



Civil Resolution Tribunal

Date Issued: June 18, 2021

File: ST-2020-006511

Type: Strata

Civil Resolution Tribunal

Indexed as: *Pyke v. New World Management Co. Ltd.*, 2021 BCCRT 673

BETWEEN:

JAMES PYKE

APPLICANT

AND:

NEW WORLD MANAGEMENT CO. LTD. and The Owners, Strata
Plan KAS 3450

RESPONDENTS

AND:

JAMES PYKE and The Owners, Strata Plan KAS 3450

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute about alterations to common property (CP) and payment of strata fees.
2. The applicant, and respondent by counterclaim, James Pyke, owns a strata lot (SL2) in the respondent strata corporation, The Owners, Strata Plan KAS 3450 (strata). The strata is a bare land strata corporation consisting of 2 strata lots and is also a respondent in the counterclaim. The other respondent, New World Management Co. Ltd. (New World), owns the other strata lot (SL1) in the strata, and operates a campground and RV park known as Cascade Cove R.V. Park (Cascade Cove), on SL1. New World is the applicant in the counterclaim.
3. Mr. Pyke says New World installed a vehicle gate on a CP road near a main entrance to the strata property without his consent. He asks for an order that the vehicle gate be removed at New World's expense. New World agrees it installed the gate without Mr. Pyke's consent but says the gate is not locked so it does not impede access or egress from the property. New World asks that Mr. Pyke's claim be dismissed.
4. In its counterclaim, New World says the strata has never operated properly. It says that New World has paid all common expenses since it became an owner, including repairs to a water system that services both strata lots. New World seeks an order that Mr. Pyke, as owner of strata lot #2, pay an unspecified share of outstanding common expenses. Mr. Pyke agrees to pay a share of the common expenses, but says he has never been provided with proof of those expenses. Specifically, he says the cost to install the vehicle gate and provide insurance for Cascade Cove operations are not common expenses.
5. As I explain below, the strata was not originally a party to these disputes and did not provide Dispute Responses, submissions or evidence.
6. Mr. Pyke is represented by a lawyer, Ms. Lilina Lysenko. New World is represented by its Director and Officer, Mr. Chris Mellalieu. The strata is not represented.

7. For the reasons that follow, I order New World to remove the vehicle gate from CP. I also order the parties to exchange information about common expenses and, together as the strata council, call an annual general meeting of the strata to consider a proposed budget based on their discussion about common expenses.

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. 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.
11. 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.
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

BC Supreme Court application

13. There is affidavit evidence that indicates a BC Supreme Court application was made about the same or similar issues set out in the Dispute Notice for Mr. Pyke's claims. The court application documents are not before me. CRTA section 15(1)(b) requires a party to adjourn or suspend a court proceeding or other legally binding process that has been started about an issue or claim that is to be resolved by the CRT, while the CRT proceeding is continuing.
14. At my request, CRT staff requested confirmation from Mr. Pyke that the court process was suspended. On June 15, 2021, Mr. Pyke's legal representative emailed the CRT confirming there have been no hearings or orders under the court process and that court activity remains suspended.

Adding the Strata as a Respondent

15. Through CRT staff, I raised the question of whether the CRT has authority to hear these disputes between 2 individual owners under its strata property claims jurisdiction, given the strata was not a party to either the original claim or counterclaim. CRT staff provided the parties with copies of 2 CRT decisions that consider strata property dispute jurisdiction in such circumstances: *Bourque et al v. McKnight*, 2017 BCCRT 19 and *Alameer v. Zhang*, 2021 BCCRT 435. The parties were asked to review the decisions before confirming whether they agreed to the strata being added as a respondent, and were given an opportunity to provide brief submissions if they did not agree. Both parties agreed the strata should be added as a respondent, so I made that order under authority of CRTA section 61. I have amended the style of cause above to reflect my preliminary order, confirming it was my intention the strata be added as a respondent to both the original claim and the counterclaim.
16. The parties were also informed that should the strata be added as a respondent, I would not seek submissions from it on the merits of the claims. I did this because submissions from the strata would not be possible given the 2 owners or their

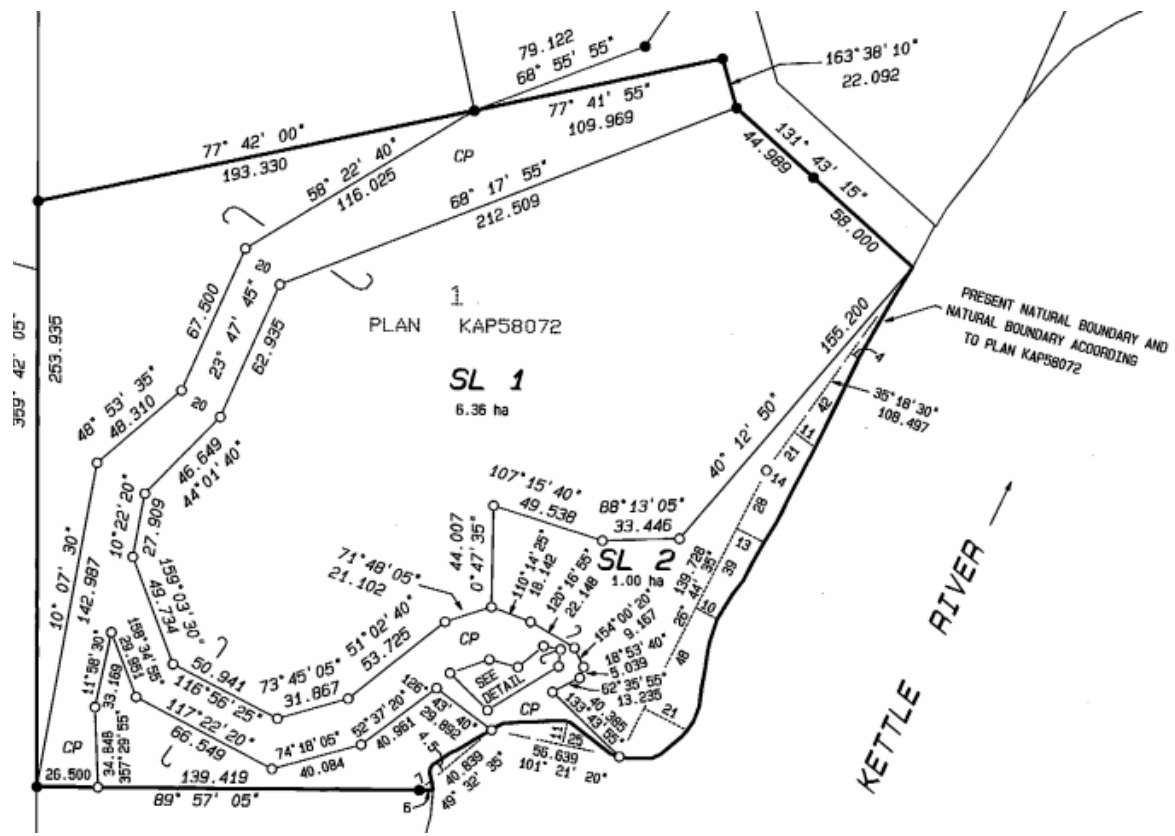
representatives are the only strata council members, and they have opposing views. Thus, even though the strata has been added a respondent, it is not represented and did not provide submissions or evidence.

ISSUES

17. The issues in this dispute are:
 - a. Did New World require the consent of Mr. Pyke before installing the vehicle gate on CP? If so, what is an appropriate remedy?
 - b. Is Mr. Pyke required to pay strata fees for CP expenses? If so, how should his share be calculated?

BACKGROUND AND EVIDENCE

18. In a civil proceeding such as this, the applicant Mr. Pyke must prove his claims, and New World must prove its counterclaims, on a balance of probabilities.
19. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
20. The strata is a residential strata corporation created in May 2008 under the provisions of the *Strata Property Act* (SPA). The strata plan shows SL2, owned by Mr. Pyke and located at the southeast portion of the strata property, is 1.00 hectares in area. SL1, owned by New World, is located north and west of SL2 and is shown as 6.36 hectares in area. There is an area marked as CP on the strata plan. Based on the evidence and submissions, I infer the marked CP area is a roadway. It travels from the north property line at River Road, south-west to the south property boundary. It also branches east near the south property boundary, providing the only road access to SL2.
21. Below is a portion of the strata plan that shows the location of the CP roadway, SL1 and SL2.



22. SPA section 1(1) defines CP to include “that part of the land... shown on a strata plan that is not CP”. Based on that definition, I find the areas west and south of the CP roadway are CP and not part of either strata lot.
23. Under the provisions of SPA section 120(1), the strata’s bylaws are the Standard Bylaws unless different bylaws are filed in the Land Title Office (LTO). There are no bylaw amendments filed in the LTO, so I find the Standard Bylaws apply.
24. It is undisputed that, prior to the creation of the strata in May 2008, Mr. Pyke’s father-in-law owned the entire property and operated Cascade Cove. In April 2018, New World became the owner of SL1 and Cascade Cove.
25. Mr. Pyke resides in a private residence located on SL2. He has lived in the residence since before the strata was created and lived there with his spouse until her passing in about 2020.
26. It is undisputed that in June or July 2018, New World installed a vehicle gate on the CP roadway. From the parties’ submissions, I infer the gate is located near the River

Road entrance to the strata property at the north boundary. Mr. Pyke and his wife objected to the gate installation before it was completed. Even though the gate is not locked, it requires removal of a metal pin in order for it to swing open. Mr. Pyke says his spouse, who was ill at the time, was unable to open the gate because of its weight so, he was concerned with emergency access. He also says it interfered with their guests' access and egress to and from the property and required him or his spouse to travel to the gate to let his guests enter and exit the property.

27. New World disagrees with Mr. Pyke's position saying the gate is open during the day and is only closed daily from 11 pm to 7 am during prime season between April and October each year. New World also says its employees monitor the gate when it is closed and live on the property near the gate. The parties agree there have been altercations between Cascade Cove employees and Mr. Pyke's guests that have involved the police, although they do not agree on the causes of the altercations. I do not find it necessary to detail the parties' positions on the altercations as I do not find them relevant to these disputes.

28. The parties agree the strata has never followed the requirements of the SPA, including holding strata council or general meetings, passing budgets, and collecting strata fees.

ANALYSIS

Did New World require the consent of Mr. Pyke before installing the vehicle gate on CP? Is so, what is an appropriate remedy?

29. For the reasons that follow, I find New World breached bylaw 6(1) by not getting written permission from the strata before installing the gate. In the circumstances of this dispute involving a 2-unit strata corporation, New World was therefore required to obtain Mr. Pyke's agreement to the gate installation.

30. The SPA applies to all strata corporations, even strata corporations that have only 2 strata lots, such as this one, even if an owner is not aware of the SPA. The strata and owners must follow the SPA provisions. There is no ability for them to "opt out" of the SPA. In the circumstances here, I find New World's representative was aware of the

strata, as New World provided in evidence a copy of the Form B under section 59 of the SPA provided by the previous owner of SL1 at the time SL1 was sold.

31. SPA section 119 makes it mandatory for a strata corporation to have bylaws. The strata's bylaws here are the Standard Bylaws under SPA section 120, as I have mentioned. Among other things, SPA section 29 says the number of persons on the strata council is determined by the bylaws, only 1 representative of a corporate owner may be a member of the strata council, and each strata lot has only 1 vote on the council.
32. Bylaw 9(2) says that if the strata has fewer than 4 strata lots, all the owners are on the strata council. SPA section 29 and bylaw 9(2) establish that the strata council here, consists of 2 votes, 1 from each of the strata lots. The parties recognize, and I appreciate, the legislation and bylaws create a stalemate for the strata if the council members have opposing positions, as is the case here with the vehicle gate. However, that is what the law says, and parties must follow it.
33. Although neither party argued any specific bylaw, I find bylaw 6 relevant and significant. Bylaw 6(1) says an owner must obtain the written permission of the strata before altering CP. I find the vehicle gate installation is an alteration of CP within the meaning of bylaw 6(1). The evidence is clear that New World did not seek permission from Mr. Pyke or his spouse to install the gate, let alone consult with them before doing so.
34. Even though the strata has never complied with the SPA provisions, given bylaw 6(1), at minimum, I find New World was required to get written permission of Mr. Pyke or his spouse at the time, for the gate installation. This is because Mr. Pyke and his spouse were strata council members and their permission was necessary for the strata to approve the gate installation. That the strata operated contrary to the SPA is not reason for New World to ignore the strata bylaws or breach them.
35. I find the submissions about why New World installed the gate and the fact there were altercations between New World's employees and Mr. Pyke's guests are not relevant because the gate should not have been installed in the first place. Further, there are

other bylaws that could be relevant, such as bylaw 3 about owners and occupants not causing a nuisance or unreasonably interfering with the rights of other people to use and enjoy common property or another strata lot. However, I find I do not need to consider any additional bylaws given my conclusion that New World did not comply with bylaw 6(1).

36. In addition, I find New World's argument that the vehicle gate was installed for the safety and security of its guests does not change my view. Bylaw 6(1) is mandatory and does not say reasons for an alteration request must be considered by the strata.
37. I find the appropriate remedy here is to order New World to remove the vehicle gate at its expense and I so order. New World must remove the vehicle gate in its entirety from the CP roadway within 60 days of this decision.

Is Mr. Pyke required to pay strata fees for CP expenses? If so, how should his share be calculated?

38. SPA section 91 says the strata is responsible for its common expenses. Common expenses is defined under SPA section 1(1) to mean expenses:
- a. relating to the common property and common assets of the strata corporation,
 - or
 - b. required to meet any other purpose or obligation of the strata corporation.
39. SPA section 92 requires owners to contribute to the strata's common expenses by paying strata fees. LTO documents show the unit entitlement for each strata lot is 1. This means that each strata lot must share equally in the common expenses (SPA section 99), unless they unanimously agree to a different method. (SPA section 100).
40. From the parties' submissions, I find they agree New World has paid all of the strata's common expenses since it became an owner. As I have mentioned, Mr. Pyke agrees that he must contribute to common expenses, such as insurance and water charges, but says he has not been provided with any invoices or receipts from New World to support the common expenses. In particular, he does not want to pay for the operating costs of Cascade Cove.

41. New World says, in addition to insurance and water charges, the strata's common expenses include things such as CP maintenance, CP insurance, and road maintenance. It says it has unsuccessfully tried to discuss these things with Mr. Pyke. I would add to the list of common expenses, those expenses necessary to fund the strata's contingency reserve fund as set out in SPA sections 92 and 93.
42. Although New World claims Mr. Pyke owes for outstanding common expenses, it has not provided any details of the amount it says Mr. Pyke owes. There is also no documentary evidence before me to support what the strata's common expenses are. Although Mr. Pyke provided an email exchange between his representative and the Regional District about water charges, it is unclear from the email if the charges apply to the strata or to each strata lot owner. Therefore, I find I do not have sufficient evidence to determine the amount of strata fees that each owner must pay. Therefore, I decline to make the order requested by New World for lack of evidence.
43. However, given Mr. Pyke has agreed he must contribute to common expenses, I find it appropriate that I assist the parties by establishing a process for the parties to identify, and hopefully agree, on the amount of the common expenses and strata fees by making the following orders:
 - a. Within 30 days of this decision, New World must provide Mr. Pyke with a list common expenses and their annual totals, including supporting documents and details showing how the amounts were calculated (proposed common expenses),
 - b. Within 15 days of receiving the proposed common expenses, Mr. Pyke must identify the expenses he agrees with and the expenses he takes exception to, and advise New World of his decisions. If he does not agree with an expense, he must provide reasons why.
 - c. Within 90 days of this decision, the strata council, meaning Mr. Pyke and a representative of New World, must call an annual general meeting of the strata under the provisions of the SPA, to propose an annual budget based on the list of common expenses proposed by New World and reviewed by Mr. Pyke. Should the parties agree that strata fees should be calculated on a basis

different than unit entitlement, a proposed method of calculation must be approved under the provisions of SPA section 100.

- d. Should the parties disagree on the common expenses or how strata fees should be calculated, New World or Mr. Pyke are open to make a fresh CRT application on the common expense issue.

44. The parties are free to obtain advice on how best to address the common expense issue.

CRT FEES AND EXPENSES

45. 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 to deviate from this general practice.

46. I find Mr. Pyke was successful in his claims. He paid \$225.00 in CRT fees and I order New World to pay Mr. Pyke this amount. I find New World was partially successful in its counterclaim. It paid \$125.00 in CRT fees and in submissions agreed to pay 50% of these fees, or \$112.50. Given New World's partial success, had it not agreed to pay ½ of its CRT fees, I would not have otherwise ordered Mr. Pyke pay a greater amount. Therefore, I order New World is responsible for its CRT fees.

47. Neither party claimed dispute-related expenses, so I make no order for expenses.

ORDERS

48. I order that:

- a. Within 60 days of this decision, New World must remove the vehicle gate in its entirety from the CP roadway.
- b. Within 30 days of the date of this decision New World must:
 - i. Pay Mr. Pyke \$225 for CRT fees, and

- ii. Provide Mr. Pyke with a list common expenses and their annual totals, including supporting documents and details showing how the amounts were calculated (proposed common expenses),
- c. Within 15 days of receiving the proposed common expenses, Mr. Pyke must identify the expenses he agrees with and the expenses he takes exception to, and advise New World of his decisions. If he does not agree with an expense, he must provide reasons why.
- d. Within 90 days of this decision, Mr. Pyke and a representative of New World together as the strata council, must call an annual general meeting of the strata under the provisions of the SPA, to propose an annual budget based on the list of common expenses proposed by New World as reviewed by Mr. Pyke. If the parties do not agree strata fees should be calculated based on unit entitlement, they must approve a different method following SPA section 100.
- e. Should the parties disagree on the common expenses or method of calculating strata fees, New World and Mr. Pyke are open to make a fresh CRT application on the common expense issue.

49. Mr. Pyke is entitled to post-judgement interest under the *Court Order Interest Act*.

50. I order any remaining claims of the parties dismissed.

51. 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