



Civil Resolution Tribunal

Date Issued: June 26, 2024

File: ST-2022-004551

Type: Strata

Civil Resolution Tribunal

Indexed as: *Stark v. The Owners, Strata Plan VR 2362*, 2024 BCCRT 607

B E T W E E N :

LESLIE STARK and DAVID MCKENZIE

APPLICANTS

A N D :

The Owners, Strata Plan VR 2362

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. The applicants, Leslie Stark and David McKenzie, co-own strata lot 3 (also known as unit 103) in the respondent strata corporation, The Owners, Strata Plan VR 2362 (strata). The parties were involved in a prior Civil Resolution Tribunal (CRT) dispute in which the CRT found a special levy for a March 2020 roof replacement was invalid (see *Stark v. The Owners, Strata Plan VR 2362*, 2021 BCCRT 1195 (*Stark 2021*)). In

Stark 2021, the CRT ordered the strata to reimburse the applicants for the invalid special levy. The strata undisputedly paid the applicants the ordered amounts. The applicants say that after *Stark 2021*, the strata improperly collected 2022 contingency reserve fund (CRF) contributions from them and used those funds to improperly reimburse other strata lot owners who had contributed to the March 2020 roof replacement. The applicants say that it was significantly unfair for the strata to make them contribute to the CRF and repay the other owners, given the CRT's findings and orders in *Stark 2021*.

2. The applicants seek the following remedies:
 - a. An order that the strata reimburse their portion of the \$16,150 in 2022 CRF contributions that the strata collected to reimburse the other owners,
 - b. An order that the strata not raise contributions in the operating fund or the CRF for the purpose of reimbursing the other owners for any costs related to the March 2020 roof replacement, and
 - c. An order that the strata not reimburse the other owners from the CRF or the operating fund for the March 2020 roof replacement costs.
3. The strata acknowledges that it historically managed itself informally. However, it says that it has worked to bring itself into compliance with the *Strata Property Act* (SPA), and believes it now is. It denies any wrongdoing related to its finances and says that it has tried to treat all owners fairly.
4. Ms. Stark represents the applicants. A strata council member represents the strata.

JURISDICTION AND PROCEDURE

5. 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.

6. 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 and that I can decide this dispute without an oral hearing.
7. 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

8. The strata argues that the applicants' claims in this dispute are similar to the claims addressed in *Stark 2021*. The legal principle of *res judicata*, meaning "already decided", prevents a party from bringing multiple legal proceedings about the same issue.
9. Although the applicants' claims in this dispute are about payments made with respect to the March 2020 roof replacement, which *Stark 2021* was also about, I find the claims here are sufficiently distinct from their claims in *Stark 2021*. The main issue before the CRT in *Stark 2021* was whether the special levy the strata attempted to pass in February 2021 to retroactively fund the roof replacement was valid. Here, the issues I must decide are about the strata's subsequent actions relating to the 2022 CRF contributions. So, I find the applicants' claims in this dispute are not *res judicata* and I consider them below.

ISSUES

10. The issues in this dispute are:
 - a. Did the strata breach the SPA or treat the applicants significantly unfairly by making the applicants contribute to the CRF in 2022 for the purpose of

reimbursing the other owners for their contributions for the March 2020 roof replacement?

- b. Did the strata breach the SPA or treat the applicants significantly unfairly when it paid the other owners from the CRF to reimburse them for their contributions for the March 2020 roof replacement?
- c. If yes to any of the above, what remedies are appropriate?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (meaning more likely than not). I have considered all the parties' submissions and evidence but refer only to the evidence and argument that I find necessary to explain my decision.

Background

12. The strata consists of 5 strata lots in a 3-storey building. There are 2 strata lots on the second floor, one of which is unit 103. The 5 strata lots do not have equal unit entitlement.
13. It is undisputed that the strata historically operated informally, including at the time the strata completed the March 2020 roof replacement. In *Stark 2021*, the tribunal member noted the cost for the roof replacement was \$20,737.50. The owners of units 101, 102, 104 and 105 each initially contributed \$4,000 for the roof replacement at the strata's informal request. The strata paid for the roof replacement from the strata's operating account (its only bank account at the time) which included the other owners' respective \$4,000 contributions. At that point, the applicants had not made any payments to the strata for the roof replacement.
14. The strata says that it then received advice that the roof replacement was not an operating expense and should have been paid for based on unit entitlement, not split evenly amongst the 5 strata lots. So, at the strata's February 27, 2021 annual general meeting (AGM), the owners voted on a special levy to have all strata lot owners pay

for the roof replacement by unit entitlement. The vote passed and as a result, the strata collected additional money from units 102, 104 and 105 and reimbursed unit 101 to rebalance their contributions to reflect unit entitlement. The applicants' portion of the special levy contribution was \$4,049.38. However, the applicants did not pay, so the strata sent them a demand letter, copying their mortgagee, which paid the \$4,049.38, plus \$500 in legal costs to the strata.

15. This prompted the applicants to start the *Stark 2021* CRT dispute. As noted above, in *Stark 2021*, the CRT found the special levy was invalid. The tribunal member ordered the strata to pay the applicants \$4,549.38 as reimbursement for the invalid special levy and legal costs, \$12.14 in pre-judgment interest, and \$250 in CRT fees. As noted, the strata undisputedly paid the applicants the ordered amounts.
16. The strata says that as a result of the CRT's decision in *Stark 2021*, it decided that all owners should be paid back the amounts they contributed for the roof replacement as it would not have been fair for some owners and not others to pay for the roof replacement. So, the strata decided to pass a budget that would increase the owners' contributions to the CRF to raise enough money to reimburse the owners of units 101, 102, 104 and 105 for their earlier contributions to the operating fund for the roof replacement work.
17. The evidence shows that the strata first proposed a budget that included increased contributions to the operating fund which would then be used to reimburse the other owners. However, the strata received a letter from the applicants' lawyer that said that the roof work was not an operating expense. So, at the strata's February 12, 2022 AGM, the owners voted to amend the budget to increase the CRF contributions instead. This motion passed and so did the amended budget. The applicants then started this CRT dispute on July 7, 2022.
18. On September 24, 2022, the strata gave notice for an October 15, 2022 special general meeting (SGM). The notice included the proposed wording for a resolution that the strata pay back the owners of units 101, 102, 104, and 105 who had funded

the March 2020 roof replacement from the CRF. The resolution said that the following amounts would be paid:

Strata Lot Number	Contribution to Roof Replacement	Interest 0.5%/yr	Total
101	\$3,766.55	\$47.08	\$3,813.64
102	\$4,067.34	\$50.84	\$4,118.18
104	\$4,067.34	\$50.84	\$4,118.18
105	\$4,049.38	\$50.62	\$4,100.00
TOTAL	\$15,950.62	\$199.38	\$16,150.00

19. The October 15 SGM meeting minutes show the resolution passed with a vote of 4 to 1, with the applicants opposing. The strata has since undisputedly paid the other owners the amounts listed above, totalling \$16,150.

Was it improper or significantly unfair for the strata to raise CRF funds to repay the other owners for their roof replacement contributions?

20. A strata corporation is responsible for its common expenses. SPA section 92 says to meet these expenses, a strata corporation must establish an operating fund and a CRF which strata lot owners must contribute to by means of strata fees. The CRF is for common expenses that usually occur less often than once a year or that do not usually occur. SPA section 99 says, in essence, that subject to section 100, owners must contribute to the operating fund and CRF based on their strata lots' unit entitlement.
21. It is undisputed that the roof replacement costs were a common expense. Though the strata paid for the roof replacement bill from its operating fund in 2020, it acknowledges now that it was not an operating expense and should have instead been paid by way of a special levy or from the CRF. As noted above, the strata did not have a CRF in 2020.
22. The strata says that the increased 2022 CRF contributions and the resolution passed at the October 15 SGM were all done to correct its prior errors and not as a means of circumventing the CRT's order in *Stark 2021* as the applicants allege.

23. I turn first to the issue of whether the increased 2022 CRF contributions were done in compliance with the SPA and in a manner that was not significantly unfair to the applicants.
24. The applicants say that given the CRT's orders and findings in *Stark 2021*, it was improper for the strata to increase their CRF contributions in 2022 to repay the other owners for their contributions towards the 2020 roof replacement.
25. The applicants appear to argue that the CRT made findings or orders in *Stark 2021* that prohibit the strata from ever collecting amounts from them relating to the March 2020 roof replacement work. I disagree. The CRT's orders in *Stark 2021* were made on the finding that the strata collected funds from the applicants based on an invalid special levy. The CRT did not find that the applicants were not required under the SPA to contribute to the roof replacement costs at all.
26. Further, to the extent the applicants argue that it was improper for the strata to pass a budget requiring all owners to make significant contributions to the CRF in 2022, I do not agree. As noted by the tribunal member in the non-binding but persuasive decision in *Kosi v. The Owners, Strata Plan KAS1471*, 2022 BCCRT 1122 at paragraph 25, the *Strata Property Regulation* (Regulation) establishes minimum contributions to the CRF based on the operating fund. Neither the SPA nor the Regulation establish maximum contributions. Section 3.4 of the Regulation says that once the minimum CRF contributions are met, additional contributions can be made as a part of a strata corporation's annual budget approve process. This is exactly what happened here. So, as in *Kosi*, I find nothing prohibited the strata's large CRF contribution increase in 2022.
27. The applicants also say that it was significantly unfair for them to have to make the increased monthly CRF contributions in 2022 as it was financially burdensome for them.
28. The CRT has authority to make orders remedying a strata corporation's significantly unfair act or decision under CRTA section 123(2). The court has the same authority under SPA section 164 and the same legal test applies (see *Dolnik v. The Owners*,

Strata Plan LMS 1350, 2023 BCSC 113). In *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173, the court confirmed that significantly unfair actions or decisions are those that are burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust, or inequitable. In applying this test, an owner's objectively reasonable expectations are a relevant factor but are not determinative.

29. Here, I find the strata properly proposed an amended budget at its February 12 AGM that included details about the increased CRF contributions, and the budget was voted on and passed in accordance with the SPA. All owners were required to pay higher CRF contributions based on their respective unit entitlement. Since the applicants do not say otherwise, I find it likely that all owners made their respective contributions. I do not find the applicants' expectation that they should have been exempt from the increased 2022 CRF contributions was reasonable. As all of the owners contributed to the CRF based on unit entitlement, I find the strata did not treat the applicants significantly unfairly by requiring them to contribute. I dismiss this part of the applicants' claims accordingly.

Was it improper or significantly unfair for the strata to reimburse the other owners from the CRF for their earlier contributions relating to the roof replacement costs?

30. As noted above, SPA section 92(b) says that the CRF is for common expenses that usually occur less often than once a year or that do not usually occur. SPA section 96 says the strata must not spend money from the CRF unless the expenditure is (a) consistent with the purposes of the fund set out in SPA section 92, and (b) approved or authorized in certain ways. Aside from emergency and minor expenditures set out in SPA section 98, which do not apply here, CRF expenditures must generally be authorized by a $\frac{3}{4}$ vote.
31. The applicants argue that the resolution that passed at the October 15 SGM was not for a proper common expense, and so the strata was wrong to use money from the CRF to reimburse the owners for their earlier payments towards the roof replacement.

32. SPA section 1 defines “common expenses” as expenses that relate to the common property and common assets or that are required to meet any other purpose or obligation of the strata. Here, the resolution stated that the CRF payments were for the purpose of paying back the 4 owners who funded the roof replacement in March 2020. As noted above, the roof replacement costs were undisputedly a common expense. While the purpose of this resolution was not to pay for the roof replacement itself, which as noted above was paid for in 2020, I find the purpose of the resolution is sufficiently related to the common property roof repairs to fall within the definition of common expense in SPA section 1. Since it is a common expense that does not occur once a year or more, it had to be paid from the CRF.
33. I find the strata also had an obligation to correct its prior mistakes in improperly collecting funds from the other owners for the 2020 roof replacement, first with the request for the initial \$4,000 payments and then with the invalid special levy. Since both the court and the CRT have authority to remedy a strata corporation’s significantly unfair acts, I find the strata had an obligation to treat all owners fairly. Given that the CRT did not make a finding that the applicants must not contribute to the 2020 roof replacement costs, I find it would have been significantly unfair for the strata to not take steps to correct the fact that it had improperly collected funds from the other owners for the roof replacement costs. I find a purpose of the October 2022 CRF payments was to correct the strata’s previous significantly unfair acts towards the other owners relating to the common property roof repairs, and thus a common expense under SPA section 1. For those reasons, I find it was not improper for the strata to pay the other owners from the CRF as set out in the resolution.
34. The remaining question is whether the payment to the other owners from the CRF was significantly unfair to the applicants. The applicants argue that it was since they are the only owners that did not receive any reimbursement. However, the strata had already repaid the applicants in accordance with the CRT’s order in *Stark 2021*. So, there were no amounts left relating to the 2020 roof replacement for the strata to reimburse the applicants for. By making the payments to the other owners from the CRF, I find what the strata has essentially accomplished is to have all 5 owners pay,

albeit indirectly, towards the roof replacement by unit entitlement, which is what the SPA calls for.

35. The applicants also argue that the strata's intentions behind the 2022 CRF contributions and payments to the owners were, in a sense, retribution for having to repay the applicants as ordered in *Stark 2021*. However, I find it unproven that the strata's actions in this regard were lacking in probity or fair dealing, or that they were done in bad faith.
36. Finally, the applicants argue that it was improper or unfair for the strata to pay interest to the other owners on the amounts it had improperly collected from them in 2020 for the roof replacement. The evidence shows that the strata calculated interest at a yearly rate of 0.5% for the period of April 1, 2020, to October 1, 2022. It appears the strata thought it was appropriate to pay interest to the other owners since the CRT had ordered it to pay the applicants *Court Order Interest Act* pre-judgment interest. Although the *Court Order Interest Act* does not apply to the strata's payments to the other owners, the 0.5% interest payment was included in the resolution that was passed at the October 15 SGM. So, I find the interest payments were properly made. I also note that the total amount of interest that was paid to the other owners from the CRF funds was \$199.38, and the applicants' contribution to that based on unit entitlement was \$40.37. So, even if it was unfair for the other owners to receive interest as part of the October 2022 CRF payments to them, I find the applicants' contribution towards that interest payment was negligible and far from significantly unfair.
37. In conclusion, I find it unproven that the strata breached the SPA or treated the applicants significantly unfairly when it made the October 2022 CRF payments to the other owners and I dismiss the applicants' claims.

CRT FEES AND EXPENSES

38. 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. Since the applicants were unsuccessful, I dismiss their claim for reimbursement of their paid CRT fees. The strata did not pay any fees and none of the parties claim any dispute-related expenses, so I award none.

39. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicants.

ORDER

40. I dismiss the applicants' claims and this dispute.

Nav Shukla, Tribunal Member