



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Possak et al v. The Owners, Strata Plan KAS 1959*, 2017 BCCRT 31

BETWEEN:

Felix Possak and Angela Possak

APPLICANTS

AND:

The Owners, Strata Plan KAS 1959

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

- 1) The applicants Felix Possak and Angela Possak (the applicants) own a strata lot in a strata corporation known as The Owners, Strata Plan KAS 1959 (the strata). While the applicants originally made a claim that the strata should pay the entire \$2,616.60 they spent resurfacing their limited common property deck, during facilitation that claim was

resolved. At this point, the applicants want the strata to reimburse them 20%, or \$523.32, which is what the applicants say the strata had previously agreed to pay.

JURISDICTION AND PROCEDURE

- 2) These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 3.6 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness. The tribunal also recognizes any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
- 3) The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
- 4) The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I heard this dispute through written submissions because I find there are no significant credibility issues or other reasons that might require an oral hearing.
- 5) In May 2016 the applicants filed a notice of claim in Provincial Court for "deck replacement" in the amount of \$2,616.60 plus fees. On August 9, 2016, at a settlement conference, the judge advised the parties that the Provincial Court did not have jurisdiction over strata property disputes. The applicants then commenced this dispute with the tribunal.
- 6) Under section 48.1 of the Act, in resolving this dispute the tribunal may make one or more of the following orders:
 - a) order a party to do something;
 - b) order a party to refrain from doing something;

- c) order a party to pay money.

ISSUES

- 7) There are two issues in this dispute:
 - a) Should the strata reimburse the applicants \$523.23, which is 20% of their deck resurfacing costs, based on the strata's July 2015 offer to do so?
 - b) Should the strata reimburse the applicants the \$225 in fees they paid the tribunal?

POSITION OF THE PARTIES

- 8) The applicants want the strata to reimburse them 20% of their deck resurfacing expenses, or \$523.32, based on a July 2015 offer that the applicants accepted in December 2015 after an annual general meeting (AGM) at which a motion to provide full reimbursement in the amount of \$2,616.60 was defeated by the owners.
- 9) The strata says its offer to reimburse 20% of the applicants' costs was "off the table" after the applicants refused that offer and the matter referred to the owners at the AGM.

BACKGROUND, EVIDENCE, AND SUBMISSIONS

- 10) The applicants moved into their strata lot in June 2015. The applicants say that in July 2015 they wanted to repair their deck and asked the strata for permission to resurface it. The strata took the position that repainting was sufficient as had been done with other decks, whereas the applicants felt resurfacing was required. Through a series of email exchanges, the applicants say in July 2015 the strata agreed to reimburse them 20% of the repair costs, after an estimate was given to the strata. A brief chronology is warranted.
- 11) The strata says that at its "first meeting" the strata offered 3 choices: 1) the strata would paint the deck as had been done with several others, 2) take a vote at its AGM, or 3) the strata would reimburse the applicants 20% of the resurfacing cost. It is undisputed that the applicants refused all 3 choices at that time, which I infer was sometime in the

summer of 2015.

- 12) The parties agree that after the applicants resurfaced their deck, the applicants asked the strata to reimburse them 100% of the cost, rather than 20%, because they felt it was the strata's duty to repair and maintain limited common property. The strata then sought advice from the Condominium Homeowners Association (CHOA) who advised in an October 6, 2015 email that deck resurfacing was considered altering limited common property and the strata must put the reimbursement to the owners for a vote.
- 13) At a December 7, 2015 AGM, the strata presented to the owners a motion to reimburse the applicants \$2,616.60, the total deck resurfacing cost. The motion noted council recommended that the owners vote against total reimbursement as doing so would be unfair to all owners. The motion also notes the strata had offered to pay 20%, which would have been close to what the strata would have spent painting the deck if the applicants had permitted it, but that the applicants refused that option. The parties agree that the motion was defeated and no other motion was presented.
- 14) The strata says that it was after the AGM's minutes were distributed that the applicants offered on December 16, 2015 to accept 20% or a \$523.32 reimbursement. The strata's December 19, 2015 response was that following the AGM, all prior offers were "off the table", as they "followed CHOA's directive" in holding the AGM. The strata also noted in its email that it "didn't have legal authority to make that offer in the first place".
- 15) The applicants say that the December 2015 vote was about reimbursement of the entire resurfacing expense of \$2,616.60 and that it did not address the 20% reimbursement of \$523.32 offered by the strata in July 2015.
- 16) The strata's relevant bylaws, most recently updated in 2001, are summarized as follows:
 - a) *Bylaw 2*: 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 under the bylaws.
 - b) *Bylaw 5*: The owner must obtain the strata's written approval before making any

alteration to a balcony or other thing attached to the building exterior.

- c) *Bylaw 6*: An owner must obtain the strata's written approval before altering common property, including limited common property. The strata may require as a condition of its approval that the owner agree, in writing, to take responsibility for any expenses relating to the alteration.
- d) *Bylaw 8(c) (ii) (C)*: The strata must repair and maintain limited common property balconies or other things attached to the building's exterior.

ANALYSIS

- 17) The strata plan is not before me but the parties agree the applicants' deck is limited common property. I consider a deck to be the same as a balcony, for the purposes of the strata's bylaws, which is not disputed.
- 18) The combined effect of section 72 of the *Strata Property Act* (SPA) and the strata's bylaws is that the strata has the obligation to repair and maintain the owners' deck. It is clear from the evidence that the strata had determined that repainting, rather than resurfacing, met that obligation and that repainting was done for other decks. The applicants disagreed.
- 19) Based on the July 2015 communications, I find the strata agreed to permit the deck resurfacing, as required in bylaws 5 and 6. I also find that the strata made the offer to reimburse 20% of the owners' costs. The crux of this dispute comes down to whether the strata can be held to that July 2015 offer even after the applicants refused it and after the AGM was called. I find the answer is no, and my reasons follow.
- 20) Once the applicants refused repainting and the strata's 20% offer and demanded 100% reimbursement, and the AGM was called, I find the strata's 20% offer was "off the table". At that point, I find the applicants had assumed responsibility to bear the entire expense, subject to the outcome of the AGM. In other words, the strata was not required to make that 20% reimbursement based on its earlier July 2015 offer that the applicants had since refused. Further, nothing has changed since to require the strata to do so now. I do not need to resolve whether the strata had any authority in July 2015 to

make the 20% offer, because as noted that offer is no longer valid.

- 21) What about the applicants' argument that the December 2015 AGM did not address the 20% reimbursement specifically? First, while the motion addressed full reimbursement, the motion's wording is clear that all owners were aware of the 20% reimbursement that the applicants had refused. The applicants only made their demand for 20% after they learned they were unsuccessful in obtaining 100% reimbursement. That fact however does not bind the strata to their earlier 20% offer. Second, there is nothing in the SPA or in the strata's bylaws that would require the strata to call another general meeting on their own initiative to address the issue. The applicants are free to call for such a motion themselves, in accordance with the SPA.
- 22) I note the applicants' argument that the strata was essentially responsible for the repair to their limited common property deck and thus they should be compensated. While the bylaws do require the strata to repair and maintain the deck, the applicants opted for a more complete repair that the strata council and the owners, after a vote, did not support. It is not unfair for the applicants to shoulder the burden of the associated expense which, for the 20% amount at issue in this dispute, could have been avoided had they accepted the strata's offer in July 2015.

DECISION

- 23) The applicants are not entitled to an order that the strata reimburse them \$523.32 towards their deck resurfacing expenses. Nothing in this decision prevents the applicants from raising the issue themselves at a general meeting of all the owners, in accordance with the SPA.
- 24) As the applicants were not successful in this dispute, I find that they are not entitled to reimbursement of the \$225 they paid for tribunal fees.

ORDER

- 25) I order that the applicants' claims are dismissed.

Shelley Lopez, Tribunal Vice Chair