



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Hallman v. The Owners, Strata Plan KAS 1821*, 2021 BCCRT 1052

B E T W E E N :

ANNE HALLMAN and ALAN HALLMAN

APPLICANTS

A N D :

The Owners, Strata Plan KAS 1821

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. The applicants, Anne Hallman and Alan Hallman, jointly own strata lot 18 in the respondent strata corporation, The Owners, Strata Plan KAS 1821 (strata).

2. The Hallmans and the strata were parties to a dispute with reasons dated October 9, 2019 and indexed as 2019 BCCRT 1179. In this new dispute, the Hallmans make the following new allegations against the strata:
 - a. the strata planted new trees under the Civil Resolution Tribunal's (CRT's) October 2019 decision and order in a negligent or significantly unfair manner,
 - b. the strata acted in a significantly unfair manner by trimming trees on strata lot 18's limited common property (LCP) too low,
 - c. the strata acted in a significantly unfair manner by approving certain front deck alterations located on strata lot 19,
 - d. the strata found the Hallmans had breached the strata's bylaws without complying with the procedural requirements of the *Strata Property Act* (SPA),
 - e. the strata produced inaccurate minutes for its November 24, 2020 strata council meeting, and
 - f. the strata failed to provide requested documents and a justification for expenses reimbursed in connection with the October 2019 CRT decision.
3. The Hallmans request different remedies that I discuss below.
4. The strata denies it did anything wrong. It also says Hallmans' claims about the font deck alterations are out of time.
5. Ms. Hallman represents the Hallmans. A strata council member represents the strata.
6. For the reasons that follow, I dismiss the Hallmans' claims.

JURISDICTION AND PROCEDURE

7. 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.

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.

The Strata's Objections about SPA Section 189.1(2)

11. Section 189.1(2)(a) of the SPA says an owner must first request a strata council hearing before commencing a CRT proceeding about a strata property dispute. This is so that parties may attempt to resolve their dispute before it further escalates. See, for example, the non-binding decision of *Ducharme v. The Owners, Strata Plan BCS 753*, 2019 BCCRT 219.
12. The strata says, and I find, that the Hallmans did not request a hearing about the accuracy of the November 24, 2020 strata council meeting minutes or the tree trimming on strata lot 18's LCP.
13. Section 189.1(2)(b) allows the CRT to waive the hearing requirement on request by an owner. I find it appropriate to do so here. This is because, given the parties' history, I find it unlikely that a formal hearing before the strata council would resolve these issues. I also find that waiving the hearing requirement is consistent with CRT's mandate to provide speedy, economical, and flexible dispute resolution.

The Strata's Late Evidence

14. The strata provided emails dated April 30 and May 4, 2021 as late evidence. The Hallmans did not object and had the opportunity to review the emails and provide evidence in response. I find the emails relevant to the issues in this dispute. For these reasons, I find the strata's late evidence admissible. I note that in any event my decision does not turn on the late evidence.

The Strata's Requested Orders

15. In submissions the strata asked for the CRT to order the Hallmans to refrain from communicating directly with the strata council members. It also asked for an order that the Hallmans cease intimidating, harassing, or bullying contractors, owners, and council members. Finally, the strata asked for an order to declare the Hallmans as vexatious litigants.

16. The strata did not file any counterclaims or pay the required fee to do so under CRT rule 3.2. I do not find the strata's claimed orders to be properly before me. So, I make no findings about them.

ISSUES

17. The issues in this dispute are as follows:

- a. Did the strata plant shrubs in a negligent or significantly unfair manner?
- b. Did the strata trim the trees on strata lot 18's LCP in a significantly unfair manner?
- c. Is the Hallmans' claim about the front deck alteration approval out of time?
- d. Did the strata comply with the procedural requirements of the SPA about a warning?
- e. Are the November 24, 2020 strata council meeting minutes inaccurate?

- f. Did the strata fail to provide requested documents and a justification for expenses reimbursed in connection with the October 2019 CRT decision?
- g. What are the appropriate remedies?

BACKGROUND, EVIDENCE AND ANALYSIS

- 18. In a civil proceeding like this one, the Hallmans as applicants must prove their claims on a balance of probabilities. I have read all the parties' submissions, including case law, but refer only to the evidence and arguments that I find relevant to provide context for my decision.
- 19. I begin with the undisputed background facts. The strata consists of 20 residential strata lots. Each strata lot is a detached dwelling surrounded by a yard. Each yard is designated as limited common property (LCP) on the strata plan for the exclusive use of the strata lot it surrounds. The Hallmans' strata lot is between strata lot 17 to its west and strata lot 19 to its east. The strata lots are on a downhill grade descending from east to west and overlooking a lake to the west.
- 20. The strata's bylaws are registered in the Land Title Office. The strata repealed and replaced its bylaws on August 4, 2017. It also registered bylaw amendments on May 28, 2018. I discuss specific bylaws below.

Issue #1. Did the strata plant shrubs in a negligent or significantly unfair manner?

- 21. I will briefly summarize the findings from the CRT Vice Chair's October 9, 2019 decision. Starting from May 2015 the strata received complaints from strata lot 19's owner that cedars on strata lot 18's LCP blocked their view. Strata lot 19 has a higher elevation than strata lot 18. Around early July 2018 the strata instructed its landscaper to cut the cedars. This left them unsightly and likely shorter than required to create a view from strata lot 19.
- 22. The CRT Vice Chair found that the strata was not entitled cut the cedars. This was because its bylaws only allowed it to levy a fine and/or engage an arborist. She

ordered the strata to replace the cedars within 90 days with an equal number of new evergreen trees of its choice. She also ordered that strata could only choose new trees with an expected height of 6 feet at maturity. This was because bylaw 31(3) prohibited an owner from planting any tree or shrub on LCP that could reasonably be expected to reach a height of 6 feet or more.

23. I now turn to this dispute. The strata subsequently hired an arborist, AG, to replace the cedars with 6 Jean Dilly spruce trees on October 24, 2019. The parties agree the spruces are currently dead or dying. The Hallmans say the strata is responsible and acted in a significantly unfair manner. For the following reasons, I disagree.
24. SPA section 164 sets out the BC Supreme Court's authority to remedy significantly unfair actions. The CRT has jurisdiction over significantly unfair actions under CRTA section 123(2), which has the same legal test as cases under SPA section 164. See *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164. Significantly unfair conduct is conduct that is 1) oppressive in that it is burdensome, harsh, wrongful, lacking in probity or fair dealing, or done in bad faith, or 2) conduct that is unfairly prejudicial in that it is unjust or inequitable: *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173 at paragraph 88.
25. In *Kunzler*, the Court of Appeal confirmed that an owner's expectations should be considered as a relevant factor. I therefore use the test from *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, to consider the following factors:
 - a. What is or was the expectation of the affected owner?
 - b. Was that expectation on the part of the owner objectively reasonable?
 - c. If so, was the expectation violated by an action that was significantly unfair?
26. The Hallmans say the strata should have chosen different trees with their input. I note this claim is close to a claim about enforcement of a CRT order, which I do not have jurisdiction over. To the extent this claim is within the CRT's jurisdiction, I do not find this expectation was reasonable as the CRT ordered the strata to choose the trees. The arborist AG also outlined his credentials in an April 25, 2021 email. He said he

planted the Jean Dilly spruces before the first frost and such spruces “grow well” in that region. I find the strata’s tree choice was therefore supported by the arborist. July 2020 photos show that the planted spruces were still green. I find they were still alive at the time. Given these facts, I find the strata’s choice was reasonable and not significantly unfair.

27. Although not necessary for my decision, my conclusion is supported by a November 18, 2019 email from a strata council member to other strata council members. The writer noted that they were unable to find any other trees because of the time of year.
28. The Hallmans also say that the spruces died due to poor placement and poor post-transplant care. Photos show that by September 24, 2020 the spruces had severe browning. Given that the spruces appeared alive until at least July 2020, I find that determining the cause of the spruces’ subsequent illness is a matter that is beyond common understanding and requires expert evidence. See *Bergen v. Guliker*, 2015 BCCA 283 at paragraph 119. As applicants, the Hallmans have the burden to provide such evidence. They have not done so. So, I find it unproven that the spruces died from any action or inaction by the strata.
29. The Hallmans also say the strata’s negligence caused the spruces’ demise. To prove negligence, the Hallmans must show the strata owed a duty of care, failed to meet the expected standard of care, and that the failure caused the claimed damages that must have been reasonably foreseeable. For the same reasons stated above, I do not find it proven that the strata caused the spruces to die.
30. In any event, I find the strata was not obligated to care for the spruces after planting them. This is because bylaw 3(3)(a) says an owner shall maintain the side and rear LCP yard areas, including “shrubs and trees located therein”. It is undisputed that the spruces are in these areas. I have also reviewed a copy of the July 2020 groundskeeper contract. The duties listed include trimming shrubs and brushes but not watering or otherwise taking care of them.
31. The Hallmans point out that they had left for the season when the spruces were planted. I find it was open to them to arrange for others to take care of the spruces in

their absence. For those reasons, I find the strata did not act in a significantly unfair manner.

32. The Hallmans also say spruces were a significant change under SPA section 71 that required approval by a resolution pass by a 3/4 vote at an annual or special general meeting. I disagree as the CRT did not order such a vote.

33. For those reasons, I dismiss this claim.

Issue #2. Did the strata trim the trees on strata lot 18's LCP in a significantly unfair manner?

34. A contract shows the strata's current groundskeeper began employment in July 2020. The Hallmans say that the groundskeeper excessively trimmed the front trees on strata lot 18's LCP to keep them at a 5-foot height. They say in comparison the front trees on strata lot 17's LCP are over 8 feet. The Hallmans say the strata did this to ensure strata lot 19 had an unimpeded westward view. The Hallmans say this is significantly unfair.

35. The strata disagrees and says the groundskeeper's logs of July, August and September 2020 show they paid no particular attention to the trees at issue.

36. The Hallmans rely in large part upon photo evidence. I find it unproven from the photos that the trees are shorter than those of strata lot 17. This is because I find the camera angles and the grade of the land make it difficult to compare the tree heights. The Hallmans also did not give any evidence to show they measured the trees.

37. Further, I find that the groundskeeper's logs show they did not trim the trees more frequently or shorter than other trees. I rely on the logs because they included the dates, hours worked, and tasks completed on the LCP of specified strata lots.

38. As I find the Hallmans' allegations about different tree heights are unproven, I dismiss this claim.

Issue #3. Is the Hallmans' claim about the front deck alteration approval out of time?

39. As noted earlier, the Hallmans say the strata should not have approved alterations to an LCP deck used by strata lot 19. The Hallmans and the strata dispute whether this claim is out of time.
40. The *Limitation Act* applies to disputes before the CRT. A limitation period is a time period within which a person may bring a claim. If that period expires, the right to bring the claim ends, even if the claim would have otherwise been successful. CRTA section 13.1 says the limitation period stops running after an applicant requests the CRT to resolve a claim.
41. I turn to the undisputed facts. In 2009 or spring 2010 the owners of strata lot 19 altered their LCP deck by extending it into their carport area. The alterations were not part of the original strata plan. In a July 24, 2012 letter, the strata council approved the alterations, subject to the owner removing the southwest 4 square foot corner of the deck and replacing a railing. Strata lot 19's owner did not immediately comply. However, a strata council member emailed Mr. Hallman on April 29, 2013, to advise that the owner had promised to fulfill these conditions by June 28, 2013. I find the owner of strata lot 19 made the requested changes by then as nothing suggests otherwise.
42. In this dispute, the Hallmans say that the strata wrongly gave conditional approval for the deck in its the July 24, 2012 letter. Section 30(2) of the *Limitation Act* says that its former version applies to a claim based on an act or omission that took place before June 1, 2013. Under section 3(5) of the former *Limitation Act*, the limitation period is 6 years from the date the owner had a right to commence an action. I find that the Hallmans had a right to commence an action on July 24, 2012 and had until July 24, 2018 to bring a claim. The Hallmans submitted their application for dispute resolution on February 9, 2021. So, I find they are out of time.
43. The Hallmans submit that a 6-year limitation period should apply starting from April 29, 2013. As noted earlier, this is when the strata advised Mr. Hallman that strata lot

19's owner promised to make the requested deck alterations. However, that would mean the limitation period expired on April 29, 2019. In that case, I find the Hallmans' claim would still be out of time.

44. The Hallmans also say they believed they CRT would adjudicate the deck extension issue in its October 9, 2019 decision. Instead, the CRT declined at paragraph 12 to make any findings because the issue was not identified in the Dispute Notice. The Hallmans alternatively suggest that they discovered their claim on October 9, 2019, the date of the decision. I do not find there to be any wording in the current or former *Limitation Act* to support such a conclusion.

45. For those reasons, I dismiss this claim as out of time.

Issue #4. Did the strata comply with the procedural requirements of the SPA about a warning?

46. As background, the strata sent an October 8, 2020 letter to the Hallmans stating it had received complaints of abusive conduct by them to another owner or contractor. The strata said such conduct breached bylaw 4(1). It quoted the bylaw, which says an owner must not unreasonably interfere with the rights of other persons to use and enjoy the common property, common assets, or another strata lot.

47. The strata made other allegations about deck and yard maintenance in the same letter. I find that I need not discuss them because the Hallmans did not request any remedies about them in the Dispute Notice.

48. The strata council held a meeting on November 24, 2020. The council decided to issue a warning to the Hallmans that berating or being abusive to other persons in the strata was unacceptable. The strata council documented its decision in the minutes and a November 30, 2020 decision letter to the Hallmans.

49. The Hallmans say the strata breached SPA section 135 by failing to provide sufficient details about the abusive conduct allegations. SPA section 135(1) says that before imposing a fine, requiring a person to pay the costs of remedying a contravention, or denying a person the use of a recreational facility, a strata corporation must give that

person written particulars of the complaint against them, and a reasonable opportunity to answer the complaint, including a hearing if requested. As the strata only issued a warning, I find the strata did not breach SPA section 135(1).

50. The strata may issue warnings under SPA section 129(2). However, there are no procedural requirements to do so. In the non-binding decision of *Chiang v. The Owners, Strata Plan LMS 4482*, 2019 BCCRT 389, a CRT member found that the strata's warning letter was essentially a discussion of behavioural expectations. She noted that the letter did not impose or threaten to impose a penalty, and the applicant was granted a hearing. She found that the applicant had not been treated in a procedurally unfair manner and there was no significant unfairness.
51. I find the reasoning in *Chiang* persuasive and applicable to this dispute. I find the strata's warning essentially outlined behavioural expectations. It did not impose or threaten to impose a penalty about the alleged abusive conduct. The strata also provided the Hallmans an opportunity to respond in writing through a hearing in its October 8, 2020 letter. I find the Hallmans were not treated in a procedurally unfair or significantly unfair manner. For those reasons, I dismiss this claim.

Issue #5. Are the November 24, 2020 strata council meeting minutes inaccurate?

52. The November 24, 2020 strata council meeting minutes state that the strata received 9 complaints from strata lot 18 about strata lot 19 and 1 complaint from strata lot 18 about strata lot about strata lot 20. Strata lot 20 is adjacent to and east of strata lot 19. The Hallmans say the minutes are inaccurate as they only made 6 complaints against strata lot 19 and none against strata lot 20.
53. The Hallmans' complaints are outlined in an October 25, 2020 email. The strata summarized the complaints as 9 separate allegations in a January 18, 2021 notice to the owners of strata lot 19. These allegations were about 1) abusive conduct, 2) illegal cannabis growing, 3) an unsightly deck, 4) an unsightly side yard, 5) an unsightly backyard, 6) parking on strata lot 20's LCP, 7) prohibited camping, 9) a wall that lacked a necessary railing, and 9) an unsafely placed potted plant. Having compared

the allegations to the Hallmans' email, I find the strata's breakdown and characterization of having received 9 complaints was reasonably accurate.

54. The Hallmans also say they did not complain about strata lot 20. However, strata bylaw 32(2) says an owner may not permit certain forms of parking on LCP they are entitled to use. As parking was at issue, I find that the strata acted reasonably in inferring the Hallmans had made 1 complaint that strata lot 20's owner had permitted prohibited parking. I find the minutes accurately reflected this.

55. In summary, I find the minutes were reasonably accurate and I dismiss this claim.

Issue #6. Did the strata fail to provide requested documents and a justification for expenses reimbursed in connection with the October 2019 CRT decision?

56. I will first consider whether the strata failed to produce certain documents. SPA section 35 sets out a list of the records that a strata must prepare and keep. Under SPA section 35(1)(d), these include books of account showing money received and spent and the reason for the receipt or expenditure. Section 36 says that on receiving a request, the strata must make the records listed in section 35 available for inspection and provide copies to an owner within 2 weeks.

57. The undisputed background is that the strata credited \$112.50 to the Hallmans' strata lot account as partial reimbursement of CRT fees in October 2019. In February 2020, the strata also credited \$685.49, plus \$9.94 notionally for interest, for the Hallmans' share of strata fees that were used to cover the expenses of defending the previous CRT proceeding. The strata did so because sections 167(2) and 189.4 of the SPA prevent a strata corporation from using contributions by an owner to the operating fund to cover the expenses of defending a CRT proceeding where that owner is an opposing party in the dispute.

58. The Hallmans questioned whether the amount reimbursed was correct. In a February 19, 2020 email, they requested the following documents: 1) invoices for the purchase of the 6 spruces, 2) invoices for replacing the cedars with the spruces including

invoices for soil, bonemeal and grinding, and 3) invoices from the strata's legal counsel from December 2018 to February 2020.

59. In this dispute the strata produced an October 29, 2019 receipt for tree removal and planting, an October 24, 2019 receipt for bone meal fertilizer, and an October 17, 2019 receipt for 6 spruces. The strata also produced detailed financial documents for the year end of October 31, 2019. These include bank statements and a general ledger for the strata. The strata objects to disclosing the legal invoices, so I find only those documents are at issue.
60. As stated in *In Kayne v. Strata Plan LMS 2375*, 2007 BCSC 1610, an owner is entitled to review books of account and financial statements, but not underlying bills, invoices or receipts reflected in the financial statements. Based on *Kayne*, I find that the Hallmans are not entitled to the legal invoices.
61. The Hallmans cited *Hamilton v. The Owners, Strata Plan NWS 1018*, 2017 BCCRT 141, in support of their position. In that decision the CRT member ordered the strata to produce documents not listed in SPA section 35. However, on appeal in reasons indexed as *The Owners, Strata Plan NWS 1018 v. Hamilton*, 2019 BCSC 863 at paragraph 27, the BC Supreme Court found that the decision to order production of documents not covered by SPA section 35 was "inconsistent with existing case law" and "unreasonable". So, based on *Hamilton* and *Kayne*, I do not find it appropriate to order the strata to provide copies of the legal invoices.
62. The Hallmans also seek an order for the strata to provide "justification" for the amounts reimbursed. I find this request too vague to order. The strata has already provided an explanation for the amount reimbursed. So, I dismiss this claim.
63. In submissions, the Hallmans raised new issues about significant unfairness under this claim. They say the strata wrongly applied the reimbursement to their strata lot account when it should have paid it to them directly. They also say the strata delayed too long before reimbursing them. These issues were not in the Dispute Notice and I find they are not properly before me. I make no findings about them.

64. In summary, I dismiss these claims.

CRT FEES AND EXPENSES

65. 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.

66. The strata paid no CRT fees and claimed no specific dispute-related expenses. So, I order none. I dismiss the Hallmans' claims for reimbursement.

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

ORDERS

68. I dismiss the Hallmans' claims and this dispute.

David Jiang, Tribunal Member