



Civil Resolution Tribunal

Date Issued: March 30, 2021

File: ST-2020-007535

Type: Strata

Civil Resolution Tribunal

Indexed as: *Leung v. The Owners, Strata Plan BCS 1596*, 2021 BCCRT 347

B E T W E E N :

NICHOLAS LEUNG

APPLICANT

A N D :

The Owners, Strata Plan BCS 1596

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This strata property dispute is about a fence built between neighbouring strata lots.
2. The applicant Nicholas Leung and his neighbour Mr. Alexander Ray own adjacent strata lots in the respondent strata corporation The Owners, Strata Plan BCS 1596 (strata).

3. Mr. Leung says Mr. Ray agreed to replace an existing hedge between their strata lots with a fence, at his own cost, but then stopped with the fence only partly built.
4. Mr. Ray says he installed the fence on limited common property (LCP) with strata approval, at his own cost.
5. The strata says it approved Mr. Ray's proposal to remove the existing hedge and install the fence on LCP. The strata says it understood that Mr. Leung declined to contribute financially to the fence project. The strata says it was not aware of any fence specifications agreed between Mr. Leung and Mr. Ray. The strata asks me to dismiss the dispute.
6. Mr. Leung represents himself. The strata is represented by a strata council member.
7. Originally, Mr. Leung brought this dispute against the strata and against Mr. Ray, alleging that Mr. Ray had breached a contract to construct the fence and that the strata had wrongfully approved the fence installation. As explained further below, with the parties' consent, I directed that the breach of contract claim between Mr. Leung and Mr. Ray be decided separately under the CRT's small claims jurisdiction.
8. For the reasons given below, I dismiss Mr. Leung's claim against the strata.

JURISDICTION AND PROCEDURE

9. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims in respect of the *Strata Property Act* (SPA), under section 121 of the *Civil Resolution Tribunal Act* (CRTA).
10. 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.

11. 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.
12. 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.
13. 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.
14. Under section 61 of the CRTA, the CRT may make any order or give any direction in relation to a CRT proceeding it thinks necessary to achieve the objects of the CRT in accordance with its mandate. The CRT may make such an order on its own initiative, on request by a party, or on recommendation by a case manager.

Preliminary Issue – Separate Disputes

15. Originally Mr. Leung filed a single dispute against both Mr. Ray and strata, as a strata dispute under section 121 of the CRTA.
16. CRTA section 121 gives the CRT jurisdiction over a claim “in respect of the *Strata Property Act*”. I find that Mr. Leung’s claim against the strata falls under section 121. However, because Mr. Leung’s claim against Mr. Ray is a breach of contract claim between two owners, independent of his claim against the strata, I find that the breach of contract claim is not a claim “in respect of” the SPA. That is, liability between Mr. Leung and Mr. Ray would arise from the contract, not from the SPA.
17. By contrast, section 118 of the CRTA gives the CRT jurisdiction to resolve a claim for damages or specific performance of an agreement relating to personal property or

services. I find that the breach of contract claim falls under the CRT's section 118 jurisdiction.

18. The distinction between the two claims is also important because a CRT small claims decision is subject to a notice of objection process under CRTA section 56.1, but a CRT strata decision may be subject to judicial review before the BC Supreme Court. Although the claims are linked by their underlying facts, I find it practical to separate them by jurisdiction given these different review mechanisms.

19. Given this analysis, with the parties' consent I directed that Mr. Leung's breach of contract claim against Mr. Ray be moved into a separate small claims dispute and decided separately from his claim against the strata. Below, I decide the strata property dispute between Mr. Leung and the strata only.

20. Given my direction to separate the claims, I exercised my authority under CRTA section 61 to remove Mr. Ray as a respondent in this dispute and make him the sole respondent in the small claims dispute.

ISSUE

21. The issue in this strata property dispute is whether the strata wrongly approved construction of the fence on LCP.

EVIDENCE AND ANALYSIS

22. In this civil claim, the applicant Mr. Leung must prove his claim on a balance of probabilities. The strata provided a Dispute Response but did not file evidence or submissions. I have reviewed all the evidence and submissions provided, but only refer to those necessary to explain my decision.

23. The applicable bylaws provide that an owner must obtain the strata's written approval before altering common property.

24. Mr. Leung owns strata lot 1 (SL1) in the strata and Mr. Ray jointly owns strata lot 2 (SL2).

25. The strata plan shows that SL1 and SL2 are beside each other, with SL1 to the north of SL2. On the ground floor, SL1 and SL2 each have adjacent LCP yards.
26. On May 30, 2020, Mr. Ray wrote to the strata proposing to replace the hedges between SL1 and SL2, and SL2 and SL3, with a fence. Mr. Ray attached a photograph of a fence. The photograph shows a fence with horizontal paneling (proposed fence photograph). Based on this email, I find Mr. Ray proposed a fence with horizontal paneling entirely covering the 4x4 posts to replace the hedge between SL1 and SL2.
27. In his May 30, 2020 email, Mr. Ray requested contact details for his “neighbor to the north”, who is Mr. Leung. Mr. Ray told the strata that he would seek approval from Mr. Leung, and then strata approval, before installing the fence. At the same time, Mr. Ray sought approval for a similar fence installation between SL2 and SL3.
28. On May 31, 2020, Mr. Ray forwarded his email proposal, including the proposed fence photograph, to Mr. Leung. Mr. Ray asked if Mr. Leung would agree to pay 50% of the cost of the new fence. Mr. Leung refused to share in the cost of the fence but agreed that Mr. Ray could install the fence to replace the hedge.
29. It is uncontested that, upon being notified that both Mr. Leung and Mr. Ray agreed to the proposed fence installation, the strata approved Mr. Ray’s request to install the fence on LCP separating the SL1 and SL2 yards. No one filed strata minutes or formal correspondence about the approval.
30. Mr. Ray and Mr. Leung disagree about whether Mr. Ray was obliged to finish the fence to match the proposed fence photograph or whether it was sufficient for him to leave the side facing Mr. Leung’s strata lot with exposed posts. I decide that issue in the related small claims dispute.
31. I now turn to analyse the claim between Mr. Ray and the strata under the CRT’s strata jurisdiction

Has Mr. Leung proven his claim against the strata?

32. In his Dispute Notice, Mr. Leung named the strata as a respondent but did not seek any relief against the strata. In submissions, Mr. Leung did not allege wrongdoing by the strata.
33. The strata's only involvement was in approving the fence installation on LCP, after both owners agreed that it could go ahead. On the evidence and submissions before me, I find that Mr. Leung has not proven that the strata did anything contrary to its bylaws or the SPA or treated him in a way that was significantly unfair.
34. For these reasons, I dismiss Mr. Leung's claim against the strata.

CRT FEES and EXPENSES

35. In accordance with the CRTA and the CRT rules, as Mr. Leung was unsuccessful against the strata, I find he is not entitled to any reimbursement.
36. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Leung.

ORDER

37. I dismiss Mr. Leung's claims against the strata.

Julie K. Gibson, Tribunal Member