



Civil Resolution Tribunal

Date Issued: May 30, 2019

File: ST-2018-009187

Type: Strata

Civil Resolution Tribunal

Indexed as: *Perry v. Teer et al*, 2019 BCCRT 628

B E T W E E N :

Nora Perry

APPLICANT

A N D :

Richard Damian¹ Teer, Jennifer Louise Teer, and The Owners, Strata
Plan KAS 1136

RESPONDENTS

AMENDED REASONS FOR DECISION

Tribunal Member:

Trisha Apland

¹ Amendment Notes: Amended to correct an inadvertent error in a respondent's name, pursuant to section 64 of the Act.

INTRODUCTION

1. The applicant, Nora Perry (owner), owns strata lot 27 (SL27) in the respondent strata corporation, The Owners, Strata Plan KAS 1136 (strata). Richard Teer and Jennifer Teer (collectively the Teers), own strata lot 25 (SL25) in the strata.
2. The owner claims the strata did not follow the proper process and acted contrary to the bylaws when it approved a request from the Teers to build an extended deck on their strata lot. The strata and the Teers deny this allegation.
3. The owner says the deck compromises her privacy. She seeks an order requiring the Teers to modify their deck to create privacy, remove the deck or compensate her in the amount of \$6000 for the cost of building a privacy structure on her own strata lot. She also seeks an order requiring the strata to enforce its disturbance bylaw.
4. The owner also alleges that Richard Teer, who was the strata council president, breached the standard of care required of a strata council member under section 31 of the *Strata Property Act* (SPA), which both the Teers and the strata deny. The owner brought no claim against any other individual strata council members.
5. The owner and the Teers are self-represented. The strata is represented by a member of its strata council.
6. For the reasons that follow, I dismiss the owner's claims.

JURISDICTION AND PROCEDURE

7. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under 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.

8. 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.
9. 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.
10. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
11. 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, order a party to pay money, order any other terms or conditions the tribunal considers appropriate.
12. The parties used the word “deck” interchangeably with the word “balcony” in their submissions. I find nothing in this matter turns on whether the improvement is a deck or a balcony. For consistency, I have called the improvement a deck.

ISSUES

13. The issues in this dispute are:
 - a. Did the strata follow proper process, including the requirements set out in the *Strata Property Act* (SPA) and its bylaws, when considering and approving the Teers’ request to construct an extended deck?
 - b. Did the Teers create a disturbance in contravention of the bylaws?
 - c. Did Mr. Teer breach the standard of care set out in section 31 of the SPA?
 - d. What remedies, if any, are appropriate?

BACKGROUND AND EVIDENCE

14. In a civil claim such as this, the burden of proof is on the owner to prove her claim on a balance of probabilities. I will not refer to all the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to reasons.
15. The strata is a bare land strata in the City of Kelowna created in 1992 under the SPA's predecessor, the *Condominium Act (CA)*. It is comprised of single family homes on detached strata lots.
16. On May 13, 2018, the Teers wrote to the strata council by email to request approval to extend the deck attached to their home on their strata lot.
17. By email dated May 22, 2018 the strata council granted approval for the deck extension. The Teers then obtained a building permit from the city and proceeded to build their deck. The relevant emails and permit are in evidence.
18. The owner says she only learned of the deck extension after the Teers started construction. She was concerned the deck would interfere with her privacy and contacted the strata property manager on June 29, 2018 with her concerns.
19. The owner says that on June 30, 2018, the strata required the Teers to cease work on the deck. Both the Teers and the strata say there was no formal stop work order. The owner submitted no stop work order in this proceeding. Instead, the email evidence shows that a strata council member attended the Teers' strata lot and requested they stop construction until the matter was resolved. Despite the strata's request, the Teers did not stop building. The strata also did not require the Teers to stop building their deck.
20. As documented in the minutes of the strata council meeting held July 9, 2018, council subsequently notified all owners about the approved deck extension.

21. The strata council members and the strata manager continued to try to resolve the dispute between the owner and the Teers. They could not reach a mutually agreeable solution.
22. The Teers completed the deck extension on February 4, 2019, as shown on the final inspection issued by the city.

ANALYSIS

Did the strata follow proper process, including the requirements of the SPA and its bylaws, when considering and approving the Teers' request to extend a deck?

The legislation and strata bylaws

23. Under Section 26 of the SPA, the strata council exercises the powers and duties of the strata corporation, including enforcement of bylaw and rules. The SPA empowers the strata council, as set out in its bylaws, to grant approval to owners for alternations to their strata lot.
24. The strata bylaws in effect at the time of this dispute were those registered on December 28, 1994 at the Land Title Office under the CA as KH123973. An amended bylaw that was already filed at the Land Title Office when the SPA came into force will continue to apply, so long as it is consistent with the SPA. I reviewed the strata bylaws relevant to this matter and found no conflict with the SPA.

Deck Extension Approval Request

25. The owner says the strata did not follow proper process when it considered and approved the deck extension because:
 - a. The strata could not approve the deck extension by email. Instead, the Teers were required, but did not, present the proposed deck plan at a strata meeting for a vote;

- b. Neither the strata nor the Teers notified the owner, or other owners, prior to the application or its approval;
- c. The strata did not follow the process set out in the Statutory Building Scheme (Design Guidelines); and
- d. The Teers' deck is too high and its design is contrary to the Statutory Building Scheme (Design Guidelines).

26. The specific bylaws relevant to this issue are:

D) EXTERIOR APPEARANCE AND ALTERATIONS

7) An Owner shall not do any act or permit any act to be done or alter or permit to be altered his lot in any matter which will alter the exterior appearance of the building except as authorized in writing by the Strata Council.

8) No fences, extended patios, awnings or exterior alterations of any kind shall be erected in or about any Strata Lot without prior written consent of the the (sic) Strata Council.

I) OTHER

25) Each strata lot owner shall abide the terms and conditions of the statutory building scheme to his strata lot, and abide by them.

27. I find that neither the SPA nor the bylaws required the Teers to present the proposed deck extension at a council meeting for approval and vote. There is also no express requirement in the SPA or the bylaws for the strata council to notify or consult with other property owners on an owner's request to alter their strata lot. This is distinct from a change in the use or appearance of common property, which under section 71 of the SPA generally requires a $\frac{3}{4}$ vote resolution at an annual or special general meeting of the strata corporation. Since the deck was not built on common property, but is instead within the boundary of the Teer's strata lot, section 71 does not apply.

28. The bylaws only required that the strata council authorize approval in writing. I find the strata followed this process in approving the Teers' request to alter their strata lot by email dated May 22, 2018 and then by documenting the approval in the strata council meeting minutes.
29. The design guidelines referenced by the owner form Schedule F to the developers' disclosure statement dated October 8, 1992. They are not titled "Statutory Building Scheme (Design Guidelines)" but simply, "Design Guidelines".
30. I have reviewed the land title documents filed for lot SL25 and find there are no guidelines or building scheme filed under the *Land Title Act*. When guidelines are not registered on title, they are not binding on the strata. This means they are to be treated only as guidelines and are not enforceable by the strata (see for example, *Dean Park Estates Community Association v. Wachal*, 2017 BCSC 1258).
31. Since the Design Guidelines were not registered, I cannot conclude they are the same as a "statutory building scheme" under Bylaw 1) 12. In any event, the owner has not established that the deck's design was contrary to them.
32. The bylaws contain no provision expressly restricting the size or height of improvements to an owner's strata lot. The decision was up to the discretion of the strata council. The owner has not established that the deck design was too high or that council had an obligation to consider this design aspect when rendering its decision.
33. I find the owner has not proven her claim that the strata followed an improper process when it approved the Teers' deck extension request.

Disturbance to others

34. The Teers' lot is up-slope from the owner's lot. While there is a strata lot between them, it is undisputed that the Teers can see into the owner's lot from their own. I cannot determine based on the submitted photographs, the extent of the Teers' view into the owner's lot from their new deck.

35. The Teers explain that due to the contours and slope of the land their view into the owner's lot did not increase with the extension of their deck. I find the photographs inconclusive on whether the extent of their view remained the same. However, the photographs do show that the Teers would have had at least a partial view of the owner's lot prior to the extension.

36. The owner claims that the Teers used their deck during construction as an instrument or device to cause a disturbance in contravention of the bylaws.

37. The relevant bylaw reads as follows:

C) DISTURBANCE TO OTHERS

6) An owner shall not use any instrument or device within a strata lot or upon the common property, which, in the opinion of the council, causes a disturbance to or interferes with the comfort of other owners or occupiers.

38. Leaving aside the question of whether or not the deck is an instrument or device as defined by the bylaws, I find the owner has not provided sufficient evidence to prove that the Teers' use of the deck caused a disturbance or interfered with her comfort in contravention of the bylaw.

39. The owner supports her claim by explaining that the Teers can view her lot from their deck and by submitting an email exchange confirming that the Teers placed chairs on their deck during the construction phase. She produced no independent evidence, such as photographs or time logs, showing that the Teers had done anything to create a disturbance during the construction phase or at all. The owner seems to be asking me to assume that because the Teers had the potential to see her from the chairs on their deck, they were causing a disturbance in contravention of the bylaw. This is not an assumption I am prepared to make.

40. While I appreciate the owner may feel disturbed by the fact that the Teers can see into her lot, this in itself is insufficient to establish that the Teers created a disturbance in contravention of the bylaw. I dismiss the owner's claim in this regard.

Duty of Good Faith and Duty of Care

41. Under section 31 of the SPA each strata council member must act honestly and in good faith with a view to the best interests of the strata, and exercise the care, diligence, and skill of a reasonably prudent person in the circumstances.
42. The substance of the owner's claim under section 31 is that the strata and the Teers followed an improper process when granting approval for the deck and that Mr. Teer made a dishonest statement that the strata failed to notice and verify. However, I cannot find on the evidence that Mr. Teer made a dishonest statement as alleged by the owner.
43. Section 31 applies to strata council members who are acting in their capacity as council members in furtherance of their obligations under the SPA and the bylaws. Section 31 does not apply to the strata. It also does not apply to owners who are strata council members when they are acting in their personal capacity.
44. At the time the strata approved the deck extension, the respondent, Richard Teer was president of the strata council. Mr. Teer and the strata both say that Mr. Teer was excluded as a council member from the consideration and approval of his own deck extension application. The owner provided no evidence for me to find otherwise. I find that Mr. Teer was acting in his personal capacity with respect to the deck extension application and section 31 of the SPA does not apply to his actions in this regard.
45. Accordingly, the owner's claims made under section 31 of the SPA must fail.
46. As the owner's claims were unsuccessful, I find she is not entitled to any remedies, including the cost of a privacy structure. Also, since the applicant was unsuccessful in this dispute, pursuant to the Act and the tribunal's rules I find she is not entitled to reimbursement of tribunal fees or dispute-related expenses.

ORDER

47. I order that the owner's claims and this dispute are dismissed.

Trisha Apland, Tribunal Member