Civil Resolution Tribunal

Date Issued: August 4, 2021

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Taylor v. The Owners, Strata Plan VR 2306*, 2021 BCCRT 850

B E T W E E N :

EVAN TAYLOR and SOPHIE ROY

APPLICANTS

A N D :

The Owners, Strata Plan VR 2306

RESPONDENT

A N D :

EVAN TAYLOR and SOPHIE ROY

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: Kristin Gardner

INTRODUCTION

1. This dispute is about limited common property (LCP) alterations and related bylaw fines.

2. The applicants (respondents by counterclaim), Evan Taylor and Sophie Roy, jointly own a strata lot (SL15) in the respondent strata corporation, The Owners, Strata Plan VR 2306 (strata). The strata is the applicant in the counterclaim.

3. Mr. Taylor applied to the strata council in 2015 to alter an LCP crawlspace under SL15 by adding a staircase and a bathroom, among other alterations. The applicants say the strata approved the alterations, and they completed construction over a 3-year period.

4. The strata later advised the applicants that it had not approved the alterations, and it demanded the applicants remove them. The applicants deconstructed the bathroom, but they did not remove the other alleged unapproved alterations. The strata ultimately fined the applicants for breaching the bylaws. The applicants seek an order that they did not breach the bylaws and that all imposed fines and charges be reversed. The applicants also claim that if it is found the strata denied their alteration requests, its decision was significantly unfair, and they seek an order that the strata approve their alterations.

5. The strata says it approved the staircase to access the crawlspace, but nothing else. The strata says it only became aware of the extent of the crawlspace renovations when the applicants listed SL15 for sale. The strata says the applicants' significant unfairness claim is out of time. In any event, the strata says its decision not to approve the alterations was fair, and the fines it imposed were valid.

6. In its counterclaim, the strata seeks an order that the applicants remove all alterations to the crawlspace other than the approved staircase.

7. The applicants also allege the strata breached section 71 of the *Strata Property Act* (SPA) by allowing other owners to alter common property (CP) without the required

¾ vote of the ownership. The strata denies that the alleged alterations were a significant change to CP, so it says a ¾ vote was not required.

8. The applicants are self-represented. The strata is represented by a strata council member.

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.

13. Under CRTA section 10(1), 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.

14. As noted, part of the applicants' requested remedies is an order that they did not breach any bylaws. In turn, the strata requests an order that the applicants breached

the bylaws. I find these are requests for declaratory relief, which the CRT generally does not have the jurisdiction to award (see *Fisher v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379). Therefore, I decline to consider these requested remedies.

15. Further, the only requested remedy for the applicants' claim that the strata allowed other owners to make significant changes to CP by constructing enclosed storage sheds without a ¾ ownership vote, is a declaration or finding that the strata breached SPA section 71. I find that the CRT has no jurisdiction to make such a declaratory order under CRTA section 123. So, I refuse to resolve this claim under section 10(1) of the CRTA.

ISSUES

16. When the strata filed its counterclaim, it claimed $18,587.77 for unpaid bylaw fines, legal fees, and additional property management services incurred to enforce the alleged bylaw breaches. During the facilitation phase of this dispute, the applicants paid those outstanding fines and other charges. The strata does not seek further payment from the applicants, but the applicants dispute the validity of the fines and charges and seek to be reimbursed.

17. The issues in this dispute are:

    a. Did the strata approve the applicants' proposed alterations to LCP?

    b. If not, was the strata's decision not approve the applicants' LCP alterations significantly unfair?

    c. Is the applicants' significant unfairness claim out of time?

    d. Must the applicants remove the crawlspace alterations?

    e. Were the bylaw fines, legal fees, and additional property management services fees validly charged to the applicants?

EVIDENCE AND ANALYSIS

18. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. The strata must prove its counterclaims on the same standard. I have reviewed all of the parties' evidence and submissions but refer only to what I find is relevant and necessary to provide context for my decision.

Background

19. The strata plan filed in the Land Title Office (LTO) shows the strata is comprised of several 3-story buildings. Each building contains 4 strata lots, with 2 strata lots on the ground floor and 2 strata lots that occupy the second and third floors.

20. The strata plan shows the ground floor strata lots each have an LCP crawlspace that is designated as "appurtenant" to, which means associated with, the respective strata lot. For clarity, the SPA defines LCP as common property that is designated for the exclusive use of the owners of 1 or more strata lots. In this case, the strata plan shows each LCP crawlspace is designated for the exclusive use of one strata lot.

21. SL15 is a ground floor strata lot, and the LCP crawlspace designated for the applicants' exclusive use can only be accessed from within SL15. In some of the buildings, the LCP crawlspaces are relatively shallow. However, the crawlspace under SL15 is deep enough for one to stand upright and walk around, and part of it is above ground level.

22. The applicants purchased SL15 in 2012. At that time, there was a ladder installed to access the LCP crawlspace. The crawlspace was "non-habitable" space, intended primarily for storage use. The evidence shows that in May 2015, Mr. Taylor informally advised the strata council that he was looking into "legitimizing" the crawlspace under SL15. The parties' email chain in evidence shows that the strata asked some questions about potential window location and whether any excavation was required. However, I find there is no evidence before me that the strata approved of or provided any indication that Mr. Taylor's informal proposal would be approved.

23. In August 2015, Mr. Taylor provided the strata council with architectural plans for the proposed crawlspace renovations. The renovations included installing 2 bedrooms, a bathroom, 2 exterior windows, and creating a new laundry area.

24. On August 28, 2015, the strata's property manager at the time, RR, advised the applicants that the strata council voted to reject their proposal to convert the crawlspace from non-habitable LCP into habitable space. The applicants responded by email to the strata council, asking whether it would accept a modified proposal to remove the windows and bedrooms from the plans. The applicants' email stated the plans would otherwise be "virtually identical", including adding a staircase and bathroom and doing the required construction to "bring the whole area up to code".

25. The strata held a September 10, 2015 hearing to discuss the applicants' amended proposal. The following day, RR sent the draft meeting minutes to Mr. Taylor. The strata says these draft minutes were also the final version, which is undisputed.

26. The meeting minutes stated that the council discussed Mr. Taylor's proposal to modify the LCP crawlspace by substituting a staircase for the existing ladder and installing a bathroom. The council voted to allow the staircase modification on the basis that it did not constitute a modification to LCP. However, the council unanimously opposed the addition of a bathroom. The minutes stated that the council supported calling a special general meeting (SGM) to put "the rest of Mr. Taylor's renovation proposal" to an ownership vote, given it would be a significant change to CP.

27. It is undisputed that the applicants then proceeded to renovate the crawlspace, including moving the existing laundry area, finishing all walls and floors, installing lighting in the ceiling, and installing a bathroom. The applicants say that most of the renovations were completed by the end of 2015, although some renovations continued over the next 3 years. The photographs in evidence show the renovated crawlspace had a bedroom with sliding doors and a media room. The applicants obtained an occupancy certificate for the renovated crawlspace on December 7, 2018, and they listed SL15 for sale on December 11, 2018.

28. The strata says it first became aware of the extent of the applicants' renovations when it saw the realtor marketing materials for SL15 showing its square footage had increased by approximately 500 square feet, and it was listed for significantly more than other similar strata lots. It is undisputed that the strata requested that the applicants take SL15 off the market, and the applicants complied. Both parties then hired legal counsel.

29. In April 2019, the applicants offered to sign an alteration agreement, which the strata did not accept. The strata told the applicants they had to take the steps necessary to amend the strata plan and designate the crawlspace as part of SL15, which would require unanimous approval of the owners. The applicants reached out to the ownership but determined they would not get unanimous approval to change the strata plan. So, the applicants proposed that the strata could grant an easement over CP to transfer liability for the area to the owner, and it could charge easement fees to effectively increase the strata fees to account for the strata lot's increased area. The evidence shows this proposal was ultimately put to an ownership vote in a resolution at a July 31, 2020 SGM, but it failed to achieve a ¾ vote.

30. The strata's lawyer sent an August 13, 2020 letter to the applicants' lawyer confirming the strata's position that the LCP crawlspace alterations were unauthorized and directing all alternations made without strata's approval to be removed within 60 days. The letter specified that all piping, wiring, flooring, drywall, ceiling tiles and all other materials installed without permission must be removed.

31. It is undisputed that the applicants deconstructed the bathroom they had installed. However, the strata says the applicants did not obtain a deconstruction permit or remove all non-original piping, wiring, flooring, drywall, ceiling tiles, fixtures, and other materials. The strata responded by imposing fines on the applicants for breach of the bylaws. The applicants responded by starting this dispute.

Did the strata approve the crawlspace renovations?

32. The applicants say they understood the strata had approved all their proposed renovations, other than the bathroom installation. They also say they did not hide the

renovations and that several strata council members visited SL15 both during and after the renovations but never raised any concern. I infer it is the applicants' position that even if the strata did not formally approve the renovations, its knowledge of the renovations constituted its implied consent.

33. The strata filed a complete set of bylaws in the LTO on March 21, 2002. Subsequent bylaw amendments relevant to this dispute include an amendment to bylaw 7 filed on June 15, 2015, and to bylaw 1 filed on March 2, 2019, discussed further below.

34. Bylaw 6(1) says an owner must obtain the written approval of the strata before making an alteration to common property, including limited common property.

35. The applicants rely on a signed Strata Common Property Representation of Authority (SCPRA) form, that RR provided to the applicants on September 15, 2015. The SCPRA form is a standard form that confirms the property management company is authorized to obtain a municipal building permit to alter the strata's common property.

36. The applicants say they understood the SCPRA form was not for the staircase, but for all the proposed alterations to the LCP crawlspace. I find there is no support for such an interpretation in the evidence. Bylaw 6(1) requires the applicants to obtain the strata's written approval for making any alterations to LCP. Nowhere on the form is there space to set out the scope of work or what alterations the strata approved.

37. Further, the strata's September 10, 2015 meeting minutes clearly state the strata approved only the staircase installation, but that it voted to oppose the bathroom installation. The meeting minutes do not specifically address the strata's position on the other proposed renovations, such as moving the laundry, or installing walls, floors, a ceiling, and electrical wiring. I find that this means the strata did not consider these aspects of the renovation proposal, and thus the strata did not vote to approve them. I find there is no evidence before me that the applicants received the strata's written approval to make those alterations, as required by bylaw 6(1).

38. Further, section 71 of the SPA says that the strata must not make or approve a significant change in the use or appearance of common property unless the change

is approved by ¾ of the owners at an annual general meeting (AGM) or SGM. Section 1(1) of the SPA says that limited common property is a form of common property. This means that section 71 applies to LCP.

39. As noted, the strata approved the staircase installation on the basis that it did not qualify as a significant change to LCP. As this decision is not in issue, I do not include the staircase in my analysis of whether the applicants' crawlspace renovations were a significant change to LCP.

40. In *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333, the court set out a non-exhaustive set of factors to consider whether a change in use or appearance is significant:

    a. Is the change visible to other residents or the general public?

    b. Does the change affect the use or enjoyment of another unit or an existing benefit of another unit?

    c. Is there a direct interference or disruption because of the changed use?

    d. Does the change impact the marketability or value of the unit?

    e. How many units are in the strata and what is the strata's general use?

    f. How has the strata governed itself in the past and what has it allowed?

41. Because the LCP crawlspace can only be seen and accessed from within SL15, most of the above factors do not apply. However, I find the evidence shows the applicants' changes to the crawlspace significantly impacted the marketability and value of SL15.

42. The strata provided the 2012 realtor listing for SL15, which showed a finished floor area of 775 square feet on a single level. It stated there was one bedroom and one bathroom. In contrast, the applicants' 2018 listing advertised SL15 as a 2-bedroom, 2-bathroom unit with 1,301 square feet, and included a photograph of what appears to be a finished basement area. The strata submits that the applicants listed SL15 for sale at approximately $500,000 more than other similar units in the strata, which the

applicants do not dispute. Further, it is undisputed that despite the increase in SL15's square footage, its unit entitlement did not change, potentially resulting in a favourable allocation of its strata fees to potential buyers.

43. Overall, I find that the applicants' renovations were a significant change to the use and appearance of the LCP crawlspace. This means the strata was unable to approve the renovations unless they were approved by a ¾ vote of the owners, which they undisputedly were not.

44. I also find the applicants have provided insufficient evidence to show the strata was aware of the extent of the crawlspace renovations before the applicants listed SL15 for sale in 2018. While the strata did not specifically deny that council members had been inside SL15 between 2016 and 2018, there is no evidence before me that any council members went downstairs to view the renovations. I find the applicants have not proven the strata unreasonably delayed raising concerns about the renovations, such that the applicants could reasonably believe they had strata's approval for the renovations. In any event, implied consent is not enough, as bylaw 6(1) requires the strata's written pre-approval for the alterations.

45. Given the above, I find the applicants did not have the strata's written approval for any alterations to the LCP crawlspace other than to replace the existing ladder with a staircase to access the crawlspace. So, I find the applicants breached bylaw 6(1).

46. I note that the parties made extensive submissions about whether the renovations converted the crawlspace from non-habitable to habitable space. This issue may be relevant to section 70(4) of the SPA, which says an owner must not increase the habitable area of a strata lot by making a non-habitable area habitable unless they seek an amendment to the schedule of unit entitlement and obtain a unanimous vote of the owners, in accordance with section 261 of the SPA. However, I find section 70(4) relates to changes made within a strata lot to increase the habitable space, and it does not apply to changes made to LCP, as was done here. In any event, neither party specifically requested any remedy in relation to the habitable space issue and,

given that I have found the applicants breached bylaw 6(1), I find it is unnecessary consider this issue further.

Was the strata's decision not to approve the renovations significantly unfair?

47. The applicants argue that if the strata did not approve the renovations, then the strata acted significantly unfairly in denying their renovation request. They say other owners have altered crawlspaces and similar LCP, both with and without strata approval, and that their LCP alterations represented only cosmetic improvements that did not impact any other owner's use or enjoyment of the property.

48. The strata submits that the applicants are out of time to bring a claim that its 2015 decision to deny the renovations was significantly unfair. In any event, the strata says its decision was made fairly and in good faith, in accordance with the bylaws and the SPA.

49. I first consider whether the applicant's significant unfairness claim is out of time.

Limitation Act

50. Under section 6 of the *Limitation Act* (LA), a party has 2 years from the time they discover a claim to start a dispute. A claim is defined under section 1 of the LA as a claim to remedy an injury, loss or damage that occurred as a result of an act or omission. I find that the applicants are claiming loss or damage associated with being unable to renovate their strata lot as a result of the strata's alleged significantly unfair decision, so I find the LA applies.

51. Under section 8 of the LA, a party discovers a claim on the first day they knew or reasonably should have known that the loss occurred, that it was caused or contributed to by an act or omission of the person against whom the claim may be made, and that a court or tribunal proceeding would be an appropriate means to remedy the loss.

52. The applicants say the strata did not provide them with any formal correspondence stating their renovations breached the bylaws until August 2019. I infer that it is the applicants' position that this was when they discovered the strata had not approved their renovations. I disagree. I find that the strata's meeting minutes delivered to the applicants on September 11, 2015 clearly stated that the applicants' proposed renovations had not been approved (other than the staircase).

53. So, I find the time for the applicants to bring a claim that the strata's decision was significantly unfair started running on September 11, 2015. Given the applicants did not apply for dispute resolution until November 20, 2020, more than 5 years after the decision, I find their claim was brought out of time and it is barred by the LA.

Retroactive approval of the renovations

54. The Dispute Notice could reasonably be interpreted as also including a claim that the strata's decision not to retroactively approve the applicants' renovations was significantly unfair. Given that both parties provided submissions on this issue, I have determined that it is properly before me. My analysis follows.

55. As noted, the strata first identified concerns about the renovations to the applicants in early 2019. In an April 12, 2019 letter to the strata, the applicants offered to sign an alteration agreement. Alteration agreements are often used for approved alterations and provide that an owner will take responsibility for the repair and maintenance of the alteration.

56. In an August 20, 2019 letter from the strata's lawyer, the strata advised it would not accept an alteration agreement. The strata also stated it was unwilling to approve the alterations unless the applicants took the steps necessary to amend the strata plan under the SPA to remove the LCP designation and amend the schedule of unit entitlement to reflect a change in the habitable area of SL15. As noted, the applicants were unable to secure the required unanimous vote.

57. Section 164 of the SPA sets out the authority of the British Columbia Supreme Court to remedy significantly unfair actions. Under section 123(2) of the CRTA, the CRT

has jurisdiction to consider whether an action enumerated under s. 121(1)(e) to (g) of the CRTA is significantly unfair (see *Time Share Section of the Owners, Strata Plan N 50 v. Residential Section of The Owners, Strata Plan N 50*, 2021 BCSC 486). I find the strata's decision to not retroactively approve the applicants' crawlspace renovations falls within CRTA section 121(1)(f), as it concerns a decision of the strata council in relation to an owner.

58. The courts have interpreted "significantly unfair" to mean conduct that is oppressive or unfairly prejudicial. "Oppressive" conduct has been interpreted as conduct that is burdensome, harsh, wrongful, lacking fair dealing or done in bad faith. "Prejudicial" conduct means conduct that is unjust and inequitable (*Reid v. Strata Plan LMS 2503*, 2001 BCSC 1578, affirmed in 2003 BCCA 126)

59. The test for significant unfairness was summarized by a CRT Vice Chair in *A.P. v. The Owners, Strata Plan ABC*, 2017 BCCRT 94, which reference to *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44: What is or was the expectation of the owner or tenant? Was that expectation on the part of the owner or tenant objectively reasonable? If so, was that expectation violated by an action that was significantly unfair?

60. The British Columbia Court of Appeal recently confirmed that consideration of the reasonable expectations of a party is "simply one relevant factor to be taken into account" (see *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342 at paragraph 89).

61. First, I find that the applicants have not shown that they expected the strata to retroactively approve their renovations. They had already attended a hearing in 2015 about the subject renovations, and the strata did not approve them. I find the applicants went ahead with their planned renovations despite knowing they were not approved, and when the strata discovered the renovations, the applicants hoped the strata would accept their proposed solution to retroactively approve them.

62. However, even if the applicants expected the strata would retroactively approve their renovations, I find that expectation was unreasonable. Contrary to the applicants'

submissions, I find there is no bylaw or SPA provision that requires the strata to not unreasonably withhold approval of a request to alter LCP. I find requests to make such alterations are within the discretion of the strata council, subject to SPA sections 71 and 164. As noted above, I find the applicants' renovations minimally required approval of ¾ of the owners as they represented a significant change to LCP. I also find the strata reasonably relied on legal advice in coming to its decisions.

63. While the applicants argue that the strata has retroactively approved alterations to CP and LCP in other cases, the strata says those alterations were made without the owners first applying to the strata. I find there is no evidence before me that the strata retroactively approved CP or LCP alterations that it had previously expressly not approved.

64. In any event, the strata offered to approve the applicants' renovations if they could obtain unanimous ownership approval to amend the strata plan under the SPA to remove the LCP designation and amend the schedule of unit entitlement. I find that this was a reasonable solution under the circumstances.

65. Overall, I find that the applicants have not proven the strata acted oppressively or prejudicially by declining to retroactively approve the applicants' renovations. I find this decision was not significantly unfair.

Must the applicants remove the renovations?

66. Bylaw 7(1) says any alteration to common property that has not received the prior written approval of the strata must be removed at the owner's expense if the strata council orders that the alteration be removed.

67. As I have found that the applicants made unapproved alterations to the LCP crawlspace, I find the strata was entitled under bylaw 7(1) to order the alterations be removed. While it is undisputed that the applicants deconstructed the bathroom they installed, I find the bathroom was not the only unapproved alteration made.

68. The strata says the crawlspace must be returned essentially to its original condition as a storage space, including removing the drywall, lighting, flooring, and other finishings on the walls and ceiling. I agree, subject to the following comments.

69. I note that the strata acknowledges the applicants' laundry was already in the crawlspace, before the current dispute arose, though it says it had no record of approving that alteration. It is undisputed that the applicants moved the existing laundry to a new location in the crawlspace during the subject renovations. I infer from the strata's submissions that it does not seek an order that the applicants remove the laundry from the crawlspace. I have no evidence before me about where in the crawlspace the laundry was previously located or whether new piping to the laundry was installed during the renovations. Therefore, I decline to order the applicants to remove the laundry machines or any piping or plumbing that services the laundry.

70. Within 60 days, I order the applicants to remove all flooring, drywall, lighting, electrical wiring, piping and plumbing related to the deconstructed bathroom, and all finishings on the walls and ceiling in the crawlspace, at their expense. I also order the applicants to allow the strata access to the crawlspace to confirm the changes have been made, as detailed in my order below.

Bylaw fines and other charges

71. As noted, the strata charged the applicants a total of $18,587.77, which it says was made up of $1,800 for bylaw fines, $13,211.10 in legal fees to enforce the bylaws, and $3,576.57 in additional property management charges related to enforcing the bylaws. While the applicants paid these amounts, they dispute their validity and seek a refund.

72. I note that the strata appears to have made an arithmetic error, as the amounts set out above add up to $18,587.67. I find the strata overcharged the applicants by $0.10. I also find the strata overcharged the applicants for legal fees, as discussed below.

Bylaw fines

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

74. 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 the continuing contravention without further compliance with the steps.

75. 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).

76. The strata sent the applicants an October 20, 2020 letter advising that it had received a complaint about their unapproved alterations to common property contrary to bylaw 6. I find the letter provided sufficient particulars of the complaint, and it provided the applicants with the opportunity to respond in writing or by requesting a hearing with in 14 days.

77. After a November 19, 2020 hearing, the strata sent the applicants a November 24, 2020 letter that confirmed its decision that the applicants had breached bylaw 6 by altering LCP without approval. The letter also advised that the strata would impose a $200 fine, and under bylaw 24, it would impose a fine every 7 days until the breach was remedied.

78. Bylaw 23 says the strata may fine an owner or tenant a maximum of $200 for each contravention of a bylaw. I find that the strata's correspondence and actions outlined above complied with SPA section 135. Given I have found the applicants breached

bylaw 6, I find the strata was entitled to impose a $200 fine on the applicants as of November 24, 2020.

79. The applicants specifically take issue with the strata's authority to impose continuing fines under bylaw 24. Bylaw 24 states:

> If an activity or lack of activity that constitutes contravention of a bylaw continues, without interruption, for longer than 7 days, a fine may be imposed every 7 days to a maximum of $200.

80. The applicants argue that bylaw 24 should be interpreted as providing a cumulative $200 maximum fine for a continuing contravention, not that the strata can impose a separate $200 fine each week. They say that the strata chose to impose the maximum $200 fine in the first week, so no further fines can be imposed.

81. Bylaws are to be given their plain and ordinary meaning (*The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32, citing *Harvey v. The Owners, Strata Plan NW 2489*, 2003 BCSC 1316). So, I must determine the correct interpretation of bylaw 24 based on its plain and ordinary meaning in the context of the bylaw as a whole. That is, I find I must consider the bylaw's purpose, as well as the plain meaning of the words.

82. I find that bylaw 24's purpose is to give the strata the ability to effectively enforce its bylaws by imposing fines for continuing contraventions.

83. While I agree that bylaw 24 would be clearer if it did not contain the phrase at the end "to a maximum of $200", I do not agree that the bylaw can be interpreted to mean that weekly fines for a continuing contravention can cumulatively add up to only $200. This would essentially defeat the purpose of having a bylaw about fines for continuing bylaw contraventions. Rather, I find that the most logical interpretation on a plain reading is that the maximum fine that can be imposed every 7 days is $200.

84. Therefore, I find the strata properly imposed a $200 fine every 7 days, and the applicants are not entitled to any reimbursement of the $1,800 in paid fines.

Legal fees and property management costs

85. Bylaw 1(4) says if the strata incurs legal or other costs in order to collect strata fees, special levies or to enforce the bylaws in relation to a strata lot, the owner of the strata lot will be responsible to reimburse the strata for the full amount of the legal costs incurred by the strata.

86. The applicants argue that any legal or property management costs related to enforcing the bylaws that were incurred before November 24, 2020 are not justified. While the strata confirmed on November 24, 2020 that it would start imposing fines, I disagree that that bylaw 1(4) is restricted to costs related to enforcing payment of bylaw fines.

87. I first address the additional property management costs the strata says it incurred. I note that while bylaw 1(4) refers to "other costs" the strata incurs to enforce the bylaws, it also says the owner is only responsible for reimbursing the strata for "legal costs". Therefore, I find the strata is not entitled to claim reimbursement for property management costs under bylaw 1(4). I order the strata to refund the applicants the $3,576.57 they paid for the strata's claimed additional property management costs.

88. Turning to the legal costs, I find the evidence shows that the strata first sought legal advice in April 2019, in response to a letter from the applicants' lawyer, and the proposal to execute a retroactive alteration agreement for the renovations. I agree with the strata that even though its lawyer's initial communications with the applicants did not specifically mention enforcement of bylaws, the claimed legal costs were incurred in relation to the applicants' contravention of the bylaws and to determine the necessary enforcement steps.

89. Specifically, the strata says the legal fees were incurred for legal opinions relating to the strata's potential liability if it permitted the applicants' unapproved alterations to remain, the applicants' proposal about granting an easement over the LCP, and correspondence with the applicants related directly to enforcing the bylaws. I find the invoices in evidence between April 2019 and November 29, 2020 support this.

90. I find the strata properly sought reimbursement of its legal costs from the applicants under bylaw 1(4). However, on my review of the of the invoices for legal services, I find they add up to $13,193.70, not the $13,211.10 charged. So, in addition to the $0.10 mentioned above, I find the strata overcharged the applicants $17.40 in legal fees.

91. Therefore, I find the applicants are entitled to a $3,594.07 refund, and I order the strata to pay them that amount.

CRT FEES, EXPENSES AND INTEREST

92. 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. The parties were both partly successful. I find the appropriate result is that neither party reimburses the other's CRT fees. Neither party claimed any dispute-related expenses.

93. The *Court Order Interest Act* (COIA) applies to the CRT. The applicants are entitled to pre-judgement interest on the $3,594.07 from February 26, 2021, the date the strata confirmed the applicants' payment, to the date of this decision. This equals $7.07.

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

ORDERS

95. Within 30 days of the date of this decision, I order the strata to pay the applicants $3,601.14, broken down as follows:

    a. $3,594.07 for overcharging legal fees and property management costs, and

    b. $7.07 in pre-judgement interest under the COIA.

96. Within 60 days of the date of this decision, I order the applicants, at their expense, to remove all unapproved alterations to the LCP crawlspace, including all flooring, drywall, lighting, electrical wiring, piping and plumbing related to the deconstructed bathroom, and all finishings on the walls and ceiling.

97. Once the 60 days has expired, I order the applicants to permit a strata council member or the property manager to enter the LCP crawlspace to confirm removal of the alterations, on 48 hours' written notice.

98. The applicants are entitled to post-judgement interest, as applicable.

99. Under CRTA section 10(1), I refuse to resolve the applicants' claim that the strata breached section 71 of the SPA by allowing other owners to make significant changes to CP without a ¾ vote.

100. I dismiss the applicants' remaining claims.

101. Under sections 57 and 58 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia. The order can also be enforced by the Provincial Court of British Columbia 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.

Kristin Gardner, Tribunal Member