



Civil Resolution Tribunal

Date Issued: May 15, 2018

File: ST-2017-006171

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan KAS 2827 et al v. Couchman et al*, 2018 BCCRT
186

B E T W E E N :

The Owners, Strata Plan KAS 2827 and Brian Lloyd

APPLICANTS

A N D :

Peter Couchman and Barbara Patz

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

John Chesko

INTRODUCTION

1. This dispute is about repairs required to a shared dock.

2. The Owners, Strata Plan KAS 2827 (strata), is made up of two strata lots. The owner of Strata Lot 2, Brian Lloyd, filed the application naming the strata as the applicant. The respondents, Peter Couchman and Barbara Patz, are the owners of Strata Lot 1.
3. Both strata lot owners are self-represented.
4. Normally there is no issue about the strata as a party when there are many strata lots and a strata council is elected and authorized to represent the strata. However, in a strata with only 2 strata lots, sometimes called a duplex, both owners are required to be members of the strata council and it may become deadlocked. As a result, there may not be a clear agreement authorizing one of the owners to represent the strata. It is also unlikely the 2 owners could agree on a submission when they have contrary views.
5. On May 9, 2018 I requested the case manager ask the 2 strata lot owners who make up the strata council if they had an agreement authorizing a strata lot to represent the strata. The 2 strata lot owners submitted they did not have any agreement. I also note one of the parties submitted new evidence on another issue. The new evidence is not relevant to the question about the named strata and I have not considered it in this decision.
6. Section 61 of the *Civil Resolution Tribunal Act* allows the tribunal to manage its process to fulfill its mandate. The tribunal has authority to ensure on its own initiative the proper parties in the strata dispute are included.
7. I find the strata is properly a party to the dispute as it is the legal entity responsible for the common property and common assets. I find the parties have tacitly acknowledged the strata is a proper party where the strata was originally named on the application and there was no objection. While the tribunal is not legally bound by other tribunal decisions, I would find the strata was properly a party even if the 2 strata lot owners did not agree (*Bourque et al v McKnight*, 2017 BCCRT 19) (Canlii).

8. I also find it appropriate to amend the style of cause to include the owner of strata lot 2, Brian Lloyd. The owner of strata lot 2 was the strata lot owner who filed the dispute and should be listed as a separate party for clarity.
9. I also find the strata does not require separate representation in this case where there are only the 2 strata lots. (*Bourque et al v McKnight*, 2017 BCCRT 19) (Canlii). The owners of the 2 strata lots provided submissions on the dispute issues. For practical purposes the submissions from the 2 individual strata lots can be taken as separate submissions from the strata council. I find there is no prejudice to the parties in having the strata lot owners make their submissions where each strata lot owner has been able to hear and respond to the issues. This is consistent with the practical reality and the tribunal's mandate of timely, accessible justice.

JURISDICTION AND PROCEDURE

10. 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, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
11. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
12. Under section 61 of the Act, the tribunal may make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the tribunal in accordance with its mandate. In particular, the tribunal may make such

an order on its own initiative, on request by a party, or on recommendation by a case manager (also known as a tribunal facilitator).

13. The tribunal may accept 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.
14. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute the tribunal may make order a party to do or stop doing something, order a party to pay money, order any other terms or conditions the tribunal considers appropriate.

ISSUES

15. The parties reached an agreement on certain issues prior to this adjudication, and those issues are not before me in this decision. In particular, the parties essentially agreed on a plan for the new dock.
16. The issues in this dispute are:
 - a. What is the appropriate cost allocation for the new dock?
 - b. Should the new dock be constructed in the location as specified in the new dock agreement?
 - c. Should the strata be ordered to proceed with the application to the ministry for a new dock? If so, what is a reasonable time to do so?
 - d. Should the respondent be ordered not to park their float plane on the side of the dock closest to the applicant's property?
 - e. Is the applicant entitled to reimbursement of \$225 for tribunal fees?

BACKGROUND AND EVIDENCE

17. The strata is located on the waterfront of Lake Okanagan in Vernon, British Columbia.
18. The strata is made up of only 2 strata lots. Each strata lot is in a separate building. The registered strata plan shows the 2 strata lots, common property and limited common property. Each of the strata lots has its own designated property that provides access to and directly fronts on the waterfront.
19. The respondents purchased their strata lot from the applicant strata lot owner by a purchase agreement dated May 17, 2013 and amendment dated June 11, 2013. The purchase agreement and amendment included an agreement to amend the strata bylaws and enter an agreement to build a new dock.
20. On June 26, 2013, the strata amended its bylaws to repeal the Schedule of Standard bylaws and include specific bylaws concerning the shared dock.
21. There is also an agreement between the owners of the 2 strata lots and the strata dated July 2, 2013. The agreement deals with certain strata issues, including construction of a new dock. Article 1 of the agreement, titled "Dock and Dock Access", sets out an agreement to construct a new dock.
22. The evidence is that the strata has operated informally. There was no evidence of formal strata council meetings or meeting resolutions passed. The parties communicated when needed and were generally able to sort things out prior to the shared dock issue.
23. The evidence shows the parties have attempted to come up with a plan for a new shared dock, but have not been successful.
24. In 2017 there was flooding in the area and the dock was damaged. Docks on Lake Okanagan are regulated by the Ministry of Forests, Lands and Natural Resources (ministry) through a foreshore lease and must meet specific requirements.

Correspondence from the ministry in December 2017 and January 2018 suggests the existing dock will need to be constructed to conform to current requirements.

25. This has brought the issue to a head and the applicant has filed this dispute.

POSITION OF THE PARTIES

Applicant's position

26. The applicant strata lot owner applies to the tribunal for various orders about the shared dock.

27. The applicant refers to the new dock agreement and the strata bylaws setting out the obligation to repair and replace the new dock. The applicant says a repair is not possible because the ministry determined the old dock must be removed and replaced by a new dock. The applicant submits the costs of removing the old dock and constructing a new dock are strata costs shared equally by the strata lot owners according to unit entitlement. The applicant also requests that I order the respondent agree to construction of the new dock plan from the dock agreement and requests an order that it be completed within one year.

28. Concerning use of the dock, the applicant submits there are safety issues with the respondent's floatplane. The applicant requests an order that the respondent dock the seaplane on the respondent's side of the dock.

Respondent's position

29. The respondent submits the old dock still has life in it and could be repaired. The respondent says the ministry may have flexibility in the regulations and that repairs could be allowed. The respondent says the new dock design from the applicant is not satisfactory and should be rejected.

30. During the tribunal dispute plan process the respondent put forward a dock design, which the applicant generally agreed to.

31. In response to the applicant's position about the use of the dock by their floatplane, the respondent submits it is unsafe to require the floatplane to use only part of the dock. The respondent says the lake is officially designated for seaplane use and submitted supporting evidence from persons with knowledge of floatplanes.
32. The respondent says there needs to be agreement on the location and design of the new dock and the applicant owner has not been reasonable.

ANALYSIS

Strata law and shared property

33. I have reviewed all the submissions and evidence, but only address the evidence and arguments to the extent necessary to explain my decision.
34. The rules for strata corporations are set out in the *Strata Property Act* and regulations (SPA). The strata carries out day to day functions through the democratically elected strata council. The strata council cannot do anything it wants, but must follow the SPA, strata's bylaws and the law.
35. Where there are two strata lots, as here, both strata lot owners form the strata council and share decision-making. With only two strata lots making up the strata, all strata business effectively requires both strata lot owners to agree.
36. Ownership in a strata corporation is different from other types of property ownership as strata lot owners share property ownership and have shared responsibilities. Cooperation and compromise are necessary among strata neighbours and it's in everyone's interest to work together respectfully.
37. The strata is responsible for managing and maintaining common property and common assets for the benefit of the owners. Section 72 of the SPA specifically provides that the strata must repair and maintain the common property and common assets. It has no choice. Common property and common assets are owned by the strata under section 66 of the SPA. Strata lot owners have an

undivided interest in the common property or common asset based on their unit entitlement.

38. The definition of what is a common asset is set out in section 1 of the SPA and includes property that is held by or on behalf of a strata corporation.
39. The bylaws of the strata also set out rules for the strata and the strata lot owners. I note bylaw 6 reinforces the SPA requirements that this strata corporation is responsible for the repair and maintenance of common assets and specifically includes "any dock or wharf". I find that the dock is a common asset of the strata.
40. The strata's obligation to repair and maintain common property and assets is one of the strata's most important obligations (*Royal Bank v Holden* (1996), 7 R.P.R. (3d) 80 (BCSC). It includes making an article good, whether or not it was sound or in good condition before. (*Taychuk v Owners, Strata Plan LMS 744*, 2002 BCSC 1638 (Canlii) at para 29)
41. As set out in *Weir v Owners, Strata Plan NW 17*, 2010 BCSC 784 (Canlii), at paragraphs 28 and 29, the strata's duty to repair and maintain can include replacement rather than repair, if that is reasonable.

What is the appropriate cost allocation for the new dock?

42. The bylaws of the strata specifically deal with responsibility for the dock. Bylaw 6 says the strata corporation is responsible for the repair and maintenance of common assets and specifically includes docks and wharfs.
43. Bylaw 7 provides for reconstruction of the dock by the strata corporation and makes it clear the costs related to the dock are to be paid equally according to the unit entitlement of each strata lot.
44. I find the dock is a common asset of the strata and the respondent must contribute to the costs of constructing the new dock and demolishing and disposing of the old dock equally according to the unit entitlement of each strata lot.

45. Unit entitlement is set out in the Form V - Schedule of Unit Entitlement registered at the Land Title Office.
46. According to the filed schedule, each of the two strata lots have a unit entitlement of 2 so that they share the costs of the common assets equally in this case.
47. I find the appropriate cost allocation for the new dock construction and old dock demolition to be on the basis of unit entitlement. In this case, each strata lot owner would pay an equal amount.
48. I note the applicant has withdrawn the request for reimbursement of \$299.95 paid to Summit Environmental. For clarity, the above decision and order that the respondent must contribute half the costs does not apply to the \$299.95 already paid to Summit Environmental.

Should the new dock be constructed in the location as specified in the new dock agreement?

49. All the strata lot owners signed a contract dated July 2, 2013 setting out agreement on certain strata matters, including construction of a new dock. (the new dock agreement)
50. Article 1 of the new dock agreement, titled "Dock and Dock Access", sets out an agreement to construct a new dock. Article 1.3 specifically says the new dock will be located on the dividing line for the LCP between strata lot 1 and strata lot 2. A diagram showing the dividing line for the LCP between strata lot 1 and 2 forms part of the signed agreement.
51. I find the strata owners previously agreed to replace the dock according to the new dock agreement. I find the new dock agreement applies to the respondent.
52. The terms of the new dock agreement set out requirements for the new dock to be built. The new dock agreement is clear the new dock would be located on the dividing line for the limited common property between strata lot 1 and strata lot 2.

53. I find the parties have agreed the new dock would be located on the dividing line for the limited common property between strata lot 1 and strata lot 2.
54. From a practical perspective, for the strata owners to have direct access to the shared dock from their own LCP areas, the shared dock needs to be located on the dividing line for the LCP. Further, there does not appear to be any requirement of the ministry that would prohibit the new dock from being located as agreed by the strata and the owners.

Should the strata be ordered to proceed with the application to the ministry for a new dock? If so, what is a reasonable time to do so?

55. The applicant strata asks for an order that the respondent accept the originally proposed plan for a new dock and also asks for an order to complete the dock within 1 year of the decision date.
56. As set out above, the strata is required to maintain and fix the dock and the parties have provided for the construction of a new dock in the July 2013 agreement.
57. During the tribunal decision plan process, the parties have essentially agreed on a plan for the new dock as set out in the respondent's document R-10.
58. As such I find the applicant must proceed with the proposed dock plan as set out by the respondent in his evidence marked as R-10 because that is in the strata's best interest to do so.
59. I note the applicant submits the location of the floatplane lift on the accepted R-10 plan may need to be relocated as part of the ministry review process. Any such relocation falls within the jurisdictional requirements of the ministry and are outside the jurisdiction of the tribunal. Simply put I cannot decide the foreshore dock approval process for the ministry. If the floatplane lift needs to be relocated, the applicant must work with the ministry to find an acceptable solution.
60. As noted in the July 2, 2013 agreement at article 1.2, the parties, through the strata corporation, must apply to the ministry for approval of the new dock prior to

construction. I also note Article 4.1 of the agreement requires that the parties, including the respondent, must sign required documents and otherwise cooperate in carrying through the approval and construction of the new dock.

61. As part of this decision and order, I find the respondent must sign and approve required documents and otherwise cooperate with the applicant in moving forward with the approval and construction of the new dock. This also includes cooperation with any direction by the ministry for the removal and disposal of the old dock.
62. The applicant has also asked for an order that the dock be completed in 1 year from the date of this decision.
63. I am not prepared to order that the dock must be constructed within 1 year as completion of the dock will depend on outside factors over which the parties have no control. Namely, the ministry's approval process and availability of contractors to complete the old dock demolition and new dock construction are unpredictable.
64. I find it appropriate that the strata proceed with the ministry's process for approval and construction of the new dock within 90 days of the date of this decision.
65. As part of the order, Mr. Lloyd shall be the designated strata contact for the application process. As part of his responsibility of moving the new dock forward, Mr. Lloyd is to ensure all strata lot owners are kept up to date with at least monthly written progress reports.
66. I would further order that Mr. Lloyd consult the other strata lot owners if there are any significant changes required to be made to the proposed plan R-10. I am mindful of the possibility of getting deadlocked and note the importance of moving forward with the proposed plan.
67. In arranging the construction of the new dock, unless the parties agree in writing otherwise, the applicant must obtain 3 quotes from suitable, qualified contractors. If the parties cannot reasonably agree on a contractor within 14 days of receiving the 3 quotes, the applicant may select a contractor for the new dock, with cost efficiencies in mind, with all correspondence to be copied to all strata lot owners.

68. To finance the new dock, the strata will issue a special levy to the owners based on their unit entitlement. The amount and timing of the special levy will be reasonable based on the cost and timing required to complete the work by the selected contractor.

Should the respondent be ordered not to park their float plane on the side of the dock closest to the applicant's property?

69. The applicant requests an order that the respondent not be allowed to park their float plane on the side of the dock closest to the applicant's property.

70. The applicant says it is a safety issue with the floatplane traveling in the water near the dock where people may be swimming.

71. The respondent submits it is unsafe to prohibit the floatplane from parking on part of the dock. The respondent says the area is legally designated by Transport Canada as a waterdrome area for floatplanes. The respondent further submits the movement and mooring of floatplanes is within the jurisdiction of Transport Canada. The respondent submitted evidence from other people familiar with floatplanes on Okanagan Lake that the respondent was a safe pilot and the proposed limit on use of the dock was unsafe.

72. Based on the evidence, I find the balance of the evidence does not support the order requested by the applicant.

73. As set out above, the dock is a common asset owned by the strata and which consists of both strata lot owners. As a common asset, the dock is free to be used by the strata lot owners, subject to requirements set out in the SPA and bylaws.

74. I am not convinced the evidence presented by the applicant concerning noise and swimmers outweighs the respondent's evidence about floatplane use and safety. I note many of the same concerns could also be raised about boats. I do not find on the evidence that the bylaws support an order prohibiting the respondent from using part of the common asset of the strata for what is a lawful and accepted use.

75. This decision concerning the use of the dock by the floatplane is an interim decision applicable to the old dock only.
76. I find it would be premature to make a decision concerning the new dock before it has even been approved and built.
77. After the new dock is built, the strata lot owners will be in a better position to figure out the best way to share it and consider amending the strata's bylaws accordingly.
78. While it is best to resolve issues by compromise and agreement, it is open for the parties to file a dispute with the Civil Resolution Tribunal for new issues.

Is the applicant entitled to reimbursement of \$225 for tribunal fees?

79. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees. In the present case I decline to order reimbursement of fees as success on the issues was divided.

DECISION AND ORDERS

80. I order that:
 - a. Pursuant to section 72 of the SPA the strata must repair and maintain the dock.
 - b. The cost allocation for repairing the dock is on the basis of unit entitlement and each strata lot owner is required to pay an equal amount. The respondent must contribute half of the costs of constructing the new dock and half the costs of demolishing and disposing of the old dock.
 - c. The new dock is to be constructed in the location as specified in the new dock agreement. Specifically the new dock is to be constructed in the location on the dividing line for the limited common property between strata lot 1 and strata lot 2 as indicated on the July 2, 2013 agreement.

- d. The applicant strata must proceed with the proposed dock plan as set out by the respondent in his evidence marked as R-10.
 - e. The applicant strata is to proceed with the ministry's process for approval and construction of the new dock within 90 days of the date of this decision.
 - f. The respondent is ordered to sign and approve required documents and otherwise cooperate with the applicant strata in moving forward with approval and construction of the new dock. This also includes cooperation with any direction by the ministry for removal and disposal of the old dock.
 - g. Mr. Lloyd will be in charge of addressing the dock on behalf of the strata and moving the project to completion. As part of the responsibility of moving the new dock project along, Mr. Lloyd is to ensure all strata lot owners are kept up to date with at least monthly written progress reports. Mr. Lloyd is also required to consult the other strata lot owners if there are significant changes required to be made to the proposed plan R-10.
 - h. In arranging the construction of the new dock, unless the parties agree in writing otherwise, Mr, Lloyd must obtain 3 quotes from suitable, qualified contractors. If the parties cannot reasonably agree on a contractor within 14 days of receiving the 3 quotes, Mr. Lloyd on behalf of the strata may select a contractor for the new dock, with cost efficiencies in mind, and all correspondence to be copied to the other strata lot owners.
 - i. To finance the new dock, the strata will issue a special levy to the owners based on their unit entitlement. The amount and timing of the special levy will be reasonably based on the cost and timing required to complete the work by the selected contractor.
81. Under section 57 of the Act, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia, a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal

has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.

82. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia. However, the principal amount or the value of the personal property must be within the Provincial Court of British Columbia's monetary limit for claims under the *Small Claims Act* (currently \$35,000). Under section 58 of the Act, the applicant can enforce this final decision by filing in the Provincial Court of British Columbia a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

John Chesko, Tribunal Member