Civil Resolution Tribunal

Date Issued: March 10, 2022

File: ST-2021-005649

Type: Strata

Civil Resolution Tribunal

Indexed as: *Carpenter v. The Owners, Strata Plan V.R. 614*, 2022 BCCRT 264

B E T W E E N :

JAMES CARPENTER and SHAINA WALKER

APPLICANTS

A N D :

The Owners, Strata Plan V.R. 614

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Chad McCarthy

INTRODUCTION

1. This dispute is about a storage shed. The applicants, James Carpenter and Shaina Walker (owners), jointly own strata lot 9 (unit 204) in the respondent strata corporation, The Owners, Strata Plan V.R. 614 (strata). The owners say the strata directed them to remove a shed from a fenced patio area adjacent to their strata lot. The owners say the shed breaks no strata bylaws, is not a significant change to

common property, and another strata lot owner was allowed to place a shed on an adjacent patio area. The owners request an order that the strata council allow the shed to remain. I infer that the owners request that I order the strata council to reverse its decision directing the owners to remove the shed, and to approve the shed.

2. The strata opposes the owners' claim. It says the owners' shed is large, is not allowed under the strata's bylaws or the *Strata Property Act* (SPA), and never received the strata's written approval as required under the bylaws.

3. Mr. Carpenter represents the owners in this dispute. The president of the strata council represents the strata.

JURISDICTION AND PROCEDURE

4. 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.

5. 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.

6. 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.

7. 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.

8. The owners submitted late evidence, specifically correspondence and photos, after the deadline for evidence and submissions had passed. CRT staff gave the strata an opportunity to comment on it, but the strata did not respond. I find it would not be unfair to the strata to consider the late evidence, because it is relevant and the strata did not object to it. I allow the late evidence.

ISSUES

9. The issue in this dispute is whether the strata bylaws and SPA allow the owners to place the shed where it is, and if so, should I order the strata council to approve it?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the owners, as the applicants, must prove their claims on a balance of probabilities (meaning "more likely than not"). I have read and weighed the parties' evidence and submissions, but I refer only to that which I find necessary to explain my decision. Further, although I considered the several CRT and court decisions the parties cited, I do not refer to them all in this decision.

11. The strata was formed in 1978 under the *Strata Titles Act*, and continues under the SPA. The strata repealed and replaced all of its bylaws by filing new bylaws at the Land Title Office on June 28, 2002, which I find are the relevant bylaws applicable to this dispute. A later bylaw amendment in 2008 is not relevant to this dispute.

12. The strata has 31 strata lot apartments in a 4-storey building. Strata lot 9 is on the second floor. The roof of the larger first floor of the building forms an outdoor patio area adjacent to, and directly accessible from, strata lot 9 and other second-storey strata lots. Fences enclose the patio areas adjacent to each of those strata lots, forming private patio areas beside each strata lot. This dispute is about a shed on the fenced patio area adjacent to strata lot 9.

13. I find that according to the strata plan, the patio area is common property (CP). The strata plan refers to a May 8, 1979 resolution designating certain CP as limited common property (LCP) for the exclusive use of one of more strata lots. That resolution is not in evidence. However, even if portions of the CP patio were designated as LCP, I find that would not affect whether the relevant bylaws and approvals apply to those patio areas, as discussed below.

14. Strata lot 9's former owner undisputedly placed 2 sheds, a gazebo, and a hot tub on the CP patio area. The strata told the former owner those placements had not been approved and breached the strata's bylaws. So, the former owner removed one shed and the gazebo, and left the other shed and hot tub in place when he sold the strata lot to the owners in March 2021. The owners agree that they were aware of the strata's non-approval of, and direction to remove, the hot tub and shed before they purchased strata lot 9, and they agreed to remove the hot tub. However, they say they are entitled to leave the shed in place.

15. Based on the parties' submissions and photos in evidence, I find the plastic shed is approximately 4 feet wide, 6 feet long, and 7 feet high. It has a raised floor, a peaked roof, and a padlocked door. It is not attached to the fence, patio, or building, and is undisputedly used to store the owners' patio furniture in the winter months. The evidence does not show that the owners stored, or plan to store, anything flammable or hazardous in the shed.

16. The strata says it directed the owners to remove the shed because the strata has not approved it as required under bylaw 6(1), and because its placement violates SPA section 71 and bylaws 3(5)(h) and 3(5)(p). For the following reasons, I find that the owners violated bylaw 3(5)(p) by placing the shed on the CP patio and failing to remove it. I also considered the alleged bylaw 3(5)(h) and SPA section 71 violations, but found that it was not necessary to address them in any detail because my decision turns on the bylaw 3(5)(p) violation.

Bylaw 3(5)(p)

17. Bylaw 3(5)(p) says that an owner must not "place any items on any deck, patio or balcony except free-standing, self-contained planter boxes, barbecues, and summer furniture and accessories". The owners say the shed should be allowed as an "accessory" to the summer furniture that they store in it. I find that the plain meaning of the bylaw, in context, is that "accessories" are items used together with summer furniture. Photos show a side table and a cooler in the shed, which may be summer furniture or related accessories. However, I find the owners' shed is not used together with summer furniture, and is for storage of items not in use. I find the fact that the shed happens to be used to store summer furniture and accessories does not necessarily mean it is itself a summer furniture accessory under bylaw 3(5)(p).

18. The circumstances of this dispute are similar to those in *Trent v. The Owners, Strata Plan EPS3454*, 2020 BCCRT 358, which is not binding on me but which I find persuasive. *Trent* found that a large, difficult-to-move pergola constructed on a balcony was not "furniture", and was therefore prohibited by a bylaw that allowed only patio furniture, barbeques, and potted plants. I agree with *Trent*'s reasoning, that a key aspect of whether something is furniture under that similar bylaw, is whether it is readily moveable. The other patio items permitted by bylaw 3(5)(p) are all easily moveable furniture-like items, specifically self-contained planter boxes, barbecues, and summer furniture. So, I find that under bylaw 3(5)(p), summer furniture accessories are easily moveable in the same way that summer furniture is.

19. The owners say the shed is "collapsible" and is therefore easily moved, but they do not describe how it collapses or what is involved. Based on shed photos in evidence, I find the shed is not easily collapsible within several minutes like a patio umbrella or a folding table, although it is likely possible to disassemble the shed and reassemble it in a new location. I find such disassembly would likely require significant time and effort. I also find the shed photos show, and the owners do not directly deny, that the shed is not easily moveable by one person in its fully-built state. Overall, I find the shed is not quickly or easily moved.

20. For the above reasons, I find the shed is a structure, and is not a summer furniture accessory or summer furniture. Therefore, under bylaw 3(5)(p), I find the shed is not permitted on the CP patio.

Bylaw 6(1) and Significant Unfairness

21. Strata bylaw 6(1) says that an owner must obtain the strata's written approval before making an alteration to CP, including LCP, or common assets. Bylaw 6(2) says that the strata may require an owner to take written responsibility for alteration-related expenses and insurance coverage, before approving any alterations.

22. The owners say the shed is not an alteration to the CP patio, but if it is, the strata should have approved it under bylaw 6(1). Given my finding that the shed is a semi-permanent structure, and its large size, I find it is an alteration requiring written approval under bylaw 6(1). The strata has undisputedly withheld its approval of, and directed the removal of, other large patio structures that are not permitted under bylaw 3(5)(p), including 2 hot tubs, more than 1 shed, a gazebo, and a greenhouse.

23. However, the owners say that the strata has allowed the owner of an adjacent strata lot (neighbour) to have a shed on the CP patio, so it was significantly unfair for the strata to direct the owners to remove their shed. I consider this alleged significant unfairness below.

24. The CRT may make orders under CRTA section 123(2) remedying significantly unfair actions or decisions by a strata corporation (see *The Owners, Strata Plan LMS 1721 v. Watson*, 2018 BCSC 164). Courts have found that a strata's actions are significantly unfair when they are burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, or are unjust or inequitable (see *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126 and *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44).

25. Further*, Dollan* established a reasonable expectations test. According to *Watson* at paragraph 28, this test asks whether an owner's objectively reasonable expectation was violated by a significantly unfair action. *Kunzler v. The Owners, Strata Plan EPS*

1433, 2021 BCCA 173 (at paragraphs 91 to 95) later determined that the reasonable expectations test is a factor to be considered in deciding whether significant unfairness has occurred, together with other relevant factors such as the nature of the decisions and the effect of overturning them.

26. Was it significantly unfair to withhold approval of the owners' shed despite approving the neighbour's shed? The neighbour's shed is on a fenced CP patio area similar to the fenced patio area beside strata lot 9. An indemnity agreement between the neighbour and the strata permits the neighbour to place an easily moveable shed on that CP patio, limited to 2 feet deep by 4 feet wide, and prohibits hazardous material storage. It is undisputed that the neighbour's shed is easily moveable by one person without any disassembly, and its footprint is about 2 feet by 4 feet. This means the owners' shed is 3 times the size of the neighbour's shed. The neighbour's shed is undisputedly kept under an overhang and is not easily visible from other strata lots or the other side of the patio fence. The parties agree that the strata would allow the owners to place the same size of shed on the patio if they signed a similar indemnity agreement, as required under bylaw 6(2). The owners say it would be inconvenient and costly to replace their shed with a smaller one.

27. Given the much smaller size and easily portable nature of the neighbour's "shed", I find it is not a structure, and is likely better described as a cabinet. In the circumstances, I find the relatively small, moveable cabinet may be considered summer furniture, which is not prohibited by bylaw 3(5)(p). So, I find the strata had a reasonable basis for approving the neighbour's cabinet.

28. In the circumstances, I find it was not reasonable for the owners to expect strata approval of their shed, for the following reasons. First, I found above that the shed violates bylaw 3(5)(p), but the evidence does not show that the neighbour's cabinet violates any bylaw or the SPA. Second, the strata says it would allow the owners the same size of cabinet, on the same terms, as the neighbour, which I find is fair. In addition, the owners purchased strata lot 9 knowing that the strata had not approved the shed and requested its removal, as it had with other large patio items. So, I find it was not significantly unfair for the strata to withhold approval of the owners' shed, in

particular because its placement on the patio violated bylaw 3(5)(p), and the neighbour's smaller cabinet did not.

29. I dismiss the owners' claim.

CRT Fees and Expenses

30. 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. The owners were unsuccessful in this dispute, but the strata paid no CRT fees and claims no dispute-related expenses. So, I order no reimbursements.

31. The owners request an unspecified amount for the portion of their strata fees the strata allegedly used to pay for its CRT dispute-related legal advice. However, there is no evidence that the strata paid for such legal advice with the owners' strata fees. Having said that, the strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owners.

ORDER

32. I dismiss the applicants' claims, and this dispute.

Chad McCarthy, Tribunal Member