



# Civil Resolution Tribunal

Date Issued: June 1, 2020

File: ST-2019-005415

Type: Strata

Civil Resolution Tribunal

Indexed as: *Heal v. The Owners, Strata Plan VR 2540*, 2020 BCCRT 599

**B E T W E E N :**

DOUGLAS HEAL AND BRENDA HEAL

**APPLICANTS**

**A N D :**

The Owners, Strata Plan VR 2540

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Trisha Apland

## **INTRODUCTION**

1. The applicants, Douglas Heal and Brenda Heal, own strata lot 83 (SL83) in the respondent strata corporation, The Owners, Strata Plan VR 2540 (strata). This dispute is over planters and a statue that the applicants keep on a section of the strata building.

2. The strata says these personal items are on common property without strata permission and contrary to both the strata and municipal bylaws. The strata asked the applicants to remove the items, but they refused. In May 2019, the strata fined the applicants \$400 for the alleged bylaw breach.
3. The applicants say the items are on limited common property (LCP) designated to SL83. They say the items have been in their present location for years and do not violate the strata's bylaws. The applicants seek orders that the fines be reversed, that no future fines be levied, and that they may keep the planters and statue in their current location. The applicants also seek compensation of \$4,000 "for a significant unfair action pursuant to paragraph 164(1)(a) of the *Strata Property Act*" (SPA).
4. The applicants are self-represented. The strata is represented by a strata council member.
5. For the reasons that follow, I find the applicants did not breach the bylaws. I find the strata must reverse the bylaw contravention fines and reimburse the applicants \$112.50 in tribunal fees. I dismiss the applicants' remaining claims.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. 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.

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.

## **Preliminary Issue**

### Concurrent Dispute

10. I have decided a concurrent dispute published as *Pretto v. The Owners, Strata Plan VR2540*, 2020 BCCRT 600. The disputes involve different applicants but the same respondent strata corporation. Many of the facts and issues are the same or similar across both disputes. This resulted in very similar written reasons. However, I decided each dispute on its own merits.

### Named Parties

11. According to the strata's filed amended bylaws, the strata is made up of a residential and a commercial section as permitted under the *Strata Property Act* (SPA). I find the bylaws create 3 separate legal entities, the strata, the residential section, and the commercial section.
12. Bylaw 36 states that the residential section is comprised of 2 committees, the "Phase I Residential Committee" and the "Phase II Residential Committee". According to the strata's minutes in evidence, it appears that the residential section's Phase I Residential Committee was involved in the decisions concerning the applicants' planters and statue. As a result, I considered whether to seek submissions from the parties on whether the residential section should be a named party to this dispute. I decided not to for the following reasons.

13. The strata filed a response to the applicants' claims and participated in the tribunal process. Therefore, I find the strata intended to be the respondent, and I find it had the authority to do so. Also, I find no prejudice by proceeding without the residential section. The disputed bylaw applies to the strata and not just the residential section. Considering the above reasons and the tribunal's mandate of speedy dispute resolution, I decided to proceed without seeking further submissions.

## **ISSUES**

14. The issues in this dispute are:

- a. Are the applicants' planters and statue located on common property?
- b. If yes, did the applicants breach the strata's bylaws by keeping items on common property?
- c. Did the strata act significantly unfairly in imposing the fines? If so, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

15. In a civil claim such as this, the applicants bear the burden of proving their claims on a balance of probabilities.

16. The parties' submissions were extensive, and I have read them all. However, I have only addressed the evidence and arguments to the extent necessary to explain my decision.

### ***Are the applicants' planters and statue located on common property?***

17. The strata plan filed in the *Land Title Office* (LTO) shows that the strata's multistoried building has a terraced shape. On each of the fifth to ninth floors, the building steps back creating exterior rooftop terraces over the living spaces of the strata lots below.

18. The applicants' photographs show that the terrace, or a portion of it, is enclosed by a guardrail. The enclosed area does not extend to the edge of the building. On the other side of the guardrail there is a gravel covered area that the parties refer to as the "well". The well is surrounded by about a 2-foot high barrier, known as a "parapet" wall. The applicants' planters and statue (the items) are positioned within the well.
19. Under section 1(a) of the *Strata Property Act* (SPA), common property is that part of the land and buildings shown on a strata plan that is not part of a strata lot. I find the well is common property because it is not shown as part of a strata lot on the strata plan. Therefore, I find the items are located on common property.
20. The parties dispute whether the well is designated as LCP. LCP is common property that is designated for the exclusive use of the owners of one or more strata lots. A strata corporation can designate common property as LCP under section 73 of the SPA. This includes a designation of LCP on the strata plan, an amendment to the strata plan under section 257 of the SPA to create LCP, and a  $\frac{3}{4}$  vote under section 74.
21. The strata floor plan shows that the terraces adjacent to SL83 are designated "LCP SL83". Therefore, I find the terrace is LCP. The applicants say the well is part of the LCP terrace. The strata says the LCP terrace includes only the area enclosed by the guardrail and not the well.
22. The filed strata plan was signed by a surveyor in 1989. There are no filed amended floor plans for the relevant sixth floor. There is no expert opinion before me that the strata building was improperly surveyed or that the building is other than what is shown on the strata plan. Therefore, I infer the strata plan is correct. I find it is more likely than not that the well is part of the LCP terrace because that is what the strata plan shows. It is not shown as common property. In other words, I conclude that the well is part of the "LCP SL83" terrace.

## ***Bylaw enforcement***

23. This dispute arises over the strata's enforcement of bylaw 3(1). I find bylaw 3(1) applies to common property including the LCP terrace well. Bylaw 3(1) reads:

3(1) An owner, tenant, occupant or visitor must not use a strata lot, the common property or common assets in a way that

- a. causes a nuisance or hazard to another person,
- b. causes unreasonable noise,
- c. unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot,
- d. is illegal, or
- e. is contrary to a purpose for which the strata lot or common property is intended as shown expressly or by necessary implication on or by the strata plan.

24. The strata says it received a complaint from an owner about the items in May 2018 and another complaint in October 2018. The May 8, 2018 email complaint states simply, "Plant Pots and items on [the applicants'] Rooftop". The email includes a photograph of the applicants' planters and statue but no details of the owner's concern.

25. On October 9, 2018 the strata property manager wrote the applicants that "strata council has received a report of a statu[e] and planter on the Common Property. Please respond to the Strata Council within 14 days of the date of this letter." The property manager asked the applicants to take action to remedy the situation and cited bylaw 3(1)(e). The letter did not state the required action or explain how the items were contrary to the bylaw.

26. The applicants subsequently wrote the strata several times and sent documents to support their position that the items should remain in the well and were not contrary to the bylaws.
27. On February 15, 2019, the strata sent the applicants an infraction letter quoting bylaw 3(1) in full and stating that the section's residential committee was not "convinced or satisfied" by their argument that the items are "suitable to remain at the current location". The applicants were required to remove the items from common property within 14 days. The strata notified them of the potential bylaw fines and their right to a hearing.
28. On about March 12, 2019, the applicants had a hearing before the residential section's residential committee.
29. On March 22, 2019 the strata wrote the applicants that the residential committee concluded (*as written*):
  - a. The planters and statue in question are, indeed occupied a common property without approval from Owners, and
  - b. The planters and statue in question impose a hazard to residents of Pacific Point community and to the integrity of common property, and
  - c. Where the planters and statue in question are located is contrary to a purpose for which the common property is intended as shown expressly or by necessary implication on or by the Strata plan.
30. The strata informed the applicants that they were required to remove the items within 14 calendar days or it would impose a \$200 fine every 7 days. The applicants did not then remove the items.
31. On May 6, 2019 the strata property manager informed the applicants that the residential committee concluded the items occupied common property without permission and "a fine of \$200 is warrant[ed]". The strata property manager also

said their voting rights might be suspended at the upcoming annual general meeting. However, the strata did not suspend the applicants' voting rights.

32. I understand the strata levied \$200 fines on May 6, 2019 and on May 15, 2019. The relevant strata account records are not in evidence. Since the applicants ask only that the fines be reversed and not refunded, I infer they are not yet collected.

***Did the applicants breach the strata's bylaws by keeping the items on common property?***

33. I find the strata's bylaws do not require approval from the ownership for the applicants to keep personal items, including planters or a statue on the terrace LCP. Therefore, I find no bylaw breach based on a lack of strata approval.

34. As for the alleged hazard, there are no documents in evidence that show the strata inspected the items and found they were a hazard to a person when it imposed the fine. I accept the applicants' undisputed evidence that the items had been in the well location for years without incident. There is also no expert evidence or other documents that show the items posed a hazard by compromising the building's integrity.

35. I note that after imposing the fines, the strata obtained a December 20, 2019 report from GHL Consultants Ltd (GHL) on the "occupant safety within floor area" provisions of the Vancouver Building Bylaw 2014. I cannot tell from the report whether the consultant, Sunny Ngan, had the expertise to provide an opinion on risk. His credentials are not explained. Therefore, I put no weight on the GHL report. Also, the report was obtained after the strata imposed the fines. I find the strata cannot use the report to justify its conclusion the previous year that the items were hazardous.

36. Under SPA section 130 the strata may only fine an owner if a bylaw or rule is contravened. When the strata fined the applicants in 2019, I find the strata had insufficient evidence to conclude that the items posed a hazard to a person. I



therefore find the strata had no authority to fine the applicants for a contravention of bylaw 3(1)(a).

37. The strata also concluded that the items' location was contrary to the common property's intended purpose. As stated above, I find the strata plan shows the well area is a terrace. I find a terrace is commonly understood to be an outdoor living space. I find the terrace shown on the strata plan is also a roof. The evidence does not show that the items interfered with the roof's purpose to shelter and protect the building below. I find that the planters and statue in the well are not contrary to the purpose of a rooftop terrace. I find the applicants have not breached bylaw 3(1)(e) by locating the items in the well.
38. In this dispute, the strata says the applicants' well use poses a liability risk. It says there is a risk of falling when entering the well and such use is contrary to municipal bylaws. The applicants dispute that their personal well use contravenes strata or municipal bylaws. At any rate, the only contraventions stated in the strata's March 22, 2019 were about the items' location. They were not about the applicants occupying or accessing the well area themselves or an alleged municipal bylaw contravention. I find the strata cannot allege new bylaw contraventions to justify the 2019 fines.
39. I order that the strata reverse the bylaw fines imposed on the applicants or SL83 related to the items in the well.
40. I dismiss the applicants' claim for an order that the strata not impose future fines. In the circumstances here, I find it would be inappropriate to make an order restricting the strata's authority over things that are in the future and have not yet happened.

***Did the strata act significantly unfairly? If so, what is the appropriate remedy?***

41. Under section 164 of the SPA, the court has authority to make an order to prevent or remedy a significantly unfair action of the strata corporation, including the strata council, in relation to an owner. Section 123(2) of the CRTA provides the tribunal

with similar authority to make an order to remedy a significantly unfair action, decision or exercise of voting rights. In *Reid v. Strata Plan LMS2503*, 2003 BCCA 126 the court described “significantly unfair” actions as actions that are “oppressive”, which it defined as burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable (*Reid* paragraph 13).

42. I find the strata improperly fined the applicants when there were no bylaw breaches and I find this action was unjust. So, I find it was significantly unfair. The applicants ask for compensation of \$4,000 for the significantly unfair action. However, I find the applicants have not proven that they suffered loss or damage apart from dispute-related legal fees. I discuss the claimed legal fees below. In the circumstances, I find the appropriate remedy under CRTA 123(2) is to reverse the fines, which I have already ordered above. I dismiss the applicants’ claim for \$4,000 in damages.
43. The applicants also ask for an order that they be granted permission to keep the items in the well. There is no evidence that the applicants removed the items or that the strata had the items removed from the well. Therefore, I infer the items remain in the well. The strata’s authority is only as set out in the SPA and bylaws. Absent a bylaw contravention, I find the strata has no authority to have the items removed from the LCP well. The bylaws do not require strata approval to keep personal items on LCP and there are no bylaws specifically restricting planters or statues. Based on the above, I find no need to specifically order that the applicants have permission to keep the items in the well and so, I have not ordered it here.

## **TRIBUNAL FEES AND EXPENSES**

44. 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 find the applicants were partially successful in this dispute. I therefore order the strata to reimburse the applicants \$112.50, which is half their tribunal fees.

45. Under tribunal rule 9.5, the tribunal typically does not award a party legal fees in a strata dispute, unless there are extraordinary circumstances. While I find the strata was wrong to impose the fines, I find there were no extraordinary circumstances here. I dismiss the applicants' claim for legal fees. The applicants did not claim any other dispute-related expenses.
46. The strata seeks reimbursement of half its expenses for the GHL report. I did not rely on the GHL report. Therefore, I dismiss the strata's claim for reimbursement of the GHL report. The strata did not incur any tribunal fees.
47. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicants.

## **ORDERS**

48. I order that:
  - a. the strata immediately reverse the bylaw fines imposed on the applicants or SL83 for the planters and statue in the well;
  - b. within 30 days of this order, the strata pay the applicants a total of \$112.50 as reimbursement for tribunal fees;
  - c. the applicants' remaining claims are dismissed; and
  - d. the strata's claim for dispute-related expenses is dismissed.
49. 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.
50. 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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Trisha Apland, Tribunal Member