



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Curtis v. The Owners, Strata Plan EPS4098*, 2024 BCCRT 960

B E T W E E N :

JOHN CRAIG CURTIS

APPLICANT

A N D :

The Owners, Strata Plan EPS4098

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Alison Wake

INTRODUCTION

1. John Craig Curtis owns a strata lot in the respondent strata corporation. Mr. Curtis says that the strata is overcharging him for using an electric vehicle (EV) charger. He asks the Civil Resolution Tribunal (CRT) to order the strata to reduce his EV charger fee and to refund his past overpayments.

2. The strata says that its EV charging user fee is permitted by its bylaws and is reasonable. It asks me to dismiss Mr. Curtis's claims.
3. Mr. Curtis is self-represented. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

4. 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 recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
5. 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, neither party requested an oral hearing, and I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Considering the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
6. 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.
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.

ISSUE

8. The issue in this dispute is whether the strata's EV charging user fee is reasonable.

EVIDENCE AND ANALYSIS

9. As the applicant in this civil dispute, Mr. Curtis must prove his claims on a balance of probabilities, meaning more likely than not. I have read all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.

Background

10. The background facts are undisputed. At its 2023 AGM, the strata passed a resolution to amend its bylaws to include new bylaw 44, which set out a user fee of \$35 for charging an EV in their designated parking stall. Bylaw 44 was added to the strata's bylaws and registered at the Land Title Office on April 26, 2023.
11. Mr. Curtis has an EV and has paid the \$35 monthly user fee imposed by bylaw 44 since February 1, 2024. Mr. Curtis says that the user fee is unreasonable. Specifically, he says that it does not reflect his actual electricity usage for charging his EV.
12. I pause to note that Mr. Curtis argues that his EV charger is installed in his "privately owned" parking stall. However, the strata plan shows that the strata's parking areas are common property. So, I find Mr. Curtis does not own his parking stall.

User fees and reasonableness

13. SPA section 110 says that a strata corporation must not impose user fees for the use of common property other than as set out in the *Strata Property Regulation* (SPR). The parties agree that the strata is entitled to charge a user fee for EV chargers' electricity usage under section 110, subject to the SPR's requirements.
14. SPR section 6.9(1) says that a user fee must be set out in a bylaw or rule, and the amount must be reasonable. SPR section 6.9(2) says that a user fee may be for a fixed amount or may vary based on factors like the user's consumption rate, the strata's costs, the number of users, and the duration of the use.
15. Here, as noted, the user fee is set out in bylaw 44. While Mr. Curtis argues that it is misleading to say that the resolution to add bylaw 44 passed by a $\frac{3}{4}$ vote, because

a ¾ majority of the voters present at the AGM does not represent a ¾ majority of all strata owners, he does not dispute that the strata complied with the quorum requirements of the SPA and its bylaws in voting on the resolution. So, I find the bylaw was validly passed and the user fee is properly set out in a bylaw as required by SPR section 6.9(1).

16. I turn to whether the user fee is reasonable. In *The Owners, Strata Plan BCS 1721 v. Watson*,¹ the BC Supreme Court found that user fee reasonableness must be determined on an objective standard. The court noted that that an assessment of whether a user fee is reasonable may account for prevailing market conditions and costs incurred by the strata.²
17. Mr. Curtis makes several arguments about the user fee's reasonableness. First, he says that SPR section 6.9(2) requires that the user fee be based on the individual user's consumption rate. I disagree. As noted, SPR section 6.9(2) says that a user fee may be either a fixed amount **or** may be an amount determined on a reasonable basis, including, but not limited to, factors including the user's consumption rate. Nothing in the SPR requires that the user fee be solely based on the user's consumption rate.
18. Second, and similarly, Mr. Curtis says that the user fee is unreasonable because it does not reflect his actual electricity consumption. Mr. Curtis provided calculations showing that based on his current EV usage, the cost of his electricity consumption averages \$13.71 per month based on his annual driving mileage of 6,000 kilometers. So, Mr. Curtis says that the user fee should be reduced to \$14 per month.
19. The strata does not dispute that Mr. Curtis's calculations of his actual electricity usage are accurate. Instead, the strata says that it is not feasible for it to impose user fees based on each user's actual consumption, and that a fixed rate for all owners is the most appropriate method.

¹ 2018 BCSC 164.

² See *The Owners, Strata Plan LMS 3883 v. De Vuyst*, 2011 BCSC 1252.

20. The parties agree that the EV chargers cannot be connected to each owner's BC Hydro account. However, Mr. Curtis suggests that the strata should impose individualized user fees based on each owner's typical consumption. The strata says that it would incur increased administrative costs if it had to audit each user's EV charger use. Mr. Curtis does not dispute this, but says that these costs would be nominal given the strata's annual budget, as there are currently only 10 EV charger users in the strata. He says that the strata and its manager have the capacity to provide individual fixed charges for each owner with an EV charger.
21. I accept that it may be difficult or time-consuming for the strata to charge user fees for EV charging based on each user's consumption. As noted, the SPR does not require that user fees be based on consumption, and permits fixed fees instead, provided they are reasonable.
22. The difficulty for the strata is that it provided no evidence or explanation of how it arrived at the \$35 per month fixed user fee. While the strata says that the user fee is reasonable with regard to estimated average EV use, it does not explain what data it relied on to determine "average use". Mr. Curtis suggests that the strata based the user fee on an average annual mileage of 20,000 kilometers, but says that this does not reflect actual use for EV drivers or the strata's owners with EVs. I note the strata did not have an opportunity to respond to this argument, as Mr. Curtis raised it in his final reply submissions. However, there is no documentary evidence before me to show what information the strata considered in setting the fee. For example, the minutes of the AGM at which bylaw 44 was passed do not include a justification or explanation for how the strata determined the fee, nor does the AGM notice.
23. The strata argues that the user fee is reasonable because its owners approved the fee by passing the resolution to add bylaw 44. I acknowledge that the strata undisputedly proposed a similar bylaw at its 2022 AGM that would have imposed a user fee for EV charging of \$60 per month, which did not pass. However, I find the mere fact that the owners rejected a \$60 fee but approved a \$35 fee does not, on its own, mean that the \$35 per month user fee is reasonable.

24. Although Mr. Curtis, as the applicant, has the burden of proving its claims, I find that because the strata is imposing the user fee, it has the burden of proving that the fee is reasonable.³ As noted, the strata provided no explanation for how it determined the user fee. It provided no evidence of relevant factors, such as average use, prevailing market conditions or of the costs that it incurs for EV charging. In the absence of further evidence from the strata about why it believes the \$35 per month user fee is reasonable, I find the strata has not established that the user fee is reasonable in the circumstances.

Remedies

25. Mr. Curtis asks that I order the strata to reduce his monthly user fee for EV charging to \$14 per month. I do not find this to be an appropriate remedy in the circumstances, as Mr. Curtis's EV charger usage may vary and, as noted, actual usage is not the only method to determine a reasonable user fee.

26. Instead, I find it is appropriate to order the strata to stop enforcing the user fee. SPA section 121 says that a bylaw is not enforceable to the extent that it contravenes the SPA and regulations. I find bylaw 44 contravenes SPR section 6.9(1) because the strata has not established that the user fee it imposes for EV charging is reasonable. So, I find bylaw 44 is not enforceable to the extent that it charges a user fee of \$35 per month for EV charging, and I order the strata to stop enforcing that portion of it.

27. Mr. Curtis also asks for reimbursement of any overpayments he has made to the strata for the user fee beginning February 1, 2024. Mr. Curtis did not provide documentary evidence of the user fees that he has paid the strata, but the strata does not dispute that he has paid \$35 per month on the first day of each month as required by bylaw 44. While in submissions Mr. Curtis says that he has overpaid by \$21 per month, as I have found the user fee portion of bylaw 44 is unenforceable, I find it appropriate to order the strata to reimburse Mr. Curtis the full \$35 per month for his user fee payments for 8 months. This equals \$280. Mr. Curtis is entitled to

³ See *Frost v. The Owners, Strata Plan BCS 3463*, 2022 BCCRT 1327, at paragraph 28.

pre-judgment interest on this amount under the *Court Order Interest Act* (COIA). Calculated from the dates Mr. Curtis paid each user fee to the date of this decision, this equals \$5.17.

Additional arguments

28. Given my conclusion and these orders, I find I do not need to address in detail Mr. Curtis's other arguments about why the fee is unreasonable. However, consistent with the CRT's mandate to recognize ongoing relationships between dispute participants, and given that the strata will need to determine a reasonable user fee if it intends to continue to charge one, I find it appropriate to briefly comment on two of Mr. Curtis's additional arguments.
29. First, Mr. Curtis says that the strata must only charge for electricity at the same rate set by the BC Utilities Commission and BC Hydro. The *Utilities Commission Act* sets out certain criteria that the BC Utilities Commission must follow in setting utility rates. While Mr. Curtis argues that provincial regulations require that the strata apply the same rates imposed by BC Hydro, he does not point to any specific provision of the *Utilities Commission Act* or its associated regulations saying this. As noted, the SPA permits the strata to charge a user fee for common property use, and does not require that fee is based only on the user's consumption.
30. Second, Mr. Curtis argues that the strata is a non-profit organization and cannot earn a profit. He says that the strata is charging more than the actual electricity usage costs, which is "profiteering" and is illegal. Nothing in the SPA or its regulations says that a strata cannot earn a profit on user fees. Further, the strata may incur additional administrative costs in approving and monitoring EV charger use, so it is not necessarily true that any user fee that is higher than actual electricity use would lead to a profit by the strata.
31. So, in summary, while I have found that the \$35 per month user fee is not reasonable, I reiterate that the SPA and SPR do not require the user fee to be based solely on the user's actual electricity consumption. The strata may establish a

reasonable user fee based on other considerations, including prevailing market conditions or its own costs.

CRT FEES AND EXPENSES

32. 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. As Mr. Curtis was successful, I order the strata to reimburse him \$225 for his CRT fees. Neither party claimed dispute-related expenses, so I make no order for them.
33. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Mr. Curtis.

ORDERS

34. I order the strata to immediately stop enforcing the EV charging user fee set out in bylaw 44.
35. Within 30 days of this decision, I order the strata to pay Mr. Curtis a total of \$510.17, broken down as follows:
 - a. \$280 as reimbursement of his EV charging user fees from February 1, 2024 to September 1, 2024,
 - b. \$5.17 in pre-judgment interest under the COIA, and
 - c. \$225 in CRT fees.
36. Mr. Curtis is entitled to post-judgment interest under the COIA.

37. 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.

Alison Wake, Tribunal Member