



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Penner et al v. The Owners, Strata Plan LMS 724*, 2019 BCCRT 1110

B E T W E E N :

RICHARD PENNER and MELANIE MITCHAM

APPLICANTS

A N D :

The Owners, Strata Plan LMS 724

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. The applicants, Richard Penner and Melanie Mitcham (owners) each own separate strata lots in the respondent strata corporation, The Owners, Strata Plan LMS 724 (strata).

2. The owners say the strata spent funds on unapproved expenses, including intercom replacement, an LED lighting system upgrade, and a fireplace upgrade. The owners also say the strata changed the appearance of common property without authorization by repainting the exterior paint/trim and interior doors. The owners say the strata also changed the use of the strata's backyard by replacing a putting green with a stone patio, again without authorization. Finally, the owners also allege irregularities with the 2018 Annual General Meeting (AGM).
3. The strata denies the owners' claim. It says it acted in the best interests of the strata corporation.
4. The owners are self-represented. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims 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 dispute parties that will likely continue after the tribunal's process has ended.
6. 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.

7. 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.
8. 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 the parties and witnesses questions and inform itself in any way it considers appropriate.
9. Under section 123 of the CRTA 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, or order any other terms or conditions the tribunal considers appropriate.
10. The owners asked for remedies against specific council members, including charging them with certain expenses. I refuse to resolve any such claims as the individual strata council members are not parties to this proceeding.
11. The owners also object to the strata hiring JL to do work as he is the son of the strata council president. I decline to make any findings on this issue. Section 32 of the SPA addresses conflicts of interest. I do not have jurisdiction over such claims, as the remedy for a such a breach is contained in section 33. Section 33 of the SPA is outside the tribunal's jurisdiction: *Dockside Brewing Co. Ltd. v. Strata Plan LMS 3837*, 2007 BCCA 83, at paragraph 59.

ISSUES

12. The issues in this dispute are as follows:
 - a. Did the strata improperly purchase a new intercom and security system and if so, what is the appropriate remedy?
 - b. Did the strata improperly replace existing lighting in late June to September 2018?

- c. Should the strata hire a contractor to inspect and, if necessary, repair the work JL did?
- d. Did the strata improperly enter into an agreement for new LED lighting and if so, what is the appropriate remedy?
- e. Did the strata improperly offer incentives to replace fireplaces, and if so, what is the appropriate remedy?
- f. Did the strata improperly repaint the exterior trim, and if so, what is the appropriate remedy?
- g. Did the strata improperly repaint the individual strata unit doors, and if so, what is the appropriate remedy?
- h. Did the strata improperly change the putting green to a stone patio, and if so, what is the appropriate remedy?
- i. Should the strata remove the front hedge and restore the lawn that was there previously?
- j. Should the strata be ordered to call a special general meeting?
- k. Should the strata present a special resolution to change the bylaws such that strata council members may only serve one term?

EVIDENCE AND ANALYSIS

13. Strata corporations in British Columbia are governed by the *Strata Property Act* (SPA). Under the SPA, a strata is owned and controlled by all of the strata owners, who in turn elect a group of owners to serve on the strata council. The strata council is responsible for the operation of the strata. The strata council is required to follow the requirements of the SPA and the strata bylaws for the best interests of the entire strata.
14. Under several issues the owners state that they seek an “appropriate” order. I dismiss such claims as the owners did not explain what an appropriate order might

be. However, where necessary, I have considered the appropriate remedy for each of the issues in this dispute.

Issue #1. Did the strata improperly purchase a new intercom and security system and if so, what is the appropriate remedy?

15. In the Dispute Notice the owners say it was wrong for the strata to replace the building's intercom in October 2018. They submit this expense should have been approved first through a vote of owners. They also ask for an updated budget for the 2018-2019 fiscal year.
16. As background, in January 2017 there was a break-in of multiple mailboxes near the front door. This cost \$1,652 to repair. The strata considered upgrading security in that area. At the time, the existing intercom was 25 years old. As part of its strategy, the strata obtained two quotes dated August 9, 2018, for a new intercom system. The first quote was for a new intercom that was capable of dialing cell phones through a new phone line. It cost \$4,828. The second quote had these features plus a security system which included installation of a maglock on the front door. New key fobs would be required to open the door. The latter quote was \$10,176. It also required replacing the existing fobs and an annual expense of \$340 per year in telephone charges.
17. As documented in several emails, on September 15, 2018, a person witnessed an attempted break-in at the front door and reported it to police. The strata property manager suggested paying for the intercom as an emergency expenditure.
18. On October 26, 2018, the strata decided to replace the intercom and signed the August 2018 quote for the \$10,176 intercom system. It is unclear when installation was completed but, in the absence of other evidence, I infer the intercom was installed soon after the August 2018 quote was signed.
19. At the next annual general meeting (AGM) of November 29, 2018, the owners approved a budget for the period of October 1, 2018 to September 30, 2019. The intercom system did not appear as an individual item, but its cost was included as

part of the “Repairs and Maintenance” budget line item. This is reflected in the fact that the repairs and maintenance were approximately \$11,000 more than budgeted. The ongoing telephone expense of \$340 also appears as a separate line item under “Telephone”.

20. At a March 21, 2019 special general meeting (SGM), the owners voted in favour of ratifying the cost of the new intercom as an emergency expenditure and having the ongoing telephone expense remain as part of the annual operating budget. Of the attendees, 18 voted in favour of the ratification, 2 opposed, and 1 abstained.
21. For the reasons that follow, I find the strata did not fully comply with the SPA and strata bylaws. However, I do not find it appropriate to make any order.
22. Under the SPA, if a proposed expenditure has not been approved in a strata corporation’s annual budget or by a vote at an annual or special general meeting, a strata corporation may not make the expenditure, unless it complies with section 98. The strata says it did so and relies on section 98(3) of the SPA.
23. Section 98(3) says an unapproved expense can be taken out of the operating fund or the contingency reserve fund if there are reasonable grounds to believe that an immediate expense is necessary to ensure safety or prevent significant loss or damage. If a strata corporation spends money relying on section 98(3), section 98(6) says it must inform the owners about the expense as soon as feasible.
24. I find that the strata complied with section 98(3) of the SPA, for the following reasons:
 - a. The strata had a verified report of an attempted break-in at the front door.
 - b. The pre-existing lock on the front door did not always latch. While the parties dispute this, I reach this conclusion based on the emails dated September 15, 2018, discussing this issue. They were written close in time to the break-incident.

- c. The strata provided a July 27, 2018 email showing that the pre-existing front door lock had been repaired throughout the years, and seven times in 2017 (January 7, February 16, June 26, August 17, August 22, October 13, and November 13, 2017). This supports the conclusion that replacing the front door lock entirely with a maglock was reasonable.
 - d. I find that the combination of the above factors were reasonable grounds for the strata to believe an immediate expenditure was necessary to ensure safety or prevent significant loss or damage.
 - e. The strata decided to replace the intercom and pre-existing front door lock soon after the September 2018 break-in attempt. There was a direct connection between the expenditure and the above-mentioned safety risk.
 - f. The strata relied on the advice of its property manager.
25. That said, I find that the strata failed to advise the owners about its decision as soon as feasible, as required by section 98(6). A full discussion of the new intercom and security system did not occur until the SGM of March 21, 2019. However, as noted in *Mitchell v. The Owners, Strata Plan KAS 1202*, 2015 BCSC 2153 at paragraph 50, strata council is typically made of lay people performing volunteer roles. Mistakes will be made, and missteps taken. As the owners subsequently voted overwhelmingly in favour of the expense, I decline to make any order.
26. The owners also requested an updated budget for the 2018-2019 fiscal year in relation to the intercom replacement. I decline to order the strata to provide such an update, as the cost of the intercom and security system was included in the budget for 2018-2019.
27. The owners say that the strata provided two fobs to each owner, with additional fobs being \$40 each. They submit submits that cost of additional fobs should be cheaper based on the August 2018 quote for a pack of 25 fobs. I decline to make any order regarding the fobs. The owners did not specify order they wanted with respect to the fobs. Further, the strata says the \$40 fee for additional fob replacement is a deterrent to losing fobs. I find this to be a reasonable position.

28. I dismiss this claim.

Issue #2. Did the strata improperly replace existing lighting in late June to September 2018?

29. The owners object to the way the strata purchased lighting. The owners listed all the lighting purchases under the heading of “LED lighting project” but I find it clearer to consider them as two groups of purchases. First, the strata replaced corridor light fixtures, ceiling light fixtures, exterior wall sconces, and balcony lights so they would match. The replacements were from Design Lighting and cost \$2,616.76, paid in two invoices dated June 27 and August 15, 2018. On August 8, 2018, \$789.10 was paid to MC Construction to fix a broken security light at the rear parking lot. On September 15, 2018, the strata paid \$540 to JL to replace balcony lights and install new door handles leading to balcony storage rooms.

30. Second, the strata entered into a lease agreement with Evergreen Lighting in September 2018 for LED lighting. I shall discuss this in further detail below as a separate issue.

31. The owners submit that the strata breached section 97 of the SPA by spending operating funds on the above-mentioned expenses. Section 97 states the strata must not spend money from the operating fund unless the expenditure usually occurs once a year or more often than once a year and is first approved by a $\frac{3}{4}$ vote at a general meeting. Emergency expenditures are an exception to this provision, but I do not find that exception applies here.

32. The owners also allege a breach of strata bylaw 11.15. That bylaw provides that strata council, without authorization through a special resolution, cannot spend more than \$2,000 on an expenditure not set out in the approved annual budget. The strata did not say that these expenses were set out in the budget for the period of October 2017 to September 2018 and I found it difficult to discern where it was included in the documents before me.

33. I find that the common expenses of replacing the existing lighting in late June to September 2018 would occur less often than once a year and therefore would not be an operating fund expense. These expenses were used to replace or fix existing mismatched light fixtures. This mismatch had built up over time. They were also not emergency expenditures. These expenditures therefore breached section 97 of the SPA and strata bylaw 11.15. The strata did not have the authority to expense these repairs from the operating fund. Rather, the expense should have come from the contingency reserve fund, consistent with SPA sections 92 and 96.

Remedy

34. I find this error is largely not correctable, as the money has been spent. I find an appropriate remedy is for the strata to report its error of spending money from its operating fund without property authorization to the owners at the next AGM or SGM.

Issue #3. Should the strata hire a contractor to inspect and, if necessary, repair the work JL did?

35. The owners allege that JL's work was potentially deficient. However, an electrician was hired to perform an inspection of JL's work on March 15, 2019, and no problems were found.

36. Given the lack of any evidence of problems with JL's work, I dismiss this claim.

Issue #4. Did the strata improperly enter into an agreement for new LED lighting and if so, what is the appropriate remedy?

37. In the second lighting project, the strata entered a lease agreement with Evergreen Lighting to update pre-existing lighting to LEDs. The lease consists of 48 payments of \$443, plus taxes and other fees, for approximately \$7,000 per year for four years.

38. The expense is mentioned in the AGM meeting minutes for November 29, 2018. It was included in the budget as an unapproved expense of \$1,171.52 for the period of October 2017 to September 2018. It was also listed as an approved budgeted item

for the period of October 2018 to September 2019. The budget was passed by the required $\frac{3}{4}$ margin. However, the LED lighting project was not, by itself, approved by a $\frac{3}{4}$ vote at the time.

39. I find that this common expense would occur less often than once a year and therefore should not have been an operating fund expense. It was also not an emergency expenditure. These expenditures therefore breached section 97 of the SPA and strata bylaw 11.15. The strata did not have the authority to pay for the LED lighting upgrades from the operating fund.

Remedy

40. I turn to the appropriate remedy. It is not clear that changing the LED lighting, particularly at this stage when an agreement is in place with a third party, would be in the best interests of the strata.
41. Once again, I find this error is largely not correctable, as the money has been spent. I find an appropriate remedy is for the strata to report error to the owners at the next AGM or SGM.

Issue #5. Did the strata improperly offer incentives to replace fireplaces, and if so, what is the appropriate remedy?

42. The owners say the strata inappropriately offered other strata lot owners financial incentives to replace their existing gas fireplaces with new gas fireplaces.
43. The strata pays for the gas to operate fireplaces out of the operating budget. The strata sought to reduce the gas costs and had the fireplaces inspected. It promoted a fireplace upgrade by using money from the repairs and maintenance budget to pay for the cost of 5 fireplace replacements and compensated another 2 strata lot owners for fireplaces installed in previous years. The strata says that replacing the fireplaces resulted in substantial cost savings.
44. The strata offered \$400 for each fireplace, or \$2,800 in total, and added as part of the October 1, 2017 to September 30, 2018 budget under repairs and maintenance.

The strata's utilities provider also offered a \$300 rebate for each of the seven fireplaces that were replaced, totalling \$2,100 in this case. There are still 15 fireplaces left that have not been upgraded.

45. The strata discussed this plan at a March 13, 2018 strata council meeting. The \$400 incentive was later ratified by a $\frac{3}{4}$ vote resolution at the March 21, 2019 AGM, with 18 votes in favor, 1 opposed, and 2 abstaining.
46. The owners say that the strata should never had offered financial incentives to owners to upgrade their fireplaces. They submit that the strata breached section 97 of the SPA and strata bylaw 11.15.
47. This is yet another common expense that would occur less often than once a year and not an emergency expenditure. The strata therefore breached section 97 of the SPA. However, the strata subsequently held a $\frac{3}{4}$ vote resolution to approve the financial incentives offered to replace the fireplaces. Given that the sizable margin that approved the expenditure, I decline to make any orders.
48. I dismiss this claim.

Issue #6. Did the strata improperly repaint the exterior trim, and if so, what is the appropriate remedy?

49. The owners say the strata repainted and changed the exterior trim paint colour and the brick colour used at the entry ramp. They say these changes are improper as the strata proceeded without a special resolution vote.
50. The exterior trim painting was approved at the November 23, 2017 AGM by a special resolution. The special resolution included repair and maintenance to the concrete walkway, driveway, and interior doors. The resolution does not discuss any changes to trim colour or brick use specifically. It is undisputed that the strata held a separate town hall meeting to discuss the changes in colour, and a May 10, 2018 email shows this happened on May 15, 2018.

51. I decline to make any orders regarding the exterior trim painting or the brick colour. The strata put forward a special resolution to have these features changed and it was approved by the margin required of a special resolution. There is some dispute as to whether it was appropriate for the strata to pick the colours used based on discussions at a town hall meeting. However, the strata members had the opportunity vote against repainting the exterior trim until colour had been determined. They did not.

52. I dismiss this claim.

Issue #7. Did the strata improperly repaint the individual strata unit doors, and if so, what is the appropriate remedy?

53. The owners say the unit entry fire doors are now deficient and must be recertified, as they were painted on one side only (instead of both, contrary to manufacturer's instructions) and had hardware and signage changed. The owners also say that they did not have a chance to pick the new colour used.

54. The door painting and hardware replacement were approved as part of the November 23, 2017 special resolution. I find that the doors' safety was not negatively affected by the painting, as shown in an April 8, 2019 email from the manufacturer and a May 1, 2019 email from a Langley Fire Department Safety Officer. The Safety Officer did not identify any issues with the door, and he is best situated to provide an opinion on the matter. If the owners wish for both sides of the doors to be painted, that is a request best made to the strata council. I decline to make any orders about doors.

55. As to the choice of colour, this was also discussed at a town hall meeting of May 15, 2018. I find that if the choice of colour was a key issue, the ownership had the opportunity vote against repainting the doors at the November 23, 2017 special resolution vote, until the colours had been chosen. They did not.

56. I dismiss this claim.

Issue #8. Did the strata improperly change the putting green to a stone patio, and if so, what is the appropriate remedy?

57. The owners say the strata impermissibly changed the strata's backyard putting green to a stone patio.
58. The strata says, and I find, that it was constructed in 1993, had partially detached from the underlying concrete, and was now a tripping hazard. I find that the putting green was slippery and unsafe, as demonstrated in a January 9, 2019 email from the strata's landscaper.
59. The change to a stone patio was not approved by any owners through a vote and instead decided at a July 10, 2018 strata council meeting. The strata says the change was done within the "Landscape Improvements" line item budget approved at the November 23, 2017 AGM.
60. I shall first consider whether changing the putting green was a significant change in use. The test is outlined in *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333. As discussed in *Foley*, section 71 of the SPA requires the strata to obtain approval by way of a $\frac{3}{4}$ vote at a general meeting before making a significant change in use or appearance of common property except in cases of emergency, which I find is not the case here.
61. The criteria for determining what is a significant change in use and appearance under section 71 of the SPA is clearly set out in *Foley* at paragraph 19. I find the change to be significant for the following reasons:
- a. the change is readily visible to the owners;
 - b. the change affects an existing benefit of all units (i.e. access to a putting green);
 - c. the change would directly interfere with any owners that wished to continue using the putting green; and

d. although there is little evidence on the matter, I find that replacing the putting green with the stone patio would impact the marketability value of strata lot units.

62. As this was a significant change in the use of common property, SPA section 71 requires a $\frac{3}{4}$ vote resolution at a general meeting to authorize the project. According to the July 10, 2018 strata council meeting minutes, the strata held a town hall meeting to decide what to do with the putting green. This was insufficient.

63. A second related matter is that the strata also breached section 97 of the SPA by paying for the putting green changes out of the operating fund rather than the contingency reserve fund. This was an expense that occurred less often than once a year. Although unsightly and dangerous to use when wet, the existing putting green was not an emergency and could be avoided.

64. I will now discuss the appropriate remedy.

Remedy

65. As with the other issues identified above, it is unclear if it would be in the strata's best interest to revert the stone patio back into a putting green. In *Foley*, the court ordered the strata to hold an SGM and have the owners vote on a $\frac{3}{4}$ vote resolution on whether the change was acceptable. Although not binding upon me, I place significance on the fact that the tribunal has used a similar remedy in the past. See, for example, *Section 1 of The Owners, Strata Plan BCS 3495 et al v. The Owners, Strata Plan BCS 3495*, 2019 BCCRT 133 at paragraphs 55 to 56.

66. I therefore order that within 6 months of this decision the strata must hold a general meeting and allow the strata owners to consider a $\frac{3}{4}$ vote resolution to revert the backyard stone patio back to a putting green. All the regular SPA requirements for such meetings and voting, including notice, will apply.

Issue #9. Should the strata remove the front hedge and restore the lawn that was there previously?

67. In its Dispute Notice the owners requested removing a strata's front hedge and restoring the lawn that was there previously. However, the owners provided no arguments to support their claim.
68. The strata says the hedge was part of the landscape improvements for the 2016-2017 fiscal year. It was used to reduce dog waste on the property and increase the privacy for owners on the street side of the building.
69. I decline to make any order regarding the front hedge. The owners did not explain the basis for their request and I do not find it appropriate to make such an order based on a bare request.
70. I dismiss this claim.

Issue #10. Should the strata be ordered to call a special general meeting?

71. The owners say that the strata should be ordered to call a special general meeting. They also request that the November 29, 2018 AGM be "extinguished" and say that new financial statements should be presented.
72. I do not find it necessary to "extinguish" the results of the November 29, 2018. This would not address the specific concerns raised in this dispute, which I have addressed above.
73. As for the financial statements presented in November 2018, I found the allegations regarding the budget are related to the issues discussed earlier and have been addressed above. I decline to order the production of any new financial statements.
74. I dismiss this claim.

Issue #11. Should the strata present a special resolution to change the bylaws such that strata council members may only serve one term?

75. In its Dispute Notice the owners requested the strata to present a special resolution to change the bylaws such that strata council members may only serve one term and that they be allowed to stand for election again one year after resigning.
76. The owners did not further elaborate upon this request in their submissions. I therefore have no factual or legal basis to make this order.
77. I dismiss this claim.

TRIBUNAL FEES AND EXPENSES

78. 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. I see no reason in this case not to follow that general rule.
79. I find that success was largely divided in this dispute. I decline to order tribunal fees or dispute-related expenses for either party.
80. The strata corporation must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owner.

ORDERS

81. I order that:
- a. At the next the next SGM or AGM, the strata must report its breaches of section 97 of the SPA with respect to the following:
 - i. approving the expenses of \$2,616.76 paid to Design Lighting, \$789.10 paid to MC Construction, and \$540 to JL, paid in June to September 2018, and

- ii. approving the September 2018 lease agreement with Evergreen Lighting.
 - b. Within 6 months of this order, the strata must hold a general meeting and allow the strata owners to consider a 3/4 vote resolution to revert the backyard stone patio back to a putting green.
 - c. The owners' remaining claims are dismissed.
82. 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). 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 a BCSC order.
83. 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 owners can enforce this final decision by filing a validated copy of the attached order in the BCPC. 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 a BCPC order.

David Jiang, Tribunal Member