



Civil Resolution Tribunal

Date Issued: March 19, 2021

File: ST-2020-006558

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wilson v. The Owners, Strata Plan NW 526*, 2021 BCCRT 302

B E T W E E N :

TREVOR WILSON

APPLICANT

A N D :

The Owners, Strata Plan NW 526

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This is a strata property dispute about replacing the front door of a townhouse. The applicant, Trevor Wilson, owns a strata lot townhouse (townhouse) in the respondent strata corporation, The Owners, Strata Plan NW 526 (strata). Mr. Wilson seeks an order for the strata to approve his December 2019 request to replace his front door with one that has a glass insert. Mr. Wilson also says that the cost of the front door

has increased since he made his request and seeks compensation for the price difference. The strata says changing the front door would be a significant change to common property and so would require approval by the other strata lot owners.

2. For the reasons set out below, I order the strata to approve Mr. Wilson's request but dismiss Mr. Wilson's claim for the price difference.
3. Mr. Wilson is self-represented. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.
7. 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.

ISSUES

8. The issues in this dispute are:

- a. Is the townhouse's front door common property?
- b. Does Mr. Wilson require strata approval to replace the front door?
- c. What remedy, if any, is appropriate?
- d. Did the strata fail to hold a hearing under section 34.1 of the *Strata Property Act* (SPA)? If so, what remedy, if any, is appropriate?

EVIDENCE AND ANALYSIS

9. In a civil proceeding such as this, Mr. Wilson as the applicant, must prove his claims on a balance of probabilities. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.

Filed bylaws

10. The strata was created in June 1976 under the *Condominium Act* and continues to exist under the SPA. It consists of 272 strata lots that are a combination of residential townhouses and apartment buildings. In November 2008, the strata repealed and replaced its previous bylaws by filing a new set of bylaws at the Land Title Office (LTO).
11. In April 2012 the strata filed a copy of the minutes from the March 2012 annual general meeting (AGM). The minutes included a 16 page document entitled "Strata Corporation NW 526 – Glencoe Estates Bylaws As Approved At The Annual General Meeting – March 1, 2012". There are 2 issues with this filing. First, according to the 2012 AGM minutes, only bylaw 34 was amended and there was no resolution to approve the rest of the bylaws. Since the owners did not approve the attached bylaws, the title of the document is incorrect. Second, this copy of the bylaws contained 2 copies of the bylaws' even numbered pages but did not contain any of the odd numbered pages. Consequently, it was missing almost ½ of all of the strata's bylaws.

12. Since the copy of the bylaws filed in April 2012 was not approved, I give it no weight and I rely on the set of bylaws filed previously in November 2008 plus any amendments filed in the LTO.
13. Under the circumstances the strata should consider filing a corrected set of consolidated bylaws, in accordance with the SPA, as soon as possible to avoid further confusion.
14. The bylaws relevant to this dispute are as follows:
 - a. Bylaw 6.1 which states that an owner must obtain written approval from the strata before altering common property, limited common property, or common assets.
 - b. Bylaw 6.2 which states that the strata can require an owner to agree in writing to be responsible for expenses related to the alteration.
 - c. Bylaw 6.4 which states that the strata can remove an alteration to common property, limited common property or common asset at the owner's expense if the owner does not obtain approval before making the alteration.
15. I find none of the bylaw amendments filed in the LTO after November 2008 are relevant to this dispute.

Background

16. It is undisputed that over the years, several owners replaced their strata lot's solid front doors with ones that had glass inserts. The size of the glass inserts varied from a small half moon near the top of the door, to glass inserts that were $\frac{1}{4}$, $\frac{1}{2}$, $\frac{3}{4}$, or almost the entire door's surface area. The parties agree that some of the owners obtained strata approval before doing so while others changed their doors without first requesting approval. The parties did not state whether any owner changed their door despite the strata explicitly denying their request. There is no evidence that the strata took any action for the front doors that were replaced without strata approval.

17. Mr. Wilson submitted 2 separate written requests to the strata to replace his townhouse's front door. The first request was in September 2016. Mr. Wilson emailed the strata council that his front door was in poor condition and he wanted to replace it at his own expense. The strata did not respond to Mr. Wilson's request. Mr. Wilson says he included a picture of a door with a $\frac{3}{4}$ glass insert, which I infer meant the glass insert replaced $\frac{3}{4}$ of the door's surface area. However, his email did not mention a glass insert and did not include any pictures of the proposed replacement door. Since the strata did not respond to his request, I find nothing turns on whether Mr. Wilson informed the strata he wanted a glass insert in his first request. The strata did not explain why it did not respond to Mr. Wilson's first request.
18. Mr. Wilson resubmitted his request on December 3, 2019. This time he included a picture of the proposed replacement door with a glass insert that covered most of the door's surface area (full-sized glass insert).
19. The strata did not respond to the second request either. Mr. Wilson followed up 3 months later and on March 10, 2020, a strata council member, SW, initially emailed Mr. Wilson that she thought he had received permission from the strata. Later the same day, SW emailed Mr. Wilson and admitted that the strata had not notified him of its decision. She also stated that the strata council did not approve his request for a door with a full-size glass insert but suggested that he resubmit his request and change the design to a metal door with a $\frac{1}{2}$ moon glass insert at the top of the door. She also stated the council was in the process of replacing and repairing front doors as needed and the strata could send the contractor to assess Mr. Wilson's door.
20. The strata says it sent Mr. Wilson a letter on June 2, 2020 denying his request. It says the letter also stated that replacing the front door with a full glass door was a major change that required a bylaw change and that the SPA required approval by a $\frac{3}{4}$ vote of the strata's ownership. It also stated that in the past 3 years, the strata had granted permission to 4 other strata owners to alter their front doors with a $\frac{1}{2}$ moon glass insert.

21. Mr. Wilson denies that he received any letter from the strata. Since the strata did not provide a copy of the letter and only included excerpts of it in its submissions, I find it has not proven that it sent Mr. Wilson a letter. However, based on the strata's submissions, I accept that the strata's reason for denying the request at the time is because it mistakenly thought a bylaw change requiring approval of $\frac{3}{4}$ of the strata lot owners was required to alter Mr. Wilson's front door.

Is the front door common property?

22. According to section 71 of the SPA, a strata corporation must not make a significant change in the use or appearance of common property unless the change is approved by a resolution passed by a $\frac{3}{4}$ vote at an annual or special general meeting. So first, I must determine if the front door is common property. If it is, then I must determine if a full-size glass insert would be a significant change to its use or appearance.

23. The parties say that the front door is common property and I agree. Section 1(1) of the SPA states that common property is the part of the land and buildings shown on a strata plan that is not part of a strata lot.

24. Section 68(1) of the SPA identifies the boundaries of a strata lot where the strata lot is separated from common property by a wall, as is the case here, based on the location of the front door to the townhouse. Section 68(1) states the strata lot boundary is "midway between the surface of the structural portion of the wall" that separates the strata lot from the common property, unless the strata plan identifies different boundaries. Here, the strata plan does not identify different boundaries, so section 68(1) applies.

25. So based on the SPA, I find the townhouse's front door is common property.

Is the proposed replacement front door a significant change to common property?

26. Factors for determining what is a significant change in use and appearance to common property under section 71 of the SPA are set out in *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333 at paragraph 19. The listed factors are:

- a. A change would be more significant based on its visibility or non-visibility to residents and its visibility are non-visibility towards the general public,
- b. Whether the change to common property affects the use or enjoyment of the unit or number of units or an existing benefit of all units,
- c. whether there a direct interference or disruption as a result of the change to use;
- d. whether the change impacts the marketability or value of the unit,
- e. The number of units in the building may be significant along with the general use, such as whether it is commercial, residential or mixed-use, and
- f. Consideration should be given as to how the strata corporation has governed itself in the past and what it is followed. For example, has it permitted similar changes in the past? Has it operated on a consensus basis or has it followed the rules regarding meetings, minutes and notices as provided in the SPA?

27. Neither party argued that replacing the front door with one with a glass insert would change its use. I find that it would not since whether the front door had a glass insert or not, it would still serve its primary function of restricting access to a strata lot's interior.

28. This leaves the issue of whether the glass insert would significantly change the front door's appearance. On the face of it, the answer would be "yes". Clearly a front door with a large glass insert looks significantly different than a solid front door. However, upon applying the factors in *Foley*, I find the answer is "no" and that the glass insert would not significantly change the front door's appearance. I will address each factor separately.

29. Is Mr. Wilson's front door visible to the general public? Mr. Wilson says his strata lot is not visible to the general public from the street or sidewalk. He says it is approximately 75 metres from the nearest roadway and at the second bend of a "dog-leg" driveway. He says his front door is directly visible to only 4 other strata lots. The strata agrees that Mr. Wilson's front door is not visible from the road. It also admits

that the front doors of strata lots surrounding Mr. Wilson are all altered, by which I infer the strata meant they have glass inserts.

30. I agree the front door of Mr. Wilson's townhouse is not visible to the general public. Mr. Wilson submitted several photographs of the front of his townhouse that showed the front door was not very visible from the roadway within the strata development. Also, the strata plan shows Mr. Wilson's townhouse located in building 19 near the centre of the development and facing towards building 18.
31. Would the change affect the enjoyment of Mr. Wilson's strata lot or other strata lots? Both parties agree it would not.
32. Is there an interference or disruption as a result of the change in use? Since, as stated above, the change would not affect use, this factor is irrelevant.
33. Does the change impact the strata lot's marketability or value? Both parties agree there is no evidence of an impact.
34. Regarding the fifth factor about the size of the strata development, the strata says this may be significant and that only a "small percentage" of the townhouse strata lots have a front door with a glass insert. Mr. Wilson disagrees. He says at the time of his second request, 29 of the townhouses, or 19%, had glass door inserts. According to photographs and a spreadsheet he prepared, 14 townhouses had glass inserts that were ½ panel or larger. Since the strata did not dispute Mr. Wilson's assessment, I accept his survey as accurate.
35. Has the strata permitted similar changes in the past? The strata acknowledges that it approved glass inserts for other owners in the past but says the glass inserts were smaller than the one Mr. Wilson wants. Mr. Wilson's evidence confirms that only 1 townhouse has a full-size glass insert similar to the one he wants to install, while 13 others have glass inserts that are ½ panels or larger.
36. I find that even if owners installed glass inserts without strata approval, the strata implicitly permitted the alterations since it did not seek remedies under bylaw 6.4 for contravening bylaw 6.1. In its submissions, the strata asked the CRT to provide

directions on how to retroactively approve these alterations so the owners are not in violation of the bylaws. So I find the strata has no intention of rectifying these contraventions. This issue is addressed below.

37. The strata also says it was unaware of the section 71 requirement when it approved previous requests. It says regardless of its previous actions, it is bound by section 71 and so must seek owner approval. While I agree that the strata must comply with section 71, the issue of whether section 71 applies must first be determined.
38. The strata referred to *Porcheron et al v. The Owners, Strata Plan KAS 2716*, 2018 BCCRT 161, a previous CRT decision, where the owners objected to the colour scheme the strata chose after it had recarpeted the building's hallways and repainted the building's entrance doors. Based on the *Foley* criteria, the vice chair determined that these were significant changes under section 71 of the SPA since they drastically altered the building's appearance. While previous CRT decisions are not binding on me, I find *Porcheron* is distinguishable from this dispute on its facts since, in this case, several owners have already altered their front doors.
39. The parties also referred to the CRT's decision in *Timms v. The Owners, Strata Plan LMS 2949*, 2020 BCCRT 1112 where the vice chair determined that replacing a retractable screen door with a swinging door was not a significant change. In applying the *Foley* criteria, the vice chair determined that the overriding factor was that although the strata had permitted another owner to install a swinging screen door due to a disability, it did not request that the door be removed once the exception no longer applied after the strata lot was sold. Based on this, the vice chair decided that the owner's alteration was not a significant change. While, again, I am not bound by the decision, I find the vice chair's analysis pertinent since he considered that another strata lot already had a similar alteration.
40. Based on the *Foley* factors as discussed above, I find that Mr. Wilson's request to replace the front door is not a significant change to the appearance or use of common property and so section 71 of the SPA does not apply.

Does Mr. Wilson require strata approval to replace the front door?

41. As stated above, under bylaw 6.1 an owner must obtain written approval from the strata before altering common property. I find that bylaw 6.1 gives the strata wide discretion to approve or disapprove alterations to common property, subject only to its obligation not to act significantly unfairly.
42. I find it would be significantly unfair for the strata to disapprove Mr. Wilson's request since the strata does not have any specifications for permissible glass inserts and has permitted other owners to make similar changes. I order the strata to approve Mr. Wilson's request made on December 3, 2019 to replace his townhouse's front door.
43. Mr. Wilson says the cost of the front door has increased since he made his request and the strata should compensate him for the price difference. There is no evidence that Mr. Wilson informed the strata of the cost of replacing the front door when he submitted his request in December 2019 or that the price could increase if there was a delay in approving his request. Also, Mr. Wilson waited 3 years between his 2 requests and an additional 3 months to follow up after his second request. I find this shows that Mr. Wilson was not in a particular hurry to replace the front door and was not concerned about price increases.
44. As mentioned above, the strata seeks guidance from the CRT about how to address the other front doors that were replaced either with or without strata approval so that those owners will not have to install solid doors. This is a request for legal advice, rather than a determination of a claim in this dispute. So, I make no findings about it.

Did the strata fail to hold a hearing?

45. In his submissions, Mr. Wilson says the strata contravened the SPA since it did not hold a hearing until October 29, 2020, despite his written request on March 10, 2020.
46. Section 34.1(1) of the SPA states an owner may request a hearing at a council meeting by stating in writing the reason for the request. Section 34.1(2) states that upon receipt of such a request the council must hold a council meeting to hear the application within 4 weeks after the request.

47. The parties agree that the strata held a hearing by videoconference on October 29, 2020. Although neither party submitted a copy of the strata council minutes, I infer Mr. Wilson's request to replace his front door was, again, denied. Since I have ordered the strata to approve Mr. Wilson's request, I find nothing turns on this.

CRT FEES AND EXPENSES

48. 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. Since Mr. Wilson was the successful party in this dispute and paid \$225 in CRT fees but did not claim dispute-related expenses. I order the strata to reimburse Mr. Wilson \$225 for CRT fees.

Is Mr. Wilson responsible for paying his proportionate share of the strata's legal fees?

49. Section 167(2) of the SPA says that the expense of defending a suit brought against the strata corporation is shared by the owners, except that an owner who is suing the strata corporation is not required to contribute. Section 189.4 of the SPA says that this requirement also applies to a dispute being resolved by the CRT.

50. Mr. Wilson submitted minutes from the 2019 AGM that show that the strata council has previously approved reimbursement at the rate of \$25 per hour to a maximum of \$375 for a strata council member who addressed a CRT dispute. Mr. Wilson says that he should not be charged his unit entitlement portion of any fees or other expenses that the strata paid in defending this dispute or for any CRT fees the strata is ordered to pay.

51. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Wilson. If such charges have been allocated to Mr. Wilson, they must be reversed.

ORDERS

52. Within 15 days of the date of this decision, I order the strata to:
- a. Approve Mr. Wilson's request to install a front door on his strata lot with a glass insert as shown in his December 3, 2019 email,
 - b. Pay Mr. Wilson \$225 for CRT fees, and
 - c. Under section 189.4 of the SPA, the strata must not charge any dispute-related expenses to Mr. Wilson. If such charges have been allocated to Mr. Wilson, they must be reversed.
53. Mr. Wilson is also entitled to post-judgement interest under the *Court Order Interest Act* as applicable.
54. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court 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.

Rama Sood, Tribunal Member