



Civil Resolution Tribunal

Date Issued: July 18, 2019

File: ST-2018-007753

Type: Strata

Civil Resolution Tribunal

Indexed as: *Owen v. The Owners, Strata Plan VR 2406*, 2019 BCCRT 868

B E T W E E N :

Mary Louise Owen

APPLICANT

A N D :

The Owners, Strata Plan VR 2406

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. The applicant, Mary Louise Owen (owner), owns a strata lot in the respondent strata corporation, The Owners, Strata Plan VR 2406 (strata).

2. The owner claims the strata did not follow proper process when it allegedly arranged for removal of her plants and pots that had been located on the strata's common property for several years. I infer the owner claims the strata acted contrary to the *Strata Property Act* (SPA) and/or treated her unfairly.
3. The owner asks for an order that members of the strata or strata council reimburse her \$1,000.00, which is what she says is the value of removed flowers, pots, and soil. She also requests orders for reimbursement of \$500.00 for her costs involved to prepare for and participate in the tribunal's dispute process, a letter of apology from the strata council member and others involved in removing the plants and pots, and that the council member involved be removed from the strata council.
4. The strata requests that I dismiss the owner's claims.
5. The owner is self-represented, and the strata is represented by a strata council member.
6. For the reasons that follow, I find the strata must reimburse the owner \$1,000.00 for the cost of her pots, plants and soil, plus pay her tribunal fees and pre-judgement interest. I dismiss the owner's remaining 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 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.
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. Under section 61 of the Act, the tribunal may make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the tribunal in accordance with its mandate. In particular, the tribunal may make such an order on its own initiative, on request by a party, or on recommendation by a case manager.
11. Tribunal documents incorrectly show the name of the respondent as The Owners, Strata Plan, VAS2406, whereas, based on section 2 of the SPA, the correct legal name of the strata is The Owners, Strata Plan VR 2406. Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, I have exercised my discretion under section 61 to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the style of cause above.
12. 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

13. The issues in this dispute are;
 - a. Did the strata act contrary to the SPA when it removed the owner's pots and plants from its common property (CP)?
 - b. If not, were the strata's actions significantly unfair?

c. What remedies, if any, are appropriate?

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 must prove each of her claims on a balance of probabilities.
16. The strata is a residential strata corporation located in Gibsons, B.C. It was created in 1989 and consists of 42 strata lots.
17. The strata repealed all of its bylaws, except its pet bylaw, rental prohibition bylaw and age restriction bylaw, which do not apply here, in 2016. The strata adopted new bylaws to replace its repealed bylaws that were filed at the Land Title office November 28, 2016.
18. The relevant bylaws to this dispute are summarized as follows:
 - Bylaw 4.1(e): A resident must not use CP in a way that is contrary to a purpose for which the CP is intended as shown expressly or by necessary implication on or by the strata plan.
 - Bylaw 4.2: A resident must not cause damage, other than reasonable wear and tear, to CP.
19. The owner's strata lot is located at the end of a roadway within the strata corporation's property. It is undisputed that she had kept a number of potted plants at the end of the roadway containing different types of plants and some solar lights, in or near a garden bed near a perimeter fence, for several years.
20. On May 17, 2018, the strata, through its property manager, wrote to the owner by mail and email, stating it had received complaints that the pots she had placed along a CP fence were in contravention of bylaws 4.1(e) and 4.2. The letter also stated the

strata's gardener had informed the strata that the pots contained an invasive plant species known as Himalayan Balsam (balsam), that was spreading to other parts of the property. A copy of a May 10, 2018 letter from the strata's gardener was attached that stated the balsam needed to be removed immediately, noting the gardener had been "warning and trying to educate the owner who owns these [potted plants] for over three years."

21. The strata's letter requested the owner immediately remove "the pots and their contents" from the CP and provided the owner an opportunity to respond to the complaint or request a hearing with the strata council within 2 weeks. The letter advised the next strata council meeting was scheduled for June 4, 2018 and that a hearing could be set for that date. The letter also advised that if the claim went unanswered, or if the owner was found to be in violation of the bylaw, the strata could proceed to impose fines or "remove the pots, plants and lights from the property."
22. The owner replied to the strata's May 17, 2018 letter by email on the same date questioning who had complained about her pots, asking what the strata would do to replace the pots with other flowers, and stating the balsam was not "spreading".
23. In an email dated May 20, 2018, the council president at the time advised the owner the strata had received verbal and written complaints, one which was from the gardener. In the email the council president confirmed the gardener's complaints about the balsam over "the past few years" and that the pots impeded the gardener's ability to weed behind them.
24. On May 25, 2018, the property manager acknowledged receipt of the owner's May 17, 2018 email and advised her concerns about additional gardening near her strata lot would be discussed at the June 4, 2018 council meeting. The property manager also advised that her pots and plants were going to be discussed at the June 4, 2018 council meeting but that action to remove the pots and their contents was required sooner. The property manager requested the owner remove the pots and their contents by May 30, 2018 because of the gardener's advice the balsam was going

“bloom next week” scattering seeds and spreading the invasive plant through out the strata complex. The letter stated if the pots and contents were not removed on May 30, the strata’s gardener would remove them at the owner’s cost.

25. At 10:54 am on May 30, 2018, the owner again requested the name of the person who complained about her pots.
26. At 5:05 pm on May 30, 2018, the property manager confirmed in an email reply that the strata had received 3 complaints about the unsightliness of the pots but would not disclose the parties at that time. In the email, the property manager stated the strata had sufficient reason to require removal of the pots and plants and that if they were not removed that day the strata would remove them on May 31, 2018 at the owner’s expense.
27. At some time on May 30, 2018, the owner moved her pots from near the fence to the outside wall of her carport and threw the balsam into her garbage can. In its submissions the strata says it does not dispute the plants were removed.
28. On May 31, 2018, the gardener removed and disposed of the pots and their contents. There is correspondence in evidence that the owner reported her pots stolen to the RCMP but the outcome of the RCMP investigation is not in evidence.
29. On June 4, 2018, the strata held a hearing with the owner over the owner’s concerns the strata did not follow due process when it removed the pots and their contents from the CP. The council meeting minutes show the council disagreed with the owner and resolved to charge the cost of the removal back to the owner.
30. On June 11, 2018, the strata wrote to the owner advising of its decision to charge the cost of the removal back to the owner, \$155.40 as set out in the gardener’s invoice, under section 133 of the SPA.

POSTIONS OF THE PARTIES

31. The owner's position is that she complied with the strata's request to remove the balsam. When she moved the pots to the outside wall of her carport she understood that to be limited common property (LCP) for her exclusive use, but later discovered only the carport itself (on the interior of the wall) is LCP. She questions the immediate need to remove her pots given they had been in the same locations for over 5 years. She also claims the balsam was not yet in bloom and that it would not have gone to seed until about August 2017, contrary to the gardener's opinion that immediate removal was necessary. She says the strata did not follow "due process" when it removed and discarded her pots.
32. She also says she was singled out as other strata owners also had pots on CP, and that there was no reason for the pots to be destroyed.
33. Finally, the owner claims some plants other than balsam were removed for no apparent reason, such as a newly planted rose bush, while other plants were left intact.
34. The strata says it had the right and obligation to remove the balsam and that the applicant did not respond in a timely manner with respect to requesting a hearing and did not respond to the strata's "requests for removing the plants and infected pots."
35. The strata also says the pots containing the balsam were "contaminated" and it was less expensive to replace them than to clean them.

Did the strata act contrary to the SPA when it removed the owner's pots and plants from its CP?

36. For the reasons that follow, I find the strata contravened section 135 of the SPA when it removed the owner's pots and plants from the CP.
37. Under section 135 of the SPA, before requiring the owner to pay the costs of remedying a bylaw contravention (permitted under section 133), the strata must have

received a complaint, given the owner written particulars of the complaint and a reasonable opportunity to answer the complaint, including a hearing if one is requested. The strata must then give the owner written notice of its decision, as soon as feasible.

38. The BC Court of Appeal has found that strict compliance with section 135 of the SPA is a requirement before a strata corporation can impose fines. (See *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449). I find the decision in *Terry*, applies equally to the strata's ability to charge an owner the cost to remedy a bylaw contravention because section 135 captures such costs and the same principles of fairness apply.
39. I find the strata's May 17, 2018 letter to the owner requesting removal the pots and their contents for CP did not meet the requirements of section 135. I am satisfied that the strata received a complaint about the appearance of owner's pots even though the single written complaint provided in evidence was dated May 27, 2018, after the strata wrote to the owner. The strata's submissions, and email evidence provided, confirmed that verbal complaints on the pots' appearance were also made. Verbal complaints have been found to be valid complaints by the BC Provincial Court in *The Owners, Strata Plan NW3075 v. Stevens*, 2018 BCPC 2 (at paragraph 52).
40. I do not accept the gardener's May 10, 2018 letter to the strata was a complaint within the meaning of section 135 of the SPA as such a complaint must be with respect to the strata's bylaws. The gardener's letter did not mention the strata's bylaws.
41. I do not see how the unsightliness complaints received by the strata are in any way connected to its bylaws 4(1)(e) or 4(2) as noted in the letter. I find the placement of pots containing plants and small solar lights next to or in a CP garden bed by an owner is neither contrary to the intended use of the CP shown on the strata plan nor can be seen to cause damage to the CP. This is especially true given the pots, plants and lights had been in their locations for several years.

42. Therefore, I find the owner did not contravene the strata's bylaws as alleged by the strata. Given my finding the owner did not breach the alleged bylaws, I find the strata acted contrary to the SPA when it removed the owner's pots and plants.
43. The strata's May 25, 2018 email to the owner requesting removal the pots and balsam by May 30, 2018, was not based on a valid complaint of a bylaw infraction and even if it was, the 5-day deadline was not reasonable. Therefore, I find the May 25, 2018 email did not give the strata authority to remove the pots as the email did not follow the procedural requirements of section 135 of the SPA. I also find the urgency of removing the pots and their contents to be unproven and unfounded, given the length of time they had been on CP.
44. In summary, I find the strata did not strictly follow the principles of procedural fairness under section 135 of the SPA as it was required to do **before** it arranged for the removal of the pots.
45. It follows that the owner is not responsible for the strata's cost of the removal of the pots and their contents.

Were the strata's actions significantly unfair?

46. Given my finding above, I need not consider if the strata's actions were significantly unfair.

What remedies, if any, are appropriate?

47. As earlier noted, the owner requests orders for reimbursement of \$500.00 for her costs to prepare for and participate in the tribunal's dispute process, a letter of apology from the strata council member and others involved in removing the plants and pots, and that the council member involved be removed from the strata council.
48. Based on section 20 of the Act, which requires parties to be self-represented, the tribunal does not generally reimburse parties for the costs involved in preparing for or participating in the tribunal process. I do not find that the circumstances in this dispute are such that they would demand consideration of the owner's expenses in

this regard. Additionally, the owner did not provide any submissions on how she reached the amount of \$500.00.

49. I decline to order a letter of apology as I find a forced apology would serve no useful purpose.
50. I also decline to order the previous council president removed from the strata council as the owner has indicated the individual was not re-elected to the strata council. Even if they were re-elected, I would decline to interfere with the strata's democratic process of electing strata council members.
51. The owner also requests the strata reimburse her \$1,000.00 for the cost of her pots, plants and soil that the strata removed and destroyed, which I find has merit. However, the owner did not provide any submissions or evidence on how she arrived at the amount.
52. Based on the photographic evidence provided by both parties, it appears the strata removed about 11 pots filled with soil and some with plants. The pots were of different sizes and material. Overall, I do not find the owner's claim for \$1,000.00 to be unreasonable and I order the strata to pay her that amount.

TRIBUNAL FEES, EXPENSES AND INTEREST

53. 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. Here, the owner was the successful party and I order the strata to reimburse her \$250.00 for tribunal fees. The owner did not claim dispute-related expenses other than the \$500.00 described above, for which I have declined to order reimbursement.
54. The *Court Order Interest Act* (COIA) applies to the tribunal. Under the COIA, the owner is entitled to pre-judgement interest on the \$1,000.00 cost of her pots, plants and soil from May 31, 2018, the date her pots were removed, until the date of this decision. I calculate the pre-judgement interest to be \$18.96.

55. 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

56. I order the strata to pay the owner, within 14 days of the date of this order, \$1,268.96 broken down as follows:

- a. \$1,000.00 for reimbursement of the owner's pots, plants and soil,
- b. \$250.00 for tribunal fees, and
- c. \$18.96 in pre-judgement interest under the COIA.

57. The owner is also entitled to post-judgement interest under the COIA, as applicable.

58. The owner's remaining claims are dismissed.

59. 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 123.1 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.

60. 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. The order can only be filed if, among other things, the time for an appeal under section 123.1 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 Provincial Court of British Columbia.

J. Garth Cambrey, Vice Chair