



Civil Resolution Tribunal

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File: ST-2023-000494

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wagner v. The Owners, Strata Plan LMS 104*, 2024 BCCRT 461

B E T W E E N :

PETER WAGNER

APPLICANT

A N D :

The Owners, Strata Plan LMS 104

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. Peter Wagner owns a strata lot in the strata corporation, The Owners, Strata Plan LMS 104 (strata). In January 2021, a delivery truck damaged the northeast corner of the strata's common property roof. A strata council member, SL, accepted a \$3,750 payment for the damage. Mr. Wagner says SL did this without the strata council's

knowledge and therefore breached the council member's standard of care set out in the *Strata Property Act* (SPA). Before the repairs were made, another delivery truck hit the same roof and gutter area, causing more extensive damage. The strata made an insurance claim and had the damage repaired. This dispute is largely about what happened, and what should have happened, to the \$3,750 payment from the first truck driver. Mr. Wagner says the strata wrongly allowed SL to keep the money. He says the money should be returned to the strata and dispersed to individual owners. The strata says it voted to pay SL \$3,750 for his decades of service as a strata caretaker.

2. Intending to repair the roof, SL purchased materials for \$752.64 for the roof repairs, which the strata reimbursed him. Because the second accident occurred before SL repaired the roof, these materials were not used. Mr. Wagner says that SL should return that money to the strata for distribution to the owners. The strata says these were validly approved expenses. Lastly, Mr. Wagner asks for orders that the strata comply with the SPA) by pre-approving expenses and contracts, providing documentation, and avoiding conflicts of interest.
3. Mr. Wagner is self-represented. The strata is represented by a lawyer, Jillian Epp.

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). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving dispute, the CRT must apply principles of law and fairness. It must also recognize any relationships between parties that will likely continue after the CRT process has ended.
5. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconference, or a combination of these. Most of the important facts

here are undisputed. Based on the evidence and submissions provided, I am satisfied that I can fairly decide this dispute without an oral hearing.

6. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court.
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.

Conflicts of interest

8. Part of Mr. Wagner's claim is that SL acted contrary to SPA section 31 by accepting \$3,750 on the strata's behalf without strata council's knowledge or approval. He wants orders that SL comply with sections 31 and 32 in the future. Mr. Wagner also suggests other council members have made decisions with conflicts of interest or bias.
9. SPA section 31 sets the standard expected of strata council members, which is to act honestly and in good faith with a view to the strata's best interests. In *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32, the court said that strata council members owe these duties to the strata corporation and not to individual strata lot owners. This means that an owner cannot successfully claim against a strata corporation or a council member for a council member's breach of their section 31 duties. So, I dismiss Mr. Wagner's claim about SPA section 31.
10. As for SPA section 32, the remedies for breaching section 32 are set out in section 33. CRTA section 122(1)(a) specifically excludes SPA section 33 from the CRT's jurisdiction. The BC Supreme Court has found that 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). CRTA section 10 says that I must refuse to resolve a claim that is outside the CRT's jurisdiction. Therefore, I refuse to resolve Mr. Wagner's claim about council members' alleged conflicts of interest.

Other requested remedies

11. Mr. Wagner asks for orders that the strata council, and SL in particular, be ordered to comply with the SPA going forward. In submissions, Mr. Wagner asks the CRT to confirm and clarify conflict of interest rules and explain to the strata that they are not optional. I decline to make these orders for several reasons. First, SL is not a party to this dispute. Second, SPA section 32 is clear, and as noted above, the remedies for breaches of section 32 are excluded from the CRT's jurisdiction. Third, the strata is already required to comply with the SPA. I find that an order to follow the law, about events that have not yet occurred, would serve no useful purpose.

ISSUE

12. The issue in this dispute is whether the strata's handling of the northeast roof repair payment and material cost expense breached the SPA, and if so, what remedy is appropriate.

EVIDENCE AND ANALYSIS

13. As the applicant in this civil proceeding, Mr. Wagner must prove his claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
14. The strata was created in 1991 and comprises seven strata lots in a single building. There are five residential strata lots over two ground floor commercial strata lots. The strata does not have any filed bylaws, so its bylaws are the SPA's standard bylaws.
15. The strata has not always governed itself in compliance with the SPA or its bylaws. For example, the strata's meeting minutes in evidence do not clearly distinguish between council meetings and general meetings, despite the SPA's different requirements for those meetings. It appears that rather than electing council, all owners who wanted a say in governance attended ad-hoc meetings, at least until an April 1, 2023 annual general meeting (AGM) when the owners elected a council. Mr.

Wagner argues that the strata did not follow the election procedures set out in its bylaws, but he does not ask for a remedy related to this so I will not consider it further.

16. It is undisputed that for decades and until recently, SL has acted as something like a strata manager or building manager, including by collecting strata fees, paying bills, and doing small repairs and maintenance. SL has also served as strata council president at various times, and generally controlled the strata's bank account.
17. The facts about the roof damage are mostly undisputed. On January 18, 2021, a commercial delivery truck struck the northeast corner of the strata's common property roof. On February 17, 2021, the truck driver and SL signed a "damage resolution agreement". Under that agreement, the truck driver or company paid \$3,750 to the strata. Although the damage resolution agreement did not explicitly say that SL was acting for the strata, I accept that he was, given that the agreement addressed common property damage SL was strata council president at the time, and the bank draft was made out to "Bay Strata Company".
18. The strata says SL intended to repair the roof damage himself. This is documented in the March 20, 2021 meeting minutes. For reasons that I find are not important to this dispute, the roof repair was delayed. On May 4, 2022, another delivery truck struck the roof, apparently causing more extensive damage. The strata made an insurance claim and paid a deductible. On October 22, 2022, a contractor completed the roof repairs.
19. So, what happened with the \$3,750 roof damage payment? It is undisputed that the money, at least at first, belonged to the strata. The strata says SL deposited the money into the strata's bank account. Although it would have been preferable to see banking statements, Mr. Wagner does not dispute this, so I accept it.
20. Emails show that at least initially, SL considered the money to be his for the work he would do repairing the roof damage. In September 2022, Mr. Wagner was strata council president. He emailed SL, stating that SL had not paid strata fees for three months. SL replied that this was because the \$3,750 roof damage payment was to

be credited toward his strata fees and those of his family members who also owned strata lots in the strata.

21. The strata says it does not matter how SL used the roof damage payment money because the owners twice agreed to allow SL to keep it as compensation for his years of hard work for the strata.
22. The first alleged agreement was at a July 9, 2022 meeting (I infer, a council meeting), two months after the second truck damaged the roof. The minutes from that meeting said, “we agreed [SL] can keep any unspent funds from the \$3,750, if not needed for this repair, to help cover his volunteer time in processing the claim on the new damage and for providing oversight of the upcoming work[.]”
23. The second alleged agreement is found in the minutes of what is identified as an April 1, 2023 AGM. The minutes say an agenda item was added to vote on SL keeping the roof damage payment. A vote was held on “who is in favour of [SL] keeping any of the money related to the issue?” The results are not entirely clear, but the strata’s position is that the vote passed.
24. Mr. Wagner says these votes or decisions were not valid. I will explain why I agree.
25. SPA section 92 says that a strata corporation must establish an operating fund and a contingency reserve fund (CRF). The operating fund is for common expenses that occur annually or more often. The CRF is for common expenses that occur less than annually. All owners must pay strata fees to contribute to these funds regardless of how much work they have done for the strata.
26. As I explain below, I find there is no basis in the SPA for the strata to treat the roof damage payment as SL’s strata fees or his family members’ strata fees.
27. SPA section 157 says insurance money that a strata receives for damaged property generally must be used to repair or replace the damaged property without delay. However, the roof damage payment was not insurance money. Once the roof was repaired through the strata’s insurer, it became essentially surplus funds. SPA section 105 says that surplus funds not required to meet operating expenses can be

transferred to the CRF, carried forward as a surplus, or used to reduce to the total contribution to next year's operating fund. They can also be used for any other purpose if approved by a resolution passed by a $\frac{3}{4}$ vote. So, provided there was an operating fund surplus at the end of the fiscal year matching the \$3,750 payment, the strata could have given SL the roof damage payment as compensation for his past service with a valid resolution at an AGM or special general meeting (SGM). Alternatively, it could have dispersed the roof damage payment among owners, as Mr. Wagner requests. However, the strata did neither of those things.

28. The strata also could have independently paid SL \$3,750, or some other amount, for service provided independent of his strata council duties. The strata appears to argue that this is what it did, as it says the \$3,750 payment was for SL's decades of common property repairs and maintenance. However, the strata did not follow the SPA's requirements for such an expenditure. One-time payments that occur less than annually must come from the CRF. Aside from emergency and minor expenditures set out in SPA section 98, which do not apply here, CRF expenditures must be authorized by a resolution passed by a $\frac{3}{4}$ vote at an AGM or SGM. That did not happen here. SPA section 45(3) requires the AGM or SGM notice to include the proposed wording of any resolution requiring a $\frac{3}{4}$ vote. There is no meeting notice before me, and from the minutes it is clear that compensation for SL came up as a last-minute agenda item.
29. For these reasons, I find the strata did not validly approve paying SL \$3,750 and neither can it consider the \$3,750 roof damage payment as any owner's strata fees.
30. I find that the strata must therefore calculate the strata fees that SL and possibly others owe. I order the strata to complete these calculations when it prepares its next budget for its next AGM. The strata can decide what to do with the resulting surplus, if any, in accordance with SPA section 105.
31. Nothing in this decision prevents the strata from approving a resolution passed by a $\frac{3}{4}$ vote to compensate SL for his past services, either with surplus funds or independently as a CRF expenditure, so long as the compensation is not for the

performance of council duties, for which compensation must be approved in advance under SPA section 34.

Materials expense

32. It is undisputed that the strata reimbursed SL for \$752.64 he spent on materials in anticipation of repairing the roof corner. On the evidence, I am satisfied that the materials were a common expense, that SL bought the materials honestly intending to complete the roof repairs, and the strata has the materials in its possession. I acknowledge that strata did not strictly follow the SPA's procedural requirements for this expenditure. However, in contrast to the vague honorarium of sorts addressed above, this was reimbursement for an actual out-of-pocket expense. I dismiss this aspect of Mr. Wagner's claim.

CRT FEES AND EXPENSES

33. As Mr. Wagner was partially successful in this dispute, in accordance with the CRTA and the CRT's rules I find he is entitled to reimbursement of \$112.50 for half his \$225 CRT fees. Neither party claims dispute-related expenses.

34. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Mr. Wagner.

ORDERS

35. I order the strata, in its next budget prepared for its next AGM, to recalculate the strata fees that any owner, including SL, owes as a result of being given credit for the \$3,750 roof damage payment contrary to the SPA.

36. Within 21 days of the date of this order, I order the strata to pay Mr. Wagner \$112.50 for CRT fees.

37. Mr. Wagner is entitled to post-judgment interest, as applicable.

38. I refuse to resolve Mr. Wagner's claims about council members' conflicts of interest.

39. I dismiss Mr. Wagner's remaining claims.

40. This is a validated decision and order. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under CRTA section 58, 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.

Micah Carmody, Tribunal Member