



Civil Resolution Tribunal

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File: ST-2021-001673

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wallace v. The Owners, Strata Plan NW 3141*, 2021 BCCRT 1088

BETWEEN:

CLARITA WALLACE

APPLICANT

AND:

The Owners, Strata Plan NW 3141

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This strata property dispute is about alterations to common property (CP).
2. The applicant, Clarita Wallace, co-owns strata lot 7 (SL7) in the respondent strata corporation, The Owners, Strata Plan NW 3141 (strata).

3. Mrs. Wallace says the strata council approved the construction of exit stairs and railings to the rear of her strata lot. She says a newly elected strata council reversed the previous strata council's decision and refuses to allow her to complete the requested change. Mrs. Wallace seeks an order that the strata allow her to complete construction of the stairs and railings.
4. The strata says the previous strata council did not approve the stairs and that a $\frac{3}{4}$ vote resolution to approve the change to CP was defeated at a general meeting in July 2020. The strata asks that Mrs. Wallace's claim be dismissed.
5. Mrs. Wallace is self-represented. The strata is represented by a strata council member.
6. For the reasons that follow, I order the strata to call a special general meeting (SGM) to consider a $\frac{3}{4}$ vote resolution to allow Mrs. Wallace, at her cost, to complete the installation of the proposed exit stairs and railings at the rear of SL7.

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)*. 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.
8. 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.

9. 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.
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 this dispute are:
 - a. Did the strata council approve the stair installation and if so, can the strata council's approval be reversed?
 - b. Is the stair installation a significant change to the use or appearance of CP?
 - c. What is an appropriate remedy, if any?

BACKGROUND

12. In a civil proceeding such as this, as applicant, Mrs. Wallace must prove her claim on a balance of probabilities. I have read all the submissions and evidence provided by the parties, but refer only to information I find relevant to give context for my decision.
13. The strata is residential strata corporation consisting of 84 strata lots in 10 2-storey buildings. The strata was created in January 1990 and continues to exist under the *Strata Property Act* (SPA). The strata plan shows SL7 is a second storey strata lot. It also shows the ground level areas surrounding the buildings are CP and the rear balcony of SL7 is limited common property (LCP) designated for the exclusive use of SL7.

14. The strata filed a complete set of bylaws with the Land Title Office (LTO) on May 3, 2018. I find these bylaws apply to this dispute. Subsequent bylaw amendments have been filed with the LTO, but are not relevant to this dispute. I will refer to any applicable bylaws in my analysis below.
15. The background facts are largely undisputed. I summarize them as follows.
16. On May 20, 2020, at an unscheduled strata council meeting, the strata council president at the time, who co-owns SL7 with Mrs. Wallace, requested permission to install stairs from the second storey rear deck to the ground level as a secondary means of emergency egress from SL7. It is undisputed that the only entrance and exit from SL7 is the main entrance door on the front of SL7. The evidence suggests the meeting was to be informal without minutes kept, but that it became a formal meeting and minutes were prepared. The strata property manager did not attend.
17. On May 26, 2020, at the request of the strata council president, the strata management company issued a \$2,000 cheque to RBM Construction (RBM) as a deposit for “emergency backyard stairs”. There is evidence that the cheque was given to a council member, who in turn, gave it the strata council president after a heated discussion.
18. By June 8, 2020, RBM had started construction on the stairs. Around this time, the strata asked the owners of SL7 to stop work on the stairs until the alterations could be raised at a general meeting of the strata. There is no documentary evidence before me about the stop work decision being communicated to Mrs. Wallace, only a statement from the property manager in an email that the request was made.
19. On June 5, 2020, Mrs. Wallace wrote to the strata council to explain her anxiety of being trapped in SL7 with no means of escape, should a fire occur in the strata lot, which she said occurred previously. Mrs. Wallace requested permission to install the exit stairs at her cost. There is no evidence the strata provided a response.

20. On June 22, 2020, Mrs. Wallace wrote to the strata council and all strata owners requesting that the exit stairs be approved for safety reasons and because of her stated medical conditions of anxiety and depression. I find this request was made after an annual general meeting (AGM) notice was issued for July 30, 2020. The July 2020 AGM notice included 2 $\frac{3}{4}$ -vote resolutions about the stairs. The first was to approve a \$60,000 special levy for the purpose for constructing emergency exit stairs for all 13 second-storey strata lots that did not have rear stairs, including SL7. The second was to approve the construction of the exit stairs for only SL7. The meeting minutes were not provided in evidence, but it is undisputed that both resolutions were defeated because the 75% majority required for them to pass was not achieved.
21. Mrs. Wallace requested a strata council hearing to discuss completion of the exit stairs, which was held March 25, 2021. The strata denied her request in an April 1, 2021 letter. I note Mrs. Wallace applied for CRT dispute resolution services on February 25, 2021 but it was not until April 20, 2021 that the CRT issued the Dispute Notice.

EVIDENCE AND ANALYSIS

Did the strata council approve the stair installation and if so, can the strata council's approval be reversed?

22. The evidence confirms that the strata council consisted of 4 members at the time of the May 20, 2020 unscheduled strata council meeting. All 4 council members attended the meeting, which was intended to be discussion about a single unrelated issue facing the strata. However, it appears the council president raised the exit stair issue for SL7, and minutes were taken. Other unrelated matters were also discussed.
23. As for the exit stairs, there appears to have been a misunderstanding as to whether or when the strata council approved the exit stair construction. In a May 21, 2020 email to the property manager, the day after the meeting, 1 council member briefly summarized what was discussed at the meeting and wrote that “[the council president] is obtaining quotes to install a fire escape stairway for his unit. All the end

units are missing stairways”. The minutes state “quotes are being obtained and Council will review and decide once details are provided”.

24. A second strata council member wrote in a June 8, 2020 email to the property manager, that the strata council considered Mrs. Wallace’s request at the May 20, 2020 meeting, “agreed on the job to be done and ... agreed to move forward on this project”. In the email, the member recalls discussing 2 quotations and expecting a third, as well as discussing giving a \$2,000 deposit, which was roughly half of the total quotation. The council member’s recollection aligns with the recollection of the strata council president, which was provided to the strata property manager via text message in what infer was in December 2020.
25. In a November 11, 2020 letter to the property manger, the remaining strata council member stated the work was never approved.
26. Despite these apparent differing views on approval of the stairs, the strata provided a \$2,000 deposit cheque dated May 26 to RBM as was provided in its quotation for the work to commence. In a written statement, Marc Dixon, an employee or principal of RBM, says he met with one of the strata council members in May 2020 “to discuss the requirements and get instructions for building an [emergency] backstairs at [SL7]”. None of this is disputed. Based on the overall evidence, even if the strata council did not approve the work at the May 20, 2020 meeting, I find it subsequently approved the stair construction by providing the \$2,000 deposit to RBM.
27. I now turn to the question of whether the strata council can reverse its decision and find that it can.
28. Under SPA sections 4 and 26, the elected strata council must exercise the powers and perform the duties of the strata. The SPA and bylaws are silent on the issue of revisiting council decisions, and I could not locate any case law directly on point. Based on my review of the legislation, I find the elected strata council that has authority to exercise the powers and perform the duties of the strata. Absent any express prohibition for a strata council to change its decision on a particular matter,

of which there are none here, I find it is entirely appropriate, practical, and reasonable for a strata council to do so. There could be various reasons a strata council would change its position or point of view. These include further consideration of the issue including new information being brought to the strata council's attention, such as consideration of whether the stair installation is a significant change in the use or appearance of CP under SPA section 71, as I discuss below.

29. I disagree with Mrs. Wallace that her request was properly presented at the May 2020 council meeting. Bylaw 21 addresses alterations to CP and requires an owner to submit a detailed written request to the strata and obtain written permission of the strata before altering CP. Mrs. Wallace's request was verbally presented by the strata council president at the May 2020 meeting. It was not until June 5, 2020 that Mrs. Wallace first wrote to the strata council for permission to install the stairs. The written request was made after the construction had started and did not contain any detailed information as required by the bylaw. Also, there is no evidence the strata ever provided written approval for Mrs. Wallace to have the stairs installed.
30. I also disagree with Mrs. Wallace that the fact the strata may have contracted with RBM to construct the exit stairs binds the strata to complete the installation. First, there is no signed contract between the strata and RBM in evidence. Second, any contractual agreement between the strata and RBM is separate from the strata approving the stair construction, or reversing its decision to do so.
31. For these reasons, I find the strata essentially approved the stair construction, although not in writing, and later changed its decision when it decided to put the stair construction issue before the owners at the July 2020 AGM. I also find the strata was within its authority to change its decision, given it was the newly elected strata council that reversed the previous strata council's approval for the stairs.

Is the stair installation a significant change to the use or appearance of CP, or exempt from a ¾ vote under SPA section 71?

32. SPA section 71 says a strata corporation must not make significant changes in use or appearance of common property unless the change is approved by a resolution passed by a ¾ vote or there are reasonable grounds to believe that immediate change is necessary to ensure safety or prevent significant loss or damage. I find section 71 also governs changes made by an owner that have been authorized by a strata corporation, which is the case here. I will first address the exemption provision.
33. Mrs. Wallace argues a ¾ vote resolution is not required to approve the stair installation as there are reasonable grounds to believe that immediate change is necessary to ensure safety, as set out under SPA section 71(b). She says there is a safety issue with only 1 means of egress from SL7 and that the current Building Code requires 2 means of egress. The strata relies on investigation by a past strata council president as reported in the March 2007 AGM minutes, that the municipal building and fire inspectors advised that there was no requirement to have rear access stairways to the second floor strata lots. Mrs. Wallace quoted several sections of what she says is the current Building Code but did not provide a copy of the Building Code. Nor did she provide details on when or if the alleged current Building Code replaced the Building Code in effect when the strata was constructed. In particular she did not argue the current Code was retroactive. Given the lack of information about Building Code requirements, I find Mrs. Wallace has not proven 2 means of egress are required from SL7 as she claims. Therefore, I find she has not proven there is an immediate safety issue to exempt the need for a ¾ vote under SPA section 71(b).
34. The criteria for determining what is a significant change in use and appearance under SPA section 71 was set out by the Supreme Court of BC in *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333 at paragraph 19 as follows:
- a. A change would be more significant based on its visibility or non-visibility to residents and its visibility or non-visibility towards the general public;

- b. Whether the change to common property affects the use or enjoyment of the unit or number of units or an existing benefit of a unit or units;
 - c. Is there a direct interference or disruption as a result of the changed use?
 - d. Does the change impact on the marketability or value of the unit?
 - e. The number of units the building may be significant along with the general use, such as whether it is commercial, residential or mixed-use;
 - f. Consideration should be given as to how the strata corporation has governed itself in the past and what it is followed. For example, has it permitted similar changes in the past? Has it operated on a consensus basis or has it followed the rules regarding meetings, minutes and notices as provided in the SPA?
35. Also, at paragraph 28, the court found that incorporating a portion of CP ostensibly into a private area, would be a significant change on its own.
36. Mrs. Wallace cites *Frank v. The Owners, Strata Plan LMS 355*, 2016 BCSC 1206 (*Frank*) as authority why section 71 should be interpreted broadly such that emergency stairs and railings fall under the strata's duty to repair and maintain. The decision is *Frank* was affirmed by the BC Court of Appeal in *Frank v. The Owners, Strata Plan LMS 355*, 2017 BCCA 92.
37. I agree with Mrs. Wallace that the court in *Frank* declared the installation of railings and related safety measures fell within the strata corporation's duty to repair and did not require approval of a $\frac{3}{4}$ vote under SPA section 71(a). However, as the strata correctly points out, the facts in *Frank* are different than the facts in this dispute. In *Frank*, the owner replaced existing railings that did not originally meet building code height requirements. Here, there were no existing stairs. Mrs. Wallace wants to install new stairs and railings. Further, as mentioned, Mrs. Wallace has not proven the building code has been breached by not having a second means of egress.

38. Based on my review of the evidence, following *Foley*, I find the installation of Mrs. Wallace's proposed stairs and railings would result in a significant change to the appearance and use of CP.
39. The changes would be visible to owners of several strata lots located in the same building as SL7. Based on the location of SL7 on the northern boundary of the strata property next to a municipal roadway, I find it is likely the changes would be visible by the general public.
40. I find the changes would adversely affect strata lot 1, located immediately below SL7. However, I acknowledge Mrs. Wallace provided a letter from the owner and resident of strata lot 1 that supported the stair and railing installation. Therefore, I find there would be no direct interference or disruption as a result of the changed use.
41. There was no evidence provided about any possible change in market value of SL7 as a result of the installation, but I find it is more than likely the market value of SL7 would increase. As the strata notes, the market value of strata lot 1 may also be negatively impacted.
42. There is no evidence the strata does not follow the SPA, or that other similar alterations have been permitted without a $\frac{3}{4}$ vote approval, so I find that the strata generally operates in accordance with the SPA and bylaws.
43. I also find the installation of the stairs leading from the CP ground area to the LCP rear deck of SL7 would essentially incorporate a portion of the CP ground area into a private area because the stairs would only be used by SL7.
44. Weighing all of these factors, I find the installation of the stairs and railings as requested by Mrs. Wallace would be a significant change in the use and appearance of CP within the meaning of SPA section 71.

What is an appropriate remedy?

45. The court in *Foley* found it appropriate to let the strata owners determine, by $\frac{3}{4}$ vote at a general meeting, whether the alterations made in that case should stand. I find

the same remedy is appropriate here. Although a $\frac{3}{4}$ vote resolution was put to the owners about approving the exit stairs at the July 2020 AGM (and defeated), neither the AGM notice nor minutes are before me. Therefore, I am unable to conclude if the language used in the resolution clearly identified that Mrs. Wallace offered to pay for the stair and railing installation or not. The parties are divided on this matter. I also agree with Mrs. Wallace that a second $\frac{3}{4}$ vote to consider a special levy of \$60,000 to install exit stairs at all 13 second-floor end units may have been misleading or confusing to the strata owners.

46. I note that Mrs. Wallace, in her submissions, argued the stairs and railings should be installed by the strata. This argument was based on her submission that there was a contract between the strata and RBM, which is not proven. It also differs from her request in the Dispute Notice for an order that she be permitted to complete the installation of the stairs and railings. I find it would be procedurally unfair for me to consider Mrs. Wallace's change in her requested order and decline to do so.
47. As a result, I order the strata to call an SGM within 30 days of the date of this decision to consider a $\frac{3}{4}$ vote resolution to approve the installation of the requested exit stairs and railing at the rear of SL7 at Mrs. Wallace's cost. I note the bylaws permit the strata to require Mrs. Wallace sign an alteration agreement if the $\frac{3}{4}$ vote resolution passes. However, I leave decision to the discretion of the strata.

CRT FEES AND EXPENSES

48. 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 not to follow this general rule. I find Mrs. Wallace was not successful in this dispute, so I do not order reimbursement of CRT fees. Neither party claimed disputed-related expenses, so I order none.
49. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mrs. Wallace.

ORDER

50. I order that, within 30 days of this decision, the strata must call an SGM to consider a $\frac{3}{4}$ vote resolution to allow Mrs. Wallace to complete the installation of exit stairs and railings at the rear of SL7, at her cost.

J. Garth Cambrey, Vice Chair