



# Civil Resolution Tribunal

Date Issued: June 11, 2019

File: ST-2019-000106

Type: Strata

Civil Resolution Tribunal

Indexed as: *PROGRESSIVE TECHNOLOGIES INC. v. The Owners, Strata Plan VAS 2828*, 2019 BCCRT 715

B E T W E E N :

PROGRESSIVE TECHNOLOGIES INC.

**APPLICANT**

A N D :

The Owners, Strata Plan VAS 2828

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Julie K. Gibson

## INTRODUCTION

1. The respondent the Owners, Strata Plan VAS 2828 (strata) is made up of strata lots with two street addresses, located at 8723 and 8793 Cambie Street, Vancouver, respectively. The strata contains seven strata lots.

2. This dispute is about an awning attached to the south side of the building at 8793 Cambie Street, overhanging a sidewalk. The strata plan does not show any awnings.
3. The applicant Progressive Technologies Inc. owns strata lot 2 in the respondent strata. The applicant asks for an order requiring the strata to repair the awning, which has fallen into disrepair.
4. The applicant says that, because the awning overhangs a sidewalk, the strata should repair it promptly.
5. The strata says the awning overhangs city property, meaning that the city should have issued special permits at the time of construction. The strata says the awning was constructed, and later a city-owned sidewalk and bike path were added. The strata takes the position that the rusty awning should be removed, because it overhangs pedestrian and bicycle traffic.
6. The strata says that the owners in 8793 Cambie Street agreed to be responsible for removing the awning but did not follow through. The strata says that strata council voted with 4 members in favour of removal, and 1 against. As well, the strata says 6 of the 7 strata lot owners agree that the awning should be removed, with 1 owner saying the awning should be repaired.
7. In summary, the applicant seeks repair of the awning, as a strata responsibility. The strata seeks to have the awning removed, and argues it is the responsibility of a single strata lot owner.
8. The applicant is represented by co-owner Lucas Burdick. The respondent is represented by strata council president Geordon Marchak.

## **JURISDICTION AND PROCEDURE**

9. 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.

10. 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.
11. 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.
12. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
13. Under section 123 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.

## **ISSUE**

14. The issue in this dispute is who is responsible to remove or repair a deteriorating awning from the exterior of 8793 Cambie Street?

## **BACKGROUND AND EVIDENCE**

15. This is a civil dispute in which the applicant owner must prove its claims on a balance of probabilities. I have read all of the submissions and evidence but refer only to information I find relevant to provide context for my decision.

16. The parties agree that the awning is rusty and in disrepair. Based on the photographs filed in evidence, I find that the awning is located physically attached to the exterior of the building on its south side.
17. On November 7, 2017, L, who appears to be a representative of Valery Black Draperies & Blinds, which operates out of a strata lot in the building, but is not Mr. Burdick, wrote to Mr. Burdick saying that they had already removed the awning cover, and would be “removing the metal frame soon.” Mr. Burdick then forwarded the email on to the strata council writing “...the awning can be removed from the building and from the agenda.”
18. I find that although the awning is now uncovered, so that only the metal frame remains, the metal frame was never removed.

### ***Bylaws***

19. The strata filed four sets of bylaw documents with the Land Title Office (LTO), on the following dates:
  - a. July 23, 1991
  - b. September 8, 2009
  - c. November 5, 2013
  - d. November 5, 2013
20. None of these bylaw documents fully replace the standard bylaws under the SPA. I outline the bylaws that apply to this dispute below.
21. On July 23, 1991, the strata adopted a bylaw amendment requiring owners to receive written permission of all owners or approval by resolution of the owners at an extraordinary or general meeting before erecting any “awning” on the exterior of a strata lot, but such permission would not be unreasonably withheld.

22. The September 8, 2009 change introduced a bylaw requirement that owners must not change the “outside look of a building” without prior majority approval of the strata council.
23. On November 5, 2013 the strata replaced Standard Bylaw 8 with a revised bylaw 8.
24. The strata’s bylaw 8 requires the strata to repair and maintain, among other things, all common property, common assets, and limited common property where the repair and maintenance would ordinarily occur less than once a year, and balconies and “other things attached to the exterior of the building”, “fences, railings and similar structures”, regardless of how often the repair ordinarily occurs.
25. The strata’s bylaw 8 requires the strata to repair and maintain any common property, and also to maintain the strata lot where it involves the structure of exterior of a building, or things attached to the exterior of a building.

## **POSITION OF THE PARTIES**

26. The applicant argues that:

- a. The awning is common property and therefore the strata is responsible to remove or repair it.
- b. If a strata lot owner ever agreed to remove the awning, that agreement was rescinded after the strata insisted that the awning was the sole responsibility of a single strata lot.
- c. A  $\frac{3}{4}$  vote resolution is needed to remove the awning, presumably under section 71 of the SPA, and no such vote has occurred.

27. The strata argues that:

- a. The awning is not common property and therefore not its responsibility.
- b. The awning overhangs city property but was never “properly registered” and permitted.

- c. Because a strata lot owner or resident in 8793 Cambie Street agreed to remove the awning, they remain obliged to do so.
- d. 6 out of 7 strata lot owners agree to the removal of the awning, though no formal vote has been taken.

## **ANALYSIS**

### ***Who is responsible for removing or repairing the awning?***

- 28. There is no evidence before me as to whether the contested awning was installed with permission of the other strata lot owners, as required by the 1991 bylaw amendment. Whether or not it was, I find that Bylaw 8 applies to the repair and maintenance of the awning.
- 29. If there is no agreement by a strata lot owner to be responsible for the repair and maintenance of the awning, then bylaw 8 applies, regardless of who installed the awning. I find the strata is responsible for repair and maintenance of the awning, whether or not it is part of the strata lot. I say this because the awning is attached to the building's exterior, which makes it a strata repair and maintenance responsibility.
- 30. Based on bylaw 8, I find that the strata is responsible for the repair and maintenance of the awning.
- 31. Turning to the question of whether the strata lot owner agreed to remove the awning, such that that strata is not obliged to do so, I find no such agreement. The only evidence is that someone wrote a casual email saying that they planned to remove the awning, back in 2017.
- 32. Mr. Burdick contests any such agreement, and says that if one existed, it was rescinded because of the position taken by the strata. The strata did not point to any evidence, aside from the email chain, proving a meeting of the minds on this issue. I find that there is no current agreement by the registered strata lot owner to remove the awning.

33. Because removing the awning will change the look of the building, the bylaws require a majority vote of the strata council to remove it. However, I find that such a vote requirement could impair the strata's ability to meet its repair and maintenance obligations.
34. If the awning is common property or a common asset, then section 71 of the SPA requires the strata not to make a significant change in its use or appearance unless that change is approved by a  $\frac{3}{4}$  vote at an annual general or special general meeting, or if there are reasonable grounds to believe that an immediate change is necessary to ensure safety or prevent significant loss or damage.
35. Because the building has business uses, some windows with awnings and some without, and there is no evidence before me that removing the awning would interfere with the use or enjoyment of any units, I find removing the awning would not be a significant change requiring a vote under section 71 in the circumstances. As well, I find that the awning's rusty condition makes an immediate change necessary to ensure safety for those passing below on the sidewalk.
36. I find it is impractical to require a strata council or owner vote in the circumstances, given the state of the awning. Nothing in this decision prevents the owners from deciding whether another awning may be installed, consistent with the requirements of the bylaws and the SPA.
37. I have found that the repair and maintenance of the awning to be a strata responsibility. I order the strata to remove it within 30 days.

## **TRIBUNAL FEES, 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 in this case to deviate from the general rule. I therefore order the strata to reimburse the applicant for tribunal fees of \$225.

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.

## **DECISION AND ORDERS**

40. I order that, within 30 days, the strata:

- a. remove the awning, at its own expense, and
- b. pay the applicant \$225 in tribunal fees.

41. The applicant is also entitled to post-judgment interest, under the *Court Order Interest Act*.

42. 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. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.

43. 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. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

---

Julie K. Gibson, Tribunal Member