



Civil Resolution Tribunal

Date Issued: April 26, 2021

File: ST-2020-006573

Type: Strata

Civil Resolution Tribunal

Indexed as: *PG v. The Owners, Strata Plan ABC XXXX*, 2021 BCCRT 427

B E T W E E N :

PG

APPLICANT

A N D :

The Owners, Strata Plan ABC XXXX

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute about bylaw fines.
2. The applicant, PG, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan ABC XXXX (strata).

3. PG says the strata has bullied and harassed him for several years and improperly fined him for providing student tutoring services within their strata lot. They say the fines continued even after they stopped providing tutoring services. They also say there were other residents of the building providing similar tutoring services who the strata did not fine. PG seeks an order that the strata cancel all fines it has imposed against them for their alleged breach of bylaw 4.1(e)(i) about operating home-based businesses.
4. The strata disagrees with PG. It says the fines were properly imposed in compliance with the *Strata Property Act* (SPA) and its bylaws for PG's repeated breaches of a bylaw that prohibits operating a home-based business without prior approval of the strata council. The strata says any allegations of its unfair enforcement of the bylaw are unfounded, and have been filed outside the applicable limitation period. The strata requests PG's claims be dismissed.
5. PG represents themselves and a strata council member represents the strata.
6. PG requested that I anonymize the published version of this decision given their state of mental health alleged by the actions of the strata. The strata agreed with PG's request, so I have ordered the published version of these reasons anonymized as agreed by the parties.
7. For the reasons that follow, I refuse to resolve PG's claims for bullying and harassment. I order the strata to cancel all fines related to their alleged breach of bylaw 4.1(e)(i).

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 by writing, 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. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.
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

Bullying and Harassment

13. PG says their dispute is "nothing related to a bylaw" and only about bullying and harassment he faced from strata council members. This is a recurring theme throughout their submissions. PG provided a significant amount of evidence, including audio recordings, about their claims that various strata council members had bullied and harassed him over several years. While there is no doubt PG believes this to be true, he did not name the strata council members he alleges harassed and bullied him as respondents in this dispute. Therefore, the council members have not had the opportunity to respond to their allegations. I find it would not be in the interests of justice and fairness for me to make an order against a non-party.
14. Further, I find the strata itself, as the only named respondent, cannot participate in bullying or harassment. Under sections 4 and 26 of the SPA, the powers and duties of the strata are exercised and performed by the strata council.
15. I also acknowledge PG's allegations that the strata council is intentionally trying to make their life more difficult and aggravating their depressed mental health state. I find these

are claims of harassment and they are outside of the CRT's jurisdiction for the reasons stated above.

16. For these reasons, I refuse to resolve PG's claims of harassment and bullying against the strata under CRTA section 10(1). Nothing in this decision restricts PG from pursuing these claims through another legally binding process.
17. I note that despite PG's argument their dispute has nothing to do with a bylaw, their only requested remedy is that bylaw fines be canceled. Therefore, I cannot agree with PG's argument. By requesting the bylaw fines be canceled, I find their claims do involve the bylaw the strata alleges he breached. Therefore, I find that bullying and harassment aspect of PG's claim can be separated from their overall claim such that I can still consider their request the bylaw fines be canceled. My authority to separate PG's claim is found at section 10(2) of the CRTA, which allows me to amend a claim by removing 1 or more issues that are outside the CRT's jurisdiction.

Limitation Act (LA)

18. The strata says PG is out of time under the LA for any alleged claims that arose or may have arisen for which he had or may have a cause of action, if they occurred more than 2 years before August 31, 2019. That is the date the strata says PG was last fined for breaching its bylaws by operating a home-based business for tutoring students. In the Dispute Notice, PG acknowledged that he was tutoring students but claimed he stopped in 2016. Given my conclusion below, I find it is not necessary for me to determine the date PG stopped tutoring students.
19. Section 13 of the CRTA states that the LA applies to the CRT as if it were a court. 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.
20. CRTA section 13 also 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.

21. Given I have dismissed PG's claims for bullying and harassment, the only remaining claim is about bylaw fines. The courts have determined a bylaw fine under the SPA is a penalty and is not caught by the LA because a claim under the LA does not include a penalty: *The Owners, Strata Plan KAS 3549 v. 0738039 B.C. Ltd.*, 2015 BCSC 2273, affirmed *The Owners, Strata Plan KAS 3549 v. 0738039 B.C. Ltd.*, 2016 BCCA 370. The court's findings were cited in *Thompson v The Owners, Strata VR 942*, 2018 BCCRT 497, at paragraph 16, as PG correctly observed.

22. For these reasons, I find PG's claim about bylaw fines is not out of time under the LA.

Audio Recordings

23. The strata asked that I place no weight on the audio recordings submitted as evidence by PG. It says there is nothing in the recordings to confirm who the individuals are. PG notes the strata did not object to the audio evidence or claim it is inaccurate. I find proving who said something in an audio recording is similar to proving who provided a written statement. The CRT regularly accepts written statements so I do not accept the strata's argument that the audio recording should not be given any weight on the basis it suggests. Regardless, after listening to the audio recordings, I find they are related to PG's claims for harassment and bullying, which I have found to be outside the CRT's jurisdiction, or their claim for significant unfairness, which I explain below is not necessary for me to consider. For these reasons, I have not relied on the audio recordings.

ISSUES

24. The remaining issues in this dispute are:

- a. Did PG breach strata bylaw 4.1(e)(i) by tutoring students in their strata lot without permission of the strata council?
- b. If so, did the strata properly impose bylaw fines?
- c. Has the strata treated PG in a significantly unfair manner in its enforcement of bylaw 4.1(e)(i)?

d. What is an appropriate remedy, if any?

BACKGROUND

25. In a civil proceeding such as this, PG as applicant, must prove their claims on a balance of probabilities. I have read all the submissions and evidence provided, and listened to the audio recordings, but refer only to information I find relevant to provide context for my decision.
26. The strata is a residential strata corporation created October 26, 1995 that exists under the *Strata Property Act* (SPA). It is comprised of 133 strata lots in a single 4 storey building.
27. Land Title Office (LTO) documents show PG purchased their strata lot on the same day the strata was created
28. On December 14, 2001, the strata filed bylaw amendments with the LTO. The bylaw amendments repealed and replaced most bylaws, but some bylaws existing at that time that are not relevant to this dispute were not repealed, and continued under a revised numbering system. The strata also filed a complete consolidated version of its bylaws with the LTO using the same filing form (Form I). I infer the consolidated bylaws accurately reflect earlier bylaw amendments because the parties did not argue otherwise. While the strata's bylaws include bylaws of similar wording to the Standard Bylaws, the Form I shows the Standard Bylaws were repealed.
29. Between June 2004 and June 2021, the strata filed a further 11 bylaw amendments with the LTO. I find the December 14, 2001 bylaws, the June 14, 2010 amendment, increasing maximum fines to \$200, and the June 28, 2011 amendment, adding bylaw 4.1(e)(i), are relevant to this dispute.

EVIDENCE AND ANALYSIS

30. As I have mentioned, this decision is about an alleged breach of bylaw 4.1(e)(i) and resulting fines. I start my analysis with a review of the bylaw and whether PG breached it by tutoring students.

Did PG breach strata bylaw 4.1(e)(i) by tutoring students in their strata lot without the permission of the strata council?

31. Effective June 28, 2011, bylaw 4.1(e)(i) read as follows:

4.1 A resident or visitor must not use a strata lot, the common property or common assets in away that

(e)is contrary to a purpose for which the strata lot is intended as expressly or by necessary implication on or by the strata plan.

(i) Where 4.1(e) implies a home-based business, residents must submit an Application for Approval to operate the busines to the Strata Council. Approval will considered based on each applicant's compliance to the home-based business criteria.

32. PG admits that he earned an income for tutoring students in their strata lot. The strata says bylaw 4.1(e) prohibits the use of a strata lot for home-based businesses without prior approval of the strata council. I disagree for the reasons that follow.

33. There is no dispute that PG's strata lot is a residential strata lot. The term "residential strata lot" is defined under SPA section 1(1) to mean "a strata lot designed or intended to be used primarily as a residence" (my emphasis). Therefore, I interpret bylaw 4.1(e) to mean the primary use of a strata lot must be as a residence.

34. I find the wording of bylaw 4.1(e)(i) is ambiguous and unclear. Particularly the words "Where bylaw 4.1(e) implies a home-based business". First, "home-based business" is not defined. Second, I find there is no implication of a home-based business contained in bylaw 4.1(e). As I have mentioned, bylaw 4.1(e) only means that a strata lot's primary use must be as a residence. I find that operating a home-based business would not be contrary to using a strata lot "primarily as a residence", as that definition would not prohibit a strata lot's occasional or regular use for tutoring. There is no clear evidence or any submissions about the frequency of PG's tutoring activities. However, based on the overall evidence and submissions I find tutoring was a secondary use of PG's strata lot, since he lived there.

35. For these reasons, I find PG did not breach bylaw 4.1(e)(i). However, if I am wrong, I have also considered if the strata properly imposed bylaw fines.

Did the strata properly impose bylaw fines?

36. As I have mentioned, there are longstanding issues between PG and various strata council members past and present. However, based on the evidence, I find the alleged bylaw contravention began about October 14, 2014. It appears this is when the strata's lawyer first wrote to PG that he was in breach of bylaw 4.1(e)(i) for operating a home-based business in their strata lot.

37. The October 2014 lawyer's letter is not before me, but a letter from the same lawyer dated February 11, 2015 is. The February 11, 2015 letter reminded PG that he was asked to immediately cease operating their home-based business by letter dated October 1, 2014 because he did not have the necessary strata council approval. The February 2015 letter stated that PG continued to operate their business and that it must "cease immediately". The letter went on to state that if PG did not acknowledge that he had ceased the business activity by February 28, 2015, the strata council would levy weekly fines for their breach of bylaw 4.1(e)(i).

38. On April 16, 2015, the strata's lawyer again wrote to PG referencing the February 11, 2015 letter. The letter stated the strata council concluded the PG was in breach of bylaw 4.1(e)(i) because it had not received the requested acknowledgement the home-based business activity had stopped, nor had it received an application for permission to operate the business. The letter stated a fine of \$200 would be levied May 4, 2015 and every 7 days thereafter for as long PG continued to operate their business.

39. On July 3, 2015, the strata wrote to PG with reference to its lawyer's February 2015 letter. The letter stated the strata had levied a \$200 fine on May 4, 2015 and a continuing \$200 weekly fine for ongoing violation of bylaw 4.1(e)(i). The letter also stated that the fines totalled \$1,800 by June 30, 2015. A statement of account for PG's strata lot provided in evidence shows an \$1,800 charge was made on June 30, 2015.

40. Strata bylaws 27.1 (amended June 14, 2010) and 28.1 respectively allow the strata to fine an owner \$200 for breaching a bylaw, and a further fine of \$200 every 7 days for as long as the breach continues without interruption.
41. The strata is obligated to enforce its bylaws under section 26 of the SPA. However it must do so in accordance with the SPA. Key to this dispute, is SPA section 135 which provides how and when the strata can impose fines.
42. Section 135(1) of the SPA states that a strata corporation may not impose a bylaw fine unless it has received a complaint, given the owner or tenant written particulars of the complaint and a reasonable opportunity to answer the complaint, including a hearing if requested. SPA section 135(2) says the strata must also give notice in writing of its decision to impose the fine to the owner as soon as feasible. SPA section 135(3) says that once the strata has complied with these procedural steps, the strata may impose fines or penalties for a continuing contravention without further compliance with the steps.
43. The BC Court of Appeal has found that strict compliance with section 135 of the SPA is required before a strata corporation can impose fines. The court also determined that bylaw fines may be found to be invalid if the procedural requirements of section 135 are not followed: *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449.
44. Following *Terry*, I am not satisfied PG was given a reasonable opportunity to be heard before the fines were imposed. The strata lawyer's April 16, 2015 letter stated the strata had made a decision that he breached bylaw 4.1(e)(i) and that fines would start on May 4, 2015 unless he confirmed certain things. The letter did not say the strata's decision could be challenged. I find the strata had already decided to fine PG on April 16, 2015 without giving him an opportunity to be heard. There is no further correspondence in evidence until the strata's July 3, 2015 letter to PG that stated fines totaling \$1,800 had been imposed.
45. It is clear that the majority of the fines related to alleged ongoing breaches of bylaw 4.1(e)(i) for PG's continued tutoring. In *The Owners v. Grabarczyk*, 2006 BCSC 1960, a strata corporation claimed against an owner for breaches of a noise bylaw. The court accepted the strata corporation's evidence that the owner persistently breached the

noise bylaw “almost nightly”. The court found (at paragraph 43) that the bylaw contraventions were repeated, but not continuing, within the meaning of section 135 of the SPA. Thus, there was a need for the strata to provide proper notice and the right to be heard for each noise violation. Following *Grabarczyk*, even if PG was tutoring students on a daily basis, which is unclear, it would not establish a continuous breach “without interruption” as required under bylaw 28 and SPA section 135(3).

46. Further, even if the bylaw infractions were found to be continuous, in *Dimitrov v. Summit Square Strata Corp.*, 2006 BCSC 967, the BC Supreme Court found (at paragraph 33) that continuing fines under SPA section 135(3) are invalid if section 135(1) has not been followed.
47. Finally, in *Cheung v. The Owners, Strata Plan VR1902*, 2004 BCSC 1750, the court found that a strata corporation can correct procedural unfairness issues relating to SPA section 135 by reversing fines and issuing a new letter to the offending owner in compliance with section 135. While the statement in evidence shows that some fines were reversed; \$1,000 on April 26, 2016, \$15,400 on May 31, 2019 (described as a “write off”), and \$1,800 on September 26, 2019, neither party provided submissions or evidence on these bylaw fine reversals. Therefore, I cannot find the strata corrected its procedurally unfair actions in this case.
48. For these reasons, I find the strata did not strictly follow SPA section 135 as required by *Terry*. As a result, I find the fines imposed by the strata for PG’s alleged breach of bylaw 4.1(e)(i) are invalid. Therefore, I order the strata cancel all fines it imposed against PG that relate to alleged breaches of bylaw 4.1(e)(i) between May 2015 and September 2019.
49. Based on my conclusions above, I need not consider PG’s claim about significant unfairness.

CRT FEES AND EXPENSES

50. As noted, 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 not to follow this general rule. PG

was the successful party in this dispute. However, he did not pay CRT fees nor claim dispute-related fees. I therefore make no order for fees or expenses.

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

ORDERS

52. I refuse to resolve PG's claims about bullying and harassment under section 10(1) of the CRTA.
53. Within 15 days of the date of this decision, I order the strata to cancel all bylaw fines imposed against PG that relate to alleged breaches of bylaw 4.1(e)(i) between May 2015 and September 2019.
54. I order the published version of these reasons anonymized, as agreed between the parties.
55. 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.

J. Garth Cambrey, Vice Chair