



Civil Resolution Tribunal

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File: ST-2019-010512

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan K82 v. Hunchak*, 2020 BCCRT 1164

B E T W E E N :

The Owners, Strata Plan K82

APPLICANT

A N D :

MARTA LILJANA HUNCHAK

RESPONDENT

AMENDED¹ REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This strata property dispute is about the re-installation of a balcony railing.

2. The applicant, The Owners, Strata Plan K82 (strata), is a strata corporation existing under the *Strata Property Act* (SPA). The strata is represented by a strata council member.
3. The respondent, Marta Hunchak, owns a strata lot 15 (SL15) in the strata, and represents herself.
4. The strata says Ms. Hunchak is responsible to re-install the railing the strata removed from a limited common property (LCP) balcony designated for the exclusive use of SL15. It says the railing must be re-installed to meet WorkSafe BC regulations for the strata's contractor to complete work to common property (CP). The strata relies on a 2012 agreement between Ms. Hunchak and the strata where Ms. Hunchak took responsibility to re-install the railing.
5. In the Dispute Notice, the strata requested an order that Ms. Hunchak reinstall the original railing at her cost or, alternatively, purchase and install a new railing if the original railing is not in Ms. Hunchak's possession. Later, in submissions, the strata seeks recovery of the railing from Ms. Hunchak so it can have the railing re-installed.
6. Ms. Hunchak says there is no work being conducted at or around the balcony located next to SL15 (SL15 balcony) and that that no safety concerns exist because SL15 is not occupied. She says her obligation to re-install the railing expired when the agreed time period expired in 2013. She also says the subject balcony is not LCP and that it is the strata's responsibility to repair and maintain both the SL15 balcony and railing.
7. For the reasons that follow, I order Ms. Hunchak to return the SL15 balcony railing to the strata at her cost, and to provide advance notice to the strata when this will be done.

JURISDICTION AND PROCEDURE

8. 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.

9. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, email, 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.
10. 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.
11. The applicable CRT rules are those in place when the Dispute Notice was issued.
12. 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.

PRELIMINARY ISSUES

13. Ms Hunchak requests several orders and remedies but did not file a counterclaim. Therefore, I have not considered her requested remedies in these reasons.
14. In submissions, the strata referred to settlement discussions. I infer from Ms. Hunchak's submissions on this matter that she did not agree settlement discussions could be disclosed. CRT rule 1.11(1) sets out when settlement discussions can be disclosed, including, among other things, if the parties agree. Here the parties did not agree to disclosure. I find there is no other acceptable reason under rule 1.11(1) for the strata to disclose the parties' settlement discussions, so I have not considered the strata's submissions on that subject in these reasons.

ISSUES

15. The issues in this dispute are:

- a. What are the parties' repair and maintenance obligations for the SL15 balcony railing under the SPA and bylaws?
- b. Is the strata's claim out of time under the *Limitation Act* (LA)?
- c. If not, who is responsible to re-install the SL15 railing?
- d. What remedy, if any, is appropriate?

BACKGROUND, EVIDENCE AND ANALYSIS

16. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision. In a civil proceeding such as this, the strata must prove its claims on a balance of probabilities.
17. The strata was created in April 1976 under the *Condominium Act* and continues to exist under the SPA. It is a residential strata corporation consisting of 15 apartment-style strata lots in a single 3-storey building located in Penticton¹, B.C. SL15 is located on the 3rd floor of the building. The strata plan shows all balconies, including the SL15 balcony, are CP.
18. In April 2010, the strata repealed all of its bylaws and filed a complete new set of bylaws with the Land Title Office (LTO). The strata again repealed and replaced all of its filed bylaws in February 2013 and March 2014. A May 2019 bylaw amendment about marijuana cultivation does not apply to this dispute. I infer the Schedule of Standard Bylaws under the SPA does not apply.
19. I find the bylaws applicable to this dispute are those filed April 2010, which I discuss below, as necessary. I say this based on my finding below that the subject railing was removed in 2012 and that the owner agreed to reinstall it by 2013.

What are the parties' repair and maintenance obligations under the SPA and bylaws?

20. The parties disagree about responsibility for repair and maintenance of the SL15 balcony. For the parties' benefit, I note the strata plan clearly shows the balcony is CP and not LCP as suggested by the strata. It is arguable that the hand railing

associated with the SL15 balcony is a common asset as defined under the SPA. However, neither party made submissions on this point and both CP and common assets are the strata's responsibility to repair and maintain under section 72(1) of the SPA.

21. The requirements of section 72(1) of the SPA are also contained in strata bylaws 2 and 9 (Bylaws 2 and 8 under the current bylaws).
22. Therefore, under the SPA and bylaws, the strata is responsible to repair and maintain the SL15 balcony and railings.
23. However, as I have noted and discuss further below, Ms. Hunchak took responsibility to replace the SL15 balcony railing when she requested extended use of the balcony without a railing, to bring materials into SL15 for renovations.

Does the LA apply to the claim in this dispute?

24. Section 13 of the CRTA states that the LA applies to the CRT as if it were a court. Both parties made brief submissions on the LA. The LA sets out strict limitation periods. A limitation period is a period within which a person may bring a claim. If that period expires, the right to bring the claim ends, even if the claim would have been successful.
25. The CRTA says reference to a claim in the LA is deemed to include a claim under the CRTA. The LA defines a "claim" as "a claim to remedy an injury, loss or damage that occurred as a result of an act or omission". The limitation period only applies to claims, as defined.
26. The central issue to this dispute is the re-installation of the SL15 balcony railing. There is no issue that the railing was removed by the strata in 2012 and Ms. Hunchak agreed to reinstall it at her cost by September 2013, but failed to do so. The strata's single claim is for an order to have Ms. Hunchak reinstall a railing, or return the railing that was removed. I find the LA does not apply to the claim in this dispute as the strata has not suffered an injury, loss, or damage as a result of Ms. Hunchak failing to install the railing.

27. While the strata might ultimately incur an expense for the railing installation, it has not yet done so. Therefore, the strata cannot be found to have suffered a loss. I therefore find the strata's claim about the railing is not barred under the LA.

Who is responsible to re-install the SL15 railing?

28. The parties agree the strata repaired balcony deck membranes of some balconies, including the SL15 balcony, in 2012. As noted, Ms. Hunchak also took responsibility to reinstall the SL15 balcony railing at her cost in 2012. In a November 6, 2012 letter to the strata, Ms. Hunchak stated "the railing will be replaced at my expense and convenience".

29. Ms. Hunchak says she included her commitment to re-install the railing at her expense out of good will because of the strata's leniency in allowing her to use her balcony to bring renovation materials into SL15. However, there is no evidence to support Ms. Hunchak's assertion. As a result, I find the strata is entitled to rely on her statement that she would re-install the railing at her cost as contained in the November 6, 2012 letter.

30. At a September 20, 2012 council meeting, the strata agreed to allow Ms. Hunchak until September 20, 2013 to re-install the railing. This was also hand-written on the copy of November 6, 2012 letter signed by the strata agreeing to Ms. Hunchak's letter promising to re-install the railing.

31. At some point Ms. Hunchak removed the railing from the strata's property and stored it. There is no evidence the strata agreed to the railing being removed from the strata's property or that it agreed to pay storage fees. I accept Ms. Hunchak's statement that the strata knew the railing was taken off site by at least December 2018, but that does not mean it agreed to Ms. Hunchak's actions or to paying storage fees. Absent evidence to the contrary, I find the strata did not agree to the SL15 balcony railing being removed from its property or that it agreed to pay for the railing's storage.

32. Several other things occurred after November 2012 involving both parties that I find were unrelated to the railing issue. These included, alleged unapproved alterations to SL15 involving the City, repairs to SL15 resulting from a roof leak, and alleged

repairs required to the SL15 balcony deck. Based on the overall evidence, I conclude the railing issue was extended because it became leverage for Ms. Hunchak to force the strata to address these unrelated things, given the railing was accessible only by her.

33. I also conclude the strata is partially at fault for delaying the railing re-installation. It appears to have delayed attending to alleged repairs involving SL15 because Ms. Hunchak had not re-installed the railing after it demanded she do so.
34. However, I do not find any of the other things that occurred after November 2012 are relevant to this dispute. Nor do I find Ms. Hunchak's service as president of the strata council during 2013 through 2015 to be relevant. I say this because Ms. Hunchak, as council president, was not entitled to make unilateral decisions on behalf of the strata council as the strata implies. There is also no evidence to suggest that she did.
35. The central issue here is Ms. Hunchak's agreement to re-install the railing and her failure to do so, despite the several requests made by the strata. There is no evidence the terms of the agreement ended or were changed over the years. There is also no evidence the strata agreed to offsite storage of the railings or storage fees. I do not agree with Ms. Hunchak that the expiry of the 1-year extension in September 2013 meant the terms of the agreement also expired.
36. For these reasons, I find Ms. Hunchak agreed to take responsibility to re-install the railing at her cost. However, I find the matter does not end here based on the strata's comments in submissions.

What is an appropriate remedy?

37. In reply submissions, the strata says in part, "[the strata's] biggest concern... is to have the railings returned to the property immediately, without excuse or cost." I find this statement is the strata's agreement to take responsibility to re-install the SL15 balcony railing at its cost, provided Ms. Hunchak returns the railing to the strata. Given the numerous underlying issues I have mentioned, that I have found unrelated to the railing re-installation, I find it appropriate for Ms. Hunchak to return the SL15 balcony railing to the strata so it may have the railing re-installed.

38. As there was no agreement between the parties that Ms. Hunchak remove the railing from the strata property or store it off site, I find Ms. Hunchak is not entitled to charge the strata for storage. I find this conclusion is supported by Ms. Hunchak's statement in her November 6, 2012 letter that she released the strata from "all responsibility and liability for the duration the railing remains removed and not in its original place".
39. Accordingly, I order Ms. Hunchak, at her cost, to return the SL15 balcony railing to the strata within 21 days of the date of this decision. It is expected the railing will be in a similar condition to condition it in when it was removed. I also order Ms. Hunchak to provide at least 3-days' advance notice to the strata of the date and time the railing will be returned and the location on the strata's property the railing will be returned to.
40. It appears clear from submissions that Ms. Hunchak has the railing. However, in the event she does not return the railing within the 21-day period in a condition similar to that which it was in at the time it was removed, or if she does not return the railing, I order the strata is entitled to purchase and install a railing for the SL15 balcony and charge those expenses to SL15.

CRT FEES AND EXPENSES

41. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. In the circumstances of this dispute, I find it appropriate to order Ms. Hunchak to reimburse the strata ½ of its CRT fees, or \$112.50. I make this order based on my finding that the strata was partially at fault for the delay in addressing the railing issue.
42. Neither party claimed disputed-related expenses, so I make no such order.
43. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Hunchak.

ORDERS

44. I order Ms. Hunchak, within 21 days of the date of this decision, to:

- a. return the SL15 balcony railing to the strata at her cost,
 - b. provide the strata at least 3-days' advance notice of the date and time the railing will be returned and the location on the strata's property the railing will be returned to,
 - c. pay the strata \$112.50 for CRT fees.
45. In the event Ms. Hunchak does not return the railing within the 21-day period in a condition similar to that which it was in at the time it was removed, or if she does not return the railing, I order the strata is entitled to purchase and install a railing for the SL15 balcony and charge those expenses to SL15.
46. The remaining strata claims are dismissed.
47. The strata is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.
48. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia. Under section 58 of the CRTA, the order can also be enforced by the Provincial Court of British Columbia if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

J. Garth Cambrey, Vice Chair

¹ Amendment Note: Paragraph 17 is amended under the authority of section 64 of the *Civil Resolution Tribunal Act* to correct my inadvertent error about the location of the strata corporation.