



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan EPS606 v. Campbell*,
2021 BCCRT 1348

B E T W E E N :

The Owners, Strata Plan EPS606

APPLICANT

A N D :

RONALD CAMPBELL and KARLA CAMPBELL

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This strata property dispute is about a shed.
2. The applicant, The Owners, Strata Plan EPS606 (strata) is a bare land strata corporation existing under the *Strata Property Act* (SPA). The respondents, Ronald Campbell and Karla Campbell, co-own strata lot 119 (SL119) in the strata.
3. The strata says the Campbells breached strata bylaws by putting a unapproved shed on SL119 that is larger than permitted by strata bylaws or municipal zoning bylaws. The strata requests orders that the Campbells remove the shed and pay \$1,600 in bylaw fines.
4. The Campbells say the strata's claims should be dismissed. They say, among other things, that the shed is not oversized, and that the strata did not give proper notice before imposing the fines.
5. The strata is represented by a strata council member in this dispute. The Campbells are represented by a lawyer, Samantha Douglas.
6. For the reasons set out below, I dismiss the strata's claims and this dispute.

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. A CRT member initially issued a decision on the merits of this dispute on January 10, 2020. The Campbells then filed a petition for judicial review of that decision with the BC Supreme Court (BCSC). On January 18, 2021, the BCSC ordered the CRT's

January 10, 2020 decision quashed and set aside, and remitted the dispute back to the CRT.

9. This is a new final decision on the merits of this dispute. The parties were given an opportunity to provide new evidence and submissions as part of this process, which is re-hearing on the merits of the dispute.
10. 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.
11. 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.
12. The strata provided late evidence in this dispute, after the CRT's deadline to provide evidence had passed. I note that strata did not request an extension of that deadline. However, given my conclusion in this dispute, I find there is no prejudice to the Campbells in admitting and considering the strata's late evidence, and I have done so.
13. The Campbells requested an oral hearing of this dispute. Among other things, they submit that the dispute is complex, and that an oral hearing is necessary for various reasons, including to obtain evidence from former strata council member MM. The Campbells say MM has evidence about the strata's significant unfairness towards them. They say MM is elderly and told them he is unable to provide a written statement, but is willing to give oral evidence at a hearing.
14. The strata says an oral hearing is unnecessary and would cause additional delay.
15. I find that an oral hearing is unnecessary to decide this dispute. I find the dispute is not particularly complex, and that both parties had a full opportunity to provide their evidence in written form. For example, I find the Campbells had the opportunity to provide their evidence, including information about the location of structures on strata lots, in written form, by providing documents such as a written statement,

photographs, videos, or diagrams. I also find the Campbells have not explained why they could not have transcribed an oral statement from MM, or provided a videotaped or audio recorded statement from him.

16. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find an oral hearing is not necessary in the interests of justice and fairness in order to decide this dispute.
17. 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

18. The issues in this dispute are:

- a. Does the Campbells' shed contravene strata bylaws?
- b. Were the strata's actions in relation to the shed significantly unfair to the Campbells?
- c. What remedies are appropriate, if any?

BACKGROUND

19. The strata was created in November 2012. At that time, the owner developer filed consolidated bylaws with the Land Title Office (LTO), which replaced the SPA's Standard Bylaws. The November 2012 bylaws included the following:

- Bylaw 3(5) – a resident must not alter their strata lot unless the alteration complies with the City of Nanaimo bylaws, the “Green Plan”, the registered geotechnical covenant, and the strata bylaws.
- Bylaw 5(1)(a) – an owner must obtain written approval from the strata before installing or placing a structure or shed on a strata lot.

- Bylaw 5(5) – a strata lot owner must comply with the City of Nanaimo (City) zoning bylaw and other requirements with respect to shed placement.
20. The parties agree that until 2018, the Campbells had a smaller shed on SL119. According to the August 8, 2018 council meeting minutes, the old shed was approximately 45.5 square feet. In July and August 2018, the Campbells requested strata permission to replace the old shed with a larger one measuring 8 feet by 10 feet (80 square feet).
 21. In making their request to the strata, the Campbells argued in an August 8, 2018 email that other strata lots had sheds larger than their old one, and other strata lots had gazebos larger than their shed in addition to storage sheds and utility trailers. The Campbells argued that it was unreasonable to allow these strata lot owners to keep their various storage facilities, but to deny the Campbells permission for a larger shed.
 22. Following a council hearing, the strata denied permission for the larger shed. The August 8, 2018 council minutes say the reason for the denial was because the City zoning bylaw only permitted sheds up to 48 square feet, and the strata's bylaws and design guidelines had to comply with the City's bylaw.
 23. Email evidence shows that in October 2018, neighbouring owners reported to the strata's property manager that the Campbells were installing an 8 by 10 shed. The strata investigated and confirmed that the shed had been built.
 24. On October 22, 2018, the property manager emailed the Campbells to notify them of a complaint about their new shed. The property manager said the strata had denied permission for the larger shed, and the shed was not compliant with strata or municipal bylaws. The email said the Campbells could respond to the complaint within 3 days and request a hearing. The property manager warned that a \$200 fine might be imposed every 7 days in the event of a continuing contravention. The property manager also attached a copy of the strata's August 14, 2018 email denying permission for the new shed.

25. Mr. Campbell responded on October 25, 2019. He wrote that he was researching City bylaws and conducting an analysis of other strata lots. He said he intended to get back to the strata council with more information.
26. The January 9, 2019 council minutes show that the council approved a motion to impose a continuing fine of \$200 per week on the Campbells, until the shed was removed. The property manager informed the Campbells of this decision by email on January 14, 2019. Mr. Campbell replied on January 19, 2019, stating that he had applied to the City for a variance permit for the shed. Mr. Campbell wrote that the City indicated support for his application, but told him it would take a considerable amount of time to be approved by City council.
27. On January 21, 2019, the property manager emailed the Campbells to say a \$200 per week fine would be imposed starting that day, continuing until the shed was removed.
28. On January 20, 2019, the day before the strata first imposed fines on the Campbells, the strata held a special general meeting (SGM). The SGM minutes show that the owners approved several bylaw amendments. One of these amendments was to add bylaw 32(5), which states in part:

An accessory building or shed shall not exceed 4.5 square meters (48 square feet) in area... – unless a variance permit has been approved by the City of Nanaimo to allow the accessory building or shed to be a maximum size of 9.29 square meters (100 square feet) in area...
29. The Campbells provided a copy of a City application form for a variance permit. That document shows they submitted their variance application to the City on January 23, 2019.
30. The strata filed the bylaw amendments approved at the SGM at the LTO on March 8, 2019. The strata filed this dispute with the CRT on March 21, 2019.
31. On December 3, 2019, the City changed its bylaws. The new City bylaw allows an accessory building up to 10 square meters in size (about 107 square feet) on a

recreational vehicle space like SL119. The evidence shows that the City cancelled the Campbells' variance permit application, as it was no longer necessary after the City's bylaw changed. The correspondence in evidence also shows that the variance approval had been delayed because the City and the Campbells knew about the pending City bylaw change, and therefore expected that a variance would become unnecessary.

REASONS AND ANALYSIS

32. In a civil claim like this one, the strata, as applicant, must prove its claims 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.
33. As noted above, the strata requests an order that the Campbells remove the shed, plus payment of \$1,600 in bylaw fines imposed between January 21, 2019 and the time the strata filed this dispute on March 21, 2019.
34. A photograph in evidence shows that the shed is made of plastic. The parties agree it is about 8 feet by 10 feet in size. The strata admits that it is attractive, and that it does not contravene any current City bylaws. However, the strata says the Campbells should be ordered to remove the shed and pay the fines because they installed it without the required permission from the strata, and knew it did not comply with strata and City bylaws when they installed it in October 2018.
35. The evidence shows that the Campbells knew the strata denied permission to build the shed in August 2018. However, since the strata denied permission due to the City bylaws that have now changed, I find it would be unreasonable to order the Campbells to remove the shed now. If the Campbells removed the shed and re-applied for permission to erect an identical one, that permission would likely be approved. The City now permits sheds of that size, which was the strata's sole reason for denying approval in August 2018. Therefore, the only reason to require removal of the shed now would be punitive. Removing the shed would not remedy any current

problem, and there is no evidence that removal would have a positive effect on the use or appearance of any common property or strata lot.

36. I agree with the strata's submission that it was obligated to enforce the bylaws in effect at the time, and that the Campbells deliberately installed the shed without the required permission. However, a January 24, 2019 email from a City planner indicates that the City informed the strata council secretary that it was investigating amending its zoning bylaw to allow for larger accessory buildings. So the strata knew when it imposed the fines that the City might allow a shed like the Campbells in the foreseeable future.
37. Also, and more importantly, the July 10, 2019 council meeting minutes document that the Campbells had complained that 39 strata lots were non-compliant with City zoning bylaws applicable to sheds and gazebos. The strata did not disprove that complaint, or find that the strata lots were compliance with City zoning. Rather, the council's response to the complaint, documented in the minutes, was that those owners had been granted written approval from previous strata councils. The minutes state, in part:

While those councils may have erred in granting approval for the sheds and gazebos because it was contrary to the [City] bylaws at that time, it is no the responsibility of current council to reverse the decisions of previous councils, nor is it practical to do so.

Rather, on a go-forward basis, the current council has followed a process where requests to install sheds and gazebos are considered in a fair and consistent manner through an amendment to the strata bylaws that permit oversized sheds and gazebos provided a variance from the City is provided to the strata council and the council in turn provides the written approval of the request.

38. Thus, in 2018, when the Campbells requested and were denied permission to build the 8 by 10 shed, I find the strata placed them in an unfair and unreasonable situation. The strata had not yet changed its bylaws to allow any process for approving a shed

or other accessory building larger than what the City bylaw allowed (4.5 square meters, or about 48 square feet). The evidence before me shows that at least some strata lot owners were granted approval for sheds and gazebos larger than 48 square feet. For example, in its submissions, the strata admits that in June 2018, its property manager approved an alteration application to add a 10 by 12 foot (120 square foot) gazebo to strata lot 84.

39. Given this evidence, I find the strata's decision to refuse to permit the Campbell's shed in August 2018 was significantly unfair.
40. The courts and the CRT have considered the meaning of "significant unfairness" by a strata corporation, and have equated it to oppressive or unfairly prejudicial conduct. In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, the Court of Appeal said a significantly unfair action is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable. See also *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173.
41. 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 is or was the expectation of the affected owner?
 - b. Was the owner's expectation objectively reasonable?
 - c. If so, was that expectation violated by an action that was significantly unfair?
42. In this case, I find the Campbells had a reasonable expectation that their application to replace their old shed with a larger new one would be considered on an equal basis with other similar applications in the same time period. The email correspondence in evidence shows the Campbells first raised the issue of the new shed with the strata on July 24, 2028, and presented their arguments about the shed on August 8, 2018. This was less than 2 months after the strata had approved a 120 square foot gazebo

for strata lot 84. The gazebo is larger than permitted under the City bylaws at that time, or at the present time.

43. The strata says the property manager who approved that alteration application for the gazebo “permitted alterations that were not compliant” . The strata says this practice ended when a new property manager was hired on July 1, 2018, and notice was given to owners about how the current council and management would administer the bylaws.
44. I accept this evidence about the former property manager, as it is undisputed. However, I find it does not support the strata’s position in this dispute. The property manger acts as the strata’s agent, but ultimately the strata council is responsible for approving or denying alteration requests. Absent a change in strata or City bylaws, I find it is unreasonable for a strata corporation to permit structures on strata lots that are non-compliant with City bylaws up to a certain date, and then to refuse such permission 2 months later. The Campbells had an objectively reasonable expectation that they would be permitted similar leniency to that offered to neighbouring owners. In making this finding, I place significant weight on the fact that the strata admits in paragraph 10 of its reply submission that its former property manager “permitted alterations that were not compliant”.
45. The strata essentially argues that the Campbells should have waited, instead of installing their shed in October 2018. However, the evidence before me does not show that the Campbells could have known that in January 2019 owners would vote on a resolution to amend the bylaws to allow larger sheds. The August 8, 2018 council minutes and the strata’s August 14, 2018 email denying their alteration request do not mention any possible recourse or potential bylaw change. So, I find this argument unpersuasive.
46. In conclusion, I find the strata acted significantly unfairly in allowing some strata lot owners to have and keep accessory buildings that did not comply with City bylaws, and in the same time period denying a similar request from the Campbells for the sole reason that it did not comply with City bylaws. For that reason, and because the shed

now complies with the revised City bylaw, I dismiss the strata's request for an order that the Campbells remove the shed.

47. Because I find the strata acted significantly unfairly in denying the Campbells' alteration request in August 2018, I also dismiss the strata's request for an order for payment of bylaw fines. Specifically, given that at least some other non-complaint structures were permitted, I find it was unreasonable for the strata to impose fines and insist the Campbells remove the shed in early 2019.

CRT FEES AND EXPENSES

48. 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.
49. The Campbells are the successful party. They paid no CRT fees and claim no dispute-related expenses. I therefore do not award them to any party.
50. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the Campbells.

ORDER

51. I dismiss the strata's claims and this dispute.

Kate Campbell, Vice Chair