



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Irvine v. The Owners, Strata Plan K451*, 2022 BCCRT 454

B E T W E E N :

WILLIAM IRVINE and CARLA IRVINE

APPLICANTS

A N D :

The Owners, Strata Plan K451

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about the removal of 3 exterior roof coverings over the entries to a strata lot. The applicants, William Irvine and Carla Irvine, co-own a strata lot (SL1) in the respondent strata corporation, The Owners, Strata Plan K451 (strata). The strata removed 3 transparent coverings installed over SL1's entries. The Irvines request an order requiring the strata to replace the coverings.

2. The strata says it is not responsible for the replacement of the coverings because they are not integral part of the strata's building's roof. The strata also says the Irvines are responsible for the expense of replacing the coverings since they were owner installed.
3. The Irvines are self-represented. The strata is represented by its strata council president.

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.

Claim for relief not raised in the Dispute Notice

8. In their submissions, the Irvines added a request for an order requiring the strata to identify and repair an alleged water leak into their strata lot. This remedy was not requested in the Dispute Notice. Though the CRTA and CRT rules permit applicants to request to amend the Dispute Notice to add new claims or remedies, the Irvines did not do so. I find the purpose of a Dispute Notice is to define the issues and provide notice to the respondents of the claims against them. CRT rule 1.17 says that the Dispute Notice will only be amended after the dispute has entered the CRT decision process where exceptional circumstances apply. I find no exceptional circumstances here that would justify adding new claims or remedies at this late stage in the CRT process. Therefore, I decline to address the Irvines' claim for a remedy relating to the alleged water leak.

ISSUE

9. The issue in this dispute is whether the strata must replace the roof coverings.

BACKGROUND AND EVIDENCE

10. In a civil claim such as this, the Irvines, as the applicants, bear the burden of proving their claim on a balance of probabilities. I have reviewed all of the evidence, but I have only refer to the evidence and arguments to the extent necessary to explain my decision.
11. The strata was created in 1998. The strata filed a complete set of bylaw amendments at the Land Title Office (LTO) on February 9, 2005. I find these are the relevant strata bylaws. Further bylaw amendments have been filed at the LTO which are not relevant to this dispute.
12. It is undisputed that SL1 had 3 transparent roof coverings near its entries. It is also undisputed that the strata removed these coverings, leaving open wood framing.

13. *Strata Property Act* (SPA) section 1 defines limited common property (LCP) as common property designated for the exclusive use of the owners of one or more strata lots. The strata plan designates the area where the coverings were located as “common exclusive use” for SL1. Based on the strata plan, I find that these entry areas, where the coverings were located, were LCP within SL1’s exclusive use. So, I also find that the roof coverings were LCP.
14. The Irvines say the roof coverings were pre-existing when they bought the strata lot in 2012, and appeared to have been originally installed more than 20 years earlier. The strata says the coverings were installed by an owner, though the strata does not specifically say who or when that was. However, I find it unnecessary to determine who originally installed the coverings since the Irvines say that they replaced the plexiglass roof coverings with tempered glass coverings in 2014 with the strata’s approval. Since the strata does not dispute this submission, I accept it as accurate. So, I find that the Irvines installed tempered glass coverings on their LCP in 2014 with the strata’s permission.
15. At an October 14, 2020 special general meeting, the owners approved the replacement of the roof, to be funded by a special levy, by a 3/4 vote resolution. Based on both parties’ submissions, I find that this resolution referred to the replacement of the strata’s building’s roof, not the LCP roof coverings over SL1’s entries.
16. The Irvines say the glass coverings became dislodged and began to slide off the support frames in January 2021 while the strata was replacing the roof. Since the strata does not dispute this, I accept this as accurate. It is undisputed that the strata contractors then removed the glass roof coverings adjacent to SL1.
17. On January 28, 2021, the strata emailed the owners saying that efforts had been made to replace the coverings. However, the strata says that it had decided not to replace the coverings because they were not part of the original design. It is undisputed that the strata has not replaced the removed coverings.

REASONING AND ANALYSIS

18. SPA section 72 says that strata corporations must repair and maintain common property, which includes LCP, unless the strata corporation's bylaws make an owner responsible. Bylaw 2(2) says that owners must maintain their LCP, except for repair and maintenance that is the strata's responsibility. Bylaw 8(c)(1) says the strata must repair and maintain LCP that in the ordinary course of events occurs less than once per year. Further, bylaw 8(c)(2)(III) says the strata is required to repair and maintain LCP that is attached to a building. I find that bylaws 8(c)(1) and 8(c)(2)(III) both apply to the LCP entry coverings in this dispute.
19. The strata argues that it is not responsible for the coverings because they were decorative and not structural. However, based on my above finding that the strata was required to repair and maintain the coverings under bylaws 8(c)(1) and 8(c)(2)(III), I find it unnecessary to determine whether the coverings were a structural element. So, I find that the strata is responsible for repairing and maintaining the LCP coverings under SPA section 72 and strata bylaw 8.
20. The strata also argues that its bylaws required the Irvines to repair and maintain LCP after they, or previous owners, altered it. Bylaw 6(1) says an owner needs written strata approval before altering LCP. Further bylaw 6(2) says the strata may require, as a condition of its approval, that the owners agree to take responsibility for any expenses relating to the alteration. However, there is no evidence or submissions showing that the Irvines, or the previous owners of SL1, agreed to accept responsibility for the coverings' repair costs.
21. The strata also argues that it should not be responsible for the roof covering repairs because an unspent portion of the roof replacement levy was returned to the owners, including the Irvines. The strata argues that the Irvines could use the unspent levy refund to repair the roof coverings. However, I find that the unspent levy proceeds are not related to the strata's repair obligations.
22. For the above reasons, I find that the strata is responsible for the repair and maintenance of the coverings under SPA section 72 and strata bylaw 8.

23. The strata's obligation to repair and maintain LCP is measured by the test of what is reasonable in all circumstances and can include replacement when necessary (see *The Owners of Strata Plan NWS 254 v. Hall*, 2016 BCSC 2363). The standard is not one of perfection. When deciding whether to repair or replace LCP, the strata has discretion to approved "good, better or best" solutions. The court (and CRT) will not interfere with a strata's decision to choose a "good", less expensive, and less permanent solution although "better" and "best" solutions may have been available (see *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784).
24. Based on the Irvine's submissions that the roof coverings were sliding off, I am satisfied that the strata appropriately removed the dislodged coverings while the roof was being replaced. The strata has not, however, provided any explanation for not replacing the coverings after the roofing work was completed, other than its position that it is not responsible for this expense. However, as discussed above, I find that the strata is responsible for repair and maintenance of these LCP coverings.
25. The Irvines say the removal of the coverings has adversely affected their use of the LCP. They say that water now drains through the overhead openings onto the ground below because there are no eaves to divert the water. Further, they say that this allows ice to form at their entrances, creating a safety hazard. The Irvines provided a photograph showing icicles forming on the open wood frame where the coverings previously were. Since the strata did not dispute that the removal of the coverings has adversely affected the Irvines' use of the LCP, I accept the Irvines' submissions as accurate.
26. In the absence of an explanation from the strata, I find that the strata has not acted reasonably by refusing to repair the roof coverings after it completed its roof replacement work. Further, I find that repairing the coverings necessarily requires their replacement. So, based on its duty to repair LCP under SPA section 72 and bylaw 8, I find that the strata must replace the removed roof coverings with tempered glass coverings, similar to those removed.

27. Further, SPA section 71 says that a strata corporation must not make a significant change to the use or appearance of LCP unless it is approved by a 3/4 vote at a general meeting, or the change was necessary for safety or to prevent significant damage. However, I find it unnecessary to consider whether SPA section 71 requires the strata to replace the roof coverings since I have already determined above that the strata is required to do so under SPA section 72 and bylaw 8.

CRT FEES AND EXPENSES

28. 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. Since the Irvines were successful, I order the strata to reimburse the Irvines for CRT fees of \$225. The Irvines did not claim dispute-related expenses .

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

ORDERS

30. I order that:

a. Within 30 days, the strata pay the Irvines \$225 in CRT fees.

b. Within 6 months, the strata replace the roof coverings removed from the LCP adjacent to SL1 with tempered glass coverings, similar to those removed.

31. The Irvines are also entitled to post judgment interest under the *Court Order Interest Act*.

32. 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