



# Civil Resolution Tribunal

Date Issued: June 6, 2018

File: ST-2017-005092-A1

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan BCS 983 v. Law*, 2018 BCCRT 214

**B E T W E E N :**

The Owners, Strata Plan BCS 983

**APPLICANT**

**A N D :**

George Law and Muriel West

**RESPONDENTS**

**A N D :**

The Owners, Strata Plan BCS 983

**RESPONDENT BY COUNTERCLAIM**

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**AMNEDED REASONS FOR DECISION**

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Tribunal Member:

Kate Campbell

## **INTRODUCTION**

1. The applicant and respondent by counterclaim, The Owners, Strata Plan BCS 983 (strata) is a strata corporation existing under the *Strata Property Act* (SPA). The respondents, George Law and Muriel West (owners), jointly own a strata lot in the strata.
2. The strata seeks orders that the owners tie their patio roof drainage into the perimeter foundation drain system, and pay related bylaw infraction fines. By counterclaim, the owners seek an order that harassment against them stop, and that the strata pay their legal fees.
3. The strata is represented by a strata council member. The owners are self-represented.
4. For the reasons set out below, I order that the owners tie the drain from their patio roof into the perimeter foundation drain system. I decline to order payment of bylaw infraction fines, as no notice of such fines was given.
5. I dismiss the owners' counterclaim, for the reasons set out below.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. 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.

8. 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.
9. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
10. 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**

11. The issues in this dispute are:
  - a. Are the owners required to tie the drainage from their patio roof into the building's perimeter foundation drain system?
  - b. Are the owners required to pay any bylaw infraction fines in relation to the patio roof drain?
  - c. Are the owners entitled to an order barring harassment against them?
  - d. Are the owners required to reimburse the strata's legal fees?
  - e. Is the strata required to reimburse the owners' legal fees?

## **EVIDENCE, FINDINGS & ANALYSIS**

12. I have read all of the evidence provided, but refer only to that which I find relevant to provide context for my decision.

### *Patio Roof Drain*

13. On August 8, 2016, the owners submitted a written request to the strata council asking for permission to install a 10 by 13 foot aluminum patio cover. The form completed by the owners stated as follows:

In the event that your alteration has any adverse effect on the water management system including but not restricted to the Soak-Aways and the Catch Basins removal of your alterations and/or repairs to the common property will be at your expense.

14. The strata council signed the bottom of the request form granting permission for the patio cover on August 10, 2016. The strata added written stipulations that the owners provide a picture of the proposed cover, and that they ensured that all drainage would not be negatively affected.
15. The owners' contractor installed the patio cover around September 2016. However, the installed cover was not 10 by 13 feet. Rather, because the next door neighbour also wanted a patio cover, the contractor installed a single large cover over both patios, measuring 10 by 28 feet. The owners did not obtain additional permission for amended design, and there is no evidence before me indicating that their neighbour obtained such permission.
16. The issue of the patio cover's size is not before me in this dispute, as the applicant has not requested a remedy on that issue. This dispute is restricted to the drainage issue.
17. In November 2016, on or more strata council members inspected the new patio cover and raised concerns about its design. The property manager sent a November 27, 2016 letter to the owners, stating that the single large patio cover was never requested or authorized by the strata council. The letter said there were concerns about common property issues, being over a common fence, and whether there was proper drainage in place given ongoing drainage issues in the strata development.
18. In the conclusion of his letter, the property manager requested that within 20 days the owners resubmit their alteration request to accurately reflect the single large patio cover. The owners refused to comply, stating in a December 1, 2016 email that there were no changes to the approved construction, and the drainage issues were addressed at the time of construction. The owners also refused to comply

with subsequent requests to provide drawings showing how the drainage was tied in.

19. In submissions to the tribunal, the owners confirmed that the canopy on their side of the patio is 10 feet by 14 feet. They say the extra 1 foot beyond the approved size was to extend their cover to reach the one next door. The photographs show that the patio is a single large expanse, with no division between the two patios. They submit that their contractor recommended this, as the two patios were so close together and leaving a small gap would allow water to enter.
20. The owners' submissions also confirm that the drains from their patio canopy drain water onto the ground rather than into the building's perimeter drain system. They submit that their contractor advised them that this was the correct approach.
21. The strata submits that the patio roof drains must be attached to the existing perimeter drainage system because unlike some other areas of the complex, there is no built-in ground drainage system at the back of their strata lot, and the strata is not permitted to allow overflow into the neighbouring property.
22. The owners say they are not obligated to change their patio roof drain because that was not a specified requirement when their alteration request was signed and approved, and the strata has not identified any problem with the drainage in their yard. They also say the drainage was inspected by a strata council member, who did not raise any concerns.
23. This council member provided a signed letter dated January 10, 2018 stating that he did not approve the owners' drainage. He wrote that in fact, he obtained information and took it back to the strata council.
24. I accept Mr. Bjornson's evidence, as there is no written confirmation that he approved the drainage, and the November 2016 correspondence indicates that the strata council raised drainage concerns shortly after the patio roof was installed.
25. I also find that the owners cannot rely on the August 2016 alteration request form as a confirmation that their patio roof was fully approved because they did not

install the same roof that was set out on the form. The form requested permission for a 10 by 13 foot roof, but the actual roof is 10 by 28 feet (10 by 14 feet over the owners' patio). This alteration was not approved by the strata council, as required under the bylaw, and this much larger roof expanse raises different drainage concerns as it would necessarily collect more water. I note that the strata council also required the owners' neighbour to tie the drainage on her side of the joint patio roof to the perimeter drain system.

26. I find that strata's request that the owners tie their patio roof drain into the perimeter roof drain is reasonable in the circumstances, and is not contrary to any previous agreement because they never approved a roof larger than 10 by 13 feet. Accordingly, I order that within 4 months of this decision, the owners must have their patio roof drainage tied into the perimeter foundation drain system. This work must be done by a licensed and insured contractor, with WorkSafe BC coverage. I also order that up to two members of the strata council must be permitted to inspect the drainage tie-in before the area is buried.

#### *Bylaw Fines*

27. Although the strata requests an order for payment of bylaw fines, they have provided no particulars of the amount of such fines, or when they were imposed. The evidence before me does not indicate that the owners were ever notified about fines.
28. Section 135 of the SPA says that a strata may not impose a fine against a person for a contravention of a bylaw or rule unless they provide written particulars of the complaint, and a reasonable opportunity to answer the complaint, including a hearing if requested.
29. The strata bears the burden of proving a claim for payment of bylaw. As the strata sent no correspondence to the owners regarding the particulars of the fines (amount, date, or the nature specific bylaw infractions), I find they have not met the requirements of section 135. I therefore decline to order payment of fines.

### *Anti-Harassment Order*

30. In their counterclaim, the owners seek an order that harassment by the strata council stop, including unnecessary inspections, emails, letters, and house calls.
31. I decline to issue this order. Although the owners provided extensive correspondence setting out their disputes with strata council members, I find that the correspondence and inspections regarding the patio roof drain were justified. While the documents show that there was conflict between the owners and some strata council members on several issues that occurred both before and after the patio roof was installed in 2016, I do not find this conflict rose to the level of harassment.
32. I also decline to order that the owners apologize, as requested by the strata. As a general rule apologies are not awarded as a remedy, as by definition they are voluntary and forced apologies serve little or no purpose.

### *Legal Fees*

33. Both parties seek an order that the opposing party pay their legal fees. As set out in the tribunal's rules, the tribunal generally does not order reimbursement of legal fees. This follows from the general rule in section 20(1) of the Act that parties are to represent themselves in tribunal proceedings. I see no reason to depart from this general rule in this case, and therefore I do not order reimbursement of legal fees.

## **DECISION AND ORDERS**

34. I order that within 4 months of this decision, the owners must have their patio roof drainage tied into the perimeter foundation drain system. This work must be done by a licensed and insured contractor, with WorkSafe BC coverage. I also order that up to two members of the strata council must be permitted to inspect the drainage tie-in before the area is buried.

35. 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. As the strata was substantially successful in this dispute, I see no reason to depart from this general rule. I therefore order the owners to reimburse the strata \$225 for tribunal fees. As the owners' counterclaim did not succeed, I do not order reimbursement of their tribunal fees.
36. Under section 189.4 of the SPA, an owner who brings a tribunal claim against a strata corporation is not required to contribute to the strata corporation's expenses of defending the claim or to any monetary order issued against it. I order the strata ensure that no part of the expenses incurred by the strata in defending its claims are allocated to the owners.
37. 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.
38. 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.<sup>1</sup>

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Kate Campbell, Tribunal Member

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<sup>1</sup> Amendment Notes: This amended decision is issued under the authority of section 64 of the *Civil Resolution Tribunal Act*, in order to correct an inadvertent error in paragraph 35 of my original decision.