



Civil Resolution Tribunal

Date Issued: May 15, 2024

File: ST-2022-008110 and
ST-2023-010153

Type: Strata

Civil Resolution Tribunal

Indexed as: *Gadbois v. The Owners, Strata Plan NES 206*, 2024 BCCRT 456

B E T W E E N :

BRIAN GADBOIS

APPLICANT

A N D :

The Owners, Strata Plan NES 206

RESPONDENT

A N D :

BRIAN GADBOIS

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This strata property dispute is about a lien charge for alleged unpaid strata fees and legal expenses. It involves 2 disputes which I find are a claim and counterclaim so, I

have issued a single decision.

2. The applicant, Brian Gadbois, co-owns strata lot 26 (SL26) in the respondent strata corporation, The Owners, Strata Plan NES 206 (strata). Mr. Gadbois is self-represented. A strata council member represents the strata. The strata is the applicant in the counterclaim and Mr. Gadbois is the respondent.
3. In dispute ST-2022-008110, Mr. Gadbois says the strata improperly filed a lien against SL26 in August 2022 for unpaid strata fees. In particular, he says he did not owe strata fees at the time the lien was filed. Mr. Gadbois says he had provided a \$300.00 cheque for increased strata fees resulting from the annual general meeting (AGM) held in May 2022. He says the strata effectively caused the strata fee arrears when it refused to cash his cheque and returned it. Mr. Gadbois also says the strata's refusal to cash his cheque was illegal and significantly unfair. Mr. Gadbois seeks an order that the strata remove the lien from SL26 and pay all associated costs for filing and removing the lien, including all legal fees and expenses charged to him. He gives his claims a \$2,000.00 value.
4. The strata disagrees and says it properly followed the *Strata Property Act* (SPA). In its counterclaim, dispute ST-2023-010153, the strata says Mr. Gadbois owed it a total of \$1,786.74 on March 1, 2023, broken down as follows:
 - a. \$1,055.25 for legal and land title fees,
 - b. \$301.32 for unpaid strata fees,
 - c. \$301.13 for interest, and
 - d. \$400.00 for bylaw fines.
5. I note the strata's breakdown totals \$2,057.70. The strata did not explain the difference, but in its submissions, it confirmed it had abandoned its claims for interest and fines. Therefore, I find the strata's counterclaim is for \$1,356.57, which is the total of alleged legal fees, land title fees, and unpaid strata fees. I find the strata seeks an order that Mr. Gadbois pay it that amount.

6. As explained below, I find mainly in favour of Mr. Gadbois and dismiss the strata's counterclaim.

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 this dispute based on the evidence and submissions provided. In particular, I note that neither party requested an oral hearing and I find there are no credibility or other concerns that would require an oral hearing.
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.

New and past allegations

10. There is no question the parties do not get along. Mr. Gadbois has previously filed at least 3 CRT disputes against the strata largely to do with financial and governance matters.
11. Mr. Gadbois provided a large amount of information and evidence about things I find are unrelated to his claims in this dispute. While I acknowledge that Mr. Gadbois was likely providing background information for context, I have only considered Mr. Gadbois' information and evidence about the lien filed against SL26. I find it would be procedurally unfair for me to address Mr. Gadbois' allegations that were are not

contained in the Dispute Notice, and I decline to do so.

12. I also note that some of Mr. Gadbois' additional information appears to relate to allegations made in previous CRT decisions, including the strata's alleged non-compliance with a CRT order and allegations the strata council acted illegally and vindictively. I have no authority to consider these things.

ISSUES

13. The issues in this dispute are:

- a. Did the strata comply with the SPA when it registered a lien against SL26?
- b. If so, did the strata treat Mr. Gadbois significantly unfairly?
- c. What is an appropriate remedy, if any?

BACKGROUND, EVIDENCE AND ANALYSIS

14. As the applicant in a civil proceeding such as this, Mr. Gadbois must prove his claims on a balance of probabilities, meaning more likely than not. The strata must prove its claims to the same standard. I have considered all the parties' submissions and evidence but refer only to information I find relevant to explain my decision.
15. The strata is governed by the SPA. I have reviewed the strata's bylaws and find none are relevant here.
16. As noted, the issues in this dispute arise from the strata's May 2022 AGM. At that meeting, the strata owners passed a new budget that resulted in an increase in strata fees effective July 1, 2022. For SL26, the strata fee increase was \$33.48 per month.

Did the strata comply with the SPA when it registered a lien against SL26?

17. The procedure required for the strata to file a lien for unpaid strata fees is found in SPA sections 112(b) and 116. Section 112(b) requires the strata to give the owner at least 2 weeks' written notice demanding payment of money owing and indicating a lien could be registered if payment is not made. Section 116 sets out the procedure

the strata needs to follow when registering a lien.

18. On July 1, 2022, Mr. Gadbois paid the previous strata fee amount. He did not pay the increase of \$33.48. The strata manager wrote to Mr. Gadbois on July 7, 2022, to advise the July 1, 2022 strata fee increase was overdue. The strata manager demanded payment within 2 weeks and advised a lien could be filed if payment was not received within that time. Mr. Gadbois argues the strata's letter was contrary to section 112(b) because the 2-week demand did not factor in the 4-day notice period of SPA section 61. I disagree. I find the strata's letter complies with section 112(b) because the strata did not register the lien within the 2-week period. The strata simply provided the appropriate notice.
19. Mr. Gadbois did not pay the strata fee increase. On August 17, 2022, the strata attempted to file a lien against SL26 for \$66.96, which represented 2 months of the strata fee increase. The Land Title Office rejected the lien application because the strata incorrectly named the strata council rather than the strata. Mr. Gadbois was not aware of the strata's attempt to file a lien until later.
20. Mr. Gadbois sent a \$300.00 cheque dated August 24, 2022, to the strata, which the strata received on September 6, 2022. The strata treasurer acknowledged receipt of the cheque and, by email, asked Mr. Gadbois what the cheque was for. On September 7, 2022, Mr. Gadbois replied by email stating the cheque was for strata fees.
21. On September 8, 2022, the strata's lawyer emailed Mr. Gadbois to say they were in the process of filing a lien when the strata notified them that Mr. Gadbois had provided a \$300.00 cheque for strata fees. The lawyer instructed the strata to return the cheque because it was for more than Mr. Gadbois owed. They advised the strata fee arrears were now \$100.44 (3 months) and demanded payment of that amount by September 16, 2022, failing which a lien would be registered. Although the strata could have cashed Mr. Gadbois cheque to pay for his unpaid strata fees, as I discuss below, I find the strata had authority to determine arrangements satisfactory to it under SPA section 116(3)(b), such as requesting the exact amount outstanding. I find the strata's September 8, 2024, letter also complied with SPA section 112(b), given its decision

to require payment of the exact amount of unpaid strata fees.

22. Mr. Gadbois emailed the strata's lawyer on September 14, 2022, advising that he already had a dispute about the strata's May 2022 AGM budget approval before the CRT (ST-2022-005223) and understood "a court proceeding or legal process cannot occur" as a result. He said filing a lien would be inappropriate in the circumstances and requested a response before the strata acted. Mr. Gadbois did not identify any specific provisions of the SPA in his communications with the lawyer, but in submissions he says the strata was prohibited from registering a lien under SPA section 116(3). The relevant parts of section 116(3) say the strata cannot register a lien if the disputed amount has been paid into court or to the strata in trust under section 114, or arrangements satisfactory to the strata corporation have been made to pay the money owing.
23. I find there is no evidence Mr. Gadbois paid the outstanding strata fees into court or to the strata in trust as permitted by section 114. The evidence is that Mr. Gadbois sent a \$300.00 cheque to the strata without any covering letter or instructions. Specifically, Mr. Gadbois did not request the strata hold the funds in trust. Further, there were no markings on the cheque that suggested the payment was intended to be made in trust.
24. It is clear that the only arrangement satisfactory to the strata was for Mr. Gadbois to pay the strata \$100.44, the precise amount of outstanding strata fees, which the strata's lawyer communicated to Mr. Gadbois on September 8, 2022. Mr. Gadbois had the opportunity to request the strata hold his funds in trust when he replied on September 14, 2022, but he did not do so.
25. Mr. Gadbois did not provide the requested payment by September 16, 2022, so the strata registered a lien against SL26 on September 22, 2022, which I find complied with SPA section 116(3). In a letter dated September 22, 2022, the strata's lawyer advised Mr. Gadbois the strata had registered a lien and provided him a copy of the registered Certificate of Lien. That the lien amount was for \$66.96 rather than \$100.44 with an effective date of August 17, 2022, does not invalidate the filing.

26. Mr. Gadbois argues he did not owe strata fees when the lien was registered on September 22, 2022. I find his argument is based on the fact that he provided the strata with a \$300.00 cheque for strata fees. However, as noted, the strata did not cash the cheque and returned it to him in early September before the lien was filed. Therefore, I disagree with Mr. Gadbois' statement. I find he owed strata fees of \$100.44 on September 22, 2022, as the strata suggested.
27. For these reasons, I find the strata complied with the SPA when it registered the lien.

Did the strata treat Mr. Gadbois significantly unfairly?

28. The CRT has authority to make orders remedying a significantly unfair act or decision by a strata corporation under CRTA section 123(2). The legal test for significant unfairness is the same for CRT disputes and court actions. See *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113.
29. The basis of a significant unfairness claim is that a strata corporation must have acted in a way that was "burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable." See *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, and *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173.
30. In *Dollan*, the BC Court of Appeal established the following reasonable expectations test:
- a. Examined objectively, does the evidence support the asserted reasonable expectations of the owner?
 - b. Does the evidence establish that the reasonable expectation of the owner was violated by the action that was significantly unfair?
31. In *King Day Holdings Ltd. v The Owners, Strata Plan LMS3851*, 2020 BCCA 342, the Court of Appeal determined the reasonable expectations test set out in *Dollan* is not determinative. Rather, the Court found the test is a factor in deciding whether significant fairness has occurred, together with other relevant factors, including the nature of the decision in question and the effect of overturning or limiting it.

32. There are 2 parts to Mr. Gadbois' significant unfairness claim.
33. First, Mr. Gadbois says the owner of unit 115 did not pay the July 1, 2022 strata fee increase on time and was not subjected to a lien. He says he was treated differently than this owner, which I agree would be significantly unfair. He relies on the strata's July 2022 bank statement that shows that owner's strata fee payment for July 1, 2022, was for the previous strata fee amount. However, the strata provided a deposit slip dated July 10, 2022, that shows the same owner paid cash of \$33.48, described on the deposit slip as "strata shortage". I infer this was the strata fee increase for July 1, 2022, for the unit 115 owner. This suggests the other owner paid the arrears for July 2022, so no lien was permitted. In any event, Mr. Gadbois did not provide any other evidence to support his claim. Therefore, I find Mr. Gadbois has not proved the strata treated him any differently than other owners.
34. Mr. Gadbois also says that if the strata had accepted his \$300.00 cheque, the lien would not have been necessary. He says this was unfair because the strata frequently accepts advance payments from owners for money they owe the strata. He says the strata accepts advance payment for user fees such as annual locker electrical fees, parking storage fees, and cable television fees. Aside from his assertion, Mr. Gadbois did not provide any evidence about the strata's practice of accepting advance payments for user fees or specifically for strata fees.
35. The strata argues that its volunteer treasurer does not keep a running balance of owner's accounts. I note it does not argue the treasurer was incapable of doing so. Mr. Gadbois suggested the strata treasurer is capable of keeping a running account of prepaid fees because of the accounting software it uses. Neither party provided any evidence about the capability of the accounting software or the treasurer's ability to use it. In any event, I find it is unreasonable for the strata to suggest it does not keep a running balance of outstanding fees. How else would it the strata be aware of owners' unpaid amounts? In any event, agree with Mr. Gadbois that it was significantly unfair for the strata not to cash his cheque. My reasons follow.
36. I find Mr. Gadbois had a reasonable expectation that the strata would cash his \$300.00 cheque, especially after he confirmed with the treasurer that the cheque was

for strata fees. Although I have found the strata had authority to request the exact amount of outstanding strata fees, I find the strata's decision was burdensome and harsh. The strata could have easily cashed the cheque and returned the overpaid amount to Mr. Gadbois if it did not want to keep a running balance of outstanding strata fees. In that case, the lien would not have been necessary. Further, that is precisely what the strata did at a later date, as I discuss below.

37. Based on this, I find the strata treated Mr. Gadbois significantly unfairly by refusing to accept his \$300.00 cheque for the strata fee increase.

What is an appropriate remedy?

38. As noted, the strata withdrew its claims for bylaw fines and interest, so I make no findings on that. I will only address outstanding strata fees and fees related to registering the lien.
39. The evidence is that on February 15, 2023, Mr. Gadbois provided the strata with a \$200 cheque to be held in trust for the strata fee increase until a decision was issued in ST-2022-005223, which the strata did. That decision was issued on April 17, 2023. Mr. Gadbois was unsuccessful. On April 20, 2023, Mr. Gadbois provided the strata with same \$300.00 cheque he had provided in August 2022, except with an amended date. In his covering letter to the strata, he considered his strata fees were paid until September 2023.
40. On May 2, the strata emailed Mr. Gadbois to acknowledge receipt of his \$300.00 cheque and asked him what he wanted done with it. There is no evidence Mr. Gadbois responded. The strata appears to have cashed both his \$200.00 trust cheque and his \$300.00 cheque as a result of Mr. Gadbois' April 20, 2023 letter and the outcome in his previous CRT claim. On June 5, 2023, the strata wrote to Mr. Gadbois stating his strata fee arrears were \$401.76, which they calculated as \$33.48 per month for 12 months. The strata then returned the overpaid amount of \$98.24 (\$500 less \$101.76). Mr. Gadbois disagrees he owed \$401.76 on June 5, 2023, but did not state why nor did he provide details of what he thought he owed.
41. I agree with the strata that Mr. Gadbois owed it strata fees of \$401.76 on June 5,

2023. Thus, by cashing the 2 cheques and returning the overpaid amount, I find the strata was fully paid for SL26's strata fee increase on June 5, 2023. Mr. Gadbois admits, and the strata does not dispute, the Mr. Gadbois started paying full strata fees on July 1, 2023. Therefore, I make no order for payment of strata fees.

42. The strata says the lien has not been removed because Mr. Gadbois has not paid it for legal and land title fees. Mr. Gadbois does not disagree with this statement and essentially relies on his earlier arguments that he is not responsible for these fees. I agree. Given my finding that the strata treated Mr. Gadbois significantly unfairly by not initially cashing his \$300.00 cheque, it follows that the strata would not have been entitled to register the lien had it cashed the cheque. Therefore, I dismiss the strata's counterclaim that Mr. Gadbois must pay legal and land title fees. I order the strata to remove these charges as against Mr. Gadbois and to remove the lien from SL26 at its cost.

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. I find Mr. Gadbois was the successful party, even though I found the strata was entitled to file the lien. He paid CRT fees of \$225.00, so I order the strata to pay him that amount. The strata is not entitled to reimbursement of CRT fees of \$125.00 it paid for its counterclaim.
44. In November 2023, Mr. Gadbois advised CRT staff that he would be claiming dispute-related expenses. However, he never did make a claim. The strata did not claim dispute-related expenses.
45. Under section 189.4 of the SPA, the strata may not charge any dispute-related expenses against Mr. Gadbois.

DECISION AND ORDER

46. I order the strata to:

- a. Immediately remove legal and land title fees charged to Mr. Gadbois,
- b. Within 15 days of this decision:
 - i. Remove the lien registered against SL26, and
 - ii. Pay Mr. Gadbois \$225.00 for CRT fees,

47. Mr. Gadbois is entitled to post-judgement interest under the *Court Order Interest Act*, as appropriate.

48. I dismiss Mr. Gadbois' remaining claims and the strata's counterclaim.

49. 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