



Civil Resolution Tribunal

Date Issued: January 12, 2022

File: ST-2021-004998

Type: Strata

Civil Resolution Tribunal

Indexed as: *Steinhauer v. The Owners, Strata Plan EPS372*, 2022 BCCRT 39

B E T W E E N :

CHRISTINE STEINHAUER

APPLICANT

A N D :

The Owners, Strata Plan EPS 372

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This strata property dispute is about alterations to common property (CP).
2. The applicant, Christine Steinhauer, owns strata lot 20 (SL20) in the respondent strata corporation, The Owners, Strata Plan EPS372 (strata). Ms. Steinhauer planted cedar hedges (cedars) in a CP fenced yard behind her strata lot. The strata requested

that Ms. Steinhauer remove the cedars, because it says she did not receive approval to plant them, in violation of the bylaws. When Ms. Steinhauer did not remove the cedars, the strata started imposing fines.

3. Ms. Steinhauer says the bylaws did not require her to obtain the strata's approval to plant the cedars because they do not constitute an alteration. She also says the strata did not follow the *Strata Property Act* (SPA) when it imposed the bylaw fines. Ms. Steinhauer seeks orders that the strata allow her to keep the cedars, and that she not have to pay any of the imposed bylaw fines.
4. The strata maintains that Ms. Steinhauer breached the bylaws by planting the cedars without approval and that it properly imposed bylaw fines for that breach. The strata did not bring a counterclaim for payment of the bylaw fines it imposed or removal of the cedars. I infer it is the strata's position that this dispute be dismissed.
5. Ms. Steinhauer is self-represented. The strata is represented by a strata council member.

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). 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.
7. 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.

8. 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.
9. 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.

Section 31 of the SPA

10. Ms. Steinhauer submits that the strata council acted contrary to SPA section 31, which requires strata council members to act honestly and in good faith with a view to the best interests of the strata corporation. Ms. Steinhauer does not request a specific remedy about the council's alleged dishonesty and bad faith, but instead relies on it in support of her other claims. In a recent decision, *Williams v. The Owners, Strata Plan NW 1340*, 2021 BCSC 2058, the BC Supreme Court confirmed that the CRT does not have jurisdiction to decide claims under SPA section 31. For these reasons, I make no findings about the council's alleged dishonesty and bad faith.

ISSUES

11. The issues in this dispute are:
 - a. Did Ms. Steinhauer contravene the strata's bylaws by planting cedars in the yard behind her strata lot?
 - b. If so, was the strata's decision to require the cedars be removed significantly unfair to Ms. Steinhauer?
 - c. Are the bylaw fines against Ms. Steinhauer valid?

BACKGROUND

12. In a civil proceeding like this one, Ms. Steinhauer as the applicant must prove her claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submissions and evidence, but I refer only to what I find is necessary to explain my decision.
13. The strata is a phased residential strata corporation consisting of 54 strata lots in 27 buildings. Each building contains 2 strata lots. The strata plan in evidence shows SL20 is located in building 10, along with strata lot 19 (SL19). SL19 and SL20 are side-by-side lots and each have a basement, main floor, and upper floor.
14. The strata plan shows that SL20 has a limited common property (LCP) patio attached to the building’s exterior on the main floor. From the photographs in evidence, I find the LCP patio can be described as a covered porch, and there are 2 steps leading down from the porch into a fenced backyard behind SL20. I find from the strata plan that the backyard behind SL20 is CP.
15. The strata’s bylaws are the SPA Schedule of Standard Bylaws, with amendments registered at the Land Title Office. Bylaw 6(1) says an owner must obtain the strata’s written approval before making an alteration to common property, including limited common property, or common assets. The strata’s owner developer registered a notice of different bylaws, including the addition of bylaw 6(3), which says an owner shall not alter the native character of all landscaping on the common property as established by the developer, and the strata corporation shall not approve any such alteration.
16. In submissions, Ms. Steinhauer also referred to bylaw 5, which deals with obtaining the strata’s approval for making alterations to a strata lot. However, I find the subject cedars were planted in the CP backyard behind SL20, which is not part of Ms. Steinhauer’s strata lot. So, I find bylaw 5 does not apply to this dispute.

EVIDENCE AND ANALYSIS

Did Ms. Steinhauer contravene the strata's bylaws by planting cedars?

17. It is undisputed that Ms. Steinhauer planted a total of 11 cedars along the fence lines on either side of the CP backyard behind SL20 in about May 2020. It is also undisputed that Ms. Steinhauer did not seek the strata's approval before planting the cedars. As noted above, bylaw 6(1) requires an owner to obtain the strata's written permission before making alterations to CP.
18. Ms. Steinhauer argues that "planting" is not an alteration under bylaw 6(1). I disagree. The words "alter" and "alteration" are not defined in the bylaws or in the SPA. In *Garry v. The Owners, Strata Plan ESP2501*, 2021 BCCRT 409, a tribunal member considered whether landscaping changes constituted an "alteration" of CP. The tribunal member found that replacing lawn with gravel or pebbles significantly changed the look of the yard, and noted the change was intended to be permanent. So, the tribunal member found the change was an alteration that required the strata's approval under the bylaws. While CRT decisions are not binding on me, I find the reasoning in *Garry* persuasive, and I apply it here.
19. I find that planting 11 cedars permanently changed the appearance of the strata's CP, and so they constitute an alteration under bylaw 6(1). Therefore, I find Ms. Steinhauer was required to obtain the strata's approval to plant the cedars. By planting them without approval, I find Ms. Steinhauer contravened bylaw 6(1).
20. Given my finding about bylaw 6(1), I find I do not have to consider whether planting the cedars also contravened bylaw 6(3).

Was the strata's decision to require the cedars be removed significantly unfair?

21. Although Ms. Steinhauer did not use these words, I find her submissions are essentially arguments that the strata has treated her significantly unfairly. The CRT

has jurisdiction to determine claims of significant unfairness under section 123(2) of the CRT (see *The Owners, Strata Plan LMS 1721 v. Watson*, 2018 BCSC 164).

22. The courts and the CRT have considered the meaning of “significantly unfair” and have largely followed the interpretation adopted by the BC Court of Appeal (BCCA) in *Reid v. Strata Plan LMS 2503*, 2003 BCCA 128. In *Reid*, the court said that actions are “significantly unfair” when they are burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable.
23. In *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, the BCCA established a reasonable expectations test, restated in *Watson* at paragraph 28, as follows:
 - a. What is or was the expectation of the affected owner or tenant?
 - b. Was that expectation on the part of the owner or tenant objectively reasonable?
 - c. If so, was that expectation violated by an action that was significantly unfair?
24. More recently, the BCCA determined the reasonable expectations test set out in *Dollan* may be considered as one factor in deciding whether significant unfairness, together with all other relevant factors, including the nature of the decision and the effect of overturning it (see *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173 at paragraphs 88 and 89).
25. Turning to the *Dollan* test, I find Ms. Steinhauer expected the strata would not require her to remove the cedars, even if planting them constituted a breach of the bylaws. She says the cedars were planted and growing for over a year before the strata notified her of any issue. She also says a council member was present when she was planting the cedars and other plants, and he did not mention that she needed strata’s approval before planting anything. She says the strata’s delay in enforcing the bylaw is unfair, and it is unreasonable to expect her to remove them now.
26. I find Ms. Steinhauer’s expectation that the strata would not enforce the bylaws was unreasonable. The strata is required to enforce its bylaws through its council under SPA section 26. I find the evidence shows the strata received a complaint about the

cedars from Ms. Steinhauer's neighbour on April 3, 2021, and the strata then properly investigated the complaint and advised Ms. Steinhauer of the alleged bylaw contravention.

27. While the strata did not directly respond to Ms. Steinhauer's allegation that a council member was present when she planted the cedars, in her own submissions, Ms. Steinhauer says the member in question told her he had no recollection of seeing her plant the cedars. I find there is insufficient evidence to conclude that the strata was previously aware of the cedars Ms. Steinhauer planted, or that it deliberately delayed enforcing the bylaws against her, as Ms. Steinhauer submits. Rather, I find it is likely the strata was unaware of the cedars Ms. Steinhauer planted until it received the April 3, 2021 complaint.
28. Ms. Steinhauer also argues that another owner has potted cedar plants placed on their patio, and that there are cedars planted in a neighbouring strata community. I find there is a distinction between cedar hedges planted in the ground and those planted in a pot, as potted plants are less permanent and are not likely considered an "alteration" under bylaw 6(1). Further, I find what a different strata corporation permits is irrelevant to the enforcement of this strata's bylaws.
29. Here, there is undisputed evidence that the strata has previously denied owners' applications to plant cedars. The strata says it does not permit cedars because they require significant watering and they are a fire hazard. Regardless of its reasons, I find the strata is entitled to determine what trees and other plants will be permitted on CP. There is no evidence before me that the strata has previously approved an application to plant cedars, or that it has previously failed to enforce the bylaws against an owner who had planted cedars on CP without approval.
30. The bylaws clearly state the strata's permission is required to alter CP, and that owners are not to alter the native landscaping of CP. I also note that bylaw 3.13 says owners are permitted to submit a variance plan for the garden beds associated with their unit, so long as the plants are chosen from an approved list of low maintenance,

non-intrusive plant life and the owner submits an alteration agreement accepting responsibility for future maintenance of the altered garden beds.

31. I find these bylaws, taken together, should have alerted Ms. Steinhauer to the fact that planting and gardening is not at the sole discretion of owners, and that strata approval is required before changes are made to gardens and landscaping, particularly on CP.
32. On the evidence before me, I find the strata did not treat Ms. Steinhauer significantly unfairly in enforcing the bylaws and requiring her to remove the cedars. For these reasons, I find Ms. Steinhauer has not established she is entitled to an order permitting her to keep the cedars.

Were the bylaw fines against Ms. Steinhauer valid?

33. As noted, Ms. Steinhauer says the strata failed to follow the SPA's procedural requirements for imposing bylaw fines.
34. SPA section 135(1) says the strata must not impose a bylaw contravention fine against an owner unless the strata has given the owner written particulars of the contravention complaint and a reasonable opportunity to answer the complaint, including a hearing if requested. Under SPA section 135(2), the strata must also give written notice of a decision to impose a fine to the owner, as soon as feasible.
35. SPA section 135(3) says that once a strata corporation has complied with the section 135 requirements in respect of a bylaw contravention, it may impose a fine or other penalty for a continuing contravention of that bylaw without further compliance with the section.
36. The strata is required to strictly follow the procedural requirements in SPA section 135 before imposing a bylaw fine (see *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449). *Terry* is binding precedent that the CRT must follow.
37. The evidence shows that the strata sent Ms. Steinhauer an April 6, 2021 letter advising her it had received a complaint she had contravened bylaws 6(1) and (3).

The letter requested that she remove the cedars within 20 days and stated that if she did not answer the complaint or she was found in violation of the bylaw, the strata may impose fines.

38. I find the April 6 letter contained sufficient particulars of the complaint against Ms. Steinhauer. I also find the letter provided Ms. Steinhauer with an opportunity to respond to the complaint by providing a written response or requesting a hearing within 20 days.
39. It is undisputed that Ms. Steinhauer responded by letter dated April 20, 2021, setting out her position on why the strata should not enforce the bylaws against her for planting the cedars. The strata then sent Ms. Steinhauer an April 27, 2021 letter in response and requested compliance within 7 days to “prevent further action”.
40. The evidence shows that in a May 10, 2021 letter, Ms. Steinhauer requested a hearing before the strata council. She also requested documents relating to the complaint under sections 35 and 36 of the SPA. The strata admits that it received Ms. Steinhauer’s hearing request. Nevertheless, the evidence shows the strata held a council meeting on May 21, 2021, without notice to Ms. Steinhauer, where it decided to impose a fine against SL20.
41. The strata sent Ms. Steinhauer a May 25, 2021 letter advising of its decision to impose a \$200 bylaw violation fine because she had failed to remove the unapproved cedars. The letter also referred to bylaw 24, which permits the strata to impose a fine every 7 days for a continuing bylaw contravention. The evidence shows the strata imposed a further \$200 fine on June 1, 2021.
42. Only after the strata had imposed the second \$200 fine did it respond to Ms. Steinhauer’s request for a hearing, which was then scheduled for June 7, 2021. On June 8, 2021, before the strata had advised Ms. Steinhauer of its decision after the hearing, the strata imposed a further \$200 continuing bylaw contravention fine.
43. I find the strata did not comply with section 135 of the SPA by imposing fines without giving Ms. Steinhauer a reasonable opportunity to answer the complaint, given she

had requested a hearing. While Ms. Steinhauer did not initially request a hearing, I find the parties corresponded back and forth about the alleged bylaw contravention, and Ms. Steinhauer's May 10, 2021 hearing request was made before the strata decided to impose the first fine. I find that once she requested a hearing, the strata was obligated to provide one before it imposed any bylaw contravention fines.

44. I find the strata's failure to comply with section 135 of the SPA means any fines imposed before it advised Ms. Steinhauer about its decision following the hearing are invalid. So, I order the strata to immediately reverse the \$600 in fines it imposed on Ms. Steinhauer's strata lot account between May 25, 2021 and June 8, 2021 for her breach of bylaw 6(1).
45. However, the evidence shows the strata imposed a further 2 bylaw contravention fines on June 15 and June 22, 2021, after notifying Ms. Steinhauer of its decision following the hearing. I find the strata had fully complied with SPA section 135 when it imposed these fines for Ms. Steinhauer's breach of bylaw 6(1). Therefore, I find those fines were validly imposed.

CRT FEES AND EXPENSES

46. 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. Here, I find there was mixed success. While Ms. Steinhauer paid CRT fees to bring this dispute, the strata paid the tribunal decision process fee because Ms. Steinhauer refused. Under the circumstances, I find it is appropriate for the parties to bear their own CRT fees. Neither party claimed any dispute-related expenses.
47. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Steinhauer.

ORDERS

48. I order the strata to immediately reverse the \$600 in bylaw contravention fines it imposed on Ms. Steinhauer's strata lot account between May 25, 2021 and June 8, 2021 for planting the cedars without approval.
49. I dismiss Ms. Steinhauer's remaining claims.
50. 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.

Kristin Gardner, Tribunal Member