



# Civil Resolution Tribunal

Date Issued: June 21, 2021

File: ST-2021-000417

Type: Strata

Civil Resolution Tribunal

Indexed as: *Kim v. The Owners, Strata Plan VIS 5489*, 2021 BCCRT 684

**B E T W E E N :**

DONG-JOO KIM

**APPLICANT**

**A N D :**

The Owners, Strata Plan VIS 5489

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## **INTRODUCTION**

1. This is a strata property dispute about an owner's request for removal of 2 trees.
2. The applicant, Dong-Joo Kim, is an owner of a strata lot (#120) in the respondent strata corporation, The Owners, Strata Plan VIS 5489 (strata).

3. Mr. Kim submits that 2 Linden trees located on common property (CP) near his strata lot should be removed, along with the tree stumps and surface roots, because the roots are causing damage to “the foundation of building and infrastructure”. He seeks an order that the trees, stumps and roots be removed by the strata at its expense.
4. The strata submits that the trees are not an immediate danger and are not causing any damage. It says that section 71 of the *Strata Property Act* (SPA) restricts the strata from removing the trees without its owners first passing a ¾ vote approving the tree removal. Although the strata says the issue will be placed on the agenda for the next annual general meeting (AGM) scheduled for September 2021, I infer the strata asks that Mr. Kim’s claims be dismissed.
5. Mr. Kim is self-represented, and the strata is represented by a strata council member.
6. For the reasons that follow, I dismiss Mr. Kim’s claims and this dispute.

## **JURISDICTION AND PROCEDURE**

7. These are the formal written reasons of the 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.
8. 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.
9. 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.

10. 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**

11. The issues in the dispute are:

- a. Must the strata obtain a  $\frac{3}{4}$  vote before removing the trees?
- b. Should the strata be ordered to remove the trees?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

12. In a civil proceeding such as this, the applicant, Mr. Kim, 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.

13. The strata is a residential strata corporation created in March 2004 under the SPA. It contains 28 strata lots in 14 buildings of 2 strata lots per building. The strata plan shows patios and driveways are designated as limited common property, with the remaining ground areas designated as CP. There is no dispute the subject trees are located on CP. Based on my review of the strata plan, submissions, and photographs in evidence, I find that is the case.

14. I find the Schedule of Standard Bylaws apply as established under SPA section 120. Land Title Office (LTO) documents show bylaws different than some of the Standard Bylaws have been filed with the LTO from 2004 to 2014, but I find none of the amended bylaws are relevant to this dispute. I address the applicable bylaws below, as necessary.

15. The basic facts are undisputed. I summarize them as follows.

16. On November 3, 2020, Mr. Kim and his neighbour, whom I infer owns the strata lot next to Mr. Kim in the same building, jointly wrote to the strata. They requested the strata council review the landscaping in front of their building with the view to having 2 trees removed. The letter set out a number of reasons why the trees should be removed that

included the trees were planted too close to the building (about 3 metres), and the tree roots "have been continuously growing toward" the building's foundation. The letter included a statement that Mr. Kim would pay for the trees' removal.

17. At a November 16, 2020 strata council meeting, the strata discussed the November 3 letter. The minutes show the strata council determined a permit was required from the City of Courtney (City) for the tree removal, and that the City required a certified arbourist report before permitting the tree removal. According to the minutes, the strata decided to hire an arbourist to investigate the subject trees.
18. In a November 22, 2020 email from the strata council president to Mr. Kim, the president confirmed the strata had met with an arbourist and identified "6 or 7" trees in the complex that could potentially cause problems. I infer the identified trees included the trees of concern to Mr. Kim. The email stated that because additional trees being identified, the strata was taking steps to have all identified trees removed at the strata's expense, but that Mr. Kim could have the stumps ground and roots removed at his expense.
19. In November and December 2020, the strata obtained 2 arbourist opinions on the subject trees' condition and met with Mr. Kim on an unspecified date. At some point in early December, the strata became aware of SPA section 71 and determined it could not remove the trees without the strata owners passing a  $\frac{3}{4}$  vote.
20. A December 10, 2020 email from the strata council president to Mr. Kim confirms a meeting took place with the strata council and Mr. Kim. The email also states and that the strata council "agreed unanimously that the tree[s] in your front yard will not come down and that [the council's] decision was firm". The president's email also stated that the council would not reconsider its position unless Mr. Kim presented a third arbourist's opinion to the strata council.
21. On January 12, 2021 Mr. Kim delivered a written request for the trees to be removed that included a December 15, 2020 arbourist's opinion.
22. The January 15, 2021 strata council minutes state the council had received 3 arbourist opinions, and that 2 of the opinions recommend the trees be removed but did not say the trees were an immediate risk. The minutes also say the trees cannot be removed

without a  $\frac{3}{4}$  vote of the strata owners and that due to Covid-19 restrictions current at that time, the strata council decided to put the tree removal issue on the agenda for its September 2021 AGM.

***Must the SPA obtain a  $\frac{3}{4}$  vote before removing the trees?***

23. The parties agree the heart of the tree removal issue is the interpretation of SPA section 71, which I reproduce below in its entirety.

**71** Subject to the regulations, the strata corporation must not make a significant change in the use or appearance of common property or land that is a common asset unless

- a. the change is approved by a resolution passed by a  $\frac{3}{4}$  vote at an annual or special general meeting, or
- b. there are reasonable grounds to believe that immediate change is necessary to ensure safety or prevent significant loss or damage.

24. The strata argues the trees cannot be removed without a  $\frac{3}{4}$  vote because “they are not in danger of falling over”. I understand the strata’s position is, that based on the arbourist opinions, there are no reasonable grounds to believe the trees must be removed immediately to ensure safety or prevent significant damage as set out in section 71(b). Therefore, the strata believes a  $\frac{3}{4}$  vote is required under section 71(a) because removing the trees would be a significant change within the meaning of section 71(a).

25. Conversely, Mr. Kim says the arbourist opinions obtained have found the trees’ root systems are invasive and encroaching on the infrastructure below ground because the trees were planted too close to the building. He says the real issue is the roots causing damage to the building’s foundation, not that the trees would fall over. He believes the requirements of section 71(b) have been met. He also says removing the 2 trees would not be a significant change in use or appearance of CP because after the trees are removed, a “tall evergreen Pine tree and shrubs” would remain in the existing garden bed.

26. In order to be successful, Mr. Kim must prove removing the trees is not a significant change within the meaning of SPA section 71, or that there are reasonable grounds to believe leaving the trees in place would be unsafe or cause significant loss or damage. As explained below, I find he has not proved either.
27. I will first discuss the matter of safety and significant loss or damage under section 71(b). Mr. Kim admits there is no safety issue with the trees remaining and says the issue is about the tree roots causing damage. I have reviewed the 3 arbourist opinions provided in evidence and find they meet the requirements of expert evidence under CRT rule 8.3. Neither party objected to these opinions and both relied on them. All 3 opinions identified a potential for root damage to occur, or that driveway cracks could possibly be related to the trees' root system. However, based on my review of the opinions, I agree with the strata that none of the opinions identify an urgent need to address safety, damage or loss. Therefore, I find the strata reasonably concluded tree removal or root pruning was not urgent under section 71(b).
28. I turn now to whether removal of the trees would be a significant change in use or appearance of the CP. The BC Supreme Court considered the meaning of "significant change" for the purposes of SPA section 71 in *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 133. It provided a non-exhaustive list of factors to consider at paragraphs 16 and 28, which I summarize here:
- a. The more visible the change, the more significant.
  - b. Does the change affect the use or enjoyment of any strata lots?
  - c. Does the change cause any disruption?
  - d. Does the change affect the value of the strata lot?
  - e. The number of strata lots in the strata corporation and their general use might make the change significant.
  - f. How the strata is governed and what it has allowed in the past might matter.
  - g. The use and enjoyment of the altered property might matter.

29. Neither party made submissions that directly address these factors. One of the arbourist opinions states the Linden trees are 25 feet tall. As mentioned, Mr. Kim says 1 “tall evergreen Pine” tree would remain, but he did not identify its height. The photographs provided do not include the current make up the entire garden area where the trees are located and do not show the height of all the trees.
30. There is evidence that 1 owner near #120 objected to the trees being removed because the trees provide them shade. Given the strata reported a  $\frac{3}{4}$  vote was necessary to remove the trees. I find it reasonable to conclude that other owners who might object to the trees’ removal, may not have voiced their concerns because they expect a  $\frac{3}{4}$  vote will decide the issue.
31. Based on the overall submissions, I find I do not have sufficient information to determine whether removing the trees would be a significant change in use or appearance. Given it is Mr. Kim’s obligation to prove the change is not significant, and he has not done so, I dismiss his claim.
32. I find it is reasonable in these circumstances for the strata to put the tree removal issue before its owners through a  $\frac{3}{4}$  vote at a general meeting and trust it will do so. With the current relaxing of Covid-19 restrictions, the strata may wish to consider calling a special general meeting before its September AGM.

## **CRT FEES AND EXPENSES**

33. 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 to deviate from this general rule. The strata was the successful party in this dispute but did not pay CRT fees, so I make no order for reimbursement of fees.
34. No party claimed dispute-related fees, so I order none.
35. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Mr. Kim.

## **ORDER**

36. I order Mr. Kim's claims and this dispute dismissed.

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J. Garth Cambrey, Vice Chair