



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Timmons v. The Owners, Strata Plan EPS2107*, 2022 BCCRT 266

B E T W E E N :

BARRY TIMMONS, YVONNE WINGFIELD and ELIZABETH KUSCHE

APPLICANTS

A N D :

The Owners, Strata Plan EPS2107

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about strata lot landscaping. The applicants are Barry Timmons, Yvonne Wingfield and Elizabeth Kusche. The applicants each own or co-own

separate strata lots in the respondent strata corporation, The Owners, Strata Plan EPS2107 (strata).

2. The applicants claim the strata is improperly threatening to enforce bylaw 2.4, which regulates strata lot landscaping. The applicants say the strata had improperly asked the respondents to replace maple trees that were removed from their strata lot front yards, or be subject to strata bylaw fines. The applicants ask for an order stopping the strata from enforcing bylaw 2.4 against their strata lots in relation to their tree removal.
3. The strata says that the applicants have breached bylaw 2.4 by removing or altering existing maple trees on their strata lots. Further, the strata says that it is required by the section 26 of the *Strata Property Act* (SPA) to enforce its bylaws.
4. The applicants are self-represented. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.

7. 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.
8. 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.
9. The strata started a counterclaim but withdrew the counterclaim before this dispute was referred to me for adjudication. So, I make no findings relating to this.

Property Management Company

10. In their submissions, the applicants argues that the property management company breached it fiduciary duty to the applicants. I find that this claim is not before me since it was not raised in the application for dispute resolution. Further even if this claim had been properly raised, the property management company is not part to this dispute and has not had the opportunity to provide its arguments. I cannot make an order against non-parties to this dispute. For the above reasons, I make no findings relating to the applicants' claim that the property management company allegedly breached a fiduciary duty to the applicants.

ISSUES

11. The issues in this dispute are:
 - a. Should the strata be ordered to stop taking action against the applicants to enforce bylaw 2.4 for tree removal from their strata lots?
 - b. Should the strata be ordered to provide copies of landscaping complaints it received relating to the applicants' strata lots?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. The strata must prove its counterclaims to the same standard. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant and necessary to provide context for my decision.
13. Though they had the opportunity to do so, Ms. Wingfield and Ms. Kusche did not provide any evidence. Based on Mr. Timmon's use of the terms "we" and the "applicants" in his submissions, I infer and find that Mr. Timmons provided his submissions on behalf of all of the applicants.

Bylaw 2.4

14. The strata is a bare land strata consisting of 15 strata lots. Bylaw amendments adding the relevant strata bylaw 2.4 were filed at the Land Title Office on November 25, 2019.
15. Bylaw 2.4 says that owners must ensure that the front of their lots are well maintained, from a landscaping perspective, to a standard reasonably commensurate with the overall conditions and aesthetics of the strata complex.
16. Based on the strata plan and the parties' submissions, I find that the landscaping in the applicants' front yard areas are part of their strata lots, and not common property.
17. It is undisputed that the applicants removed pre-existing maple trees from each of their strata lots' front yards. Those maple trees had been planted by the strata's owner developer in the front yard of each strata lot. The strata acknowledges that the applicants did not need strata permission to remove the trees. However, it says the resulting landscaping does not comply with bylaw 2.4.
18. The strata's property manager sent Mr. Timmons a May 12, 2021 letter saying that the maple trees in the front yards of multiple strata lots, including his strata lot, had been "excessively lopped or completely removed." I infer that this letter also referred to Ms. Wingfield's and Ms. Kusche's strata lots. The property manager asked Mr. Timmons to replace the maple tree with a specific maple tree variety. The letter says

that a bylaw fine would be assessed against the strata lot if he failed to do so. The property manager sent a further June 3, 2021 letter saying that it previously requested the wrong replacement tree variety and that the replacement should be an Acer x Fremanii tree. The property manager also sent letters to Ms. Wingfield on May 28, 2021 and Ms. Kusche on June 3, 2021 saying that their removal of the existing maple trees violated bylaw 2.4.

19. Based on the strata letters provided and the parties' submissions, I find that the strata has asked each of the applicants to replace the removed maple trees and, if not, the strata said it would impose bylaw fines against the strata lots.
20. SPA section 26 says that the strata council has a duty to enforce bylaws. In *Chorney v. The Owners, Strata Plan VIS770*, 2016 BCSC 148, at paragraph 52, the BC Supreme Court said the SPA allows strata corporations to deal with bylaw violation complaints "as it sees fit, as long as it complies with the principles of procedural fairness and not be significantly unfair to any person who appears before it." According to *Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74 at paragraph 61, the strata council must take "reasonable action and fair regard for the interests of all concerned". The strata is not held to a standard of perfection. Thus, the strata will meet its bylaw enforcement obligations under SPA section 26 if it acts reasonably.
21. SPA section 129 says that a strata may enforce a bylaw by imposing a fine, remedying the contravention or denying access to a recreational facility. Though the strata has asked the applicants to replace the removed maple trees, it is undisputed that the strata has not yet assessed bylaw fines against the applicants' strata lots or taken any further action to enforce bylaw 2.4. Rather, the strata says it will wait for this decision before it enforces bylaw 2.4.
22. The applicants are essentially asking for an order stopping enforcement of bylaw 2.4 before the strata does so. I have considered whether the applicants' claims are premature since the strata has not yet taken action under SPA section 129. However, I find that the strata has threatened to assess bylaw fines against the applicants'

strata lots if they do not replace the trees. Since the CRT has jurisdiction to resolve claims of threatened strata actions under CRTA section 121(1)(e), I find that the applicants' claims are not premature.

23. The applicants argue that the tree removals do not breach bylaw 2.4. The strata argues that bylaw 2.4 requires the applicants to maintain their strata lots in a manner consistent with the development's "look and feel." The strata says that each strata lot has a maple tree planted in a specific place which it says is an important part of the development's appearance. The strata argues that bylaw 2.4 requires owners to maintain the continuity and uniformity by keeping the same tree variety on the front of each strata lot. In contrast, the applicants say that the bylaws do not require this.
24. I find that bylaw 2.4 does not require strata lot owners to maintain the same specific variety of maple tree in their front yards as the strata argues. I reach that conclusion because I find that a plain reading of the bylaw 2.4's requirement that the landscaping remain "reasonably commensurate with the overall conditions and aesthetics" does not mean that landscaping must remain unchanged and identical to neighbouring strata lots. Further, bylaw 2.4 does not require a specific tree variety. Rather, I find that bylaw 2.4 only requires that each of the strata lots' landscaping must be reasonably consistent with the rest of the strata lots.
25. Mr. Timmons provided a video file showing 8 of the strata lots' front yards, including Mr. Timmon's and Ms. Wingfield's strata lots. The video shows that both Mr. Timmon's and Ms. Wingfield's strata lots do not have the same maple tree variety in their front yards as the neighbouring strata lots. However, both Mr. Timmon's and Ms. Wingfield's strata lots have a different, unspecified tree variety in their front yard instead. This is also shown in strata' photographs of Mr. Timmon's and Ms. Wingfield's strata lots. The strata also provided a photograph of Ms. Kusche's strata lot which shows trees and landscaping, however it is difficult to determine the type of vegetation present in her strata from the provided photograph.
26. Based on the video file and the photographs, I find that the applicants have sufficiently proved that they have not breached bylaw 2.4. I agree with the strata that the absence

of maple trees from Mr. Timmon's and Ms. Wingfield's strata lots is a noticeable difference from the other strata lots. However, I find that even though the trees on their strata lots look different, their landscaping is still reasonably consistent with the other strata lots. Further, based on the photograph of Ms. Kusche's property, I find that strata lot's landscaping is also consistent with the other strata lots. I find that each of the applicants' strata lots have full looking landscaping which looks comparable to the other strata lots.

27. The strata argues that the city must approve the owner developers' building scheme which can include specific landscaping requirements. However, I find that municipal development rules and bylaws are not relevant to my determination of whether the tree removal breached the strata bylaws. So, I make no findings about potential city requirements.
28. For the above reasons, I find that the applicants' landscaping changes did not violate bylaw 2.4. CRTA section 123(1)(b) says that the CRT may make an order requiring a party to refrain from doing something. Based on my finding that the applicants did not breach bylaw 2.4, I order the strata not to take action under SPA section 26 relating to the removal or alteration of the maple trees in their strata lots.
29. The applicants also argue that the strata failed to consistently enforce its bylaws. Put another way, the applicants argue the strata treated them significantly unfairly by threatening to assess bylaws fines against them for removing trees but not enforcing bylaw 2.4 against other strata lots. The applicants say that other strata lot owners altered their landscaping by adding a lawn and rubber mulch. However, based on my above finding that the applicants' tree removals did not violate bylaw 2.4, I find it unnecessary to make a finding about whether the strata treated the applicants significantly unfairly.

Complaints disclosure

30. In their submissions, the applicants requested a redacted copy of all landscaping complaints made about the applicants' strata lots. The strata says the complaints are confidential. Section 61 of the CRTA permits the CRT to order the disclosure of

dispute-related documents. However, based on my above findings that the applicants' strata lots' landscaping does not breach bylaw 2.4, I find it unnecessary to determine whether the complaints should be disclosed for the purposes of this dispute. Further, this claim for document disclosure was not raised in the application for dispute resolution. For the above reasons, I make no findings relating to the applicants' request for the disclosure of complaint documents.

CRT FEES AND EXPENSES

31. Under section 49 of the CRTA and 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. Since the applicants were successful, I find that they are entitled to reimbursement of their CRT fees. This totals \$225. The applicants did not claim reimbursement of dispute-related expenses.
32. Since the strata was not successful, I find that it is not entitled to reimbursement of its CRT counterclaim fees. The strata has requested reimbursement of legal and administrative costs. I note that under CRT rule 9.5, compensation for legal fees and administrative costs for a party's time spent dealing with a CRT proceeding is only awarded in extraordinary circumstances. I find that there are no extraordinary circumstances here. Further, I find there is no proof that the strata paid or owes any amount for legal fees for this dispute, and no proof that it incurred any administrative costs in this dispute. On the evidence before me, I find that the strata is not entitled to reimbursement of legal or administrative costs. Further, I find that the strata is not entitled to reimbursement of dispute-related expenses since it was not successful in this dispute.

ORDERS

33. I order that within 30 days of this order that the strata pay the applicants jointly \$225 in CRT fees.

34. I order the strata not to take action against the applicants under SPA section 26 relating to the removal or alteration of the maple trees in their strata lots.
35. The applicants are entitled to post-judgment interest as applicable under the *Court Order Interest Act*.
36. 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.

Richard McAndrew, Tribunal Member