



# Civil Resolution Tribunal

Date Issued: September 11, 2019

File: ST-2019-003828

Type: Strata

Civil Resolution Tribunal

Indexed as: *Bruzas et al v. Bjornson et al*, 2019 BCCRT 1070

BETWEEN:

JOHN BRUZAS and LOLA BRUZAS

**APPLICANTS**

AND:

JEREMY BJORNSON and The Owners, Strata Plan VIS 4204

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This dispute is about payment for a new fence.
2. The applicants, John Bruzas and Lola Bruzas, own strata lot A in The Owners, Strata Plan VIS 4204 (strata), a 2-unit duplex. The respondent, Jeremy Bjornson,

owns strata lot B, as a joint tenant with another individual who is not a party to this dispute. The strata is also not a party to the dispute.

3. The applicants claim that the fence between their strata lot and Mr. Bjornson's strata lot is in poor condition and needs to be replaced. The applicants say Mr. Bjornson refuses to pay his equal portion for the new fence, and that Mr. Bjornson "illegally" put up a new fence on his own strata lot. The applicants seek an order that Mr. Bjornson remove the fence he has constructed and seek \$2,500 for Mr. Bjornson's half of a replacement fence.
4. Mr. Bjornson says the existing fence does not need to be completely replaced, but admits several panels require repair. He says the applicants are seeking a "Cadillac" fence, which is unnecessary. Mr. Bjornson further says the "fence" he constructed is a temporary structure until the parties can agree on how to proceed.
5. The applicants are represented by John Bruzas. Mr. Bjornson is self-represented.
6. As a preliminary matter, the strata was not initially a party to this dispute. One of the orders sought by the applicants would, if successful, bind the strata. I find the strata is therefore a necessary party to this dispute as a respondent.
7. I did not seek submissions from either party on this issue. Because this dispute involved a deadlocked, 2-unit strata, submissions from the strata will not be different from the submissions of the parties. Both parties have had the opportunity to provide their evidence and submissions on all of the issues, so neither party is prejudiced by the addition of the strata as a party. There would be no practical benefit to having the parties provide further submissions and it would delay resolution of this dispute.
8. I find that my approach is consistent with the mandate of the Civil Resolution Tribunal (tribunal) to provide timely and accessible justice, as well as with previous decisions of the tribunal, which I accept even though they are not binding on me (see: *Runka v. Guthrie et al*, 2019 BCCRT 171 and *Chipkin v. Lin et al*, 2019 BCCRT 419).

## **JURISDICTION AND PROCEDURE**

9. These are the formal written reasons of the 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. The tribunal must act fairly and follow the law. It must also recognize any relationships between parties that will likely continue after the tribunal's process has ended.
10. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, 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.
11. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
12. 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.

## **ISSUES**

13. The issues in this dispute are:

- a. Did Mr. Bjornson improperly construct a fence, and if so, what is the appropriate remedy?
- b. Should the property line fence be replaced, and if so, who should pay for it and how much?

## **BACKGROUND, EVIDENCE & ANALYSIS**

14. In a civil dispute such as this, the applicants bear the burden of proof. This means the applicants have to provide evidence to prove their 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.
15. The strata is a side-by-side duplex. Each unit has a front yard and a back yard. The backyard area is separated by a fence on the property line between the two strata lots.
16. The strata was created in 1997 under the *Condominium Act (CA)*, which is the predecessor to the *Strata Property Act (SPA)*. A May 17, 2019 general index search of the strata obtained from the Land Title Office (LTO) shows bylaws were filed on May 15, 1997, under the CA.
17. 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. The strata has not filed any further bylaws with the LTO. Therefore, the Schedule of Standard Bylaws (standard bylaws) in the SPA apply.
18. Like many duplexes, it appears the strata does not have a history of adherence to the procedural requirements of the SPA or the bylaws. There is no evidence before me about whether the strata has ever held an annual general meeting or approved a budget.

19. It is undisputed that the fence between the two strata lots needs repair. The applicants say the fence needs to be replaced, and provided a quote from a contractor, RAC, for \$4,875.72 plus GST. This quote includes removal and disposal of the existing fence, approximately 91 feet of 6 foot high cedar fencing with treated cedar capped posts, to match the existing fencing at the front of the properties, and site clean up. An additional \$30 per cedar post would need to be added if the existing posts are sitting in concrete. In contrast, Mr. Bjornson provided prices for raw materials for the fence repair he obtained from online retailers, which he argues are a more reasonable estimate of the cost to repair the fence.
20. Mr. Bjornson says the fence is generally fine, and only 4 or 5 fence panels need to be replaced, including the 3 closest to the building. Due to the state of those 3 panels, Mr. Bjornson constructed his own 3 panel fence as a temporary measure. The strata plan shows the backyard areas of each strata lot are limited common property. The applicants say Mr. Bjornson was not entitled to build a fence where he did and seeks an order for its removal.

***Did Mr. Bjornson improperly construct a fence, and if so, what is the appropriate remedy?***

21. Bylaw 6(1) of the standard bylaws provides that an owner must get advance strata approval of any alteration to limited common property. As noted above, Mr. Bjornson's temporary fence sits on limited common property. Under bylaw 6(1), any alteration to limited common property must be approved by strata council.
22. Therefore, I find Mr. Bjornson was required to get the advance approval of the strata before constructing the temporary fence. In the context of a 2 person strata, approval from the strata requires approval from the applicants. Mr. Bjornson therefore breached bylaw 6(1) by constructing the temporary fence without strata approval.

23. Given the other claim in the dispute, and that Mr. Bjornson admits the structure was intended to be temporary pending the outcome of the fence issue, I order Mr. Bjornson to remove the temporary fence from limited common property.

24. I now turn to whether the existing fence should be replaced.

***Should the property line fence be replaced, and if so, who should pay for it and how much?***

25. Both parties provided photographs showing the state of the fence. It is clear that portions of the fence are in need of repair. The fence also appears to have been repaired to some degree in the past, with some panels not matching others.

26. Standard bylaw 8(c)(ii) provides that the strata corporation must repair and maintain limited common property including fences, railings and similar structures that enclose patios, balconies and yards. Given the state of the fence from the photographs, showing misaligned wood planks with gaps, detaching lattice work and piecemeal previous repairs, I find it is reasonable to have the entire fence replaced.

27. I have compared the RAC quote provided by the applicants with the raw materials costs provided by Mr. Bjornson. Given the amount of fencing required, as well as labour and removal and disposal of the existing fence, I find RAC's quote reasonable in the circumstances. I order the strata to proceed with RAC's quote for replacing the fence, including the additional \$30 per post if the existing posts are set in concrete.

**TRIBUNAL FEES, EXPENSES AND INTEREST**

28. Under section 49 of the CRTA, 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 applicants have been successful in

their claim, I order Mr. Bjornson to reimburse them \$225 in paid tribunal fees. The applicants did not claim any dispute-related expenses.

## DECISION AND ORDERS

29. I order that:

- a. Within 30 days of the date of this decision, Mr. Bjornson must remove the temporary fence from limited common property.
- b. Within 30 days of the date of this decision, the strata will retain a contractor to replace the property line fence.
- c. Within 14 days of the date of this decision, Mr. Bjornson must pay to the applicants \$225 in tribunal fees.

30. The applicants are entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

31. Under section 57 of the CRTA, a party can enforce this final tribunal decision by filing a validated copy of the attached order in the Supreme Court of British Columbia (BCSC). Once filed, a tribunal order has the same force and effect as a BCSC order.

32. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia (BCPC). However, the principal amount or the value of the personal property must be within the BCPC's monetary limit for claims under the *Small Claims Act* (currently \$35,000). Under section 58 of the CRTA, the applicants can enforce this final decision by filing a validated copy of the attached order in the BCPC. Once filed, a tribunal order has the same force and effect as a BCPC order.

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Andrea Ritchie, Vice Chair



