



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Morelli v. The Owners, Strata Plan BCS 1493*, 2022 BCCRT 429

BETWEEN:

TERRY MORELLI and CARLINE MORELLI

APPLICANTS

AND:

The Owners, Strata Plan BCS 1493

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about construction of a secondary structure on a bare land strata lot.
2. The applicants, Terry Morelli and Carline Morelli, own strata lot 8 (SL8) in the respondent bare land strata corporation, The Owners, Strata Plan BCS 1493 (strata).

3. The Morellis say they built a pergola (structure) on the west side of SL8. They say the strata wrongfully decided they had built a carport, and therefore fined them for building an impermissible structure. The Morellis request orders that the strata reverse its decision and rescind the bylaw fines.
4. The strata says the Morellis breached the bylaws, including by not obtaining advance written permission to build the structure. The strata says the Morellis claims should be dismissed.
5. The Morellis are self-represented in this dispute. The strata is represented by a strata council member.
6. For the reasons set out below, I find in favour of the Morellis in this dispute. I therefore order the strata to rescind the disputed bylaw fines.

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 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.
11. In its submissions, the strata asks for an order that the Morellis must remove the structure. However, the strata did not file a counterclaim, although it was entitled to do so. I therefore make no decision or order about removing the structure in this decision.
12. The Morellis made submissions about alleged privacy breaches by the strata. However, this claim is not included in the Dispute Notice, and the Morellis did not request to amend the Dispute Notice. So, I make no findings or orders about privacy breaches in this decision.

ISSUES

13. The issues in this dispute are:
 - a. Did the Morellis breach any bylaws, and if not, must the strata cancel the bylaw fines?
 - b. Are the Morellis entitled to reimbursement for time or expenses?

BACKGROUND

14. In a civil claim like this one, the Morellis, as applicants, must prove their claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision.
15. The strata filed consolidated bylaws with the Land Title Officer in November 2013, and then filed various bylaw amendments after that. Of these amendments, I find the

ones filed in November 2018 are relevant to this dispute. I discuss the relevant bylaws in my reasons below.

16. The evidence shows that the Morellis built the disputed structure on SL8 gradually, between 2019 and early 2021. The structure is located in the west side yard of SL8. The photos show that the construction began with a small retaining wall running along the border between SL8 and the neighbouring strata lot. The wall is approximately 10 feet away from the side of the Morellis' house.
17. The Morellis then built a cedar fence on top of the retaining wall. Three of the fence posts extend well above the height of the fence, and are slightly higher than the gutters on the Morellis' house. The Morellis then used narrow beams to connect the fence posts to the side of the house, and installed cedar slats horizontally, parallel to the top beams, between the house and the fence. This formed an open, lattice-style roof.
18. The evidence shows that after the strata raised concerns about the structure, the Morellis removed the cedar slats, leaving a fully open wood framework across the top of the structure. Based on their submissions, I infer that after this dispute is resolved, the Morellis wish to replace the cedar slats. The Morellis say they initially planned to use polycarbonate panels to roof the structure, but they changed this plan after a council member told them this would likely make the structure an impermissible "carport" under the strata's bylaws.
19. In this dispute, the Morellis assert that the structure, with the open cedar slat roof, is a pergola. The strata says it is a carport.
20. The strata says the structure breaches 2 strata bylaws: Division 11, section 1 (11.1) and Division 11, section 9 (11.9). Bylaw 11.1, as amended in November 2018, states as follows:

There shall not be constructed, placed or erected or maintained on any lot any dwelling, building or other improvement whatsoever, hereinafter referred to as a dwelling or house unless and until plans showing compliance in all

respects with restrictions and showing size, colour scheme and all materials used have been submitted in quadruplicate to and approved in writing by [the strata] or by its authorized agent or agents who shall have the right and power to approve or arbitrarily reject such plans and specifications; and construction shall include, filing or other preparatory work on the lot. Three sets of drawings marked "Approved" and signed by the Strata or the Strata's authorized agent will be returned to the owner for submission to the [regional district] as required prior to their issuance of a Building Permit.

a. In addition, the following must be shown on all plans

Elevation of: the top of the foundation wall, the top of the concrete pillars, the garage slab, the main floor, and the final grade elevations at all corners of the house and the corners of the lot.

Location of: retaining walls...water meter readout...raised roof ridge caps.

b. The owner/builder must provide a copy of the topographic survey.

c. The owner, builder and the home designer must, by signing the Plan Approval Application, acknowledge in writing, the review and understanding of the [strata] building regulations and bylaws.

21. Bylaw 11.9 states:

No garage shall be constructed on any lot except an enclosed garage for two standard passenger size motor vehicles contiguous to the dwelling of which it forms a part, unless the Strata deems it appropriate to approve a garage separate from the dwelling for a particular architectural design. No carports or garages without doors shall be constructed.

22. The strata received a written complaint from an owner in November 2020, and sent the Morellis a warning letter dated February 10, 2021. In the letter, the strata cited bylaws 11.1 and 11.9, and said the structure breached those bylaws because the Morellis had not provided the strata with a plan or obtained advance written

permission before building it. The letter warned of potential fines, and offered the Morellis an opportunity to request a strata council hearing.

23. After a hearing and some further correspondence between the parties, the strata sent a March 24, 2021 letter stating that the council confirmed its decision that the structure was unauthorized, contrary to bylaw 11.1. The strata also said the Morellis had breached bylaw 11.9 by using the structure to store their boat. The letter demanded removal of the structure. It said if the Morellis did not remove the structure within 21 days, the strata would impose a \$200 fine every 7 days until it was removed.
24. In an April 27, 2021 letter, the strata said it had begun to impose fines on April 14, 2021. A strata lot account statement provided in evidence appears to show that the first fine was actually imposed on May 25, 2021, and that recurring fines of \$200 per week were imposed until September 29, 2021, for a total of \$3,200. There is no evidence before me indicating whether further fines were imposed after that. This CRT dispute was filed on July 17, 2021.

REASONS AND ANALYSIS

Must the strata cancel the bylaw fines?

25. For the following reasons, I find the strata must cancel the bylaw fines it imposed on the Morellis related to the structure.
26. As noted above, the strata imposed the fines because the Morellis did not obtain advance written permission to build the structure, and because they stored their boat in it. I will address the boat storage issue first, and the written permission issue second.

Boat Storage

27. The photos the Morellis provided in evidence, and their submissions, establish that they do park their boat (on its trailer) inside the structure for periods of time.

28. The strata says that because the Morellis have used the structure “exclusively” for boat storage, it is a “carport”, and therefore not permitted under bylaw 11.9. The strata cites the following definition of carport, although there is no definition in the bylaws, or the *Strata Property Act* (SPA): “A carport is a covered structure used to offer limited protection to primarily cars from rain and snow.”
29. I accept the strata’s definition of carport, as I find it is reasonable. However, I find that the structure does not meet this definition. The photos show that the structure is not significantly covered. The cedar slats forming the structure’s roof, when they were in place, were at most 2 inches wide, spaced at least 8 inches apart. The fence forming the west wall of the structure is only about 6 feet high, with the top foot made of open lattice. The front wall is open, and the back wall is made up of a solid fence and gate, also about 6 feet high. In particular, I find the structure’s open roof would offer almost no “protection...from rain and snow”, as required under the strata’s definition of carport.
30. For this reason, I find the structure does not violate bylaw 11.9, so the strata was not entitled to impose fines on that basis. The strata has other bylaws about parking and boat storage. However, the evidence in this dispute does not include any notice about a breach of those bylaws, so I find that is not before me to decide in this dispute.

Advance Written Permission

31. The strata says the Morellis breached bylaw 11.1 by not obtaining advance written permission from the strata before building the structure.
32. I find that the wording of bylaw 11.1 is unclear and contradictory. It sets out a rigorous written approval process for “any dwelling, building or other improvement whatsoever, hereinafter referred to as a dwelling or house”. Generally, the phrase “other improvement whatsoever” would include any structure, including the one the Morellis built. However, it makes no sense to refer to that structure as a “dwelling or house”, since it is almost entirely open to the elements, and has no closed walls or roof. Also, bylaw 11.1 refers to a mandatory building permit, but there is no suggestion in the

evidence that the local government would actually require any building permit for the structure.

33. In *Semmler v. The Owners, Strata Plan NES3039*, 2018 BCSC 2064, the BC Supreme Court said that while strata bylaws are not statutes, basic rules of statutory interpretation should be used to understand how a strata's bylaws work together (paragraph 18). This means that to determine the meaning of an individual bylaw, the bylaws must be read as a whole. An interpretation that allows the bylaws to work together harmoniously and coherently should be preferred.
34. Following the reasoning in *Semmler*, which is binding, I place significant weight on bylaw 11.20, entitled "Auxiliary Buildings". Bylaw 11.20 says that the design and finish of any auxiliary building must be compatible with and complementary to the house. Reading the bylaws in Division 11 together, I find it significant that auxiliary buildings are addressed in entirely separate sections of Division 11. This, and the fact that the term "auxiliary building" does not appear in bylaw 11.1, suggests that bylaw 11.1 was not intended to apply to non-habitable structures. I also note that Bylaw 11.20 does not set out any requirement for advance approval of auxiliary buildings.
35. The Morellis assert that at the October 2019 annual general meeting, owners voted on a resolution to amend bylaw 11.20 to require advance written approval for auxiliary buildings. They say the proposed amendment failed to pass. The strata does not dispute that the amendment was proposed and failed, but says it is not relevant. I do not agree. I find the undisputed fact that the amendment was put forward for a vote supports the conclusion that the current bylaw 11.1 does not apply to auxiliary buildings.
36. For these reasons, I find that bylaw 11.1 does not apply to the Morelli's structure, so advance written approval was not required. However, even if bylaw 11.1 did apply, I find the strata was not entitled to impose fines on the Morellis. This is because the evidence shows that the strata knowingly allowed numerous other structures to exist without any advance permission, or subsequent written permission. Therefore, I find

the strata's decision to demand the structure's removal and impose fines was significantly unfair.

37. The CRT can make orders to remedy a strata's significantly unfair actions or decisions under CRTA section 123(2). In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, the BC Court of Appeal interpreted a significantly unfair action as one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable. In *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342, the BC Court of Appeal confirmed that the reasonable expectations of an owner may also be relevant to determining whether the strata's actions were significantly unfair.
38. I find that the Morellis' reasonable expectations are relevant in this dispute, since the strata made a discretionary decision to require the structure's removal and impose fines. The test for assessing an owner's reasonable expectations is from *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44:
- a. What was the applicants' expectation?
 - b. Was that expectation objectively reasonable?
 - c. Did the strata violate that expectation with a significantly unfair action or decision?
39. I find that the strata's actions in relation to the structure were significantly unfair. The Morellis provided photos of at least 11 structures on other strata lots, including sheds, a pergola, a privacy wall, and a gazebo. The Morellis also provided evidence showing that in May 2021 they made a written request under SPA section 36 for copies of written approvals for specific listed structures on 28 different strata lots, and the strata provided none.
40. The strata says the other structures were not the same, and the Morellis' structure is "unique". The strata says that the other auxiliary structures in the strata were deemed not to require advance documentation.

41. I find that explanation is unreasonable and unexplained. The strata did not provide a convincing explanation for its position that bylaw 11.1 requiring advance written permission applies to the Morelli's structure, but not to the other structures, which I noted above included a gazebo, a pergola, a privacy fence, and numerous sheds. The strata submitted that back yards are not subject to bylaws. I find that submission is factually incorrect. Also, even if bylaw 11.1 does apply to the structure, which I found above it does not, there is nothing in the bylaw's wording that suggests it applies to some parts of strata lots and not others.
42. Given the numerous other unapproved structures in the strata, I find the Morellis had a reasonable expectation that their structure did not require specific permission. I find the strata violated that reasonable expectation with its demand that the Morellis remove the structure, and its decision to fine them. There is no evidence that other owners with unapproved structures have been fined, or that the strata has demanded that other structures be removed.
43. For all of these reasons, I find the strata must reverse any structure-related bylaw fines from the Morellis' strata lot account. As there is no suggestion in the evidence that the Morellis have paid the fines, I order no refund.
44. Finally, I note the strata's submission that the Morellis' structure does not meet the regional district's setback requirements. This setback issue was not raised in any of the pre-dispute correspondence in evidence, including the strata's bylaw warning and fine letters. So, I find it is unreasonable and significantly unfair to rely on an argument about setbacks now as justification of the strata's position in this dispute. Nothing in this decision prevents the regional district from enforcing its bylaws.

CRT FEES AND EXPENSES

45. The Morellis request reimbursement of their time spent on this dispute. CRT rule 9.5(5) says that except in extraordinary circumstances, the CRT will not order one party to pay another for time spend dealing with a dispute. I find there are no extraordinary circumstances in this dispute, so I dismiss this claim.

46. CRT rule 9.5(1) says the CRT will usually order an unsuccessful party to pay a successful party's CRT fees and reasonable dispute-related expenses. The Morellis are the successful parties, so I order the strata to reimburse them \$225 for CRT fees.
47. The Morellis also request reimbursement of \$110.40 for the cost of scanning documents. They did not provide a receipt to confirm this expense, so I order no reimbursement.
48. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to the Morellis.

ORDERS

49. I order that:
 - a. The strata must immediately remove any structure-related bylaw fines, and associated interest, from the Morellis' strata lot account.
 - b. The strata must immediately reimburse the Morellis \$225 for CRT fees.
50. The Morellis are entitled to postjudgment interest under the *Court Order Interest Act*, as applicable.
51. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under CRTA section 58, 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.

Kate Campbell, Vice Chair