



Civil Resolution Tribunal

Date Issued: April 8, 2022

File: ST-2021-006985

Type: Strata

Civil Resolution Tribunal

Indexed as: *Krohnke v. The Owners, Strata Plan NW 2871*, 2022 BCCRT 401

B E T W E E N :

CHARLOTTE KROHNKE

APPLICANT

A N D :

The Owners, Strata Plan NW 2871

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Laylí Antinuk

INTRODUCTION

1. This strata dispute is about a concrete patio.
2. The applicant, Charlotte Krohnke, owns strata lot 66 (SL66) in the respondent strata corporation, The Owners, Strata Plan NW 2871 (strata). Mrs. Krohnke says her neighbour in strata lot 65 (SL65) installed a concrete patio outside SL65 and SL66,

which she says is a significant change to common property. She says the change was not approved by a $\frac{3}{4}$ vote as required by the *Strata Property Act* (SPA). She also says the strata did not give its written approval for the patio as required by the bylaws. Mrs. Krohnke wants the patio removed.

3. The strata says it approved the patio, which it argues is not a significant change to common property. The strata also says the patio is the same as several others in the strata complex. It asks me to dismiss Mrs. Krohnke's claims.
4. Mrs. Krohnke represents herself. A strata council member represents the strata.
5. As explained below, I find that the patio is a significant change that requires a $\frac{3}{4}$ ownership vote under the SPA.

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). 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 parties that will likely continue after the CRT process has ended.
7. The CRT has the discretion to decide how to hold the hearing. A hearing can occur by writing, telephone, videoconferencing, email, or a combination of these. I have decided that a written hearing is appropriate here. I find I can properly assess and weigh the documentary evidence and submissions without resort to an oral hearing.
8. The CRT can accept any evidence that it considers relevant, necessary and appropriate, even if the evidence would not be admissible in court. The CRT may also ask parties and witnesses questions and inform itself in any other appropriate way.
9. In resolving this dispute, the CRT may order a party to pay money, or to do or stop doing something. The CRT may also order any other appropriate terms or conditions.

ISSUES

10. The issues in this dispute are:
 - a. Is the concrete patio a significant change?
 - b. If not, did the strata provide written approval for the patio as the bylaws require?
 - c. What remedies, if any, are appropriate?

EVIDENCE AND ANALYSIS

11. As the applicant in this civil claim, Mrs. Krohnke must prove her claims on a balance of probabilities (meaning “more likely than not”). I have reviewed all the parties’ evidence and arguments but refer only to what is necessary to explain my decision.
12. The strata was created in 1988 under the *Condominium Act* and continues under the SPA. It consists of 99 residential, townhouse-style strata lots in 43 buildings.
13. In 2015, the strata repealed and replaced all previously filed bylaws with the Land Title Office, with the exception of a few bylaws that I find irrelevant to this dispute. Given my conclusion about the issues, I do not find it necessary to discuss the bylaws.

Is the concrete patio a significant change?

14. SL66 and SL65 sit beside one another in separate buildings with a space between them. The space is undisputedly common property. Based on the photos in evidence, I find that this space contains a shared sidewalk running the full length of the two strata lots, and out to 2 visitor parking stalls. The space also has 2 sidewalks that branch off from the main shared sidewalk and go to each strata lot’s front door. The concrete patio at issue sits in this common property space, between the main shared sidewalk and the sidewalk that goes to SL65’s door. To install the concrete patio, Mrs. Krohnke’s neighbours had a large evergreen bush and planting bed removed and paved over with concrete. I find that the patio is a few steps away from Mrs. Krohnke’s door. I make all the above findings based on the photographic evidence.

15. Mrs. Krohnke says her neighbours installed the patio in June 2021. She argues that the patio is a significant change to common property, so it should have been approved by a $\frac{3}{4}$ vote, which undisputedly did not happen. The strata says the change is not significant and that other strata lots have created similar concrete patios.
16. I turn to the applicable law. SPA section 71 says a strata must not make a significant change in the use or appearance of common property unless the change is approved by a resolution passed by a $\frac{3}{4}$ vote at an annual general meeting (AGM) or special general meeting (SGM). An individual owner's significant changes to common property also trigger the requirements of SPA section 71. See *Foley v. The Owners, Strata Plan VR387*, 2014 BCSC 1333.
17. The SPA does not define "significant change". However, the BC Supreme Court set out the following list of non-exhaustive factors to consider when deciding whether a change is significant:
 - a. How visible is the change?
 - b. Does the change affect the use or enjoyment of any strata lots?
 - c. Does the change cause any disruption or direct interference?
 - d. Does the change impact the marketability or value of any strata lot?
 - e. How many strata lots are there and what are their general use (i.e. commercial, residential, or mixed)?
 - f. How has the strata governed itself in the past? What has it allowed?

See *Foley* at paragraph 19, citing *Chan v. The Owners, Strata Plan VR677*.

18. Court decisions also suggest that the more permanent the change, the more significant it is. For example, see *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126 and *Sidhu v. The Owners, Strata Plan VR1886*, 2008 BCSC 92.
19. Considering the above factors, I find that the patio is a significant change. Based on the photos in evidence, I find that it is visible both from the parking area and street,

and from Mrs. Krohnke's home. I also find that paving over a planting bed permanently changes the use of common property. The space in question went from being a sizeable planting bed with natural rainwater drainage and absorption, to a concrete pad with no ability to absorb rainwater. Additionally, the photos show that SL65 has placed patio chairs on the patio, which the strata does not dispute. Given this, I find that installing the patio effectively turned a common property space into limited common property. I say this because I find that the patio prevents or discourages communal use and enjoyment and instead essentially allows SL65 to claim exclusive use over common property. As a result, I find that the patio disrupts and directly interferes with other owners' ability to use and enjoy common property.

20. Further, as noted above, the photos show that the patio is mere steps away from Mrs. Krohnke's front door. So, I am persuaded by her submission that the change affects the marketability and value of her strata lot. Mrs. Krohnke submitted a signed statement from her realtor, Steve Klassen, who says the patio could negatively impact the market value of SL66. I accept that Steve Klassen is qualified to provide this expert opinion evidence under the CRT rules, and I find the opinion persuasive, particularly given the photos in evidence. Again, the photos show that where a large, healthy-looking evergreen bush and plantings once were, there is now a concrete patio with furniture owned by someone else just steps from Mrs. Krohnke's front door. On balance, I find the patio negatively impacts SL66's marketability and value.
21. I acknowledge the strata's arguments and evidence that there are a few other similar concrete patios throughout the 99-unit residential strata complex. The strata says these changes were never approved in the manner required by SPA section 71. However, I find that past practice does not outweigh the factors just discussed.
22. Taking all this into account, I find that the concrete patio's installation should have been approved by a $\frac{3}{4}$ vote at an AGM or SGM.
23. Mrs. Krohnke asks me to order the patio's removal. However, I find that such an order would prevent the strata from making a democratic decision about common property as contemplated by the SPA. In the circumstances, I find it appropriate to order the

strata to hold an AGM or SGM within 90 days of this decision's date. I order that the strata propose a $\frac{3}{4}$ vote resolution that the concrete patio be permitted to remain in the common property space between SL65 and SL66. If the resolution does not receive $\frac{3}{4}$ of the votes as required under SPA section 71, I order the strata to have the patio removed and replaced with a planting bed within 90 days of the AGM or SGM, since this was the status quo prior to the patio's installation.

24. Given my findings above, I do not need to address the issue about whether the strata gave written approval for the patio. I say this because I find that the strata council cannot give its written approval without the required $\frac{3}{4}$ vote under SPA section 71.

CRT fees and dispute-related expenses

25. Mrs. Krohnke was substantially successful in this dispute. So, under CRTA section 49 and the CRT rules, I find it appropriate to order the strata to reimburse the \$225 she paid in CRT fees. Neither party claims any dispute-related expenses, so I make no order about that.

26. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Mrs. Krohnke.

ORDERS

27. I order that:

- a. Within 90 days of this decision's date, the strata hold an AGM or SGM in which it proposes a $\frac{3}{4}$ vote resolution that the concrete patio be permitted to remain in the common property space between SL65 and SL66.
- b. If the resolution does not receive $\frac{3}{4}$ of the votes as required under section 71 of the SPA, I order the strata to have the patio removed and replaced with a planting bed within 90 days of the AGM or SGM.
- c. Within 30 days of this decision's date, the strata must pay Mrs. Krohnke \$225 in CRT fee reimbursement.

28. Mrs. Krohnke is entitled to post-judgment interest under the *Court Order Interest Act*, as appropriate.
29. Under CRTA sections 57 and 58, the BC Supreme Court can enforce a validated copy of the CRT's order. The BC Provincial Court can also enforce the order since it is an order for financial compensation under \$35,000. Once filed with a court, the order has the same force and effect as if it were a judgment of that court.

Laylí Antinuk, Tribunal Member