



Civil Resolution Tribunal

Date Issued: June 30, 2021

File: ST-2020-007694

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan BCS2498 v. Sefat*, 2021 BCCRT 722

B E T W E E N :

The Owners, Strata Plan BCS2498

APPLICANT

A N D :

SEYED MOHSEN HASHEMI SEFAT

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about enforcement of bylaw fines.
2. The applicant The Owners, Strata Plan BCS2498 (strata) is a strata corporation existing under the *Strata Property Act* (SPA). The respondent Seyed Mohsen

Hashemi Sefat owns a ½ interest in strata lot 126 (SL126) which is unit 2002 in the strata.

3. Between February and August 2020, the strata fined Mr. Sefat multiple times for allegedly causing unreasonable noise and for one incident where he had an open fire pit on the SL126 balcony, contrary to the bylaws. The strata charged those fines to Mr. Sefat's strata lot account.
4. The strata says Mr. Sefat owes it \$2,000 in fines. The strata also claims \$5,000 in damages for time spent on this dispute and dealing with other owners' complaints about Mr. Sefat's conduct.
5. Mr. Sefat says the fines were unfairly imposed following complaints from the owner of the unit below SL126 (unit 1902). Although he does not specifically deny causing the noise, Mr. Sefat says he did not get along with the unit 1902 owner. He says that same owner is close friends with some strata council members. There is a related small claims dispute between the unit 1902 owners and Mr. Sefat and his co-owner, which I decided separately in dispute number SC-2021-005163.
6. Mr. Sefat also says he agreed to pay \$1,000 to resolve the complaints, but that the strata is now trying to collect \$7,000 from him without justification.
7. The strata is represented by a strata council member. Mr. Sefat represents himself.
8. For the reasons that follow, I find that Mr. Sefat must pay the strata \$2,000 in fines. I dismiss the strata's claim for time spent on the dispute.

JURISDICTION AND PROCEDURE

9. 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.

10. 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.
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.

ISSUES

13. The issues in this dispute are whether Mr. Sefat must pay the strata:
 - a. \$2,000 in fines for bylaw violations, and
 - b. \$5,000 in damages for time spent on the dispute and other effort involved in dealing with complaints about Mr. Sefat.

EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, the applicant strata must prove its claims on a balance of probabilities. I have read and weighed all the parties' evidence and submissions, but I refer only to that which I find necessary to explain my decision.

Overview

15. This dispute is about bylaw enforcement.

16. Mr. Sefat did not provide evidence in this dispute. He submitted that the fines were unfair because of an alleged friendship between the unit 1902 owner and someone on strata council, or because he and unit 1902 owner did not get along. Mr. Sefat also suggested that he had settled these fines with the strata. I find that he failed to prove any of these assertions, or that the strata was otherwise unfair to him in imposing the fines.
17. By contrast, the strata provided evidence that it received several noise complaints on different dates and gave Mr. Sefat an opportunity to respond in each instance. Aside from a bare denial of causing noise, Mr. Sefat did not respond to the strata. I find the strata has proven that Mr. Sefat breached bylaw 5 by causing noise as described in its correspondence, and bylaw 47.1 by having an open fire pit on his balcony on one occasion. Below, I discuss the specifics of the strata's bylaw enforcement correspondence.

Bylaws

18. The strata filed the applicable bylaws at the Land Title Office on January 22, 2019.
19. Bylaw 5.1 (b) prohibits a resident or visitor from using a strata lot in a way that causes unreasonable noise.
20. Bylaw 47.1 prohibits a resident from doing anything that will unreasonably increase the risk of fire or the rate of fire insurance on the building.
21. Bylaw 27.1 provides that the strata may fine an owner or tenant \$200 for each bylaw contravention.

SPA Section 135 and Noise Complaints

22. The strata is obligated to enforce its bylaws under SPA section 26. However, it must do so in accordance with the SPA. SPA section 135 provides for how and when the strata can impose fines.

23. SPA section 135(1) 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.
24. 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 will be found to be invalid if the section 135 procedural requirements are not followed: *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449.
25. In the binding decision in *The Owners v. Grabarczyk*, 2006 BCSC 1960 at paragraph 43, appeal dismissed 2007 BCCA 295, the court indicated that noise violations are not continuous or continuing contraventions when observed on different dates. Noise violations are distinct contraventions for which a fine may be imposed only if the section 135 requirements are met for each contravention. Following *Grabarczyk*, I must consider whether the strata complied with SPA section 135 for each individual noise bylaw violation.

Fines for February – August 2020

26. On February 27, 2020, the strata wrote to Mr. Sefat informing him about complaints of excessive noise after 11 pm on February 15, 16, 19, 20 and 25. The strata explained that the noise appeared to violate bylaw 5. The strata wrote that it was considering imposing a fine of up to \$200 for each apparent bylaw contravention.
27. The strata provided Mr. Sefat with an opportunity to respond to the complaints, including a hearing before strata council, if he wished. The strata explained that failure to respond in writing within 21 days would result in strata deciding about the fines at its next meeting.

28. Mr. Sefat did not respond to the strata's February 27, 2020 letter. Strata council decided to impose 2-\$200 fines, totalling \$400. The strata wrote to Mr. Sefat to inform him of its decision on April 1, 2020.
29. Based on the strata's correspondence, I find that the strata complied with SPA section 135 in imposing the \$400 in fines charged to Mr. Sefat's strata lot account on April 1, 2020. I therefore find that Mr. Sefat must pay those fines.
30. On April 9, 2020, the strata wrote to Mr. Sefat about further noise complaints on March 28, 2020 and April 3, 2020 at 12:10 a.m. and 12:00 a.m. respectively. The strata explained that the noise appeared to contravene bylaw 5, which prohibits unreasonable noise. The strata wrote that it was considering imposing a \$200 fine for the apparent bylaw contravention. The strata provided Mr. Sefat with an opportunity to respond to the complaints, including a hearing. The strata wrote that failure to respond in writing within 21 days would result in strata council deciding about the fine at its next meeting.
31. On May 8, 2020, the strata wrote to Mr. Sefat about complaints of excessive noise on April 10, 2020 at 11:20 p.m. and 12:30 a.m. on April 11, 2020, contrary to bylaw 5. Again, the strata gave Mr. Sefat an opportunity to respond and request a hearing.
32. On May 11, 2020, the strata wrote to Mr. Sefat about complaints of excessive noise on May 2, 2020 from 12:00 a.m. to 4:00 a.m. contrary to bylaw 5. The strata gave Mr. Sefat an opportunity to respond or request a hearing.
33. On May 11, 2020, the strata wrote to Mr. Sefat. The strata explained that it had received multiple noise complaints, which the strata council determined to be legitimate after reviewing information from a security guard and strata council, as well as an email from Mr. Sefat. Strata council explained that it had decided to impose 2-\$200 fines and requested payment of \$400. Although the May 11, 2020 letter does not specify the dates for which the fines were imposed, I find that these fines were for the March 28 and April 3 noise violations. I find that the strata complied with SPA section 135 in imposing them and that Mr. Sefat must pay this further \$400 in fines.

34. On May 13, 2020, the strata wrote to Mr. Sefat informing him of a complaint of noise on May 5, 2020, contrary to bylaw 5. The strata gave Mr. Sefat an opportunity to respond and request a hearing.
35. On May 15, 2020, the strata wrote to Mr. Sefat informing him of a complaint of noise on May 9, 2020, contrary to bylaw 5. The strata gave Mr. Sefat an opportunity to respond and request a hearing.
36. Also on May 15, 2020, the strata wrote to Mr. Sefat informing him of a complaint that he had an open fire pit on his balcony on February 14, 2020, contrary to bylaw 47.1 which prohibits a resident or visitor from doing anything that unreasonably increases fire risk. The strata gave Mr. Sefat an opportunity to respond and request a hearing.
37. Mr. Sefat did not respond to the strata's May 15, 2020 letter. Mr. Sefat only provided one letter to the strata in which he denied causing unreasonable noise. Otherwise, on the evidence before me, I find that Mr. Sefat did not provide responses.
38. On June 11, 2020, the strata wrote to Mr. Sefat indicating that it had fined him \$200 for having an open fire pit on his balcony on February 14, 2020. I find that Mr. Sefat must pay this \$200 fine.
39. On June 11, 2020, the strata wrote to Mr. Sefat advising that it had decided to impose a further 4-\$200 fines for "multiple complaints of noise". The strata requested payment of \$800 for fines mentioned in its May 8, 11, 13 and 15th letters. I find that this \$800 was imposed as \$200 fines for separate noise violations on April 10, May 2, 5 and 9. I find that strata complied with SPA section 135 in imposing these fines and that Mr. Sefat must pay this \$800.
40. On July 9, 2020 the strata wrote to Mr. Sefat informing him of a noise complaint observed on July 2, 2020 at 11:30 to about 5:00 a.m. on July 5, 2020, contrary to bylaw 5. The strata gave Mr. Sefat an opportunity to respond and request a hearing.

41. On August 10, 2020, the strata wrote to Mr. Sefat informing him it would levy a further \$200 fine against his strata lot account for the noise violation noted in its July 9, 2020 letter. Again, I find the strata complied with SPA section 135 and so Mr. Sefat must pay this \$200.
42. In summary, I find that Mr. Sefat violated bylaws 5 and 47.1, and must pay the strata \$2,000 in fines. I address the strata's \$5,000 claim for time spent in my consideration of dispute-related expenses, below.

CRT FEES, EXPENSES AND INTEREST

43. 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 in this case not to follow that general rule. Because the strata was largely successful, I therefore order Mr. Sefat to reimburse it for CRT fees of \$225.
44. Turning to dispute-related expenses, the strata claims \$5,000 for time spent on this dispute.
45. CRT Rule 9-5(3) governs when the CRT will order a party to reimburse another party's legal fees. CRT Rule 9-5(5) governs when the CRT will order a party to reimburse another party for time spent on a dispute. They both say that the CRT will not make such an order absent extraordinary circumstances. Under CRT Rule 9-5(4), the CRT may consider the complexity of a dispute when deciding whether to order reimbursement of legal fees. I find that the same applies for ordering compensation for time spent.
46. I find that the strata has not proven its claim for compensation for time spent. There was no documentation provided of the time it says was required to respond to the owner's dispute, nor any explanation for the basis of the amount claimed.

47. I also find that there are no extraordinary circumstances here warranting an order for time spent. The dispute is not unusually complex, as it deals mainly with the issue of bylaw enforcement. I dismiss the strata's claim for time spent.
48. I have also considered the strata's claim for compensation for time spent in dealing with the complaints against Mr. Sefat. This is not a dispute-related expense, since the strata seeks payment for time spent before the dispute was filed. There is nothing in the SPA or bylaws that permits the strata to collect any amount for addressing bylaw complaints and their enforcement. Rather, this is part of the strata's duty under SPA section 26. Therefore, I also dismiss the claim for \$5,000 for time spent in dealing with complaints about Mr. Sefat's conduct before the dispute was filed.
49. The *Court Order Interest Act* (COIA) applies to the CRT. The strata is entitled to pre-judgement interest on the \$2,000 from August 10, 2020, the date on which the most recent fine was imposed, to the date of this decision. This equals \$8.01.
50. The strata must comply with section 189.4 of the SPA, by not charging dispute-related expenses against Mr. Sefat.

ORDERS

51. I order that, within 30 days of this decision, Mr. Sefat pay the strata a total of \$2,233.01, broken down as:
- a. \$2,000.00 in fines,
 - b. \$8.01 in pre-judgement interest under the COIA, and
 - c. \$225 in CRT fees.
52. The strata is also entitled to post-judgement interest under the COIA.

53. 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.

Julie K. Gibson, Tribunal Member