



# Civil Resolution Tribunal

Date Issued: March 29, 2022

File: ST-2021-006679

Type: Strata

Civil Resolution Tribunal

Indexed as: *Worsfold v. The Owners, Strata Plan KAS 1348*, 2022 BCCRT 351

**B E T W E E N :**

ROLAND WORSFOLD

**APPLICANT**

**A N D :**

The Owners, Strata Plan KAS 1348

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## INTRODUCTION

1. This strata property dispute is about repair and maintenance of landscaped areas of a bare land strata corporation.
2. The applicant, Roland Worsfold, co-owns strata lot 27 (SL27) in the respondent strata corporation, The Owners, Strata Plan KAS 1348 (strata). The strata is a bare land

strata corporation.

3. Mr. Worsfold says the strata refuses to properly maintain certain landscaped areas of the strata contrary to its bylaws. They seek an order that the strata maintain the “grassland banks” areas on all strata lots within the strata to include cutting the grass and pruning trees.
4. The strata disagrees with Mr. Worsfold and asks that the claims be dismissed.
5. Mr. Worsfold is self-represented. The strata is represented by a strata council member.
6. As explained below, I dismiss Mr. Worsfold’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. 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 section 123 of the CRTA and the CRT rules, 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. The issue in this dispute is whether the strata has failed to maintain landscaping as required under its bylaws.

**BACKGROUND, REASONS AND ANALYSIS**

12. As applicant in a civil proceeding such as this, Mr. Worsfold must prove their claims on a balance of probabilities, meaning “more likely than not”. I have read all the submissions and evidence provided by the parties, but I refer only to information I find relevant to give context for my decision.

13. The strata was created in December 1993 and consists of 40 residential bare land strata lots.

14. Land Title Office (LTO) documents show the strata filed a complete new set of bylaws on November 22, 2013 which repealed and replaced all previous bylaws and the Standard Bylaws under the *Strata Property Act* (SPA). There is no dispute that the strata followed the correct process set out in the SPA when it amended its bylaws. The relevant bylaws to this dispute are bylaws 7 and parts of bylaw 9.

15. Bylaw 7 requires an owner to repair and maintain their strata lot. Bylaw 9 addresses landscaping. I find subsections 9.2 and 9.3 are the relevant parts of bylaw 9, which I reproduce in full.

9.0 **LANDSCAPING**

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9.2 Except for the costs to be paid for by the Strata Corporation pursuant to Bylaw 9.3, the Owner will pay for all landscaping costs and expenses, including but not limited to the cost of all labour and materials.

9.3 The Strata Corporation will at its cost maintain the following landscaping on the Strata lots:

- a. mowing the groomed lawns;
- b. weeding and fertilizing of groomed lawns and flower beds;
- c. weed control of grassland banks;
- d. annual pruning of trees, except as otherwise agreed between an Owner and the Strata Council;
- e. underground irrigation; and
- f. maintaining soil covering such as bark mulch and shale.

16. The bylaws do not define “groomed lawns” or “grassland banks”. Nor were any photographs of these areas provided in evidence. However, I find from the overall evidence and submissions, that “groomed lawns” mean lawn areas that are usually mowed and maintained regularly, and that “grassland banks” means grass areas located on steeply sloped land. It is clear that some of the grassland banks are located on common property, and some are located on specific strata lots, including SL27. Under SPA section 72(3), the strata may take responsibility for specified portions of a strata lot, so I find no issue with bylaw 9.3’s enforceability.

17. Mr. Worsfold provided conflicting statements on whether the strata’s landscaping bylaw has changed. In 1 part of their submissions they say the bylaws “have basically not changed” since the strata was created, yet in another part of their submissions they say “of concern is the way the By-Laws were changed.” Based on my review of bylaws, including the bylaws that existed prior to November 22, 2013 when a new set of bylaws was adopted, bylaw 9 did not change. I find the wording in both versions of the filed bylaw is exactly the same. Based on this finding, I do not agree with Mr. Worsfold’s unsupported assertion that the strata lot owners did not fully understand “the changes” in the bylaws.

18. It also does not matter that the strata owners directed the strata to cut the grassland banks on Mr. Worsfold's property at an annual general meeting (AGM) held in September 2012, because that direction was rescinded at a special general meeting (SGM) held in September 2018. It is unclear from the evidence whether the strata ever did cut the grassland banks or that it continued to cut the grassland banks after the owners' direction was rescinded in 2018. However, to the extent Ms. Worsfold says the strata's action to stop cutting the grassland banks was unfair, I disagree. This is because SPA section 27(1) permits strata corporation owners to direct or restrict the strata council in its exercise of powers and performance of duties through a majority vote resolution passed at a general meeting. I find the motion passed at the 2018 SGM to rescind the previous direction to cut the grass complied with SPA section 27.
19. Mr. Worsfold's says that all strata lot owners moved into the strata "so they would not have to be responsible for any landscape maintenance", but I find this assertion is unproven. At the 2018 AGM, a motion to approve "weed whacking" the grassland banks located on strata lot was defeated. Further, at the 2020 AGM, a proposed amendment to bylaw 9.3 to require cutting the grassland banks (among other things) was also defeated. Based on the unsuccessful attempt to direct the strata to cut the grassland banks in 2018 and amend bylaw 9.3 in 2020, I find the majority of owners do not support Mr. Worsfold's view about landscape maintenance of the grassland banks.
20. Mr. Worsfold also says the strata incorrectly refers to parts of strata lots as "private property", which is not mentioned in the SPA or the strata's bylaws. While I agree with Mr. Worsfold that private property is not mentioned in the SPA or bylaws, I find in the evidence before me, the strata's reference to private property is about strata lots and the strata's attempt to distinguish the common property grassland areas from the those located on individual strata lots. I agree with the strata that nothing turns on this distinction.
21. I also agree with the strata that Mr. Worsfold's issue is mainly about the interpretation of its bylaws concerning landscape maintenance for individual strata lots. The strata correctly states that the courts have found that the basic rules of statutory

interpretation are used to understand how bylaws work together. It says, and I agree, that bylaws should be given their plain and ordinary meaning, and when determining the meaning of an individual bylaw, the bylaws must be read as a whole preferring an interpretation which allows the bylaws to work harmoniously and coherently. See *The Owners, Strata Plan LMS 3259 v Sze Hang Holding Inc.*, 2016 BCSC 32 at paragraph 179 and *Semmler v The Owners, Strata Plan NES 3039*, 2018 BCSC 2064 at paragraph 18.

22. Following *Sze Hang* and *Semmler*, I find the bylaws are not ambiguous or vague. Bylaw 7 requires owners to repair and maintain their strata lots, however, there are exceptions for repair and maintenance that is the strata's responsibility, which includes strata lot landscaping under bylaw 9.3. Mr. Worsfold essentially says the strata should be maintaining the grassland banks, which is not what the bylaw says. Rather, as the strata suggests, I find bylaw 9.3 includes only weed control of the grassland banks and does not include cutting the grass. I also find the strata's responsibility for groomed lawn areas does not include re-sodding grass areas as Mr. Worsfold suggests. Further, Mr. Worsfold did not provide any evidence to support his argument that the strata was responsible for grass failing.
23. Mr. Worsfold says the strata has refused to prune trees located on the grassland banks, but did not provide evidence to support his position. Bylaw 9.3 clearly requires the strata to take responsibility for annual pruning of trees located on strata lots unless there is a different agreement reached between the strata lot owner and strata council. It is unclear from Mr. Worsfold's submissions, what their concern is for tree pruning. However, I find the strata's responsibility for annual pruning is a minimum requirement. If Mr. Worsfold believes additional tree work is required, I find he is responsible to pay for that work.
24. Mr. Worsfold asserts that the bylaws require the strata to maintain landscaping of strata lots and the common property to the "expected standards" of strata lot owners. However, based on my discussion above, I find the bylaws clearly have different landscape maintenance requirements for strata lots and common property.

25. I also disagree with Mr. Worsfold's argument about the strata's standards. The courts have established that a strata corporation is not held to a standard of perfection and must only act reasonably with fair regard for the interests of all concerned (my emphasis). See *Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74 at paragraph 57.

26. In *Slosar v The Owners, Strata Plan KAS 2846*, 2021 BCSC 1174, the court summarized the strata's repair responsibility in this way (at paragraph 66):

The standard against which the Strata's actions are to be measured in assessing its duty under s. 72 of the SPA is objective reasonableness, which requires, among other things, balancing interests to achieve the greatest good for the greatest number given budget constraints. Contrary to the petitioner's arguments, there is no requirement that repairs be performed immediately or perfectly: *Hirji v. Strata Plan VR 44*, 2015 BCSC 2043 at para. 146. Steps required to be taken are dictated by the circumstances at the time. The standard is not perfection nor is it to be judged with the benefit of hindsight.

27. Based on *LeClerc* and *Slosar*, the strata is required to act reasonably when completing its landscape repair and maintenance responsibilities, which I find applies equally to both common property and strata lots. Mr. Worsfold has not established through evidence that the strata has acted unreasonably in the circumstances of this dispute.

28. Based on my findings above, I conclude that the strata has met its duty to maintain landscaping as required under its bylaws. I dismiss Mr. Worsfold's claims and this dispute.

## **CRT FEES, EXPENSES AND INTEREST**

29. 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 find the strata was the most successful party but did not pay CRT fees, so I make no order for reimbursement of CRT fees.

30. Neither party claimed disputed-related expenses, so I order none.

31. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Worsfold.

## **ORDER**

32. I dismiss Mr. Worsfold's claims and this dispute.

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J. Garth Cambrey, Vice Chair