



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Bowie v. The Owners, Strata Plan VR1122*, 2019 BCCRT 1342

B E T W E E N :

ANDREA BOWIE and GREGORY HOLLAND

APPLICANTS

A N D :

The Owners, Strata Plan VR1122

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about a proposed roof deck addition and rooftop patio (addition). The applicants Andrea Bowie and Gregory Holland (owners) own strata lot 12 in the respondent strata corporation, The Owners, Strata Plan VR1122 (strata).

2. The owners say the strata unreasonably withheld approval for the addition. They also feel misled by the strata. They claim \$9,767.11 as reimbursement for architectural drawings. The strata disagrees. It says it denied approval because the addition would be a significant change in the use of common property.
3. Ms. Bowie represents the owners. A strata council member represents the strata.

JURISDICTION AND PROCEDURE

4. 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.
5. The tribunal has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.
6. 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.
7. Under CRTA section 61, 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. Tribunal documents incorrectly show the name of the respondent as The Owners, Strata Plan 1122. Based on section 2 of the *Strata Property Act* (SPA), the correct legal name of the strata is The Owners, Strata Plan VR1122. 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.

8. 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.

ISSUES

9. The issues in this dispute are as follows:
 - a. Is the proposed addition requested by the owners a significant change within the meaning of SPA section 71?
 - b. Did the strata unreasonably withhold approval of the addition?
 - c. Did the strata mislead the owners?
 - d. Are the owners entitled to reimbursement of \$9,767.11 for the cost of preparing architectural drawings?

BACKGROUND AND EVIDENCE

10. In a civil claim such as this, the applicant owners bear the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

11. The background facts are undisputed. The strata property consists of three buildings. One building is strata lot 11. Another building consists of strata lots 12 (the owners') and 13. The last, and largest building, consists of the remaining 15 strata lots.

12. The photographs show that several rooftop patios exist. Strata lot 13, which shares the rooftop with strata lot 12, also has a patio or rooftop garden. The photographs do

not make this clear. The majority of the remaining rooftop patios are located on the largest building.

13. In March 2017 the owners asked the strata to approve their design for the addition. Architectural drawings prepared for the owners dated April 18, 2018 show the owners' proposed changes. The addition alters the rooftop exterior of strata lot 12. It includes a new structure with a door, enclosing a stairwell. The drawings also include proposed guardrails, glass screens and trees in planters.
14. The parties agree the rooftop of strata lot 12 is common property. This is consistent with definition of common property under section 1(1) of the SPA and the registered strata plan in evidence.
15. The relevant bylaws were filed in the Land Title Office on December 19, 2013. Bylaw 8.3 states in part that an owner must obtain written approval before making an addition that involves common property. Bylaw 8.5 states that the strata must not unreasonably withhold approval under bylaw 8.3. However, the strata may require, as a condition of approval, an owner to agree in writing to certain terms and conditions. Bylaw 8.5(q) allows the strata to add any terms for approval the strata may reasonably require.
16. At the April 27, 2017 strata council meeting, the strata withheld approval for the addition. The strata was concerned about the proposed stairwell structure that was required to provide roof access. It felt that this would significantly block views from several units.
17. The owners said that they would revise the designs based on feedback from the strata and other owners. The revised architectural drawings are dated May 31, 2017. The roof access addition shown on the May 31, 2017 drawings is shorter and shows a hatch opening, rather than a door. The revised drawings still include new guardrails and glass screens.
18. The strata council held a meeting on June 29, 2017. The strata emailed the owners to say that they had decided that the addition would be a significant change in the

use or appearance of common property. As a result, 3/4 of the owners present at a general meeting must approve it. The strata asked the owners if they wished the strata to arrange for such a vote at a special general meeting (SGM).

19. According to the strata council minutes, the strata based its decision in part on educational seminars of the Condominium Home Owners Association of BC (CHOA). A strata council member recently attended these seminars and the topics included alterations to common property.

20. The owners took the position that the revised addition was not a significant change. They requested and had a hearing with the strata council on March 20, 2018. The strata emailed the owners that same night. The strata decided that the addition was a significant change in the use and appearance of common property. It asked the owners again if they wished for council to arrange an SGM. In a March 23, 2018 email, the strata clarified that it was withholding approval for the addition.

21. SPA section 71 states that the strata must not make a significant change in the use or appearance or use of common property, unless the change is approved by a 3/4 vote resolution. SPA section 1(1) says that limited common property (LCP) is a form of common property. This means that section 71 also applies to LCP.

22. The court considered the meaning of “significant change” for the purposes of SPA section 71 in *Foley v. The Owners, Strata Plan VR387*, 2014 BCSC 1333. It provided the following non-exhaustive list of factors to consider, which I summarize here:

- a. The more visible the change, the more significant.
- b. Does the change affect the use or enjoyment of any strata lots?
- c. Does the change cause any disruption?
- d. Does the change affect the value of the strata lot?
- e. The number of strata lots in the strata corporation and their general use might make the change significant.

f. How the strata is governed and what it has allowed in the past might matter.

23. In *Foley*, the court noted that by altering a roof deck, the petitioner Mr. Martin added common property into his private area. There was no indication that anyone else aside from Mr. Martin could use or enjoy the extended deck. The court found that, even ignoring the other criteria, this suggested the change is significant.

POSITIONS OF THE PARTIES

24. Both parties agree that the test in *Foley* applies. However, the parties disagree on the outcome of the test. The owners say the addition is not a significant change under SPA section 71. They seek an order that the strata approve the addition. The owners also say the strata misled them. They consequently seek an order for \$9,767.11, as reimbursement for the cost of architectural drawings.

25. The strata disagrees. It says that the addition requires the rooftop of strata lot 12 to be re-designated as LCP. Alternatively, the owners must enter into a short-term use of common property agreement with the strata. The strata says that in either case, the addition would be a significant change under SPA section 71. The strata says it cannot approve the addition unless the owners pass a 3/4 vote resolution at a general meeting. The strata denies it misled the owners.

ANALYSIS

Issue #1. Is the proposed addition requested by the owners a significant change within the meaning of SPA section 71?

26. For the reasons that follow, I agree with the strata that the proposed addition would be a significant change under SPA section 71.

27. I begin by applying the test in *Foley*. In that case, a key consideration was whether the addition would add common property to the owners' private area. I find this factor applies in this dispute. I have no evidence that anyone, but the owners, will use the

addition. As stated in *Foley*, even ignoring the other criteria, this suggests the change is significant. I place the most weight on this factor.

28. Several other factors support the conclusion that the addition is a significant change. I find that the addition would be visible to the residents of the strata. The addition includes a structure on the roof of strata lot 12. The photographs in evidence show windows overlooking the addition, particularly from the largest of the 3 buildings in the strata. I also find that the addition would be visible to the general public. The addition includes guardrails and there is nothing that would prevent a person from seeing the addition by looking up.
29. I also find that the addition changes common property and would affect its use or enjoyment. The rooftop of strata lot 12 is currently bare. The addition would provide the owners with new space to use. The guardrails and glass screens would make the rooftop safer and change its appearance. The rooftop would also be more accessible to the owners.
30. I also find that the addition would directly interfere with other owners. In May 2017, the strata asked the owners of units 8, 9, and 10 for feedback on the addition. These units are in the largest building across from strata lot 12. In emails, the owners of units 8 and 9 objected to the addition because it would block their view. The owners subsequently shortened the proposed addition as described above. However, the revised addition still creates a profile. It is not level with the roof.
31. I was not provided with any evidence on the marketability or value of strata lot 12. In *Foley*, the court concluded that it was “readily apparent” that the expansion of deck space would likely enhance the value of the unit. I find that similar reasoning applies here. The addition would enhance the value of strata lot 12.
32. It is undisputed that the strata property consists of 18 strata lots that are entirely residential. I find the modest size and residential use of the strata buildings support the conclusion that the addition is significant.

33. There is some evidence that the strata did not comply with SPA section 71 in the past. The strata admits it changed its understanding of the law in 2017 based on the CHOA seminars. The owners say that the strata approved expanding pre-existing rooftop patios on strata lots 13 to 18. They say these expansions incorporated common property. The strata plan shows that strata lots 13 to 18 have small LCP garden areas on their rooftops. The photographs in evidence show rooftop patios that are larger than the LCP garden areas. However, the photographs are also blurry. They are not the best evidence available for this purpose.
34. Ultimately, I find it unclear if the strata breached the SPA in approving the expansion of the other rooftop patios. The evidence on this issue is incomplete. It is also unclear if the SPA or older *Condominium Act* would have applied at the time. I also find the owners' situation is not directly comparable. They do not seek to expand existing LCP property. Instead, they wish to convert bare rooftop space for their own use. I find this factor provides the owners limited assistance.
35. In summary, I place significant weight upon the fact that the addition will add common property to the owners' private area. I also place weight upon its visibility and direct interference with other owners. I find that the addition is a significant change under SPA section 71.

Issue #2. Did the strata unreasonably withhold approval of the addition?

36. The strata cannot approve the addition without first passing a $\frac{3}{4}$ vote resolution at an annual or special general meeting. In its March 20 and March 30, 2017 emails, the strata wrote that the necessary $\frac{3}{4}$ vote was a condition of approval. I therefore find the strata did not unreasonably withhold its approval under bylaw 8.3 for the proposed addition. It complied with the SPA.

37. I dismiss this claim.

Issue #3. Did the strata mislead the owners?

38. The owners say they would not have spent money on architectural drawings if they knew a vote was required. The owners say the strata misled them.

39. I disagree. The evidence shows the owners decided to ask for approval of the addition on their own, in March 2017. The strata withheld approval in April 2017 as it was concerned that part of the addition would block the view of other owners. This is a consideration under the test in *Foley*. It was a relevant concern. In June 2017 it advised that the addition would require approval by both strata council and the owners through a $\frac{3}{4}$ vote resolution. The strata provided these comments after a council member attended the CHOA seminars. The strata has been consistent on this point since then.

40. The strata may still approve the addition if the necessary $\frac{3}{4}$ vote takes place. The owners did not raise issues regarding significant unfairness in this dispute. Nothing in my decision restricts the owners from doing so if the proposed addition is not approved at an SGM.

41. In summary, I find the strata did not mislead the owners.

Issue #4. Are the owners entitled to reimbursement of \$9,767.11 for the cost of preparing architectural drawings?

42. The owners say they should be reimbursed \$9,767.11 for the cost of architectural drawings. The owners also claim interest on this amount. They say they are entitled to this amount because the strata misled them.

43. I have found that the strata did not mislead the owners. The owners did not provide any other legal basis for this claim. I note that it is still possible for the owners to have the addition approved.

44. I dismiss this claim.

TRIBUNAL FEES AND EXPENSES

45. 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.

46. The strata is the successful party in this dispute. The strata paid no tribunal fees and does not claim dispute-related expenses. I therefore decline to make any orders relating to tribunal fees or dispute-related expenses.

47. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owner.

ORDERS

48. I dismiss the owners' claims and this dispute.

David Jiang, Tribunal Member