



# Civil Resolution Tribunal

Date Issued: May 22, 2019

File: ST-2018-005794

Type: Strata

## Civil Resolution Tribunal

Indexed as: *DeJulius v. The Owners, Strata Plan BCS 1961*, 2019 BCCRT 613

B E T W E E N :

Louise DeJulius

**APPLICANT**

A N D :

The Owners, Strata Plan BCS 1961

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## INTRODUCTION

1. The applicant, Louise DeJulius (owner), owns a strata lot in the respondent strata corporation, The Owners, Strata Plan BCS 1961 (strata). The owner is self-represented. The strata is represented by a member of its strata council.

2. The owner alleges the strata refused to permit her to install laminate flooring in her strata lot but has since permitted other owners to install similar flooring. She says the strata's inconsistent approach is contrary to the strata's bylaws. The owner asks the tribunal for the following orders:
  - a. The strata council act with integrity and comply with the *Strata Property Act* (SPA) and bylaws,
  - b. That the strata reimburse her \$4,000.00 for the extra cost of her flooring, and
  - c. The strata manager to act professionally and represent all strata owners.
3. The strata opposes the owner's allegations and asks the tribunal to dismiss the owner's claims.
4. For the reasons that follow, I dismiss the owner's claims.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 121 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.
6. 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.
7. Under section 10 of the Act, the tribunal must refuse to resolve a claim that it considers is not within the tribunal's jurisdiction. A dispute that involves one or more

issues that are within the tribunal's jurisdiction and one or more that are outside its jurisdiction may be amended to remove those issues that are outside its jurisdiction.

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. Under section 123 of the Act and the tribunal rules, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

## ISSUES

10. I note at the outset that the owner has not named individual strata council members or the strata manager as a party to this dispute.
11. I refuse to resolve the owner's request for an order that the strata council act with integrity because the individual strata council members are not parties in this dispute and have not had the opportunity to respond to the owner's allegations. I also note that section 31 of the SPA addresses a strata council member's duty of care and the BC Supreme Court has found that remedies for breaches of section 31 of the SPA fall under section 33 of the SPA, which is expressly outside the tribunal's jurisdiction as set out in section 122(1)(a) of the Act. See *Dockside Brewing Co. Ltd. v. Strata Plan LMS 3837, 2007 BCCA 183* at paragraph 59.
12. I also refuse to resolve the owner's request for an order that the strata manager act professionally as a representative of all strata owners given the strata manager has not had the opportunity to respond to the owner's allegations. Even if the strata manager had been a party, I likely would have refused to resolve the owner's claim against them for lack of jurisdiction under section 121 of the Act.
13. The issues before me are:

- a. Did the strata act contrary to the SPA and bylaws by restricting the owner from installing laminate flooring in 2016?
- b. Has the strata approved flooring installations in other strata lots contrary to its bylaw 41?
- c. Is the owner entitled to reimbursement of \$4,000.00 for the extra cost of her flooring?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

14. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
15. In a civil proceeding such as this, the applicant owner must prove their claims on a balance of probabilities.
16. The strata is a residential strata corporation of 164 strata lots in 8 separate buildings located in Port Moody, B.C.
17. The owner's strata lot is located on the third floor in one of the buildings. For the purposes of bylaw 41(3) discussed below, I infer it is considered an "Upper Floor Strata Lot" because of its location in the building.
18. The strata has a flooring bylaw, bylaw 41, filed at the Land Title Office on March 18, 2013, which is the only bylaw relevant to this dispute. I summarize the relevant subsections, as follows:
  - a. An owner is not permitted to install "Hard Flooring" without the strata's prior written consent.
  - b. When applying for consent, the owner must include a detailed description of:
    - i. The proposed method of installation,
    - ii. The type of Hard Flooring to be used,

- iii. The type of underlay to be used, including the Sound Transmission Class and the Impact Insulation Class ratings, and
  - iv. Any other information required by the strata.
- c. The strata will not provide its consent unless:
  - i. It is satisfied the prosed method of installation and materials are of a nature and quality that would ensure the Hard Flooring will not create unreasonable noise or nuisance to other owners, tenants or occupants,
  - ii. Without limiting the generality of bylaw 41(3)(a), the proposed Hard Flooring for a “Main Floor Strata Lot” is:
    - Engineered hardwood of 2 layers or more,
    - Tile,
    - Slate,
    - Bamboo; or
    - Laminate.
  - iii. The proposed Hard Flooring for an “Upper Floor Strata Lot” is:
    - Engineered hardwood of 2 layers or more,
    - Tile,
    - Slate,
    - Bamboo.If the proposed Hard Flooring is tile, slate or laminate the proposed Hard Flooring may only be installed in a kitchen, bathroom or foyer in the strata lot; the proposed Hard Flooring is no less than  $\frac{1}{2}$  inch thick, and the underlay is “Floor Muffler” underlay and the Impact Insulation Class rating of such underlay is at least 72.

19. On January 8, 2016, the owner submitted a request to install hardwood flooring in her living room and dining room. The strata responded on January 14, 2016 that the owner would be responsible for the installation of the flooring, citing bylaw 41 in its entirety, and requested the owner sign the letter accepting the conditions, which

also suggested an “Assumption of Liability Agreement” would be required from the owner before she was able to proceed.

20. The owner signed the strata’s letter on January 20, 2016. The liability agreement was not provided but it is undisputed the hardwood flooring was installed in the owner’s strata lot without concern from either party.
21. Two years later, in about May 2018, the owner says she learned the strata had given consent for other strata lot owners to install vinyl planking floors. She sought clarification of the interpretation of bylaw 41, or if it had been amended, and requested reimbursement for the extra expenses of her hardwood flooring that form the subject of this dispute.
22. The strata wrote to the owner on July 9, 2018 to explain its position that the owner never applied for laminate flooring and therefore, the strata did not refuse the owner’s flooring choice but simply approved her request for hardwood. The letter also acknowledged bylaw 41 was open to interpretation and stated it would have its lawyer review the bylaw with any amendments to be considered at the next annual general meeting. The strata also denied it owed the owner for the cost of her hardwood floor.

***Did the strata act contrary to the SPA and bylaws by restricting the owner from installing laminate flooring in 2016?***

23. Under section 26 of the SPA, the strata council must exercise the powers and perform the duties of the strata corporation, including enforcement of bylaws. Section 119 of the SPA states a strata corporation may have bylaw that provides for the use and enjoyment of strata lots, among other things.
24. The owner says she wanted to install laminate flooring but was told by the strata manager that hardwood flooring was the only flooring permitted. The strata denies the owner made any enquiries about alternate flooring before she requested permission to install hardwood. The strata also denies the owner was told she must install hardwood but rather states she was referred to bylaw 41, as all other owners

are when making flooring requests. The strata's position is supported by a statement of its strata manager, who was also the strata manager in 2016 when the owner originally requested consent to install hardwood flooring.

25. Although the owner alleges she wanted to install laminate flooring and was not permitted to do so, there is no supporting evidence that this was the case. The owner has not provided copies of correspondence she exchanged with the strata before her January 8, 2016 application.
26. I find the owner has failed to prove her claim that she was denied the ability to install laminate flooring in her strata lot in 2016. Therefore, I find the strata did not act contrary to SPA or bylaw 41 when it approved her hardwood flooring installation in 2016. I dismiss this aspect of the owner's claim.

***Has the strata approved flooring installations in other strata lots contrary to its bylaw 41?***

27. I find the strata has not acted contrary to bylaw 41 with respect to other strata lot flooring for the following reasons.
28. The owner did not provide any proof the suggested flooring was approved for other owners. Although the strata does not deny this, I find the lack of proof sufficient reason on its own for me to dismiss the owner's claim. However, I will proceed as if the owner had provided proof, for the owner's benefit.
29. The owner feels the strata council has given special permission to 3 other owners to install vinyl planking. I infer she feels the approval of vinyl planking is contrary to bylaw 41 and specifically to subsection 3. The owner provided limited information about the 3 other owners and the locations of their respective strata lots. Specifically, she does not say the other strata lots are Upper Floor Strata Lots under bylaw 41 but, for the purposes of this discussion, I infer they are.
30. While the language used in bylaw 41(3) could have been clearer, I would not agree the strata acted contrary to the bylaw if it approved vinyl planking in other Upper Floor Strata Lots as suggested by the owner.

31. Bylaw 41(3) has 2 subsections, (a) and (b), which can be considered separately.
32. Subsection (a) simply says the strata will not consent to any flooring installation that would create unreasonable noise or nuisance to another strata lot.
33. Subsection (b) is prefaced by the phrase “without limiting the generality of Bylaw 41(3)(a)” and sets out examples of flooring material and underlay, and locations where stated material would be approved. The use of the word “is” throughout the subsection could easily have led the owner to interpret the bylaw as only permitting the specified flooring material at the stated locations. However, I find the use of the phrase “without limiting the generality of Bylaw 41(3)(a)” gives the strata discretion as to what material and underlay they can approve, and at what location in a strata lot the flooring can be installed.
34. I note the strata admits that it only uses bylaw 41(3)(b) as a guideline in an effort to accommodate new flooring material. I further note that in its July 2018 letter to the owner, the strata agreed to have the bylaw reviewed by a lawyer. I encourage the strata to do so, if it has not already.
35. For the reasons set out above, I find the strata has not acted contrary to bylaw 41 as alleged by the owner. I dismiss the owner’s claim in this regard.

***Is the owner entitled to reimbursement of \$4,000.00 for the extra cost of her flooring?***

36. Given my conclusions above, I dismiss the owner’s claim for reimbursement of her extra flooring costs.
37. I note that even though the owner claimed \$4,000.00 for extra costs, she only made submissions about \$2,292.00.

**TRIBUNAL FEES AND EXPENSES**

38. 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. I see no reason to deviate from the general rule. The strata was the successful party but it paid no tribunal fees and did not claim any dispute-related expenses. I dismiss the owner's claim for tribunal fees and dispute-related expenses.

39. The strata corporation must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owner.

## **ORDER**

40. I order the owner's claims, and this dispute, dismissed.

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J. Garth Cambrey, Vice Chair