



Civil Resolution Tribunal

Date Issued: October 30, 2024

File: ST-2022-008602

Type: Strata

Civil Resolution Tribunal

Indexed as: *Main v. The Owners, Strata Plan NW3163*, 2024 BCCRT 1091

B E T W E E N :

STUART MAIN, LORRAINE BISSETT, PRESTON MACDONALD, BOB BROWN, ELAINE PERA, JEAN CENTER, TAMARA LAZA, JACK MACKAY, BRENDA HAYASHI, BERNICE GAUTHIER, MARILYN MORLOCK, ATTRACTA MORGAN, MARILYN FRENCH, and DIANE HALLS

APPLICANTS

A N D :

The Owners, Strata Plan NW3163

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about financial matters in the strata. The applicants are Stuart Main, Lorraine Bissett, Preston Macdonald, Bob Brown, Elaine Pera, Jean Center, Tamara

Laza, Jack Mackay, Brenda Hayashi, Bernice Gauthier, Marilyn Morlock, Attracta Morgan, Marilyn French, and Diane Halls. They each own or co-own a strata lot in the respondent strata corporation, The Owners, Strata Plan NW3163 (strata).

2. The strata consists of condominium and townhouse strata lots. The applicants' strata lots are all condominium strata lots. The applicants say that the strata incorrectly allocated certain repair and maintenance expenses solely to the condominium strata lots in its 2021/22, 2022/23, and 2023/24 budgets. The applicants say that the *Strata Property Act* (SPA) requires the strata to allocate those expenses across all strata lots as it has no sections or "types" bylaws. The applicants request the following remedies:
 - a. a ruling that the condominium owners overpaid their 2021/22, 2022/2023, and 2023/24 strata fees,
 - b. reimbursement of \$21,960.17 in strata fees,
 - c. for the strata to hold a special general meeting within 30 days to reallocate the common expenses based on unit entitlement in the 2021/22, 2022/23, and 2023/24 budgets, and
 - d. for the strata to provide the applicants the proposed special general meeting resolutions for review with the strata manager, prior to distributing the notice for the special general meeting.
3. The strata disagrees. It says its budgets comply with the SPA and the *Strata Property Regulation* (SPR). As part of its justification, it says the strata plan shows some areas are defined as joint limited common property for the exclusive use of the condominium strata lots. It says that, given this, it correctly allocated costs under SPR section 6.4(1). The strata also says it would be significantly unfair to allocate expenses otherwise.
4. Stuart Main represents the applicants. A strata council member represents the strata.
5. For the reasons that follow, I find the applicants have proven part of their claim.

JURISDICTION AND PROCEDURE

6. 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.
7. 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. The key facts are largely undisputed, and I find credibility is not central to this dispute. 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.
8. 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.
9. 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.

The CRT's September 25, 2023 Preliminary Decision

10. The strata says that the allocation of the repair and maintenance expenses at issue were previously addressed in another dispute under file number ST-2021-001297. It says the dispute was resolved in a July 7, 2021 consent resolution order (CRO). The strata says this dispute is *res judicata*, meaning already decided.
11. In a September 25, 2023 preliminary decision, the CRT found that this dispute was not *res judicata* or an abuse of process. The CRT declined to refuse to resolve this

dispute under CRTA sections 11(1)(a) and (b). Further, the CRT determined that the current dispute did not require the CRT to issue an order contradicting or overriding the 2021 CRO.

12. For the sake of brevity, I will not further summarize the preliminary decision here. I agree with the reasoning in the decision and will consider this dispute on its merits.

The Character Length of the Applicants' Submissions

13. Under CRT rule 7.3(5), an applicant and respondent's arguments are generally limited per claim to 20,000 characters, and 10,000 characters for the applicant's final reply. Arguments for dispute-related expenses and interest claims are limited to 2,500 per claim.
14. The applicants provided submissions through the CRT's online portal and through an uploaded document labelled Exhibit 0. The strata says Exhibit 0 alone exceeds rule 7.3(5)'s character count and should not be considered.
15. The applicants disagree. They say that section 6 of Exhibit 0 is the main part of their argument, and that part is less than 20,000 characters. They say that I should waive the application of rule 7.5(5) under CRT rule 1.2(2).
16. By my count, Exhibit 0 is 47,531 characters excluding spaces. It greatly exceeds the CRT's character count limit. I disagree with the applicants' submission that only section 6 should be considered as arguments for the purpose of rule 7.3(5). I find this is an unreasonable interpretation of the rule and one that would create uncertainty for the parties to determine what is or is not part of an argument.
17. In order to address any unfairness to the strata, I invited it to provide submissions about Exhibit 0. The strata also asked for an extension of time to provide these submissions, and I granted it. The strata provided additional submissions, and I have considered them in my decision. Ultimately, they did not change my findings or decision, so I did not find it necessary to share them with the applicants for further comment.

ISSUES

18. The issues in this dispute are as follows:

- a. Did the strata incorrectly allocate certain repair and maintenance expenses solely to the condominium strata lots in the 2021/22, 2022/23, and 2023/24 budgets?
- b. If so, would it be significantly unfair to order the strata to change the allocation of any expenses?
- c. Are any remedies appropriate?

BACKGROUND, EVIDENCE AND ANALYSIS

19. 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 read all the parties' submissions and evidence but refer only to the evidence and argument that I find necessary to explain my decision.
20. The strata plan shows that the strata consists of Phase I and Phase II strata lots. Phase I is comprised of strata lots 1 through 28. Phase II consists of strata lots 29 through 58. The parties refer to the Phase I strata lots as the townhouse strata lots and the Phase II strata lots as the condominium strata lots. I will use the parties' preferred language here of townhouse and condominium strata lots.
21. The condominium building has 3 floors and has all the condominium strata lots in it. The strata plan labels multiples areas as C2 in this building. The plan defines C2 as joint limited common property for the exclusive use of the condominium strata. The areas labelled C2 include a basement parking lot, some stairs, a lobby, hallways, an elevator, decks, a planter area, storage rooms, mechanical rooms, firewalls, and a third-floor lounge.
22. There are also common facility rooms and a workshop that are designated as common property on the basement floor. The applicants refer to the facility room as

the Amenity Room and the Library/Exercise Room. They say, and I accept, that owners use these rooms for personal events, council meetings, townhall meetings, annual general meetings, and special general meetings.

23. The strata registered a complete set of bylaws in June 2018. There are no subsequent amendments. The bylaws do not create any types or sections.
24. The budgets in evidence show the strata's fiscal year end is August 31. The applicants allege that the budgets are incorrect for the following periods: September 1, 2021 to August 31, 2022 (2021/22 budget), September 1, 2022 to August 31, 2023 (2022/23 budget), and September 1, 2023 to August 31, 2024 (2023/24 budget).

Issue #1. Did the strata incorrectly allocate certain repair and maintenance expenses solely to the condominium strata lots in the 2021/22, 2022/23, and 2023/24 budgets?

25. I will first begin with the relevant provisions of the SPA and SPR as they are necessary to understand the parties' arguments.
26. The overall scheme of the SPA is that common expenses are borne in proportion to unit entitlement under SPA section 99. SPA section 99(2) says the following:

99(2) Subject to the regulations, the strata fees for a strata lot's share of the contribution to the operating fund and contingency reserve fund are calculated as follows:

$$\frac{\text{unit entitlement of strata lot}}{\text{total unit entitlement of all strata lots}} \times \text{total contribution}$$

27. There are some limited exceptions to this formula. The most relevant is SPR section 6.4(1). It provides the formula for sharing operating expenses for limited common property. For limited common property expenses, the contribution is shared only between strata lot owners entitled to use the limited common property to which the contribution relates:

6.4(1) For the purposes of section 99 of the Act, but subject to a resolution under section 100 of the Act, if a contribution to the operating fund relates to and benefits only limited common property, the contribution is shared only by owners of the strata lots entitled to use the limited common property, and each strata lot's share of that contribution is to be calculated in accordance with the following formula and not in accordance with the formula set out in section 99 (2) of the Act:

$$\frac{\text{unit entitlement of strata lot}}{\text{total unit entitlement of all strata lots whose owners are entitled to use the limited common property to which the contribution relates}} \times \text{contribution to operating fund}$$

[Emphasis added.]

28. The words “relates to and benefits only” in SPR section 6.4(1) have been interpreted very narrowly by the CRT. See, for example, the non-binding decisions of *Carroll et al v. The Owners, Strata Plan VIS 2499*, 2019 BCCRT 125 at paragraph 34, citing *Ernst & Twins Ventures (PP) Ltd. v. Strata Plan LMS 3259*, 2004 BCCA 597.
29. Another exception is in SPA sections 191 to 195, and SPR sections 6.4 and 11.1 to 11.3. They allow a strata corporation to allocate operating expenses to different types of strata lots, or different strata sections, if those expenses only apply to that section or strata lot type. The strata has not created sections, nor has it passed a bylaw establishing strata lot types. I also note that it is too late for the strata to create a types bylaw now. See the non-binding decision of *Merchant v. The Owners, Strata Plan LMS 992*, 2021 BCCRT 263 at paragraph 31.
30. SPA section 100 says that in order to change the formulas set out in SPA section 99 and the SPR, the owners must unanimously pass a resolution to do so. There is no submission or evidence that the owners have passed such a resolution.
31. I will also cite the relevant bylaws here. Bylaw 2(2) says an owner who has the use of limited common property must repair and maintain it, except for repair and maintenance that is the responsibility of the strata corporation under the bylaws.

32. Bylaw 12(2) says in part that the strata must repair and maintain limited common property to the extent that the repair and maintenance ordinarily occurs less often than once a year.
33. With that in mind, I turn to the parties' arguments. The applicants say that various expenses do not relate to or benefit only limited common property for the exclusive use of the condominium units. These expenses include the maintenance contracts to repair and maintain the elevator, the boilers, the carpet, and the fire protection system. They also say this is the case for the budget line items for the gate, electrical and telephone wiring for the enter-phone, and certain expenses in the semi-annual budget. The applicants say these expenses instead relate to common property or common assets and should be shared under SPA section 99(2) rather than only among condominium strata lot owners under SPR section 6.4(1).
34. The strata says the applicants have not explained how the 2021/22, 2022/23, and 2023/24 budgets were prepared incorrectly. It notes that the strata has historically allocated some expenses as relating to common property, and others under SPR section 6.4(1) that are for the exclusive use of the condominium strata lots. It say it has appropriately allocated expenses by relying on the strata plan. As noted above, the plan designates certain areas as C2, meaning for the exclusive use of the condominium strata lot owners. The strata also says that changing its historical approach would also result in significant unfairness.
35. The applicants say that the central issue is whether the applicants are correct to say that, given that SPR section 6.4(1) is inapplicable, the only method the strata can use to calculate the contribution each strata lot owner is required to contribute towards the operating fund budget is based on SPA section 99(2). However, I find it is not given that SPR section 6.4(1) is inapplicable. I find from the parties' submissions that the central issue is, in fact, whether SPR section 6.4(1) applies to the expenses identified by the applicants.
36. I turn to the different expenses the applicants say do not relate to or benefit only C2 limited common property. The budgets for 2020/21, 2022/23, 2023/24 show that the

strata allocated the following annual costs to solely to the condominium strata lots: elevator maintenance, janitorial services, carpet cleaning, boiler maintenance, and gas.

37. For these same budgets, the gate, enter-phone, and fire protection system appear as line items in the “all” category. I find this likely includes electrical and telephone wiring for the enter-phone, as described in the applicants’ claim. I find it clear that the strata treated these items as expenses connected with common property. It did not allocate their repair or other expenses to the condominium strata lots only. So, I need not make any orders about them.
38. I was unable to identify from the evidence the other expenses the applicants were referring to in the semi-annual budget in their claim. To the extent the applicants seeks a ruling on such Items, I decline to do so given the lack of evidence about their specific location and use
39. The remaining items appear as annual expenses in the budgets at issue so I will consider them. I turn first to the elevator. The strata plan shows the elevator is designated as C2 limited common property. The applicants say that the strata plan only designates the elevator shaft as C2 property. However, the strata plan only says “elevator”. So, I find it does not refer only to the elevator shaft and likely includes the elevator itself.
40. The applicants say that the strata, as a whole, benefits from the elevator expense. They say that all owners can access the elevator. While it may be the case that all owners have access, there is no indication that any townhouse strata lot owners would need to use the elevator to access the common property facility rooms or workshop. They also would not use the elevator to access any townhouse strata lots as the condominium strata lots are in a separate building. I find that mere access to these areas is not enough. Given this, I find that the elevator expense relates to or benefits only the C2 property. So, I find that SPR section 6.4(1) applies.

41. I next consider the carpet and janitorial services. There is no evidence about what specific areas these services are for. For example, there are no invoices in evidence that describe what areas the contractor cleaned or serviced.
42. In the absence of more specific evidence, I find it likely that these expenses concern the hallway areas or other areas designated as C2. So, I find that repairing and maintaining these areas relates to or benefits C2 property. I note my decision might have been different if these services included cleaning any of the common property facility rooms or workshop.
43. The applicants say that all owners benefit from the hallway in a similar manner to the elevator. However, much like the elevator, I find there is nothing to suggest that the townhouse strata lot owners would benefit or use the C2 hallways. Again, I find that mere access is insufficient.
44. This leaves boiler maintenance and gas. The strata's undisputed submission is that the boilers are located in areas designated as C2 property. From this, I find the boilers are likely located in the mechanical rooms shown on the strata plan designed as C2 property. Presumably they are fixtures and attached to the limited common property mechanical room.
45. The applicants say that the boilers heat water for the condominium strata lot owners and water used in the Amenity Room. The applicants made this submission in Exhibit 0. The Amenity Room is common property.
46. As noted earlier, I asked the strata to provide additional submissions about Exhibit 0. The strata did not dispute that the boilers provide hot water to the Amenity Room. So, I find they do not benefit only C2 limited common property. Accordingly, I also find that the strata breached SPR section 6.4(1) by allocating the expense to the condominium strata lots. I will comment on this again below.
47. This leaves only the gas expense. A gas bill in evidence show that Fortis BC bills the strata monthly. The strata then pays the expenses and, according to the budgets in

evidence, allocates the cost of the gas to the condominium strata lots only. It has a budgeted cost of approximately \$5,650 per year.

48. The applicants say in Exhibit 0 that the gas bill is a common expense that benefits all owners. They say some of the gas is used to a small degree in the common property Amenity Room. The strata does not dispute this, nor does it directly comment on the gas expense.
49. The strata is obligated to pay for common expenses under SPA section 91. These are expenses that relate to common property and assets or are required to meet any other purpose or obligation of the strata corporation.
50. In the non-binding decision of *Carroll et al v. The Owners, Strata Plan VIS 2499*, 2019 BCCRT 125, the strata corporation had both residential and commercial strata lots. The strata corporation started allocating some electricity expenses to residential strata lots. The strata corporation had only one BC Hydro account. The CRT held that in order to allocate the expense to the residential lots, the strata had to show that only the residential limited common property used electricity. The CRT found that some of the electricity related to common property. So, the strata corporation's allocation of electricity expenses to the residential strata lots breached SPR section 6.4(1).
51. I find it likely from the applicants' undisputed submissions that the gas is used to heat water that is also used in the Amenity Room. So, I find that the natural gas expense does relate, at least in small part, to common property. I therefore find that the strata breached SPR section 6.4(1) by allocating the expense to the condominium strata lots.
52. The applicants requested a finding that the condominium owners overpaid their 2021/2022, 2022/2023, and 2023/24 strata fees. Given my findings about the boiler maintenance and repair and gas expenses, I find this was likely the case.

Issue #2. Would it be significantly unfair to order the strata to change the allocation of any expenses?

53. The strata says that it would be significantly unfair to change the allocation of expenses even if this breaches SPR section 6.4(1). It says it has calculated expenses in this manner for many years, save for the 2019/20 and 2020/21 budgets, by allocating C2-only expenses in a separate operating budget.
54. The applicants say that the strata's argument is essentially that, "because we have always made errors, we should be able to continue with the same error." It says this does not justify the strata's actions.
55. The CRT has authority to make orders remedying a strata corporation's significantly unfair acts or decisions 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. The BC Court of Appeal has confirmed that significantly unfair actions or decisions are those that are burdensome, harsh, wrongful, lacking in probity and fair dealing, done in bad faith, unjust, or inequitable. See *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173. In applying this test, the owner's objectively reasonable expectations are a relevant factor, but are not determinative.
56. The strata says that it would be significantly unfair to the townhouse strata lot owners to allocate the gas expenses across all strata lots by unit entitlement. I find the strata essentially argues that it is constrained by the fact that it must avoid significantly unfair actions.
57. The strata relies in part on the decision of *Poloway v. Strata Plan K692*, 2012 BCSC 726. In that decision, the court considered whether allocating special levy expenses according to unit entitlement could potentially be significantly unfair. It ultimately concluded that it was not.
58. The court said, "If the strata corporation has approached similar issues, such as the treatment of expenses, in one way and then changes its approach to the substantial detriment of one group or type of strata lot owner, that will often be cogent evidence

of unfairness". The court considered the strata's budget from previous years and found that the strata had made no distinction between expenses benefitting one type of strata unit or another and as such the status quo should remain.

59. The strata says the same analysis should apply here. That is, the strata has historically treated the C2 expenses as separate than the joint expenses of the entire strata. As such, its chosen method of budget preparation and confirmation ought to continue.
60. Although *Poloway* does not consider SPR section 6.4(1), I find its reasoning in connection with significant unfairness is applicable. However, I reach a different conclusion than the strata.
61. I find the strata argues that the townhouse owners have a reasonable expectation that the condominium owners would remain responsible for the payment of expenses relating to the C2 areas as they had in the past.
62. I find that this is an unreasonable expectation to the extent that it would require the strata to breach SPR section 6.4(1). Even if this expectation were reasonable, I find complying with SPR section 6.4(1) would not be significantly unfair for the following reasons.
63. In *Poloway* the court considered factors including the magnitude of the expenses, whether the strata corporation's treatment of historical expenses were an oversight or a matter to which no thought was given, the conduct of the strata, and the degree to which the expense benefitted the apartment-style strata lots as opposed to townhouse strata lots.
64. Here, I find these factors support a finding that it would not be significantly unfair to reallocate the boiler repair and maintenance and gas expenses.
65. First, the expenses in this dispute are relatively modest. The boiler repair and maintenance and gas expenses cost approximately \$2,500 and \$5,000 per year, respectively. This amount is spread out over numerous strata lots on a monthly basis. The expense is recurring, but I find this means it is not an unusual emergency that

would require a different course of action than the allocation required under the SPA and SPR. I find these factors support an absence of significant unfairness.

66. Second, I find the degree of discrepancy leads to a relatively minor subsidy to the benefit of the condominium strata lot owners. I find the allocation, while perhaps unfair, is not significantly unfair.
67. Third, I find the strata's treatment of the expense is an oversight. All the evidence before me indicates the strata intended to comply with the SPA and SPR.
68. Fourth, I find the strata proceeded and continues to proceed in good faith. There is nothing to indicate otherwise.
69. Further, as noted in *Strata Plan LMS 1537 v. Alvarez*, 2003 BCSC 1085, the overall scheme of the SPA is that "you are all in it together". I find it difficult to characterize complying with the SPA and SPR as burdensome, harsh, wrongful, lacking in probity and fair dealing, done in bad faith, unjust, or inequitable in the circumstances.
70. For all those reasons, I find it would not be significantly unfair to order the strata to change the allocation of expenses based on my above-noted findings.

Issue #3. What remedies are appropriate?

71. Given my findings, I find it proven that the 2021/22, 2022/2023, and 2023/24 budgets do not comply with the SPA and SPR 6.4(1). I find an order similar to that in *Carroll* is appropriate.
72. I order the strata to recalculate the budgets, including strata fees, for the 2021/22, 2022/23, and 2023/2024 fiscal years, by dividing the boiler repair and maintenance costs and the gas expenses based on unit entitlement according to SPA section 99(2).
73. I also order the strata to determine how much each condominium strata lot overpaid strata fees for the 2021/22, 2022/23, and 2023/2024 fiscal years, and how much each townhouse strata lot underpaid strata fees for the 2021/22, 2022/23, and 2023/2024 fiscal years.

74. I also order the strata to apply the amount each strata lot overpaid or underpaid to each strata lot's account, as the case may be, and to provide each owner with a brief description of what adjustments the strata has made to their strata lot account, what the current account balance is, and how the owner may address any non-zero balance.
75. I find it unnecessary in the circumstances to order the strata to hold a special general meeting or for the applicants to review the matter with a strata manager in advance of it. I say this because this would be disproportionate to the amount at issue. The budgets indicate that boiler repair and maintenance and the gas expense cost approximately \$2,500 and \$5,000 per year, respectively. Spread out over numerous strata lots on a monthly basis, I find this is a relatively modest amount.
76. Of course, the parties are free to review the matter together without an order. It may be prudent to do so.

CRT FEES AND EXPENSES

77. Under section 49 of the CRTA, 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 see no reason in this case not to follow that general rule. The applicants proved part of their claim. So, I award partial reimbursement of \$112.50 in CRT fees. The parties did not claim any specific dispute-related expenses. So, I order none.
78. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicants.

ORDERS

79. Within 30 days of the date of this order, I order that the strata recalculate the budgets, including strata fees, for the 2021/22, 2022/23, and 2023/2024 fiscal years, by dividing the boiler repair and maintenance costs and the gas expenses based on unit entitlement according to SPA section 99(2).

80. Within 30 days of the date of this order, I order that the strata determine how much each condominium strata lot overpaid strata fees for the 2021/22, 2022/23, and 2023/2024 fiscal years, and how much each townhouse strata lot underpaid strata fees for the 2021/22, 2022/23, and 2023/2024 fiscal years.
81. Within 60 days of the date of this order, I order that the strata apply the amount each strata lot overpaid or underpaid to each strata lot's account, as the case may be, and to provide each owner with a brief description of what adjustments the strata has made to their strata lot account, what the current account balance is, and how the owner may address any non-zero balance.
82. Within 30 days of the date of this order, I order that the strata pay the applicants \$112.50 in CRT fees.
83. The applicants are entitled to post-judgment interest under the *Court Order Interest Act*.
84. I dismiss the applicants' remaining claims.
85. 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.

David Jiang, Tribunal Member