



Civil Resolution Tribunal

Date Issued: July 20, 2018

File: ST-2017-005835

Type: Strata

Civil Resolution Tribunal

Indexed as: *Francoeur v. The Owners, Strata Plan EPS 288*, 2018 BCCRT 351

B E T W E E N :

Luke Francoeur

APPLICANT

A N D :

The Owners, Strata Plan EPS 288

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Salima Samnani

INTRODUCTION

1. The respondent is a strata corporation established under the *Strata Property Act* (SPA) located in Campbell River, BC (strata). The applicant is the owner of strata lot 1, in the strata (owner).
2. The owner wants to install a dome tube light, also referred to as a sun tunnel, in his strata lot. The owner was refused strata's approval to install the sun tunnel. The owner is seeking an order that the strata allow him to install the sun tunnel.
3. The owner self-represented. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.

7. 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

8. The issues in this dispute are:
 - a. Should the strata approve the owner's request to install a sun tunnel in his strata lot?
 - b. Should I order the strata to reimburse the owner dispute-related expenses and fees paid to bring this dispute to the tribunal?

EVIDENCE AND ANALYSIS

9. I have only commented upon the evidence and submissions as necessary to give context to my reasons. The applicant bears the burden of proving his claims on a balance of probabilities.
10. The strata's bylaws are those filed in 2010 and then amended in 2013 and 2014. The bylaws are summarized as follows:
 - (a) **Bylaw 5(1):** An owner must obtain the written approval of the Strata Corporation before making an alteration to the Strata Lot that involves any of the following: (a) the structure of the building; (b) the exterior of the building; ... (f) common property located within the boundaries of the a Strata Lot; (g) those party's of the strata lot which the Strata corporation must insure under the Section 149 of the Act.
 - (b) **Bylaw 6(1):** An owner must obtain the written approval of the Strata Corporation before making an alteration to common property, including limited common property, or common assets.

(c) **Bylaw 6(5):** An owner...shall not alter the exterior appearance of any Strata Lot...without the written consent of the Strata Council.

(d) **Bylaw 8:** The strata corporation must repair and maintain all of the following:
(a) common assets of the Strata Corporation; (b) common property that has not been designated as limited common property.

11. Apart from the bylaws the strata also has a set of rules. The rules require that the strata maintain uniformity between strata lots. and strata owners are not allowed to make any changes to their strata lot that detracts from the overall look of the strata lot.
12. On June 7, 2017 the owner wrote to the strata asking if he could install two sun tunnels in his strata lot. The strata council unanimously voted to deny the owner's request. The owner re-sent his request to the strata providing more information about the installation of the sun tunnel and requesting approval to install only one 14 inch sun tunnel. The letter states that to install the sun tunnel the roof sheeting will have to be cut 5/8ths of one inch, with a 15 inch circle out of the ceiling. The letter states that the sun tunnel comes with all the accessories that give it a perfect fit so there will be no leaks for "many years". The letter also states that once the owner receives approval for the sun tunnel, he will provide strata with the drawings showing where the sun tunnel will come out on the roof and other details of the installation.
13. On July 20th, 2017 the strata re-considered the owner's request and wrote in the minutes "Council reviewed the request a second time, with input provided by the requesting owner. Much discussion followed and a motion was made to confirm the original decision to decline the request." The motion was unanimous. The strata management company wrote to the owner letting him know of the decision, and that the strata had concerns that installing a sun tunnel would have a potentially negative effect on the roof warranty and change the exterior appearance of the strata lot.

14. Sometime after, the owner installed just the top of the sun tunnel dome on the roof with tape. The owner says it took the strata two months to notice the dome and send him a letter asking him to remove the dome.

POSITION OF THE PARTIES

15. The owner argues that the sun tunnel cannot be seen by people passing by and is not noticeable. The owner also argues that the roof is no longer under a warranty and the roofing contractor is no longer in business. The owner has provided a personal guarantee that he will properly install and maintain the sun tunnel himself and there will be no harm to the strata lot.
16. The strata argues that after thoroughly considering the bylaws, especially bylaw 6 and 8, and researching the potential negative implications on the warranty, insurance and exterior appearance, they denied the owner's request. The strata argues that the roof warranty will be void if the sun tunnel is installed. The strata's insurance broker has advised that if the sun tunnel is not properly maintained and installed, any insurance claim relating to the roof and surrounding area of the sun tunnel will likely be denied. The strata argues they have been consistent in their approach to external installations on strata lots. Last, the strata argues that the personal guarantee form the owner does not hold any value for the strata if something goes wrong.

ANALYSIS

17. There is ample case law that a court or tribunal should be cautious in interfering with a strata council's decision.
18. I find the roof is common property based on definition of common property under the SPA. Under section 72 of the SPA and bylaw 8, the strata is responsible for the maintenance of the roof. The installation of the sun tunnel will place a maintenance burden on the strata. I find that the strata is within their rights to refuse to take on this burden. Although the owner has offered to maintain the sun tunnel, the strata

has refused this offer as they would have to take on the burden of monitoring the maintenance. I find the strata's position is reasonable.

19. The owner has not provided information about how he came to the conclusion that the roof is no longer under warranty. As the strata is in the best position to access information about the warranty, I accept the strata's evidence that the roof is under a warranty and that the installation of the sun tunnel will void the roof warranty.
20. The owner states that the sun tunnel will not have leaks for "many years". The strata is concerned about leaks and the owner has confirmed that eventually this could be an issue, even if it is many years in the future.
21. Last, the owner argues that the sun tunnel is not visible and it took the strata two months to notice the exterior sun tunnel dome. Regardless of the time it took to notice the dome, the dome was eventually noticed and so does violate the strata rules regarding consistency in strata lot appearance.
22. While the owner did not argue "significant unfairness", I note there is no evidence before me that the strata has treated the owner unfairly, let alone significantly unfairly.
23. I find that the strata was well reasoned in its decision to deny the owner permission to install a sun tunnel in his strata lot. The strata has accurately and appropriately applied the bylaws and rules.
24. Given my conclusions above, I dismiss the owner's claim that the strata should be ordered to allow the installation of the sun tunnel.
25. In accordance with section 49 of the Act and tribunal rules 129 and 132, the tribunal generally does not award an unsuccessful party their fees or dispute-related expenses. I see no reason in this case to deviate from that rule. The owner was unsuccessful and I dismiss his claim for tribunal fees and dispute-related expenses.

ORDERS

26. I order that the applicant owner's dispute is dismissed.
27. As provided by section 189.4(b) of the SPA, I order the strata to ensure that no part of the strata's expenses of defending the dispute are allocated to the owner.
28. 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.

Salima Samnani, Tribunal Member