 2021. The certificate of insurance and insurance invoice confirm this. However, when the strata's insurance policy renewed in September 2022, D&O coverage was not included in the strata's basic policy. The strata had to obtain separate D&O coverage for which it paid a premium of \$25,000. In an October 20, 2022 email to Ms. Wu from the strata's insurance broker, the broker stated the loss history under the D&O policy was the reason a separate policy was necessary.

29. The October 18, 2022 annual general meeting (AGM) minutes confirm the strata approved a budget of \$36,500 for its September 2022 insurance renewal. From the evidence, I find the premium was comprised of \$11,031 for basic coverage and \$25,000 for D&O coverage. All 3 owners present at the October 2022 AGM voted in favour of the budget, so I find the strata properly approved the D&O coverage when it approved the operating budget. It does not matter that Ms. Wu was not present at the meeting given budget approval requires a majority vote of the owners present to pass.
30. Second, Ms. Wu argues the strata has no authority to obtain and maintain D&O insurance for the strata based on her interpretation of SPA section 151 noted earlier. She says D&O insurance coverage under section 151 must only cover strata council members and not the strata. I do not agree. By its nature, D&O insurance is intended to cover the individuals involved in governance from personal liability or losses arising from their discharge of their duties in that role. While section 151 says the strata may obtain insurance for strata council members, section 152(a) effectively permits the strata to obtain insurance for any strata liability. Further, section 155 states that the named insureds under a strata corporation policy includes the strata despite what the policy documents say. Therefore, I find the strata had clear authority to obtain D&O coverage for the strata.
31. Third, I also disagree with Ms. Wu that the strata made improper claims against its D&O policy. Ms. Wu's arguments suggests the strata must show a council member has made an error or omission that has harmed the strata before making a claim

under the D&O policy. There is no such obligation in the SPA or bylaws that requires this. Further, as explained in a March 2023 witness statement from the strata's insurer's claims attorney and Divisional Vice President, it is the insurer that determines if coverage is available to the strata after assessing the potential claim. In this case, the insurer assessed the claims for legal defence expenses and determined coverage was available. The insurer paid the strata's lawyer directly. It is perfectly reasonable for the strata to use any insurance it has to reduce its expenses. The D&O insurance is no exception.

32. Fourth, Ms. Wu also argues the strata did not follow SPA section 156, which says that payments under an insurance policy must be made to an insurance trustee identified in the bylaws, or if no trustee is identified, then to the strata corporation. Ms. Wu says the strata did not follow section 156 as it relates to the legal defence expenses. Again, I disagree. Section 156 does not expressly state the payments under the provision are insurance proceeds, which likely excludes payments made by the insurer directly to the strata's lawyer. However, there is an exception in section 156 that says the provision does not apply to payments arising from the liability of a strata corporation. So, even if the legal expenses were considered insurance proceeds, section 156 would not apply.
33. Therefore, I agree with the strata that Ms. Wu has misinterpreted SPA section 156, and I find the strata did not act contrary to that provision.
34. Finally, Ms. Wu argues the strata acted contrary to SPA section 167(2). I infer she means SPA section 189.4 because that section addresses CRT proceedings and refers to section 167(2). Section 167(2) exempts an owner who sues a strata corporation from contributing to the strata corporation's expense of defending the lawsuit. I understand Ms. Wu's argument to be that she is indirectly paying to defend her own proceedings against the strata, which she says is contrary to SPA sections 167(2) and 189.4.
35. The strata argues the increased D&O insurance premium is not an expense of defending a lawsuit as contemplated under sections 167(2) and 189.4. I agree with that interpretation.

36. For all of these reasons, I dismiss Ms. Wu's claim that the strata made improper claims against its D&O policy.

Is the matter of the August 2022 special levy res judicata or an abuse of process?

37. Ms. Wu says the strata passed a \$10,000 special levy at the August 15, 2022 SGM to fund legal services for the strata's proceeding against her. She said this is contrary to the SPA because she is not required to contribute to the strata's legal costs for proceedings she has initiated against the strata. Ms. Wu seeks orders that the August 2022 special levy was illegal and that the strata refund her proportionate share of \$2,500 that she paid the strata in trust.
38. As noted, the strata says the issue of the special levy was already decided in CRT dispute ST-2021-008094. For the following reasons, I agree with the strata.
39. I issued my decision in ST-2021-008094 on August 17, 2023. It is indexed as *Wu v. The Owners, Strata Plan VR 2197*, 2023 BCCRT 692. At paragraph 58 of that decision, I noted that Ms. Wu had filed this dispute which appeared to relate to the same special levy that was before me in ST-2021-008094. I asked staff to place this dispute on hold until my decision in ST-2021-008094 was issued because of concerns over *res judicata*. I also left it to the parties to raise any concerns about *res judicata* during these proceedings.
40. Neither party made submissions about this claim, but I will briefly discuss why I find Ms. Wu's claim is *res judicata*.
41. In the strata's ST-2021-008094 counterclaim, it sought release of the \$2,500 special levy Ms. Wu paid to the strata in trust under SPA section 114. There is no question the \$2,500 special levy here is the same special levy I considered in ST-2021-008094. I ordered the strata to release \$1,714.17 of the \$2,500.00 it held in trust to its special levy account for legal expenses, and the balance of \$785.83 to Ms. Wu.
42. Given I fully decided Ms. Wu's claim for a refund of her \$2,500.00 special levy in ST-2021-008094, I find it is clearly *res judicata*, and I dismiss it.

CRT FEES AND EXPENSES

43. 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. In this dispute, the strata was successful but did not pay CRT fees or claim dispute-related expenses, so I order none.
44. Under section 189.4 of the SPA, the strata may not charge any dispute-related expenses against Ms. Wu.

DECISION AND ORDER

45. I order Ms. Wu's claims and this dispute dismissed.

J. Garth Cambrey, Vice Chair