



Civil Resolution Tribunal

Date Issued: January 31, 2020

File: ST-2019-005970

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VIS 2287 v. Mullins*, 2020 BCCRT 122

BETWEEN:

The Owners, Strata Plan VIS 2287

APPLICANT

AND:

Ken Mullins and Marilyn Mullins

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. The respondents, Ken Mullins and Marilyn Mullins (the owners), own a strata lot in the respondent strata corporation, The Owners, Strata Plan VIS 2287 (strata). This dispute is about whether the strata is entitled to reimbursement of the \$1,233.81 in legal costs the strata incurred when attempting to have work done by an arborist on the common property.
2. The strata says that it had to hire a law firm because the owners stopped the gardening work in March 2019 and then the owners also said they were going to refuse access to their strata lot for further work scheduled to be completed on May 9, 2019. The strata is represented by a strata council member.
3. The owners say they did not stop the gardening work's completion in March 2019 or interfere with the work in May 2019. The owners state that the strata prematurely hired a lawyer instead of attempting to resolve the issue with them as to how the pruning would affect their strata lot's surroundings. The owners represent themselves.

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. In some respects, this dispute amounts to a "it said, they said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.

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 the parties and witnesses questions and inform itself in any way it considers appropriate.
7. 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.

ISSUE

8. The issue in this dispute is whether the owners must reimburse the strata its legal costs.

EVIDENCE, FINDINGS AND ANALYSIS

9. In a civil dispute such as this, the applicant must prove its claim. It bears the burden of proof on a balance of probabilities.
10. While I have reviewed all of the material provided, I have only commented below on the evidence and submissions necessary for this decision.

Background Events

11. The strata has presented evidence that there is a history of disagreements between the strata and the owners going back to 2015. I do not find that relevant to the dispute before the tribunal.

12. The strata's November 2018 annual general meeting minutes and budget show that work was approved relating to hedges and front gardens. The strata council meeting minutes from February 13, 2019 say that the hedge trimming was scheduled for March 2019.
13. On March 7, 2019, the owners sent a letter to the strata complaining about the pruning work done. It noted that the landscaping was not overseen by the strata and that the 25-year-old laurel was "butchered."
14. On March 17, 2019, the gardening company emailed the strata that the work on the laurel had not been completed due to the owners' "request/conflict." The company asked the strata if that had been sorted out and if there was still more work to be done. The strata replied via email on March 19, 2019 and said that the issue was going to be addressed at the March 27, 2019 council meeting.
15. The March 24, 2019 gardening invoice noted that additional pruning of the laurel hedge was necessary but that this was along the avenue and not on the side of the owners' yard. However, the invoice did say that conflict management was required.
16. The March 27, 2019 minutes stated that a fully qualified arborist and landscaper would be coming to trim the hedges and trees. It noted that members of the strata council would be present to monitor the work.
17. The strata also had an in-camera meeting. The minutes said that when the gardening company attempted to complete the trimming of the hedges and the trees one of the applicant owners came out and threatened the arborists. The minutes also indicated that rather than risking any physical violence the arborists left without completing their work. The strata did not provide any evidence to the tribunal that the arborists said they were threatened and feared physical violence from the applicant owners.
18. The minutes indicate that the strata discussed that it was responsible for the maintenance of common property. It acknowledged that the owners were upset about how the laurel looked and agreed that while presently looking "ugly" it would

regenerate in time. The strata decided to set a new date for the gardening company to return and said that it would inform the owners of the date, the arborists' qualifications, and that strata council members would be present when the work was done.

19. On April 29, 2019, the strata sent the owners a letter saying that the hedging was going to be completed on May 9, 2019 by the same gardening company and that two strata council members would be present. It said that interference with the work would not be tolerated and if necessary the strata would call the RCMP.
20. The owners wrote back the same day and said that there had been no communication as to what kind of trimming and hedging was going to be done. They said that the work already completed was unsatisfactory and exposed their strata lot. The owners said that the gardening company did not have their permission to enter their strata lot and that they would ask the RCMP themselves to enforce their rights.
21. The strata wrote to the owners on April 30, 2019 and said that the gardening company did not need to enter the owners' strata lot but only the common property around it which was the responsibility of the strata. The strata said that the work would proceed.
22. At that point the strata did not give the owners a chance to reply. Nor did it attempt to complete the work and see if the owners interfered. Rather, it hired a law firm on May 1, 2019.

Legal Costs Incurred

23. The May 2, 2019 lawyer's letter accused the owners of wrongful interference with the arborist on March 5, 2019. The letter told the owners to cease and desist from interfering with the gardening company on May 9, 2019. It explained the hedge was common property and the strata had a duty to maintain it.

24. The letter referred to bylaw 3. Bylaw 3 prohibits an owner from using the common property in a manner that causes a nuisance, hazard, is illegal or unreasonably interferes with the rights of others to use this property. The letter also referred to bylaw 3(3) which states that, in the event an owner's action increased the operating costs of the strata corporation, the owner of the offending strata lot would have to reimburse the strata corporation the increased costs.
25. The letter went on to say that the owners had violated these bylaws and invited them to answer within 21 days. The letter also said that if the owners wished to have a hearing, they could request one. I note that the letter is confusing in that its focus begins by warning the owners not to intervene on May 9, 2019 but then seems to suggest that the strata was considering what happened on March 5, 2019.
26. The letter also then goes on to tell the owners that if the council determined that the owners were in breach of the bylaws it intended to take steps to compel the owners to comply with the bylaws and charge the related costs, including legal costs, back to them under section 133 of the *Strata Property Act* (SPA).
27. The owners wrote to the strata on May 3, 2019 and denied that they interfered with the arborist on March 5, 2019. They said that they asked him not to touch the lilac tree. They said it was never their intention to obstruct the gardening company and that they would not stop the company from finishing trimming the hedges on May 9, 2019. They asked the strata to withdraw its complaint against them.
28. Despite this, the strata met on May 29, 2019 and determined that the owners had breached the bylaws. The minutes from that meeting do not specify how the owners violated the bylaws or on which date. Rather, the minutes simply state that a bylaw infraction took place relating to "nuisance, hazards and unreasonable interference to use the strata property." The strata indicated that it incurred costs, which should be charged to the owners.
29. The lawyer then sent the owners a letter on June 20, 2019 saying that the strata determined that the owners were in violation of the bylaws. It did not specify which bylaws but said that a copy of the May 29, 2019 minutes was enclosed. The lawyer

requested that the owners pay the \$1,233.81 in legal costs under section 133 of the SPA. The lawyer's letter demanding payment referred to the case of *The Owner, Strata Plan KAS 2428 v. Baettig*, 2017 BCCA 377 (*Baettig*) as authority for claiming the legal costs.

Did the owners breach a bylaw?

30. I find there is insufficient evidence before me to establish that the owners threatened the gardening company's employees on March 5, 2019 or what exactly happened on that day. The strata says that Mr. Mullins refused to allow the arborist to complete the trimming of the laurel tree. There are no witness statements provided to the tribunal from the arborists to support that allegation.
31. Also, the owners said that they would not allow the gardening company on their strata lot on May 9, 2019. The strata explained to them they would only be on common property. There is no evidence that the owners did anything after that. Therefore, I find that there is insufficient evidence to establish that the owners interfered with the gardening work on March 5, 2019 or May 9, 2019 in violation of bylaw 3.
32. Accordingly, I find that the strata has not proved that the owners violated a bylaw.

Reimbursement of the Legal Fees

33. The strata seeks reimbursement of its legal fees. I note that in *The Owners, Strata Plan VR 293 v. Bains*, 2019 BCCRT 504, the tribunal ordered a strata lot owner to pay part of the strata's legal fees under an applicable bylaw, which said an owner would be liable for legal costs incurred by the strata as a result of a bylaw infraction. However, there is no such bylaw in this dispute.
34. The bylaw here, bylaw 3(3), refers to costs but unlike in *Bains* does not specify legal costs. Rather, bylaw 3(3) refers only to "operating costs." Specifically, bylaw 3(3) states that in the event an owner's action increased the operating costs of the strata corporation, the owner of the offending strata lot would have to reimburse the strata

corporation the increased costs. The strata has not proven that a legal fee is an operating cost.

35. Further, I have found that the evidence does not establish that the owners breached a bylaw. Therefore, the strata has not proved that it was the owners' actions that increased the operating costs of the strata corporation.
36. Therefore, because there is no specific bylaw that refers to legal costs, and there was no proven breach of a bylaw, I find that this dispute is distinguishable from *Bains*. I also note that the letter sent by legal counsel indicated that it was proceeding under section 133 of the SPA to recover the legal costs.
37. Section 133(1) says a strata corporation may do what is reasonably necessary to remedy a bylaw contravention, including doing work on the strata lot or common property, and removing objects from common property. Section 133(2) says the strata may require that the reasonable costs of remedying a bylaw contravention be paid by the person who may be fined for the contravention.
38. Based on the evidence before me, I find that the legal fees incurred by the strata were not reasonable costs of remedying a bylaw contravention. The lawyer's invoice indicates that he started work on this matter on May 1, 2019 which was after the March 5, 2019 date the strata alleges the owners interfered. I have already decided that the strata has not established a bylaw contravention occurred on that day. May 1, 2019 is also before the date the strata formally determined a bylaw contravention had taken place.
39. Therefore, I find the legal fees were not incurred as a cost of remedying a bylaw contravention on March 5, 2019. Rather, the costs were incurred to prevent a potential bylaw contravention from occurring on May 9, 2019. Accordingly, I find no reimbursement is justified under SPA section 133.
40. Finally, I note that the tribunal decided in *Hallman et al v. The Owners, Strata Plan KAS 1821*, 2019 BCCRT 1179 that the law is currently unclear about whether legal expenses for a tribunal dispute are recoverable under SPA section 133.

41. The tribunal member considered the *Baettig* case referred to by the strata and noted that there the BC Court of Appeal considered a case where the strata sought legal costs in relation to registering a lien against an owner's strata lot. The court said that one case, *Strata Plan VR19 v. Collins*, 2004 BCSC 1743, was capable of being read as suggesting that "reasonable costs" in SPA section 133 encompassed the actual legal costs associated with bringing a court action. However, the tribunal member noted that a tribunal dispute is not a court action.
42. In *Hallman*, the tribunal member also referred to a recent BC Supreme Court case, *The Owners, Strata Plan NW3075 v. Stevens (Stevens)*, 2018 BCSC 1784, where, in paragraph 91 of that decision, Madam Justice Fleming specifically noted that the legal costs of the strata's tribunal dispute were not recoverable, in part because the strata had not made submissions on that issue, and in part because of the tribunal's mandate.
43. In *Stevens* the court addressed the legal costs invoiced before the trial, indicating the Strata conceded they were not recoverable in that action with reference to s. 19(4) of the *Small Claims Act*. The judge noted but came to no conclusion about the potential for unfairness to a successful defendant owner, were section 133 to be interpreted as allowing a strata to recover its actual costs related to a Provincial Court action. She said that she had the same concern about any costs that may be claimed in relation to the tribunal proceedings. She stated that the CRTA provides that parties are generally required to represent themselves and that both forums are intended to offer simple and inexpensive access to dispute resolution and the adjudication of legal disputes.
44. While not conclusive of this issue, just as in *Hallman*, I find that the court's reasoning suggests that legal costs for tribunal disputes are not recoverable under SPA section 133. For all these reasons, I dismiss the strata's claim for legal fee reimbursement.

TRIBUNAL FEES AND EXPENSES

45. Under section 49 of the Act, and the tribunal's rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. As the strata was unsuccessful in this dispute, it is not entitled to have its tribunal fees reimbursed.

ORDER

46. I dismiss the strata's claim and this dispute.

Kathleen Mell, Tribunal Member