



# Civil Resolution Tribunal

Date Issued: October 1, 2021

File: ST-2020-009581

Type: Strata

Civil Resolution Tribunal

Indexed as: *Zazubek v. The Owners, Strata Plan LMS 1700*, 2021 BCCRT 1058

B E T W E E N :

BRENT ZAZUBEK and NANCY ZAZUBEK

**APPLICANTS**

A N D :

The Owners, Strata Plan LMS 1700

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Leah Volkers

## INTRODUCTION

1. This dispute is about alleged common property (CP) alterations. The applicants, Brent Zazubek and Nancy Zazubek (owners), installed curb risers on a CP curb in front of their strata lot. The owners say the respondent, The Owners, Strata Plan LMS 1700 (strata), denied their request to install the curb risers on CP. The owners say the curb risers do not alter CP in any event.

2. The owners ask for orders that the strata:
  - a. Not be allowed to restrict the owners' use of the curb risers,
  - b. Not assess fines or physically remove the curb risers, and
  - c. Cease enforcing "an inapplicable bylaw".
3. The strata says the owners' curb risers alter CP and require the strata's approval. The strata also says the curb risers are a hazard to others and interfere with CP maintenance, contrary to the strata's bylaws and the *Strata Property Act* (SPA). The owners' dispute this.
4. The owners are represented by Mr. Zazubek. The strata is represented by the strata council president.

## **JURISDICTION AND PROCEDURE**

5. 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). CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
6. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.
7. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be

admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

8. Under CRTA section 123, 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**

9. The issues in this dispute are:
  - a. Whether the curb risers alter CP,
  - b. Whether the curb risers are otherwise contrary to strata bylaws, and
  - c. What are the appropriate remedies, if any.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this one the applicant owners must prove their claims on a balance of probabilities (meaning “more likely than not”). I have reviewed the parties’ submissions and weighed their evidence, but only refer to that necessary to explain my decision.
11. The strata was created in 1998 and consists of 35 strata lots in 17 duplex-style buildings. The strata filed a complete set of bylaws at the Land Title Office on November 21, 2018, which replaced all previously filed bylaws. The strata also filed one bylaw amendment on September 20, 2019, which is not relevant to this dispute.
12. The owners purchased their strata lot in August 2020. In September 2020, the owners asked the strata’s permission to install curb risers on CP. It is undisputed that the owners’ installed rubber curb risers on the CP curb in front of their strata lot in October 2020. I find that installing the curb risers involves placing the curb risers on the CP curb. I find it is undisputed that the curb risers are not attached or affixed to the CP curb in any way.

13. On November 10, 2020, the strata denied the owners' alteration request and asked the owners to remove the curb risers from CP by November 17, 2020. At the owners' request, the strata provided further reasons for its denial on November 13, 2020. The strata again asked the owners to remove the curb risers from CP and warned that bylaw fines might be assessed if they failed to do so.
14. The owners responded to the strata November 16, 2020 and said that the curb risers did not alter CP, so they did not need the strata's permission to use them. The owners also requested a strata council hearing, which was held on December 1, 2020. At the strata council hearing, the owners' request was again denied. In a December 3, 2020 letter to the owners after the hearing, the strata confirmed its decision that the owners were not permitted to install the curb risers. It is undisputed that the owners' have removed the curb risers from CP, as requested by the strata. There is no evidence before me that the owners have been fined for placing the curb risers on CP.

***Do the curb risers alter CP?***

15. The owners say the curb risers do not alter CP, and so the strata's permission to place the curb risers on CP is not necessary. The strata disputes this and says the curb risers alter CP, and say the owners require the strata's approval under bylaw 6(1) prior to installing the curb risers on CP. Bylaw 6(1) says that owners must obtain the written approval of the strata before making a CP alteration.
16. So, the question is whether the curb risers "alter" CP, such that the owners require the strata's approval under Bylaw 6(1) to place the curb risers on CP.
17. The words "alter" and "alteration" are not defined in the bylaws or in the SPA. Both the strata and the owners referred me to case law involving CP alterations from both the BC Supreme Court (BCSC) and the CRT. I note at the outset that BCSC decisions are binding on me, and I must follow them. On the other hand, CRT decisions are not binding on me.

## **BCSC decisions**

18. The owners rely on *The Owners, Strata Plan LMS 4255 v. Newell*, 2012 BCSC 1542. In *Newell*, the Court considered whether a hot tub was an “alteration” to limited CP within the meaning of a similar bylaw to bylaw 6(1). The owner asserted that the hot tub was freestanding and did not require alterations to the building’s plumbing or electrical systems, which the strata corporation did not dispute. The strata corporation argued that because the hot tub was installed using a crane to the 37<sup>th</sup> floor, it effectively became a permanent part of the owner’s deck even if it technically could be moved. The Court found that the hot tub was not designed to be permanent and was therefore not an alteration that required strata approval.
19. *Newell* may be contrasted with *The Owners, Strata Plan VR 390 v. Harvey*, 2013 BCSC 2293, which the strata relies on. In *Harvey*, the owner pruned some bamboo and argued that it was not an alteration of common property because pruning was not a permanent change, relying on *Newell*. The court found that the bamboo plants themselves were common property, so altering the plants was altering common property.

## **Previous CRT decisions**

20. The owners rely on *Merk v. the Owners Strata Plan NW 1263*, 2019 BCCRT 500. In *Merk*, the applicant placed a hot tub and gazebo on a CP patio. The CRT member found that the hot tub and gazebo were not CP alterations, relying on *Newell*. The CRT member found that the only significant distinction between *Newell* and *Merk* was that the owner in *Newell* installed his hot tub on his LCP, whereas the applicant's hot tub was located on common property. However, I note that while the hot tub was not installed on properly designated LCP in *Merk*, it was installed on a fenced in CP patio that the CRT member found was, in practice, used by the strata lot owner as their exclusive property.
21. In contrast, the strata relies on *Graham v. The Owners, Strata Plan EPS104*, 2020 BCCRT 344. In *Graham*, the issue was with the owner moving a metal strap that was placed on a CP outlet by the strata. The CRT member found that despite the fact that

the CP outlet itself was not permanently altered, the owner moving the metal strap off of the outlet altered CP.

## ***Analysis***

22. The strata says that, similar to *Graham*, the owners' placing the curb risers on the CP curb causes a clear physical change to the CP curb. For the following reasons, I agree with the strata.
23. In *Graham* at paragraph 44, the CRT member found that *Newell* and *Harvey* are difficult to reconcile. The CRT member said his "best attempt" was to say that *Newell's* hot tub did not physically change any common property, but *Harvey's* bamboo pruning did. The change need not be significant. The CRT member went on to say that his interpretation was supported by Merriam Webster's definition of alter: to make different without changing into something else. While CRT decisions are not binding on me, I find the reasoning in *Graham* persuasive and adopt it here.
24. In this dispute, the owners' stated purpose for placing the curb risers on the CP curb was to "get the necessary lift" to prevent their vehicle's undercarriage and front bumper from scraping as they entered and exited their garage. The owners say that placing the rubber curb risers on the CP curb does not physically change the CP curb's pavement. I agree that the pavement itself has not been permanently changed because the curb risers are not physically affixed to the curb. However, I find that placing the curb risers on the CP curb changes the shape and structure of the curb, without changing the physical integrity of the curb itself. I also find that placing the curb risers on the CP curb falls squarely within Merriam Webster's definition of alter. That is, to make different without changing into something else.
25. In *Simon Fraser University Foundation v. The Owners, Strata Plan BCS 1345*, 2021 BCSC 360 (*SFU*), the court considered whether the installation of an air conditioning system altered CP, and found that it did. In doing so, the court applied previous case law and confirmed that "immaterial" changes to CP do not constitute an alteration.

26. Here, I find that the curb risers change to the CP curb's shape and structure amounts to a physical and material change, more in line with *SFU* and *Harvey*, than with *Newell*. I agree with the CRT member in *Graham* that to require a change to be significant or permanent to be considered an alteration would run against the plain meaning of the word "alter" and would allow owners to place a number of items on common property whenever they wish, so long as they could move them back on the strata's request.
27. On the facts before, I find the curb risers are a CP alteration within the meaning of bylaw 6(1), and the owners require the strata's permission to place them on the CP curb. So, I dismiss the owners' claims and order no remedies.

***Are the curb risers otherwise contrary to the bylaws?***

28. I have already found that the curb risers alter CP and require strata approval. As noted above, the owners' have undisputedly removed the curb risers from the CP curb. So, I find I do not need to address the strata's arguments that the curb risers are otherwise contrary to the bylaws.

**CRT FEES, EXPENSES**

29. 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. As the owners' were unsuccessful, I dismiss their CRT fee claim. The strata did not pay any CRT fees or claim any dispute-related expenses, and so I award none.
30. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owners.

## **ORDER**

31. I dismiss the owners' claims and this dispute.

---

Leah Volkers, Tribunal Member