



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Dorn v. The Owners, Strata Plan EPS1433*, 2021 BCCRT 1256

B E T W E E N :

WALTER DORN

APPLICANT

A N D :

The Owners, Strata Plan EPS1433

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This strata property dispute is about road access to a strata lot in a bare land strata corporation.

2. The applicant, Walter Dorn, owns strata lot 24 (SL24) in the respondent strata corporation, The Owners, Strata Plan EPS5206 (strata). The strata was created in 2014, and is a bare land strata corporation consisting of 27 strata lots and some common property (CP) roadways.
3. Mr. Dorn says the only road access to SL24 is via an unpaved CP emergency access road, which is substandard and unfinished. He says all the other strata lots in the strata have paved access, and the strata is legally obligated to create paved access to SL24. Mr. Dorn requests an order that the strata provide paved access from the strata's main CP road (Skywater Drive) to the edge of SL24.
4. The strata denies Mr. Dorn's claim, and says it is not responsible for the cost of creating a paved access.
5. Mr. Dorn is self-represented in this dispute. The strata is represented by a strata council member.
6. For the reasons set out below, I dismiss Mr. Dorn's claim.

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 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.

ISSUE

11. Must the strata provide paved access to SL24?

BACKGROUND

12. Documents filed with the Land Title Office (LTO) show that the strata was created in June 2014, and in the same month Mr. Dorn bought SL24. Mr. Dorn says he decided to start developing the main building site on SL24 in 2020.
13. The strata plan shows that SL24 is 15.25 hectares in size, and has an irregular shape. It is located on the northern border of the strata property. CP roads border the southern and western sides of SL24. One road, which Mr. Dorn refers to as the emergency exit road (emergency road), runs along the west side of SL24. The emergency road connects to Skywater Drive, which runs along the south side of SL24.
14. Mr. Dorn says Skywater Drive is paved and the emergency road is unpaved, which the strata does not dispute. The strata plan shows that Skywater Drive is also wider than the emergency road.
15. The northwest corner of SL24 is bordered by a road that is part of a different strata plan, so I accept that Mr. Dorn does not have regular access to this private road. The

emergency road runs from the private road to Skywater Drive, and Skywater Drive connects to a public road outside the strata plan.

16. The strata repealed and replaced its bylaws by filing new bylaws in the Land Title Office (LTO) in August 2015. The strata filed some bylaw amendments after that, but I find they are not relevant to this dispute.

POSITIONS OF THE PARTIES

17. Mr. Dorn says that under *Strata Property Act* (SPA) section 72, the strata must repair and maintain the CP roadways. Mr. Dorn says that as part of this duty, the strata must provide paved access to SL24, from the strata's main access road (Skywater Drive) to the edge of SL24. This would include adding a culvert.

18. Mr. Dorn says the current road access to SL24 is by the unpaved emergency exit road, which is problematic in the following ways:

- Substandard and unfinished, with embedded bedrock.
- Rough, poorly maintained.
- Dusty in summer and muddy or covered with deep snow at other times of year.
- Not associated with a postal address, therefore hard to find, and not suitable for deliveries, services, or to establish a permanent residential address.
- SL24's assigned legal address cannot be directly accessed from the strata's CP road system.
- "Rather long" detour from main CP road (Skywater Drive) to main building site.

19. Mr. Dorn also submits that SL24 has no "access route", which is required under the *Bare Land Strata Regulations* (BLS Regulation).

20. The strata does not dispute Mr. Dorn's assertion that it is required to repair and maintain the strata's CP roads. However, in a December 12, 2020 email to Mr. Dorn,

the strata council wrote that it was not responsible to provide any “additional driveway” to SL24. The email contained the following points:

- It appeared that SL24 had a driveway/access road since the strata’s inception in 2014, when Mr. Dorn bought SL24. Therefore, SL24 had the access route required under the BLS Regulation. This access route leads to the unpaved emergency exit road, which connects to the paved road.
- The July 2014 and November 2014 disclosure statements said the owner developer had completed gravel driveways to the selected home sites on the strata lots, and that it would be each strata lot owner’s responsibility to make further modifications as required for their needs, to maintain the driveway in the future, and to ensure that the final driveway met municipal standards as required for building permits.
- If Mr. Dorn found the current access route from SL24 to the emergency road unacceptable, he should have raised this with the owner developer.
- If Mr. Dorn wished to build his own additional access route from SL24 to Skywater Drive, he could apply to the strata council for approval. The email said council would likely consider such an application favourably, if certain conditions and regulatory requirements were met.

REASONS AND ANALYSIS

21. In a civil claim like this one, Mr. Dorn, as applicant, must prove his claim on a balance of probabilities (meaning “more likely than not”). I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision.

22. I find the strata is not responsible to create paved access to SL24. My reasons follow.

23. Part 14 of the SPA sets out the mandatory process for creating a strata corporation. In short, a strata corporation is created with a strata plan is deposited with the LTO. For a bare land strata corporation, the owner developer must first obtain approval

from an approving officer appointed under the *Land Title Act* before applying to deposit the strata plan. Under SPA section 243, the approving officer may only grant approval of a bare land strata plan if it complies with the regulations, including the BLS Regulations.

24. Section 6 of the BLS Regulations is titled, “No approval if access routes insufficient”. “Access route” is defined elsewhere in the BLS Regulations as, “those portions of the common property in a bare land strata plan intended to provide vehicular access to the strata lots in the bare land strata plan”.

Section 6(1) of the BLS Regulations states as follows:

The approving officer may decline to approve a bare land strata plan if, where the approving officer considers access routes are necessary, the approving officer considers that

- a. the width of the access routes are not sufficient to meet police and fire protection requirements,
 - b. the access routes are not sufficient to provide practical and reasonable access to the strata lots, or
 - c. the access routes have not been designed or are not capable of being constructed in accordance with standards generally accepted as good engineering practice.
25. Section 6(2) of the BLS Regulations says that in considering the sufficiency of the access routes, the approving officer may consider various information, including engineering studies, the configuration of the land, the relation of the intended access routes to an existing highway or approach outside the strata plan, and whether or not the access routes are suited to the proposed use of the land.
26. Taken together, these provisions mean that a bare land strata plan will not be approved if it lacks sufficient access routes to the strata lots. Thus, I find the sufficiency of the access routes was necessarily considered and approved by the

approving officer before the strata was created. The strata is therefore not liable for any deficiency in that approval.

27. *Brakop v. The Owners, Strata Plan K99*, 2019 BCCRT 737 was a dispute about modifications to a driveway in a bare land strata corporation. In her reasons, the CRT member considered arguments about whether the driveway was an “access route” as defined in the BLS Regulation. She found there was a common access route within the strata, and it was up to individual owners to build driveways to connect with the common access route (paragraph 45). She also wrote as follows in paragraph 47:

...on a plain reading of the provisions of the *Bare Land Strata Regulations* and the SPA, the relevant time for determining whether common property constitutes an access route is when the bare land strata plan is submitted for approval – not after. See: *Cornick v. Owners of Strata Plan VIS7092*, 2019 BCSC 710 at para. 11. Therefore, I find that nothing turns on whether the driveway (built after the creation of the strata plan) may meet the definition of an access route within the meaning of the *Bare Land Strata Regulations*.

28. While *Brakop* is not binding on me, I find its reasoning about access routes in bare land strata corporations persuasive, and rely on it here. In this dispute, Mr. Dorn argues that the strata is required under the BLS Regulations to create an access route to SL24, as there is none. Based on section 6 of the BLS Regulations and the reasoning in *Brakop*, I find that duty would not fall to the strata, even if there were no access route to SL24. This is because it was not the strata’s legal duty to create access routes in the first place, but the owner developer’s.

29. I also find that since section 6 of the BLS Regulations requires confirmation of sufficient access routes to all strata lots in the strata, it is unlikely that the approving officer would have granted the necessary approval to permit the strata’s creation if they found the access route to SL24 was insufficient. The fact that Mr. Dorn is unsatisfied with the route is not determinative of his claim against the strata in this dispute, since the strata neither created nor approved the access routes.

30. The strata provided a copy of a July 26, 2021 letter from AL, who is identified as the former president of the corporate owner developer of the strata. The letter says Mr. Dorn purchased SL24 from the owner developer, and as part of the purchase agreement the owner developer constructed a driveway with Mr. Dorn's approval.
31. Mr. Dorn admits that this driveway still exists. However, he says it leads to a well site, rather than the main building site, unlike the driveways on most other strata lots in the strata. However, I find the strata has no legal duty to create a different access route in Mr. Dorn's preferred location. Also, I infer that Mr. Dorn chose the location of the "main building site" on his fairly large strata lot, and he has provided no evidence otherwise.
32. Similarly, Mr. Dorn argues that all of the other strata lots have fully paved access routes. The strata does not dispute that assertion, so I accept it. However, I find the strata has no obligation to provide paved access to SL24.
33. Also, the strata plan and photos provided in evidence all show that SL24 is directly adjacent to Skywater Drive, although there is currently no driveway connecting SL24 to Skywater Drive. There does not appear to be any reason (such as terrain) for why a driveway could not be constructed directly to Skywater Drive. As noted above, the BLS Regulations define "access route" as portions of CP intended to provide vehicular access **to the strata lots**. Thus, the required access is to the edge of each strata lot, rather than to any building or building site located on the strata lots.
34. I also note that there is nothing in the strata's bylaws that make it responsible for access routes, or for driveways located on strata lots.
35. In assessing Mr. Dorn's argument that other strata lots have paved access while he does not, I have also considered whether the strata treated Mr. Dorn in a significantly unfair manner in regard to road access. For the following reasons, I find it has not.
36. 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 (*The*

Owners, Strata Plan BCS 1721 v. Watson, 2018 BCSC 164). Significantly unfair means conduct that is oppressive in that it is burdensome, harsh, wrongful, lacking in probity or fair dealing, or done in bad faith, or conduct that is unfairly prejudicial in that it is unjust or inequitable (*Reid v. Strata Plan LMS 2503*, 2001 BCSC 1578, affirmed in 2003 BCCA 126 and *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173).

37. In *Kunzler*, the Court of Appeal confirmed that an owner's expectations could be considered a relevant factor in assessing significant unfairness. In considering an owner's reasonable expectations, the following test from *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164 applies:

- a. What was affected owner's expectation?
- b. Was that expectation objectively reasonable?
- c. Did the strata violate the expectation with a significantly unfair action or decision?

38. I find Mr. Dorn's expectation that the strata pay to create paved access at the southwest corner of SL24 is not objectively reasonable. First, as noted above, the strata did not create the access routes, and was never obligated to do so, as that was a requirement on the owner developer before the strata plan was filed.

39. Second, based on Mr. Dorn's admission in response to AL's letter, and the fact that the strata plan received the necessary approvals for filing with the LTO, I find there is an access route to SL24. Although Mr. Dorn has pointed out flaws with it, he has not proven it is unusable. I find the fact that it may create an inconvenient route or not reflect SL24's civic address does not reflect burdensome, harsh, wrongful, unfair, bad faith, unjust or otherwise unfairly prejudicial conduct by the strata. This is because the strata never created the existing access route to SL24, and did not create the access routes to the other strata lots that Mr. Dorn asserts are better. Also, there is no evidence that the strata changed or upgraded access routes to other strata lots,

while denying similar upgrades to Mr. Dorn. Therefore, I find that any inequity between owners was created by the owner developer, not by the strata.

40. I also find that Mr. Dorn has not proven that problems with the current access route to SL24 were caused by the strata's failure to repair and maintain CP, as it is obligated to do under SPA section 72.
41. This is not a situation where the strata has failed to repair or maintain an existing access route. Rather, Mr. Dorn's claim is that the strata create a new one, which I find it reasonably declined to do, for the reasons explained above.
42. The strata is obligated to repair and maintain the emergency road. However, Mr. Dorn's claim in this dispute is not for an order that the strata pave, change, or upgrade the existing emergency road. That claim, if brought, would be assessed on the basis of whether the strata's repair and maintenance of the emergency road was reasonable in the overall circumstances of the strata's operation and finances (*Weir v. Owners, Strata Plan NW 17, 2010 BCSC 784*).
43. I also note that although Mr. Dorn provided a few photos of small parts of the emergency road, that evidence is not sufficient to establish that strata failed to maintain the road to a reasonable standard. I find the evidence before me does not prove Mr. Dorn's assertions that the emergency road is poorly maintained, substandard, or unfinished, or that it has embedded bedrock that interferes with reasonable use. I find the fact that the emergency road is unpaved does not, in itself, prove that the strata's repair and maintenance is unreasonable.
44. For all of these reasons, I dismiss Mr. Dorn's claim that the strata must create a paved access to SL24.

FEES AND EXPENSES

45. Under CRTA section 49 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.

46. The strata is the successful party. It paid no CRT fees and claims no dispute-related expenses. I therefore do not award them to any party.

47. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to Mr. Dorn.

ORDER

48. I dismiss Mr. Dorn's claims and this dispute.

Kate Campbell, Vice Chair