



Civil Resolution Tribunal

Date Issued: June 10, 2021

File: ST-2020-003257

Type: Strata

Civil Resolution Tribunal

Indexed as: *Bahmutsky v. The Owners, Strata Plan KAS 3860*, 2021 BCCRT 642

B E T W E E N :

MICHAEL (MOSHE) BAHMUTSKY and IRINA BAHMUTSKY

APPLICANTS

A N D :

The Owners, Strata Plan KAS 3860 and MARIAN GRIFFITHS

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This is a strata property dispute about use and enjoyment of a strata lot.

2. The applicants, Michael (Moshe) Bahmutsky and Irina Bahmutsky, own a strata lot in the respondent strata corporation, The Owners, Strata Plan KAS 3860 (strata). The other respondent, Marian Griffiths, owns a neighbouring strata lot in the strata. At the time of the events at issue in this dispute, Ms. Griffiths' adult son Morgan Griffiths lived with her.
3. The Bahmutskys say that Ms. Griffiths and Mr. Griffiths have breached various strata bylaws, including the bylaw prohibiting interference with use and enjoyment of common property (CP) and strata lots. Specifically, the Bahmutskys say Ms. Griffiths improperly parked her car in their carport. They also say that Morgan Griffiths smoked tobacco and other substances on limited common property (LCP), interfered with their renovation, blocked CP with his belongings, damaged a CP flowerbed, made racist slurs against them, and verbally and physically abused them.
4. As remedy in this dispute, the Bahmutskys initially requested \$5,000 in damages in their dispute application, and in their submissions increase this request to \$6,000. They also request an order that Morgan Griffiths may not live in or visit the strata.
5. Ms. Griffiths says this dispute should be dismissed. She says the Bahmutskys began complaining about her and Mr. Griffiths before they moved in. Ms. Griffiths says she parked in their parking stall once by accident, that Mr. Griffiths has stopped smoking since being instructed not to, and that she and Mr. Griffiths have broken no other bylaws.
6. The strata also says the dispute should be dismissed. It says it has enforced its bylaws, and has addressed the various conflicts between the Bahmutskys and the Griffiths to the extent required under the *Strata Property Act* (SPA) and bylaws.
7. Mr. Griffiths is not a party to this dispute, but is a party to a related dispute, SC-2020-006950, which I discuss below.
8. In this dispute, the Bahmutskys and Ms. Griffiths are self-represented, and the strata is represented by a strata council member.

9. For the reasons set out below, I refuse to resolve the Bahmutskys' claims about whether Mr. Griffiths may live in or visit the strata, their claim about verbal and physical abuse, and their claim about permitting surveillance cameras. I dismiss the Bahmutskys' remaining claims, and this dispute.

JURISDICTION AND PROCEDURE

10. 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). CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
11. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Both parties in this dispute question the credibility, or truthfulness, of the other. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is in issue.
12. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

13. Under CRTA section 123 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. Mr. Bahmutsky provided late evidence after the stated deadline. Given the CRT's mandate that includes flexibility, and since both respondents had an opportunity to respond to the late evidence, I find it admissible and where relevant I discuss it below. The Bahmutskys objected to the fact that the Griffiths were given extra time to provide documents by postal mail. For the same reasons, I find the additional time given to the Griffiths was reasonable, and consistent with the CRT's mandate of flexibility. I also find there was no prejudice to the Bahmutskys arising from this time extension. I therefore conclude that there was no procedural fairness breach in this proceeding.

PRELIMINARY ISSUES

Order Against Morgan Griffiths

15. As noted above, the Bahmutskys request an order that Mr. Griffiths may not live in or visit the strata. Since Mr. Griffiths is not a party to this dispute, I find I cannot make an order against him.
16. Under CRTA section 123(1), the CRT can order a party in a strata property dispute to do or stop doing something. Since Ms. Griffiths is a respondent and strata lot owner, I have considered whether I could order her to stop permitting Mr. Griffiths to live with or visit her. However, I find that would effectively be a restraining order, which sometimes called a protective order. Previous CRT decisions have said the CRT does not have authority to make a restraining order, unless it can be linked to a claim under SPA section 121: see for example *Frolic v. Perfect et al*, 2019 BCCRT 1123 at para. 42, and *Ciesek v. The Owners, Strata Plan VIS 4542*, 2019 BCCRT 312 at para. 12.
17. While prior CRT decisions are not binding on me, I find the reasoning in these prior decisions persuasive, and rely on it here. I find the Bahmutskys' claim for an order preventing Mr. Griffiths from living in or visiting the strata goes beyond a claim about use and enjoyment of property, as permitted under CRTA section 121(1). For this

reason, I find the CRT does not have jurisdiction to make the requested order, and refuse to resolve it under CRTA section 10(1).

Damages for Verbal and Physical Abuse

18. As noted, the Bahmutskys request damages for alleged verbal and physical abuse by Mr. Griffiths. For the following reasons, I refuse to resolve this claim.
19. First, I find the CRT does not have jurisdiction to resolve this claim under its strata property jurisdiction. CRTA section 121(1) sets out the scope of the CRT's jurisdiction over strata property disputes. It says the CRT has jurisdiction over claims "in respect of the *Strata Property Act*". The SPA and the strata's bylaws do not address verbal or physical abuse. I find the Bahmutskys' claims about abuse are likely tort claims, for either assault and battery. A tort is a wrongful act leading to civil liability. The CRT has authority to resolve tort claims under its small claims jurisdiction. Since the Bahmutskys' claim about verbal and physical abuse is not a claim in respect of the SPA or bylaws, I refuse to resolve it under CRTA section 10(1).
20. Second, the Bahmutskys say the alleged verbal and physical abuse was done solely by Mr. Griffiths. As explained above, Mr. Griffiths is not a party to this dispute. The only respondents are Ms. Griffiths and the strata. So, I would dismiss the Bahmutskys' claim for damages for verbal and physical abuse in any event.

Griffiths' Counterclaim

21. After receiving a copy of the Dispute Notice, Ms. Griffiths and Mr. Griffiths filed a counterclaim. They requested \$5,800 in compensation for pain, suffering, and damage to personal property, plus orders that the Bahmutskys' take down surveillance cameras, return their emails, repair their iPads, and stop harassing them, "hacking" their internet and phones, and killing their plants.
22. The strata was not named as a party to the counterclaim, and I find the counterclaims are not claims in respect of the SPA, as required for strata property disputes under CRTA section 121(1). For these reasons, and with the parties' consent, the

counterclaim was re-classified as a CRT small claims dispute, SC-2020-006950. I have addressed this small claims dispute in a separate decision.

Surveillance Cameras

23. In their final reply submission, the Bahmutskys request an order that the strata permit them to have surveillance cameras, to monitor limited common property “for safety reasons”. There is no claim or remedy about a camera included the Dispute Notice. I find this claim was raised too late, and it would be unfair to decide it here, since the respondents had no opportunity to respond to it. So, I refuse to resolve the Bahmutskys’ claim about surveillance cameras because I find it is not properly before me in this dispute.

ISSUES

24. The remaining issues in this dispute are:

- a. Did the strata fail to enforce its bylaws?
- b. Are the Bahmutskys entitled to damages for bylaw breaches by the Griffiths, and if so, how much?

BACKGROUND

25. In a civil claim like this one, the Bahmutskys, as applicants, bear the burden of proving their claims on a balance of probabilities. Balance of probabilities means “more likely than not”. While I have reviewed all the material provided by the parties, I have only addressed the evidence and arguments to the extent necessary to explain my decision.

26. The strata’s bylaws are the Standard Bylaws under the SPA, along with some amendments filed with the Land Title Office in November 2011 and November 2013. The Bahmutskys argued that the strata did not provide the bylaws as evidence in this proceeding. However, for strata property disputes, the CRT obtains filed bylaws directly from the Land Title Office. I have reviewed the filed bylaws.

27. The strata plan shows that the strata lots owned by Ms. Griffiths and the Bahmutskys are townhouse-style dwellings located next to each other in the same building, with a shared wall.

REASONS AND ANALYSIS

28. The Bahmutskys say that the Griffiths have breached various strata bylaws, including bylaws about parking, smoking, and damaging CP. They say the strata has failed to enforce these bylaws. The Bahmutskys request \$1,000 in damages from the strata, for not enforcing its bylaws, and \$5,000 in damages from Ms. Griffiths, for not following the bylaws, for a total of \$6,000 in damages.

29. I note that this amount is higher than the \$5,000 requested in the dispute notice. However, I find it unnecessary to consider whether the respondents had sufficient opportunity to respond to the increased damages claim because I find the Bahmutskys are not entitled to any damages.

30. First, I find Ms. Griffiths is not personally liable to the Bahmutskys for any bylaw breach. Strata bylaws must be enforced by the strata, and the possible enforcement options are set out in SPA section 129. The SPA does not permit owners to enforce bylaws against each other, or make owners liable to each other for bylaw breaches.

31. Second, as explained below, I find the strata sufficiently enforced its bylaws.

32. SPA section 26 says that the strata council has a duty to enforce bylaws. In *Chorney v. The Owners, Strata Plan VIS770*, 2016 BCSC 148, at paragraph 52, the BC Supreme Court said the SPA allows strata corporations to deal with bylaw violation complaints “as it sees fit, as long as it complies with the principles of procedural fairness and not be significantly unfair to any person who appears before it”.

33. According to *Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74 at paragraph 61, the strata council must take “reasonable action and fair regard for the interests of all concerned”. The strata is not held to a standard of perfection. So, the

strata will meet its bylaw enforcement obligations under SPA section 26 if it acts reasonably.

34. I find the evidence before me establishes that that strata has enforced its bylaws reasonably, with regard to the Griffiths. I discuss the general types of bylaw breaches alleged by the Bahmutskys below.

Parking

35. Bylaw 31 is the strata's parking bylaw. It says, in part, that vehicles shall only be parked on CP in designated parking spaces. The Bahmutskys say Ms. Griffiths breached this bylaw by parking in their assigned CP carport.
36. Ms. Griffiths admits she parked in the Bahmutskys' carport stall once in 2018, by accident. She said she apologized and has not done it again. The strata agrees. It provided a copy of a September 27, 2018 email to Ms. Griffiths, informing her that she should only park in her assigned space unless granted written permission to do otherwise. The strata says Ms. Griffiths has not parked in the Bahmutskys' carport since it sent this email.
37. The Bahmutskys dispute this, and submit that Ms. Griffiths has "been seen many times parking her car" in their carport. However, I find the Bahmutskys have not proven this assertion. They have not provided a log or record of these alleged parking incidents, information about when they occurred, or other evidence about them such as photos or witness statements.
38. Based on the evidence, I find the strata dealt reasonably with the parking incident in September 2018 by sending a warning email. Since no other parking bylaw breaches are established, I dismiss the Bahmutskys' claim about parking.

Smoking

39. The Bahmutskys say that for 2 years, Mr. Griffiths regularly breached strata bylaws by smoking tobacco and cannabis on strata property, particularly on the LCP patio

adjacent to Ms. Griffiths' strata lot. The evidence shows that this patio is located next to the Bahmutskys' LCP patio, separated by a wall approximately 5 feet high.

40. Ms. Griffiths denies Mr. Griffiths smoked on the patio, or on the deck or balcony adjacent to her strata lot. She also notes there is no bylaw specifically prohibiting smoking anywhere in the strata, including CP and strata lots.
41. I agree there is no smoking prohibition bylaw . Bylaw 3(9) says an owner or occupant shall not “permit the use of or participate in the creation of odorous smells, materials or substances which may be offensive to other occupants”.
42. In *Bahmutsky v. Petkau*, 2020 BCCRT 244, an earlier dispute involving the Bahmutskys and a different neighbour, I found that tobacco smoke constituted an “odorous smell”, as contemplated in bylaw 3(9). However, I find the circumstances in this case are difference from those in *Bahmutsky v. Petkau*. In that prior case, I ordered the respondent neighbours and the strata to pay a total of \$1,000 in damages to the Bahmutskys. I found the strata had failed to properly investigate and remedy the nuisance caused by the neighbours' second hand smoke.
43. I do not find that to be the case here. I reject Ms. Griffiths' assertion that Mr. Griffiths did not smoke on the patio, since photographs and videos provided by the Bahmutskys show him holding cigarettes on the patio on more than one occasion. However, I find the strata did respond to the Bahmutskys' complaints about Mr. Griffiths' smoking, and took reasonable and appropriate action by writing to Ms. Griffiths on April 8, 2020 and May 28, 2020. This correspondence cited the relevant bylaws, informed her about the smoking complaints, asked her to respond, and warned her of potential bylaw fines.
44. In correspondence following a strata council hearing about the Bahmutskys' bylaw complaints, the strata said the Bahmutskys admitted at a May 12, 2020 hearing they had not experienced smoke from Mr. Griffiths for the previous 2 to 3 weeks, as he had been using a nicotine patch.

45. In their submissions in this dispute, the Bahmutskys say they “sensed” second hand smoke from Ms. Griffiths’ strata lot until at least June 21, 2020. Although this may be true, I again note the strata does not have a bylaw prohibiting all smoking. Also, I find the evidence establishes that the strata took appropriate steps in this case to enforce its bylaws about odour, in particular by sending bylaw contravention warning letters to Ms. Griffiths, and by discussing the problem with her directly.
46. For these reasons, I dismiss the Bahmutskys’ claim about smoking.

Interference with Renovations

47. The Bahmutskys say that Mr. Griffiths tried to “prevent and damage” their renovation work to their strata lot. They say he disturbed them through verbal abuse, offensive gestures, banging, taking pictures, and “breaching” the wall between the LCP patios.
48. The video and photographic evidence provided by the Bahmutskys does show that Mr. Griffiths made loud noises, including banging, which appeared to be in protest of loud noises related to the Bahmutskys’ renovation work. The evidence also shows that he took a photograph or video of the work at one point. However, I find there is no evidence that this conduct actually slowed or stopped the renovation work. Also, I find it was not a bylaw breach.
49. Bylaw 3(1) is the strata’s nuisance bylaw. It says, in part, that an owner or occupant must not use a strata lot or CP in a way that causes a nuisance or hazard to another person, unreasonably interferes with the rights of others to use and enjoy CP or a strata lot, or causes unreasonable noise contrary to the Town of Osoyoos municipal noise bylaws.
50. First, I find the evidence before me does not establish that Mr. Griffiths violated municipal noise bylaws. Second, I find the evidence does not show he caused a nuisance. To establish nuisance, the Bahmutskys must prove a “substantial, non-trivial interference” with their use and enjoyment CP or their strata lot, and that the interference is unreasonable: see *The Owners, Strata Plan LMS 1162 v Triple P Enterprises Ltd.*, 2018 BCSC 1502 at paragraph 33.

51. Based on the video and photographic evidence I find Mr. Griffiths' conduct was erratic and unneighbourly. However, given that the Bahmutskys were engaging in renovation work at the relevant times, I find they had no reasonable expectation of quiet. Therefore, I find Mr. Griffiths' conduct was not a substantial, non-trivial interference. Again, I note the Bahmutskys have not proven that Mr. Griffiths' conduct delayed or prevented their renovations.
52. I also find that taking a video or photo of the patio was not a nuisance or contrary to the bylaws, particularly since the Bahmutskys' own evidence shows that they frequently took video footage of the same area with their surveillance camera.
53. Finally, as for the claim about the wall "breach", the Bahmutskys provided a photo showing a hole in what I infer is the wall between the 2 patios. I find there is insufficient evidence before me about where this hole is, when it was created, or who caused it. Therefore, I cannot conclude that Mr. Griffiths damaged the wall.
54. For these reasons, I dismiss the Bahmutskys' claim about interference with their renovations.

Use of CP

55. The Bahmutskys say Ms. Griffiths damaged the CP lawn by putting her patio chair on it and sitting. They also say Mr. Griffiths blocked or damaged the lawn by putting a tent and patio furniture on it.
56. First, I find the evidence does not show that any of these items damaged the lawn. They were temporary, and while they may have crushed the grass, there is no other suggestion of damage.
57. Second, contrary to the Bahmutskys' submissions, I find there is no bylaw that prevents items from being placed on the lawn temporarily. The evidence establishes that while Mr. Griffiths had his tent on the lawn for a few days, he removed it when asked by the strata. Also, there is no suggestion that anyone was actually camping on the lawn.

58. Even if these actions were bylaw breaches, I find they are trivial and did not warrant further action by the strata. A strata corporation need not enforce a bylaw, even if there is a clear breach, where the effect of the breach on other owners is trifling: see *Ranchod v. The Owners, Strata Plan KAS 2112*, 2019 BCCRT 1001. While this prior CRT decision is not binding, I find its reasoning persuasive and rely on it.

Damage to Garden

59. The Bahmutskys say that Mr. Griffiths deliberately destroyed CP flowerbeds in front of their strata lot. Although Ms. Griffiths denies this, I find the video evidence does show Mr. Griffiths ripping up some plants and throwing them in the nearby lake. However, I find the strata took reasonable action to address this conduct. It reviewed the video evidence, and wrote to all owners about the damage. The strata's letter asked all owners to respect property. In a subsequent letter, the strata said the council was considering redeveloping the garden area, and asked all owners to remove their personal plants.

60. The Bahmutskys were unsatisfied with the strata's action. They felt Mr. Griffiths should have been identified, and the Griffiths required to pay for the damage. However, I find the strata is entitled to manage there CP garden as it sees fit, provide it acts reasonably. There is no evidence that it spent money to fix the problem, so it could not charge such costs to Ms. Griffiths under SPA section 133.

61. I conclude that in the circumstances, the strata dealt reasonably with the garden damage. Even if it did not, I find that neither the strata nor Ms. Griffiths are liable to the Bahmutskys on that basis, since the Bahmutskys do not own or have exclusive use of the CP garden.

Conclusion

62. For all of these reasons, I find the strata reasonably enforced its bylaws, in relation to the Griffiths. I find the Bahmutskys not entitled to damages from the strata or Ms. Griffiths arising from any bylaw breaches.

CRT FEES AND EXPENSES

63. Under CRTA section 49 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.

64. The strata and Ms. Griffiths are the successful parties. The strata paid no CRT fees and claimed no dispute-related expenses, so I order none. I address reimbursement for Ms. Griffiths' counterclaim CRT fees in my related small claims decision.

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

ORDER

66. I refuse to resolve the Bahmutskys' claims about whether Mr. Griffiths may live in or visit the strata, their claim about verbal and physical abuse, and their claim about permitting surveillance cameras.

67. I dismiss the Bahmutskys' remaining claims, and this dispute.

Kate Campbell, Vice Chair