



# Civil Resolution Tribunal

Date Issued: November 19, 2021

File: ST-2020-006291

Type: Strata

Civil Resolution Tribunal

Indexed as: *Braun v. The Owners, Strata Plan 1295*, 2021 BCCRT 1221

**B E T W E E N :**

RALPH BRAUN and MAUREEN BRAUN

**APPLICANTS**

**A N D :**

The Owners, Strata Plan 1295, JACK SCHANDL, and FIONA  
SCHANDL

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

David Jiang

## **INTRODUCTION**

1. This dispute is about 2 covered pergolas on 2 separate patios. The applicants, Ralph Braun and Maureen Braun, own a strata lot in the respondent strata corporation, The Owners, Strata Plan 1295 (strata). The respondents, Jack Schandl and Fiona

Schandl, own 1 of the 2 strata lots with an adjacent patio with a pergola on it. The owners of the other strata lot and pergola are not a party to this dispute.

2. The Brauns say that the pergolas each required approval by a  $\frac{3}{4}$  vote of owners in the strata under the bylaws and the *Strata Property Act* (SPA). The Brauns say that the strata held no such votes. They seek the following orders: 1) for the strata to hold a vote under the SPA and bylaws to approve the pergolas, 2) for the strata to define what a significant change is in the bylaws with owner approval, and 3) for the strata to provide further details in its minutes about owner requests for modifying a strata lot or common property. The Brauns say the details should include the owner's strata lot number, details of the request, and when the request is approved. The Brauns request no specific orders against the Schandls.
3. The strata disagrees and says it could approve the pergolas without votes. It also says putting further information in the minutes would violate the owners' privacy interests. The Schandls essentially take the same position as the strata.
4. The Brauns and the Schandls represent themselves. A strata council member represents the strata.
5. For the reasons that follow, I find the Brauns have partially proven their claims and I make the orders set out below.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. 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.

8. 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.
9. 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.
10. CRT documents incorrectly show the name of the respondent as The Owners, Strata Plan VIS 1295. Based on section 2 of the SPA, the correct legal name of the strata is The Owners, Strata Plan 1295. Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, I have exercised my discretion under section 61 to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the strata's name above.

### ***The Brauns Claims against the Schandls and CRTA section 92(1)***

11. The Brauns only sought orders against the strata. So, I find it appropriate to dismiss the Brauns' claims against the Schandls.
12. The Schandls say the Brauns provided false information to the CRT contrary to CRTA section 92. That section says it is an offence to provide false or misleading evidence or information in a CRT proceeding. The CRT has no jurisdiction to impose fines or a conviction under section 92. I have considered the parties' evidence and submissions and where relevant address the weight I give them below.

## **ISSUES**

13. The issues in this dispute are as follows:

- a. Did the strata approve the pergolas contrary to the SPA or the bylaws, and if so, what is the appropriate remedy?
- b. Must the strata provide further details in its minutes when it approves owner requests for modifying a strata lot or common property?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

14. In a civil proceeding like this one, the Brauns as applicants must prove their claims on a balance of probabilities. This means more likely than not. 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. The parties each provided submissions. The Brauns and Schandls also provided evidence. The strata did not, though the CRT provided it the opportunity to do so.
15. I begin with the undisputed background. As shown on the strata plan, the strata provides residential townhouse-style housing. The Brauns jointly own strata lot 10. The Schandls jointly own strata lot 23. The plans shows each strata lot has an adjoining patio designated as common property. The parties say that the patios are now limited common property (LCP) and I accept this for the purposes of this dispute. As discussed below, nothing turns on which is the case. The strata registered a full set of bylaws in the Land Title Office in December 2001 and other subsequent amendments. I discuss the relevant bylaw below.
16. The strata council's meeting minutes show that in June 2019 the strata council conditionally approved an owner's request to erect a pergola on their adjoining patio. The covered pergola was built on strata lot 2's patio around spring 2020. In June 2020, the Schandls asked the strata for permission to erect a pergola on their adjoining patio, "similar in appearance to that of [strata lot] 2". The strata approved the request that same month. I will discuss the covered pergolas in greater detail below.
17. On July 16, 2020, the Brauns requested a hearing about the pergola on strata lot 2. They expressed concerns that it was a significant change and required approval by

a ¾ vote of owners. The strata held the requested hearing on July 28, 2020 but took no action. The Brauns applied for dispute resolution with the CRT on August 19, 2020.

***Issue #1. Did the strata approve the pergolas in breach of the SPA or the bylaws, and if so, what is the appropriate remedy?***

18. Section 71 of the SPA says that a strata corporation must not make a significant change in the use or appearance of common property or land that is a common asset unless the change is approved by a resolution passed by a 3/4 vote at an annual general meeting (AGM) or special general meeting (SGM), or there are reasonable grounds to believe that immediate change is necessary to ensure safety or prevent significant loss or damage. Changes to common property made by individual owners may also trigger SPA section 71. See *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333.
19. Similarly, bylaw 8(1) says an owner must not make any significant changes to the common property, including limited common property, unless approved by a 3/4 vote.
20. As the patios are common property or LCP the test outlined in *Foley* still applies. In *Foley*, the court summarized the criteria for a significant change at paragraph 19 as follows:
  - a. A change would be more significant based on its visibility to residents and towards the general public.
  - b. Whether the change to common property affects the use or enjoyment of a unit or a 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 in the building may be significant along with the general use, such as whether it is commercial, residential, or mixed.
  - f. Consideration should be given as to how the strata corporation has governed itself in the past and what it has allowed. 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?

21. Court decisions suggest that the more permanent the change, the more significant it is. See for example, *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126 and *Sidhu v. The Owners, Strata Plan VR1886*, 2008 BCSC 92.
22. The parties cited many cases and I reviewed them all. I find the most relevant is *Giddings et al v. The Owners, Strata Plan BCS 3620*, 2018 BCCRT 61. In that decision the owners argued that their gazebo was not a significant change to the use of common property because it was free-standing, unattached to the building, and covered less than a third of the patio. The CRT Vice Chair disagreed. She noted it had a solid roof with a span of several feet, and it could not be collapsed or removed by a single person in a few minutes. Similarly, in *Satgunam v. Strata Plan BCS 1135*, 2021 BCCRT 821 and *Borghardt v. Strata Plan BCS 1135*, 2021 BCCRT 777, another CRT member applied the reasoning in *Giddings et al*. He found that a sunshade and patio cover were similarly significant changes that required approval by a  $\frac{3}{4}$  vote under SPA section 71.
23. I turn to the facts. I will first consider the covered pergola located on strata lot 23's adjacent patio as there is more evidence about it. As shown in the photos, it is a free-standing structure that covers the vast majority of the concrete slab that is the patio area. It consists of 4 wooden legs and a solid roof made of translucent polycarbonate panels. The roof materials are specified in the June 8, 2020 strata council meeting minutes. A video shows its measured length and width are about 10 x 8 feet. Photos show the pergola is about 1 storey high. The Schandls explain the pergola is attached to the slab through anchored supports. They say the supports are screwed or bolted into the ground. Given its size and degree of attachment, I find that the pergola cannot be moved by a single person in a few minutes.
24. I find the non-binding decisions of *Giddings et al*, *Satganum* and *Borghardt* suggest the pergola is a significant change. I find the pergola is likely larger and has a greater

degree of permanence than what is described in those decisions. This is because it covers nearly the entire patio rather than a smaller portion of it.

25. I find a more detailed examination of the factors in *Foley* supports the same conclusion. The Schandls' video and other photos show it is visible to the public while driving southbound on the strata's driveway. Photos show it is also visible to at least 1 neighbor from their patio. There are no fences to block line of sight. I also find it is visually inconsistent with the rest of the construction in the strata. The pergola's posts are much darker than the building's off-white siding. The translucent roof is unlike other building materials. The Schandls provided letters from other owners in support of the pergola, but I place little significance on this because at least one resident, JV, emailed the strata in June 2020 to express concerns about both pergolas at issue. Further, the letters are not determinative of whether the change is significant.
26. I find the pergola would positively affect the enjoyment of strata lot 23 since it covers the entire patio from the elements. I find the pergola is meant to be a permanent change based on its degree of attachment and that lack of any indication that its use is only seasonal. This also supports my conclusion that it is a significant change.
27. I also find strata lot 23's pergola is unlike other structures the strata has approved in the past, save for the pergola on strata lot 2. The Schandls pointed out that the strata council approved arbours for strata lots 12 and 55. Based on photos I find them to be much smaller, open-roofed structures. I find the evidence shows the pergolas at issue are in a class of their own.
28. The Schandls rely on *Soong et al v. The Owners, Strata Plan NW 2583*, 2019 BCCRT 879. In that decision, the Vice Chair found that a backyard gazebo was not a significant change in the use or appearance of common property. I find *Soong* distinguishable because in that dispute there was a solid fence that blocked visibility of part of the gazebo. Strata lot 2 and 23's adjacent patios are not fenced.
29. As for the other *Foley* factors, I find it unproven that strata lot 23's pergola directly interferes with others or changes the strata lot's marketability. The strata has 55 residential strata lots. I find this factor has little bearing on whether the change is

significant. Ultimately, I find the other factors identified above are the key ones. This is consistent with the reasoning in the CRT's past decision which I have cited above.

30. I now turn to strata lot 2's pergola. For the same reasons, I find it to be a significant change in the use and appearance of common property. Photos show it has 4 wooden posts, a polycarbonate roof, and covers most or all of the patio. Strata lot 23 also requested a pergola similar to that on strata lot 2. So, I find that the 2 pergolas are essentially the same. This includes the materials, appearance, size, and anchorage system. I find the same analysis applies. One noteworthy difference is that strata lot 2 is nearer to the edges of the strata plan than strata lot 23. However, I find the pergola would still be visible to neighbours. As stated above, there are no fences to block visibility.
31. For those reasons, I conclude that the pergolas on strata lots 2 and 23 are each significant changes in the use and appearance of common property under SPA section 71 and require approval by a 3/4 vote at an AGM or SGM.
32. Given this, I order the strata to, within 90 days of the date of this decision, hold an SGM or AGM to vote on a resolution under SPA section 71 to approve the already-erected covered pergolas on the patios of strata lots 2 and 23. If the resolution is not approved by a 3/4 vote at the general meeting, then within 90 days of the general meeting, the strata must remove the pergolas and restore the common property to its state before they were installed. I decline to make a finding on whether the strata must pay for this as there may be pre-existing agreements about this that apply.
33. The Brauns requested an order for the strata to define what a significant change is in the bylaws. I decline to do so and dismiss this claim. The term is already defined in case law, which the Brauns cited at length. I also agree with the strata that it would be impractical for it to define the term with greater specificity given the numerous situations where this can arise.



***Issue #2. Must the strata provide further details in its minutes when it approves owner requests for modifying a strata lot or common property?***

34. The Brauns say the strata council meeting minutes should identify the strata lot number from which an alteration request is made. The strata disagrees.
35. SPA section 35(1)(a) says the strata must keep minutes of strata council meetings, including the results of any votes. Non-binding CRT decisions have found that there is an implicit requirement for the minutes to be reasonably accurate and not misleading. I agree this is the case. See, for example, *The Owners, Strata Plan VR 211 v. Knight*, 2020 BCCRT 193 and *The Owners, Strata Plan 1769 v. Dagenais*, 2020 BCCRT 957.
36. The Brauns acknowledge it is not is “not legally mandatory” for the strata to identify strata lot numbers in the minutes. I agree and find the bylaws and the SPA lack any requirement for the strata to identify strata lot numbers in the minutes. For this reason, I decline the Brauns’ request. Further, I also find that the Brauns would likely be able to obtain such information by requesting documents under SPA section 36. This section is mandatory and requires the strata to provide a requesting owner unredacted copies of documents listed in SPA section 35. See, for example, the non-binding decision of *Horton v. The Owners, Strata Plan NW2*, 2021 BCCRT 1153. I find this to be another reason to decline the order.
37. For those reasons, I dismiss this claim.

**CRT FEES AND EXPENSES**

38. 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. I find the Brauns have been largely successful. I therefore order the strata to reimburse the Brauns for CRT fees of \$225. The Brauns claimed no specific dispute-related expenses so I order none.

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

## **ORDERS**

40. I order that:

- a. Within 90 days of the date of this order, the strata must hold an SGM or AGM to vote on a resolution under SPA section 71 to approve the already-erected covered pergolas on the patios of strata lots 2 and 23.
- b. If the resolution is not approved by a  $\frac{3}{4}$  vote at the above-mentioned general meeting, then within 90 days of the general meeting, the strata must remove the covered pergolas and restore the common property to its state before they were installed.
- c. Within 14 days of the date of this order, the strata must reimburse the Brauns \$225 in CRT fees.

41. I dismiss the Brauns' remaining claims, including all claims against the Schandls.

42. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court 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.

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David Jiang, Tribunal Member