



Civil Resolution Tribunal

Date Issued: August 6, 2019

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Type: Strata

Civil Resolution Tribunal

Indexed as: *LeTexier v. The Owners, Strata Plan LMS 284*, 2019 BCCRT 940

BETWEEN:

SUZANNE LETEXIER

APPLICANT

AND:

The Owners, Strata Plan LMS 284

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. The applicant, Suzanne LeTexier (owner), owns strata lot 122, a top floor unit, in the respondent strata corporation, The Owners, Strata Plan LMS 284 (strata).

2. The owner claims the strata has been unfair to her in its enforcement of the bylaws. She says the strata has allowed some owners to have canopies on their rooftop patios, contrary to the bylaws, which the owner says unreasonably interferes with the use and enjoyment of her strata lot. The owner seeks clarification on the bylaw about canopies and awnings, as she says the version filed with the Land Title Office (LTO) is incorrectly worded. She also seeks an order requiring the strata to fairly apply its bylaws. The strata says it has acted fairly and enforced the bylaws as registered with the LTO.
3. The owner is self-represented. The strata is represented by a strata council member.

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 121 of the *Civil Resolution Tribunal Act* (CRTA). 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an issue.
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 123 of the CRTA, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. Order a party to do or stop doing something;
 - b. Order a party to pay money;
 - c. Order any other terms or conditions the tribunal considers appropriate.
8. In her submissions, the owner requested that her name be anonymized or redacted for privacy reasons. The tribunal's decisions are always made public and parties are identified because its proceedings are considered open proceedings. Decisions will be anonymized where a vulnerable party such as a child is involved or where sensitive information such as medical issues are disclosed, but parties' names are not otherwise removed. I have considered the owner's request, and I find it is not appropriate in the circumstances to use initials in place of full names in this case.

Section 31 Claim

9. Under section 10 of the CRTA, 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.
10. In the Dispute Notice, the owner claims that the council members have not been in compliance with their duties under section 31 of the *Strata Property Act* (SPA). Section 31 requires a council member to 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 comparable circumstances. The British Columbia Court of Appeal has found that remedies for breaches of section 31 of the SPA are found in section 33 of the SPA. Section 33 is expressly outside the tribunal's

jurisdiction as set out in section 122(1)(a) of the CRTA and must be dealt with by the Supreme Court (see: *Dockside Brewing Co. Ltd. v. Strata Plan LMS 3837*, 2007 BCCA 183 at para 59).

11. The owner did not request a specific remedy for her claims under section 31, but in any event, I find that I do not have authority to make orders against the council members for breaches of section 31 of the SPA. Accordingly, under section 10 of the CRTA, I refuse to resolve the owner's claims that the council members have failed to act in good faith.

ISSUES

12. The issues in this dispute are:
 - a. What is the proper bylaw about canopies and awnings?
 - b. Do the canopies unreasonably interfere with the owner's use and enjoyment of her strata lot?
 - c. Have the strata's actions been significantly unfair to the owner, and if so, what is the appropriate remedy?

BACKGROUND AND EVIDENCE

13. In a civil dispute such as this, the owner bears the burden of proof. This means the owner has to provide evidence to prove each of her claims on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
14. The strata is a 125-unit apartment complex that was created in 1992 under the SPA's predecessor, the *Condominium Act* (CA). The SPA replaced the CA on July 1, 2000. *Strata Property Regulation* 17.11(1) provides, with some exceptions, that the strata's bylaws under the CA continued to have effect until January 1, 2002,

when they were deemed replaced with the Schedule of Standard Bylaws under the SPA. There are no restrictions on a strata corporation to amend the Standard Bylaws or to repeal or replace them.

15. An April 10, 2019 general index search of the strata obtained from the LTO shows that on December 28, 2001, the strata repealed and replaced its bylaws, further to the SPA. Bylaw amendments were made in 2007, 2008, 2010, 2011, 2012, 2015, 2017 and 2018.

16. The relevant bylaws are:

- a. **Bylaw 2(5):** Canopies and awnings are not permitted without written permission of council.
- b. **Bylaw 3(4):** Balconies and patios are restricted to patio furniture, barbecues, plants and other strata approved items.
- c. **Bylaw 3(4)(a):** Patio umbrellas used on decks, patios and balconies are to be properly secured to prevent them from being blown away. Patio umbrellas are permitted for seasonal use (March 1 – October 31), but should be removed from all decks, patios and balconies or securely stored up against the building during the off season (November 1 – February 28/29).
- d. **Bylaw 3(5):** Balconies or patios may not be used for the storage of any articles...that are not garden or patio related.
- e. **Bylaw 3(11):** An owner must not use a strata lot, the common property, or common assets in a way that, amongst other things, unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets, or another strata lot.

17. In February 2018, the owner wrote to the strata council about two tent-like metal canopy structures and a storage container that had been erected on two strata lots' rooftop patios and were obstructing the owner's view from her strata lot. The owner's complaint was reflected in the council meeting minutes dated February 13,

2018. The minutes noted that the council directed that bylaw infraction letters be sent to the offending owners.

18. The owner followed up about the canopies by email on April 10, 2018. The property manager at the time told her the strata was going through the procedure for a bylaw infraction, and to look to the meeting minutes for any updates.
19. In the council meeting minutes also dated April 10, 2018, it was noted that an owner with a “fabric gazebo” on their balcony had received approval for the gazebo from a prior council. In meeting minutes dated September 11, 2018, the balcony issue was again noted, and the minutes documented that the matter had been “dealt with accordingly”.
20. On October 7, 2018, the owner wrote to the strata council stating that the canopies were still in place, that “no infractions [were] given” to the two owners, and that no evidence had been provided to her that the owners had permission from the strata to erect the canopies. On October 26, 2018, the owner requested a hearing with the council, which was held on November 13, 2018.
21. On November 5, 2018, the owner requested copies of the written approval provided to the canopy owners. The property manager responded stating she did not have copies of the written approval, and included letters written to the canopy owners either requesting copies of the written approval, or requesting that the canopies be removed.
22. At the November 13, 2018 hearing, the owner raised a concern that bylaw 2(5) as registered at the LTO (originally registered as bylaw 2(6) on December 28, 2001 and again on August 27, 2007, and registered as bylaw 2(5) on July 16, 2018) was not what was voted on in the 2001 meeting, and that the actual bylaw should read that “canopies and awnings of any kind are not permitted”. As a result of the hearing on November 13, 2018, the owner was informed in writing that the strata would obtain the filed bylaws from the LTO to determine the official wording of bylaw 2(5).
23. It is unclear from the evidence whether the two canopies remain in place.

ANALYSIS

What is the proper bylaw about canopies and awnings?

24. At a special general meeting (SGM) held on December 18, 2001, one of the proposed resolutions was to repeal and rescind all previous bylaws, and replace them with those attached to the meeting notice as Schedule A. Schedule A included bylaw 2(6), which stated “Canopies and awnings of any kind or [sic] not permitted.”
25. Page 2 of the SGM minutes notes “2.6 Amended to read: *Canopies and awnings are not permitted without the written permission of the Council.*” The minutes show the motion to adopt the amended bylaw was passed 37 in favour, 4 opposed. The parties did not raise the validity of the vote as an issue, so I find it is not in dispute.
26. The amended wording from the 2001 SGM minutes is the same as bylaw 2(5) currently filed at the LTO. As a result, I find the currently registered bylaw 2(5) correctly reflects the motion that was voted on by the owners in 2001. Therefore, I dismiss the owner’s claim for an order correcting the bylaw on record as it is already correct.

Interference with Use and Enjoyment

27. The owner says that the placement of the canopies has interfered with the use and enjoyment of her property in contravention of bylaw 3(11). She says the canopies are an eyesore, that they block the view from her patio and den, and that they are left up year-round, contrary to bylaw 3(4)(a).
28. The owner submitted photos of the canopies. I appreciate that when the canopies have the fabric attached to them, they block parts of the owner’s view. Although the owner may not like the look of the canopies, I find they are not unkempt or in poor condition. As noted above, bylaw 3(11) prevents an owner from using their strata lot in a way that unreasonably interferes with the rights of other owners to use and enjoy their own strata lots. I accept the canopies somewhat impact the owner’s ability to use and enjoy her strata lot, but I find that effect is not unreasonable,

particularly in community living. I also find the owner does not otherwise have an unobstructed view, regardless of placement of the canopies, due to the orientation of the buildings. The owner did not seek damages related to this impact, nor do I find she would be entitled to such damages. Courts have held that blocking or changing a view is not a legal nuisance (see: *Zhang v. Davies*, 2017 BCSC 1180, *Christensen v. District of Highlands*, 2000 BCSC 196). I find the canopies do not contravene bylaw 3(11).

29. The owner also says her strata lot is worth less due to the canopies obstructing her view. The owner submitted statements from two realtors which indicated an obstructed view may impact sale price. The realtors also noted that several other factors affect sale price. The owner did not claim damages for reduced property value, and I find no damages would be appropriate in any event as there is no evidence as to the amount of the reduction in value.
30. The owner also takes issue that the canopies remained on the rooftop patios year-round, contrary to bylaw 3(4)(a) which requires patio umbrellas to be taken down or anchored against a wall from November 1 to February 28/29 each year.
31. The preamble to bylaw 3(4)(a) indicates that the purpose of introduction of the bylaw was due to safety concerns about windstorms blowing umbrellas off patios. Bylaw 3(4)(a) does not reference canopies or awnings, although I note that canopies and awnings are specifically referred to in other bylaws. As a result, I find that bylaw 3(4)(a) refers to patio umbrellas only, and canopies and awnings are not captured by the bylaw. Therefore, as written, there is no seasonal restriction on the placement of canopies. It is always open to the owner to suggest to the strata an amendment of bylaw 3(4)(a) to include additional items.

Have the strata's actions been significantly unfair to the owner, and if so, what is the appropriate remedy?

32. The owner argues that the strata has been significantly unfair to her with its investigation about the canopy issue and its decisions about rooftop deck usage. I

interpret this to mean the owner feels the strata has unfairly permitted canopies on some owners' decks, which in turn obstruct her views.

33. Section 164 of the SPA permits the courts to make orders to remedy or prevent significant unfairness in strata disputes. Section 123(2) of the CRTA contains similar language to section 164 of the SPA, and addresses remedies for significant unfairness. Section 123(2) provides that the tribunal has discretion to make an order directed at the strata, the council or a person who holds 50% or more of the votes, if the order is necessary to prevent or remedy a significantly unfair action, decision or exercise of voting rights.
34. In *The Owners, Strata Plan BCS 1721 v. Watson*, 2017 BCSC 763, the court restated the test for determining significant unfairness as set out in *Dollan v. Strata Plan BCS 1589*, 2012 BCCA 44. While that test was considered under section 164 of the SPA, as referenced above I find it would equally apply to an analysis under section 123(2) of the CRTA. In particular, in *Watson*, the court stated:

The test under s. 164 of the [SPA] also involves objective assessment. [The *Dollan* decision] requires several questions to be answered in that regard:

- a. What is or was the expectation of the affected owner or tenant?
 - b. Was that expectation on the part of the owner or tenant objectively reasonable?
 - c. If so, was that expectation violated by an action that was significantly unfair?
35. I find that the owner had a reasonable expectation that the strata would enforce bylaw 2(5) and ensure any canopies received written approval. Further, I find that the owner's expectation was objectively reasonable. The fact that the strata eventually wrote to the canopy owners to request copies of the prior written

approval, if it existed, or to remove the canopies also suggests that the owner's expectation of enforcement of the bylaw was reasonable.

36. I find that the strata breached the owner's reasonable expectation that it would enforce the bylaws, and acted in a manner that was significantly unfair to the owner.
37. The strata has a statutory duty to enforce its bylaws. Bylaw 2(5) requires that canopies or awnings require prior written approval from strata. Based on the evidence, it appears that after the owner's initial complaint in February 2018, the strata was told the canopy owners received approval from a prior council, but the strata did not have copies of any such approval. It took no further steps to investigate the issue.
38. The owner then followed up requesting copies of the written approval or seeking to have the canopies removed. At that time, the strata's property manager wrote to the canopy owners requesting copies of the written approval or stating the canopies had to be removed. There is no evidence before me indicating the canopies received approval or that they were removed. I find the strata has not acted reasonably in investigating the canopy issue and ensuring the canopies were placed in compliance with the bylaws.
39. However, given that the canopy owners can seek approval from the council in the future, and given that I have found the canopies do not significantly interfere with the owner's use and enjoyment of her strata lot, it is unlikely that the strata's failure to investigate and enforce bylaw 2(5) would have changed the outcome of the dispute. However, as noted above, I find the strata's investigation of the issue was unreasonable. Thus, I conclude that the strata acted in a manner that was significantly unfair to the owner.
40. I therefore find that the owner is entitled to a remedy for significant unfairness by the strata, pursuant to section 123(2) of the CRTA. The owner did not specifically ask for a monetary remedy in this regard, however, on a judgment basis, I find it is

reasonable for the owner to be compensated and I order the strata to pay the owner \$1,000 as compensation for its significant unfairness.

TRIBUNAL FEES, EXPENSES AND INTEREST

41. 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. As the owner has been partially successful in her claims, I find she is entitled to reimbursement of half of her tribunal fees and dispute-related expenses. She paid \$225 in tribunal fees, so I order reimbursement of \$112.50. The owner also incurred expenses for scanning totaling \$120.19. I find this is a reasonably dispute-related expense and order reimbursement by the strata for \$60.10.

42. 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

43. I order that within 30 days of the date of this order, the strata pay to the owner a total of \$1,172.60, broken down as follows:

- a. \$1,000 as compensation for significant unfairness,
- b. \$112.50 for tribunal fees, and
- c. \$60.10 for dispute-related expenses.

44. The owner is also entitled to post-judgment interest under the *Court Order Interest Act*.

45. The owner's remaining claims are dismissed.

46. Under section 57 of the CRTA, 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 CRTA 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.

47. 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 CRTA, the strata 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 CRTA 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.

Andrea Ritchie, Vice Chair