



# Civil Resolution Tribunal

Date Issued: October 14, 2020

File: ST-2020-003841

Type: Strata

Civil Resolution Tribunal

Indexed as: *Ng v. The Owners, Strata Plan BCS4068*, 2020 BCCRT 1156

**BETWEEN:**

JACKY NG

**APPLICANT**

**AND:**

The Owners, Strata Plan BCS4068

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Julie K. Gibson

## INTRODUCTION

1. This dispute is about recreational use of the strata's common property (CP) laneway.
2. The applicant Jacky Ng co-owns a strata lot in the respondent strata corporation, The Owners, Strata Plan BCS4068 (strata). Mr. Ng says the strata has failed to properly enforce a bylaw restricting the use of the CP laneway (path) to the passage of motor

vehicle and pedestrians. Mr. Ng says that owners and their families are using the path for sports and recreation, endangering drivers and children playing on it. Mr. Ng seeks an order requiring the strata enforce a bylaw restricting the path's use.

3. The strata says it does not have a bylaw restricting the path's use to only motor vehicle and pedestrian passage. The strata held a hearing about Mr. Ng's concerns and determined that the activities, including children playing, did not contravene the bylaws. The strata asks me to dismiss the dispute.
4. Mr. Ng represents himself. The strata is represented by council member AW.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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.
7. 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.
8. 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.

## **ISSUE**

9. The issue in this dispute is whether the strata must either:
  - a. Enforce its bylaws to prevent recreational use of the path, or
  - b. Adopt a specific bylaw to restrict use of the path to the passage of vehicles and pedestrians only.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, Mr. Ng must prove his case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
11. The strata is made up of 26 townhouse units in 4 separate buildings. Between the buildings runs an internal CP path to allow people and vehicles to enter and exit the complex and access their units and common facilities. Each strata lot contains its own garage, accessible through a garage door that opens onto the path at ground level. The path is not a through road. There is only one entrance/exit for the complex.
12. The strata contains a small play area for children which the strata council considers in need of an upgrade. It is undisputed that this area is inadequate for activities such as bicycling.

### ***Bylaws***

13. The relevant bylaws were deposited at the Land Title Office (LTO) on September 14, 2015 (Bylaws).
14. Bylaw 4 prevents an owner, tenant, occupant or visitor from using the CP in a way that causes a nuisance or hazard to another person.
15. Bylaw 35.6 says that an owner, tenant, occupant or visitor operating a vehicle in the parking areas must activate the vehicle's headlights and not exceed 10 km/hour.

## ***Factual Background***

16. On November 20, 2019, strata council met and considered correspondence from Mr. Ng about children playing on CP. Strata council noted it had considered this same concern in the past. Strata council wrote that the strata is “family-oriented” and that children are permitted to play on CP under parents’ supervision.
17. On April 17, 2020 Mr. Ng emailed strata council to report the following concerns:
  - a. April 10 - 2 children cycling in front of unit 124, who ended up on a “collision course” with an incoming vehicle on the path. No actual collision occurred.
  - b. April 16 – a child rode her bike in front of Mr. Ng’s vehicle suddenly, coming within 4 feet of his front bumper.
  - c. A general observation about people playing volleyball and skateboarding without adequate supervision.
18. On April 29, 2020, Mr. Ng again emailed the property manager to report his observation of a child cycling and other children playing on CP on April 27, 2020.
19. On April 30, 2020, the strata property manager replied to Mr. Ng, telling him that children are permitted to play on CP. The property manager noted that strata council was looking at measures to reduce the speed on the path including installation of more speed bumps.
20. On May 6, 2020, Mr. Ng attended a strata council hearing to discuss his concerns.
21. On May 11, 2020, strata council wrote to Mr. Ng to say that, as the strata did not have a specific bylaw prohibiting children playing in common areas and given that there are no sidewalks along the path, uses other than for vehicle traffic are allowed. The strata noted that it had taken measures to improve safety by:
  - a. obtaining quotes to install a mirror for a blind corner at the back row and an additional speed bump,
  - b. buying signs to alert drivers to the speed limit and to watch for children, and

- c. reminding parents to ensure that their children are appropriately supervised while outside.
22. The strata explained the need for an outside play option for children living in the strata, particularly given the COVID-19 pandemic.
  23. It is undisputed and I find that, to address Mr. Ng's concerns, the strata installed a convex mirror on the edge of the garbage shed to allow for visibility around a blind corner, installed a second set of speed bumps along the path, provided signs for residents to put on their driveways to alert drivers if children were at play, and installed speed limit signs showing a 10 km/hour limit.

***Has Mr. Ng proven a breach of the Bylaws?***

24. Section 119(2) of the *Strata Property Act* (SPA) says that bylaws may provide for the control, management, maintenance, use and enjoyment of strata lots, CP and common assets and for administration of the strata corporation.
25. Bylaws govern the everyday life of those living in a strata community. Strata lot owners may amend bylaws to reflect their community's uniqueness: see CLE-BC's *Strata Property Practice Manual*, section 11.18. Consistent with the communal aspect of strata living, an individual owner may not impose a bylaw. Bylaw amendments require a  $\frac{3}{4}$  vote resolution of the owners: see SPA section 128(1).
26. It is undisputed that this strata is "family-oriented". It does not have bylaws restricting occupancy to adults. This strata also has no bylaw banning recreational use of the path. I find that the Bylaws do not restrict the use of the path to the passage of pedestrians and vehicles. The effect is that owners and their children may use these areas for activities including sports, if they comply with Bylaw 4 regarding nuisance or hazard.
27. Nuisance occurs when there is an unreasonable, continuing or repeated interference with a person's enjoyment and use of their strata lot: see *Chen v. The Owners, Strata Plan NW 2265*, 2017 BCCRT 113 at paragraph 55. The test is an objective one, measured with reference to a reasonable person occupying the premises. In strata

living, "...a certain amount of give and take is necessary among neighbours and between users, both of the strata lots and of the common property.": *Sauve v. McKeage et al.*, 2006 BCSC 781 at paragraph 22.

28. The Cambridge English Dictionary defines a hazard as something dangerous that is likely to cause damage.
29. I find that Mr. Ng has not proven either nuisance or a hazard due to children occasionally cycling or playing sports on the path. I understand that Mr. Ng is concerned about safety. I find that prudent shared use of the path, given the 10 km/hour speed limit and signage, is not likely to cause injury. Objectively, Mr. Ng also has not proven an unreasonable interference with his use of his strata lot or CP. I find no breach of the Bylaws. Therefore, I dismiss Mr. Ng's claim to require the strata to enforce its Bylaws.

***Should the strata be required to adopt a bylaw restricting path use to the passage of vehicles and pedestrians only?***

30. Mr. Ng submits that the only solution to prevent further conflict and "abusive use" of the path is for the strata to adopt a bylaw restricting its use to the passage of vehicles and pedestrians.
31. The strata disagrees, saying the shared path use addresses a need for recreational space.
32. In *Oakley et al v. Strata Plan VIS 1098*, 2003 BCSC 1700, at paragraph 16, Madam Justice Stromberg-Stein wrote:

It is not for the court to interfere with the democratic process of the strata council. Those who choose communal living of strata life are bound by the reality of all being in it together for better or for worse.

33. I find that bylaw amendment is not the only solution, nor one the CRT should impose. Rather than amending its Bylaws, the strata decided to employ safety measures including reminding parents to supervise their children, installing a mirror for a blind corner at the back row, considering additional speed bump installation and providing signs to alert drivers of the speed limit and to watch for children. The strata council made a democratic governance decision to address Mr. Ng's concerns in this way. While this may not be the way Mr. Ng wanted the strata to address his concerns, it is a compromise with the competing needs of other owners. I find that the strata took reasonable measures to address Mr. Ng's safety concerns, without amending Bylaws.
34. Under SPA section 126, the strata is entitled to amend its bylaws as voted upon by the owners under SPA section 128. If Mr. Ng would like to bring a  $\frac{3}{4}$  vote resolution to amend the Bylaws, he may do so using the process in SPA sections 43(1) or 46(2). I find that there is no basis for the CRT to interfere with strata's democratic governance process here.
35. I dismiss Mr. Ng's claim for an order that the strata amend its Bylaws.

### **CRT FEES and EXPENSES**

36. 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. Mr. Ng was not successful. The strata did not pay CRT fees or claim dispute-related expenses, so I make no order for them.
37. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Ng.

## **ORDER**

38. I dismiss Mr. Ng's claims and this dispute.

---

Julie K. Gibson, Tribunal Member