



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Bowe et al v. The Owners, Strata Plan LMS 482*, 2018 BCCRT 923

B E T W E E N :

Melinda Bowe and Russell Bowe

APPLICANTS

A N D :

The Owners, Strata Plan LMS 482

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Ashley Syer

INTRODUCTION

1. This is a dispute about a roof replacement project, whether the strata council failed to call a special general meeting to approve a significant change to the strata building, and whether the strata council acted in good faith.

2. The applicants, Melinda Bowe and Russell Bowe (owners) are self-represented. The respondent strata corporation, The Owners, Strata Plan LMS 482 (strata), is represented by a council member.
3. For the reasons that follow, I dismiss the owners' claims.

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. Is the change from cedar shingles to asphalt shingles a significant change to the strata building, and, if so, did the strata fail to pass a 3/4 vote at a special general meeting before proceeding with the work?
- b. Did the strata council fail to act in good faith regarding the roof replacement project?

BACKGROUND AND EVIDENCE

9. The owners must establish their positions on each claim based on evidence, on a balance of probabilities. I have considered all the evidence submitted by the owners and the strata, even if I do not refer to it in this decision.
10. On or around November 22, 2017, the strata held an annual general meeting (AGM). The strata gave notice to owners of the AGM on or about November 3, 2017, including notice of resolutions requiring a 3/4 vote that would be voted on at the AGM. The parties provided the notice as evidence.
11. Two of the proposed $\frac{3}{4}$ vote resolutions dealt with a roof replacement project. Those resolutions related to different quotes for the roof replacement project. The quotes were available to all strata lot owners on their online portals. The quotes were for different types of roofing materials, one for asphalt roofing tiles, and the other for aluminum roofing.
12. Before the AGM, the strata held at least 2 information meetings about options for the roof replacement, including a meeting on November 15, 2017 with information about asphalt shingles, and a meeting on November 16, 2017 with information about aluminum roofing. The strata provided the notices as evidence.
13. There is no evidence before me that the owners objected to the change from cedar to a different type of roofing material prior to the AGM, that the owners did vote on the resolutions at the AGM, or that the owners did not know that the resolutions dealing with the roof replacement project were for 2 different types of roofing materials.

14. The minutes from the AGM note that the strata council had not considered using cedar shingles for the roof replacement because they were expensive to maintain and other options would prolong the life of the new roof in comparison.
15. The strata had 66 eligible votes at the AGM. Owners representing 43 eligible votes attended the AGM in person, and 6 attended by proxy for a total representation of 49 votes. Quorum needed for the AGM was 22.
16. The 2 resolutions for the roof replacement project were presented at the AGM. The first resolution had two options for the amount of the special levy. The second resolution would not be voted on if one of the options for the first resolution passed. The first option of the first resolution failed. The second option of the first resolution passed.
17. The resolution that proposed a special levy for the roofing project being done with asphalt tiles passed, with 38 owners voting in favour, and 5 opposed. There were no abstentions, so it is unclear to me from the evidence why the other 6 votes were not counted. In any event, 38 votes in favour was enough to pass the $\frac{3}{4}$ vote resolution as it exceeded the required 75% majority.
18. In or around early March 2018, the company the strata hired to do the roofing project put samples of three tile colour options up for residents to view.
19. The owners requested information from the strata about colour options by email on March 5, 2018. On March 7, 2018, the strata's property manager advised the owners by email that she did not know the answers to their questions, but that the owners could ask their questions on March 10 at the meeting with the strata council, which was also one of the opportunities for strata lot owners to vote on the colour of the new roof.
20. On March 7, 2018, the owners requested a hearing with strata council, and asked for that hearing to be before March 10, 2018. The strata's property manager arranged a hearing with the owners and strata council for March 9, 2018.

21. The strata provided notices to all owners about the colour samples and asked the owners to vote on their preferred colour. The strata provided two opportunities for owners to vote for their preferred colour, on March 10 and 12, 2018. 55 of 66 strata lot owners voted. The owners did not vote. 36 of 55 voted for the black coloured tiles.
22. On March 11, 2018, the owners sent a letter to the strata, requesting that the strata hold a special general meeting with resolutions to address the colour choices for the roofing project. The owners expanded their request by email the following day.
23. On March 12, 2018, the owners sent an email that objected to the voting process for the new roof colour, and requested another hearing with the strata council to discuss the voting process for the new roof colour.
24. On March 16, 2018, the strata property manager responded by letter to the owners' questions from March 5, 2018. The strata offered the owners the opportunity to vote on the roof tile colour, since the owners had not voted on March 10 or 12, 2018. The letter also said that the strata had negotiated an upgraded type of tile and an increased warranty at no extra cost to strata lot owners.
25. On March 21, 2018, the strata sent a letter to the owners that said the strata did not need to hold a 3/4 vote to decide on the colour of the new roof tiles, because the significant change was from the type of tile, and the type of tile was voted on at the AGM.
26. On March 26, 2018, work began on the roofing project.
27. In or around late May 2018, the company the strata hired to do the roofing project put samples of three colour options for trim colours up for residents to view. The strata provided notices to all owners about the colour samples and asked the owners to vote on their preferred colour. The strata provided two opportunities for owners to vote for their preferred colour, on June 9 and 11, 2018. 47 of 66 strata lot owners voted. The owners did not vote. 19 of 47 voted for the white coloured trim. The next most popular option received 17 votes.

28. On May 30, 2018, the owners sent an email to strata, objecting to the voting process for the new trim colours, and requested that the vote be delayed until the owners' dispute was resolved.
29. On May 30, 2018, the owners sent a letter to strata requesting that the strata hold a special general meeting with resolutions to address the colour choices for the trim for the roofing project.
30. In early December 2018, I requested further information from the parties about whether the strata has held the AGM for 2018 that was scheduled to be in November 2018. Both parties agree that the AGM had been held.
31. I requested further information from the parties about the status of the roof replacement project. The owner says that the project is not completed to the original aesthetic look of the building. The strata says that the project is complete, except for some metal flashing on 3 of the 15 buildings, which will be completed shortly.
32. While I have considered all evidence submitted, I have not considered the without prejudice correspondence between counsel for the parties. I have also not considered the commentary in the parties' arguments that are not applicable to the claims the owner has made.

POSITION OF THE PARTIES

33. The owner argues that:
- The strata failed to hold a proper 3/4 vote at a general meeting to approve a change from cedar shingles to asphalt shingles in the strata building.
 - The change from cedar to asphalt shingles is a significant change.
 - The strata failed to hold a 3/4 vote at a general meeting to approve the colour of the roofing materials.
 - The strata council is not acting in good faith.

34. The owner requests that I order:

- The strata to hold a 3/4 vote resolution at a special general meeting, that fully describes the shingle materials, colour and accessories to be used in the roof replacement project.
- That a trustee be appointed to take over the operation of the strata council until the 2018 AGM in November, and to hold a special general meeting to complete the roofing project.
- That the newly elected strata council members take a course on the roles and responsibilities of council members, and on the *Strata Property Act* (SPA).
- The strata reimburse the owners for their tribunal fees and \$315 for strata management fees.

35. The strata argues that;

- The strata properly conducted a vote for the roof replacement project at its AGM and did not need to hold a separate vote for the colour of the new roof.
- The strata council is acting properly.
- The owners simply do not like the colour for the new roof that was chosen by a vote by other owners.

36. The strata requests that I dismiss the applicant's claims.

ANALYSIS

37. As a preliminary matter, I am persuaded, on the evidence before me, that the roofing replacement project is complete or nearly complete.

38. The parties have advised me that the 2018 AGM has already been held and a new strata council has been elected. For this reason, the owner's request that I appoint a

trustee to oversee the strata until the 2018 AGM is moot, and I decline to deal with this request.

Is the change from cedar shingles to asphalt shingles a significant change to the strata building, and did the strata fail to pass a 3/4 vote at a general meeting?

39. Section 3 of the SPA says that a strata is responsible for managing and maintaining common property and common assets of the strata corporation for the benefit of the owners. Common property means, in part, that part of the land and buildings shown on a strata plan that is not part of a strata lot. I find the roof is common property.
40. Section 72 of the SPA says that a strata corporation must repair and maintain common property and common assets.
41. The relevant part of section 71 of the SPA says that a strata corporation must not make a significant change in the use or appearance of common property unless the change is approved by a resolution passed by a 3/4 vote at an annual or special general meeting.
42. The case of *Chan v. Strata Plan VR677* (2 February 2012), Vancouver Registry S115516 (B.C.S.C.) dealt with the objective and subjective factors for significant change in paragraphs 21 – 25. Those factors include visibility or non-visibility to residents or the public; use or enjoyment of a strata, or a number of units as an existing benefit; and an impact on marketability or value of the units due to the change.
43. The criteria for determining what is a significant change in use or appearance as contemplated in section 71 of the SPA are set out in *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333 (CanLII) at paragraph 19:
 - a. A change would be more significant based on its visibility or non-visibility to residents and its visibility or non-visibility towards the general public;
 - b. Whether the change to common property affects the use or enjoyment of the unit or number of units or an existing benefit of all unit or units;

- c. Is there a direct interference or disruption as a result of the change to use?
 - d. Does the change impact on the marketability or value of the unit?
 - e. The number of units in the building may be significant along with the general use, such as whether it is commercial, residential or mixed-use;
 - f. Considerations should be given as to how the strata corporation has governed itself in the past and what it has followed. For example, has it permitted similar changes in the past? Has it operated on a consensus basis or has it followed the rules regarding meetings, minutes and notices as provided in the SPA.
44. In the photographs submitted by the owners, the new asphalt roof tiles and previous cedar roof tiles look different. On the plain meaning of the word “appearance”, I find that the new roof tiles look significantly different. I find that the visibility of the roof is a factor that makes the change from cedar to asphalt shingles a significant change. I find that the other factors in *Foley* do not apply in this dispute.
45. Section 45(3) of the SPA says that a strata must give notice of an annual or special general meeting that includes the description of proposed wording of any resolutions requiring a 3/4 vote.
46. The AGM notice that the strata sent to all owners included the description of two 3/4 vote resolutions that both said the roof replacement project was going to be done with material other than cedar shakes. The notice also directed strata lot owners to the roof replacement quotations in their online portal.
47. Section 50(2) of the SPA says that amendments to the proposed wording of a resolution requiring a 3/4 vote can be made at an annual or special general meeting if the amendments do not substantially change the resolution. The 3/4 vote resolutions dealing with the roofing replacement project that were voted on at the AGM were for smaller dollar amounts than in the AGM notice. I find that the change in the proposed amount of the special levy to an amount smaller than in the AGM notice is not a substantial change to the resolution.

48. The owners have asked that I consider *Imbeau v Owners Strata Plan NW971* 2011 BCSC 801. That case dealt with voting at a special general meeting by secret ballot. I find it has no application to this dispute.
49. I find that the $\frac{3}{4}$ vote resolution met the voting requirements of sections 45, 50, and 71 of the SPA. I find that the resolution was a vote on the significant change from cedar roofing tiles to asphalt roofing tiles.
50. There is no set process that a strata must follow in relation to a roof replacement project, beyond what is set out in the SPA. The strata obtained multiple quotes for the project and did consult with all owners about the colour choice options for the new roofing tiles. I find that the colour choice of the asphalt roofing tiles was not a different significant change that required its own $\frac{3}{4}$ vote.
51. In the event that I am wrong, I find that it would not be in the best interests of all the strata lot owners to incur the expense of having to redo a roofing project that has just been completed. Under section 3.6(1)(f) of the Act, the tribunal's mandate extends to resolving claims concerning a decision of a strata corporation, including its council. The strata's duty under section 3 of the SPA is to manage and maintain the common property in the best interests of all strata owners. This over-riding duty must be considered by the tribunal when making an order overturning a strata decision.
52. I dismiss this claim.

Did the strata council fail to act in good faith regarding the roof replacement project?

53. Section 3 of the SPA says that a strata is responsible for managing and maintaining common property and common assets of the strata corporation for the benefit of the owners.
54. I have found that the strata properly held a $\frac{3}{4}$ vote on the change of roofing tiles from cedar to asphalt. There is not sufficient evidence before me that would convince me that the strata council failed to act in good faith.

55. The owners have requested that I order the newly elected council members to take a course on the roles and responsibilities of strata council members and the SPA. There is no evidence before me that would convince me that this order is necessary. I decline to make this order.

56. I dismiss this claim.

TRIBUNAL FEES AND EXPENSES

57. I have dismissed the owners' claims. I decline to order the strata to reimburse them for their tribunal fees.

58. The owners have not provided any evidence showing why should be reimbursed for their property management service fees. I decline to make this order.

59. 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 and reasonable dispute-related expenses. However, the strata must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owner, unless the tribunal orders otherwise.

DECISION

60. I dismiss the owners' claims and therefore their dispute.

Ashley Syer, Tribunal Member