



Civil Resolution Tribunal

Date Issued: October 25, 2021

File: ST-2021-002628

Type: Strata

Civil Resolution Tribunal

Indexed as: *Turenne v. Blyth*, 2021 BCCRT 1128

BETWEEN:

MAXWELL TURENNE

APPLICANT

AND:

ELIZABETH BLYTH

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Roy Ho

INTRODUCTION

1. This strata property dispute is about fencing in a strata corporation.

2. The applicant, Maxwell Turenne, and the respondent, Elizabeth Blyth, each own 1 of the strata lots in The Owners, Strata Plan VIS 3410 (strata), which is a duplex. Mr. Turenne owns strata lot 1 (SL1) and Ms. Blyth owns strata lot 2 (SL2).
3. The strata corporation, The Owners, Strata Plan 1318 (strata) is not a party to this dispute.
4. On an unspecified date, Mr. Turenne repaired a fence that was allegedly part of the strata's common property. As a part of that repair, Mr. Turenne installed a gate and a portion of fencing which allegedly limited Ms. Blyth's access to common property. Ms. Blyth originally brought a claim against Mr. Turenne to have the gate and that portion of the fence removed. However, she withdrew her claim during the CRT's facilitation stage because Mr. Turenne had removed the gate and the portion of the fence that was in issue.
5. The remaining claim is Mr. Turenne's. He seeks an order that Ms. Blyth reimburse him \$1,500 for the remainder of the fence repairs. He says she is responsible for half the costs under the *Strata Property Act* (SPA), and also because she had allegedly agreed to pay for half of the fence repairs.
6. Ms. Blyth denies Mr. Turenne's claim. She says that the fence is not the strata's property but a neighbour's property. She asks me to dismiss this dispute.
7. The parties are self-represented in this dispute.
8. For the reasons set out below, I dismiss this dispute.

JURISDICTION AND PROCEDURE

9. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). 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.

10. 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 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.
11. 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.
12. Under CRTA section 61, the CRT may make any order or give any direction in relation to a CRT proceeding it thinks necessary to achieve the objects of the CRT in accordance with its mandate. The CRT may make such an order on its own initiative, on request by a party, or on recommendation by a case manager.
13. 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

14. The issues in this dispute are:
 - a. Is the fence common property?
 - b. Whether the strata must reimburse Mr. Turenne \$1,500 for fence repairs?

EVIDENCE AND ANALYSIS

15. In a civil claim like this one, as the applicant, Mr. Turenne must prove his claims on a balance of probabilities. This means the CRT must find it is more likely than not that his position is correct. I have reviewed all the parties' evidence and submissions but refer only to what I find relevant to explain my decision. While Mr. Turenne provided submissions, he did not provide any evidence, despite being given an opportunity to do so.
16. The strata was created in 1984 under the *Condominium Act* and continues to exist under the SPA. The strata did not file bylaws with the Land Title Office, so the Standard Bylaws under the SPA apply to this dispute.
17. The relevant bylaw in this dispute is bylaw 8. Bylaw 8 says that the strata must repair and maintain common property fences, railings and similar structures that enclose patios, balconies and yards.
18. The strata consists of 2 strata lots in a duplex-style building. The strata plan filed in the Land Title Office shows SL1 and SL2 are adjacent to each other, with the same unit entitlements. The land on the east side of the strata lots is designated as common property as defined in SPA section 1. The remaining sides of the strata lots are designated as limited common property for their respective strata lot's exclusive use.
19. The strata plan does not show any fencing on the common property. It is undisputed that the fence in issue borders a neighbouring property. However, as noted above, Ms. Blyth disputes that the fence is within the boundaries of the strata's common property. She says that the fence belongs to the neighbouring property.
20. Mr. Turenne says that the fence is the strata's common property. He says that the fence was "dilapidated" and fell on his car twice, so it required repairs. It is undisputed that Mr. Turenne hired a contractor to repair that fence. The contractor's repair invoice is not before me in evidence.
21. Mr. Turenne says that Ms. Blyth must pay \$1,500 for half of the fence repairs under the SPA. He further says that Ms. Blyth agreed to do so. Ms. Blyth does not directly

address this allegation, but I infer that she denies this agreement given that she says an adjacent neighbour owns the fence and not the strata. I find it unlikely that Ms. Blyth would agree to pay for half a fence if the strata did not own it.

22. In any event, even if such an agreement existed, I find nothing turns on it. This is because an agreement about cost splitting between strata lot owners does not affect the strata's responsibilities under the bylaws or the SPA. The strata remains responsible for the repair and maintenance of common property under the SPA section 72 and bylaw 8. There is no mechanism under the SPA for the parties to contract out of the SPA or the bylaws.
23. Under section 66 of the SPA, a strata lot owner has an undivided interest in the common property and common assets of the strata corporation based on their unit entitlement, which is set out in the strata plan. Under section 99 of the SPA, the general rule is that common property repair and maintenance expenses are shared by the strata lot owners based on their unit entitlement. The question then is whether the strata is responsible for the fence repair and maintenance.

Is the fence common property?

24. As noted above, Mr. Turenne did not provide any evidence. Based on the evidence before me, I am unable to determine whether the fence is on common property. As noted, the strata plan does not show any fencing. Yet, there is no survey certificate in evidence showing that the fence was on the strata's common property. There are no photos in evidence from Mr. Turenne showing the repaired fence, so that I can make a finding that the fence was on common property and not on the neighbouring property. While Ms. Blyth submitted 1 photo in evidence that depicts a corner of a building, the parties did not provide any submissions or explanation for it. The photo shows fencing bordering at least 2 sides of the building. However, I do not find this photo helpful. I am unable to determine from this photo whether either of those fences is the fence that Mr. Turenne had repaired.
25. As Mr. Turenne bears the burden of proof, I find that he has failed to prove that the fence is on common property.

Must the strata reimburse Mr. Turenne \$1,500 for fence repairs?

26. As I have found Mr. Turenne has not proven that the fence is part of the strata's common property, I find that Ms. Blyth does not need to reimburse Mr. Turenne under the SPA.

27. I note I would reach the same conclusion that Ms. Blyth does not need to reimburse Mr. Turenne even if the fence is on common property, given the evidence before me. Mr. Turenne has not provided the contractor's invoice showing that he had incurred a fence repair cost of \$3,000. As Mr. Turenne bears the burden of proof, I find that he has failed to prove he incurred a cost.

28. For the above reasons, I dismiss Mr. Turenne's claims and this dispute.

CRT FEES and 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 Mr. Turenne was unsuccessful in this dispute, I dismiss his claims for CRT fees. Neither party claimed dispute-related expenses.

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

ORDER

31. I dismiss Mr. Turenne's claims and this dispute.

Roy Ho, Tribunal Member