



Civil Resolution Tribunal

Date Issued: August 5, 2020

File: ST-2019-009089

Type: Strata

Civil Resolution Tribunal

Indexed as: *Best v. The Owners, Strata Plan NW1716, 2020 BCCRT 870*

B E T W E E N :

LEANNE BEST

APPLICANT

A N D :

The Owners, Strata Plan NW1716

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about fence repairs. The applicant, Leanne Best, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan NW1716 (strata). Ms. Best says the strata should reimburse her \$257.60 for the cost of 2 fence panels. The strata disagrees and says it never approved using or purchasing these panels.

2. Ms. Best represents herself. A strata council member represents the strata.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.
4. The CRT 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.
5. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
6. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

The March 5, 2020 Preliminary Decision

7. In a March 5, 2020 preliminary decision, a CRT Vice Chair noted that the owner made allegations about the strata's governance, finances, and maintenance. The Vice Chair found that these claims were not properly before the CRT because Ms. Best had requested no remedies about them. I agree and make no findings about these matters in my decision.
8. The Vice Chair also dismissed Ms. Best's flood damage claim as out of time. The fence repair cost claim could proceed. However, the Vice Chair wrote that the

parties could provide evidence and submissions about whether the fence claim is barred under the *Limitation Act*.

9. The strata does not argue that this claim is out of time. There is no evidence to suggest otherwise. Ms. Best seeks reimbursement for a February 5, 2018 receipt for the fence panels. Ms. Best filed her application for dispute resolution on November 23, 2019. The *Limitation Act* generally provides 2 years for an applicant to commence a proceeding. Given the date of the receipt, I find Ms. Best's fence claim is not out of time and I will consider the claim on its merits.

ISSUE

10. The issue in this dispute is whether the strata must reimburse Ms. Best \$257.60 for the cost of 2 fence panels.

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, Ms. Best must prove her claim on a balance of probabilities. I have reviewed all the evidence and submissions and only refer to them as necessary to give context to my decision.
12. As background, the strata consists of 6 strata lots that provide townhouse-style residential housing. Ms. Best's strata lot has fencing on its north side and fencing on its east side, near her carport. It is undisputed that both fence sections are common property that the strata must repair and maintain.
13. Key facts are contained in emails that Ms. Best copied and pasted into a word processing document. Ms. Best did not provide the original emails. However, I accept the copies are accurate as the strata did not object to Ms. Best's evidence.
14. In a March 21, 2018 email, the strata council president wrote to Ms. Best and other council members to describe the strata's plans for replacing the fence panels. He wrote that the strata would pay for 10 new panels for the strata's north fence. He added that 2 of the replaced panels, which I infer were newer or in better condition,

would be moved and reused to replace the fence panels near Ms. Best's carport. The president noted that the strata would hire a contractor recommended by Ms. Best for replacing the 2 panels.

15. Ms. Best departed from this plan, as documented in her May 29, 2018 email to the strata council president. She wrote that she purchased 2 new panels instead of reusing the old ones. She justified reimbursement by saying she saved the strata \$756.06 by having her family members install 4 northern fence panels and 2 eastern panels for free. I find the amount saved to be speculative as Ms. Best did not explain how she arrived at this figure or provide any supporting evidence.
16. In this dispute, Ms. Best says that she should be reimbursed for the 2 panels as the strata approved the repairs generally and she saved the strata money. The strata disagrees on the basis that Ms. Best acted without prior authorization.
17. The strata's bylaws are the same as those in the Schedule of Standard Bylaws under the *Strata Property Act* (SPA), with limited amendments. Bylaw 6(1) says that an owner must obtain the written approval of the strata before making an alteration to common property, including limited common property, or common assets.
18. In *The Owners, Strata Plan NW 1017 v. Ahern et al*, 2019 BCCRT 617 (*Ahern*) a CRT member dismissed the owner's claim for reimbursement of the cost of replacing a fence that the strata corporation had to maintain and repair under its bylaws. The CRT member held that the owner breached a bylaw by altering common property (the fence) without express written permission. The CRT member wrote at paragraph 44 that in some circumstances it might be necessary for an owner to conduct repairs that are the strata corporation's responsibility and seek reimbursement later. One such situation would be an emergency. However, the CRT member noted that if, in general, owners could unilaterally decide to repair common property, they would usurp the strata corporation's ability to prioritize repair and maintenance for the benefit of all the owners and within a budget.
19. Although not binding, I find the reasoning in *Ahern* applicable and persuasive. I find that Ms. Best breached the bylaw 6(1) by altering common property (here, the 2

fence panels) without prior written approval from the strata. Ms. Best specifically went against the strata's decision to reuse 2 pre-existing panels from the north side and place them in the east side of the fencing. The correspondence shows that there was no urgency to the situation. As such, I find that Ms. Best had the opportunity to seek approval under bylaw 6(1) for the fence panels, prior to work being done. She chose not to. Given this, and for many of the same reasons as stated in *Ahern*, I find the strata is under no obligation to reimburse Ms. Best.

20. I appreciate that Ms. Best's family members worked on the fence for free. However, the strata did not agree in advance to exchange this labour for 2 new fence panels. As noted above, I have found the value of this labour to be unsupported by evidence. The strata was also entitled to choose a contractor to do the fence work instead and delay obtaining new panels. Presumably, the strata felt that hiring a professional would be more appropriate than seeking volunteers. Ultimately, Ms. Best acted unilaterally and usurped the strata's role to direct repairs to common property.

21. For all those reasons, I dismiss Ms. Best's claim.

CRT FEES AND EXPENSES

22. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule.

23. The strata is the successful party. It did not pay or claim for any CRT fees or dispute-related expenses. I therefore do not order any for either party.

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

ORDERS

25. I dismiss Ms. Best's claim and this dispute.

David Jiang, Tribunal Member