



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Loyer v. The Owners, Strata Plan BCS 983*, 2022 BCCRT 491

B E T W E E N :

JO-LYNN LOYER

APPLICANT

A N D :

The Owners, Strata Plan BCS 983

RESPONDENT

A N D :

JO-LYNN LOYER

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about fines for violating strata bylaws and rules. The respondent strata corporation, and applicant by counterclaim, The Owners, Strata Plan BCS 983 (strata), fined the applicant, and respondent by counterclaim, Jo-Lynn Loyer, for violating a bylaw and a rule prohibiting business signs. The fines were issued for printing displayed on a van operated by Ms. Loyer's son, who lived with Ms. Loyer in her strata lot and parked in her driveway.
2. Ms. Loyer requests orders that the strata stop applying fines for the "branding" on the van, and stop applying incorrect "parking violation" fine amounts for the alleged sign violations. She requests orders that the strata reverse \$702.50 in charges on her strata lot account, including for \$400 for fines, \$227.50 for "fees", and \$75 for interest. She also claims \$308 for the cost of magnetic sheets to cover up printing on the van, and \$2,000 for legal fees.
3. The strata says it owes nothing because it properly issued the fines after Ms. Loyer volunteered to cover the information on the van and then stopped doing so. The strata counterclaims \$500 in unpaid fines for the alleged signage violations and \$638.45 for legal fees.
4. Ms. Loyer is self-represented in this dispute. A strata council member represents the strata.
5. For the reasons set out below, I allow Ms. Loyer's claim for cancellation of the fines, and I dismiss all of the parties' other claims and counterclaims.

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). 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.

7. 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.
8. 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.
9. 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.
10. As noted, Ms. Loyer requests orders that the strata stop applying fines for the van's "branding" and stop applying allegedly incorrect "parking violation" fine amounts for alleged sign violations. If granted, those orders would restrain the strata from fining Ms. Loyer for future violations that have not yet occurred. The CRT does not generally grant prospective orders about things that have not yet happened (see for example, *Fisher v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379). I find the requested prospective orders are not appropriate, and I dismiss Ms. Loyer's requests for them.
11. Ms. Loyer says the strata treated her significantly unfairly by issuing the disputed fines. However, she did not request any different remedies for significant unfairness, and as explained below, I find that the disputed fines are invalid. Given these circumstances, I find it unnecessary to determine whether the strata treated Ms. Loyer in a significantly unfair manner.

ISSUES

12. The issues in this dispute are:

- a. Do the disputed fines meet the requirements of the *Strata Property Act* (SPA) and the strata's bylaws?
- b. Did Ms. Loyer violate the strata's signage bylaws or rules?
- c. If so, does Ms. Loyer owe the strata \$500 in fines, and if not, should the strata remove \$702.50 in charges from her strata lot account?
- d. Is the strata responsible for the \$308 Ms. Loyer paid for magnetic sheets?

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, Ms. Loyer must prove her claims on a balance of probabilities. The strata must prove its counterclaims to the same standard. I have read and weighed the parties' evidence and submissions, but I refer only to that which I find necessary to explain my decision.

14. I find the strata bylaws applicable to this dispute were filed at the Land Title Office on January 26, 2017. Bylaw 13.1(a) says:

owners shall not cause any trade, business, professional or other sign to be exhibited on or about their strata lot, the common property or limited common property

15. The parties do not dispute that strata rule 1.1 says, "No business signage or advertising is allowed in the Cedarpark complex." Given my findings below, nothing turns on whether rule 1.1 was in effect when the strata fined Ms. Loyer.

16. Ms. Loyer's son lived with Ms. Loyer in her strata lot at the time of the disputed fines, although he has since moved out. The evidence does not suggest that he was a tenant or that he paid rent, so I find he was a strata lot occupant. It is undisputed that he regularly parked a work van on the common property driveway leading from a

strata lane to the garage inside Ms. Loyer's strata lot. Photos in evidence show the van was white, and a business name, a logo, telephone numbers, and a list of services provided, were prominently displayed on its side and its rear doors.

17. In submitted correspondence, the strata warned Ms. Loyer that parking the van on the driveway with its printing visible was a breach of bylaw 13.1(a) and rule 1.1. In a June 3, 2021 email, Ms. Loyer asked the strata which areas of the van should be covered, and offered that "we might cover" those areas "with a white magnet. I believe this will solve the issue in question." The strata confirmed in submitted correspondence that covering the van's printing brought it into compliance with bylaw 13.1(a) and rule 1.1, and avoided the need for a bylaw or rule violation fine.
18. Ms. Loyer and her son then undisputedly stopped covering the van's printing with magnetic sheets. The strata issued multiple fines against Ms. Loyer's strata lot account for violating bylaw 13.1(a) and rule 1.1. The fine letters were addressed to Ms. Loyer.

Do the fines meet the requirements of the SPA and the strata's bylaws?

19. SPA section 130(1) says that the strata may fine an owner if a bylaw or rule is contravened by the owner, a visitor, or an occupant if the strata lot is not rented to a tenant. Under SPA section 132, the strata must set out in its bylaws the maximum amount it may fine an owner for each bylaw or rule contravention. The strata may set out different maximum fines for different bylaws and rules. Under *Strata Property Regulation* (SPR) 7.1, the maximum fines the strata may set out in its bylaws are \$200 for each bylaw contravention, and \$50 for each rule contravention.
20. Strata bylaws 29.1 and 29.3 say that the strata may fine an owner based on the schedule of fines attached to and forming part of the bylaws. Bylaw 38.1 contains this schedule, which sets out 2 maximum fine amounts for each of several different "violation" types. These are an amount for a "first offense" and an amount for a "second offense". There are no amounts listed for subsequent offenses.

21. Nothing in the bylaws directly indicates which maximum fine amount applies to each section of the bylaws and rules. Rather, bylaw 38.1 lists the maximum fines for each violation type, without specifying which type applies to each bylaw or rule. The “Other Parking/Vehicle Violations” type has maximum fines of \$100 for a first offense and \$200 for a second offense. Similarly, maximum fines for “Trespass/common Property violations” (reproduced as written) are \$100 for a first offense and \$200 for a second. “Other Violations of these bylaws or rules” have a maximum fine of \$25 for a first offense and \$50 for a second offense. Bylaw 38.1 lists several other types of violations and their maximum fines, but I find none of them are applicable to this dispute.
22. I find correspondence in evidence shows the strata fined Ms. Loyer \$100 for a first offense on Sep 15, 2021, \$200 for a second offense on October 12, 2021, and \$200 for a third offense on October 19, 2021, for a total of \$500. The fines were for alleged violations of bylaw 13.1(a) and rule 1.1. As explained below, I find these fines exceeded the applicable maximums set out in bylaw 38.1.
23. Under bylaw 38.1, I find the maximum fine for violating a strata rule is either \$25 or \$50. The strata’s fines against Ms. Loyer each exceeded both of those maximums, as well as the \$50 maximum set out in SPR 7.1. So, to the extent the strata issued the fines for rule 1.1 violations, I find they were invalid because they contravened the strata’s bylaws and the SPR. In the circumstances, I find that the strata likely issued the fines for alleged bylaw 13.1(a) violations, and not alleged rule 1.1 violations. In any event, I find the strata did not issue any valid fines for rule 1.1 violations.
24. Turning to the bylaw 13.1(a) fines, which of the bylaw 38.1 maximum fine amounts applies? The strata’s October 12 and 19, 2021 violation letters indicated that the applicable maximum fine under bylaw 38.1 was \$100 or \$200 for “Other Parking/Vehicle Violations”. However, in its submissions, the strata suggests that those fines were issued for “Trespass/common property violations”, also with maximum amounts of \$100 or \$200. Ms. Loyer says that the alleged bylaw 13.1(a) violation is not a parking violation, but is an “other” violation attracting maximum fines

of \$25 or \$50 under bylaw 38.1. Ms. Loyer raised this issue in a June 30, 2021 email to the strata, but the strata did not respond.

25. In the circumstances, and on the evidence before me, I find that the alleged bylaw 13.1(a) violation was not an “other parking/vehicle violation.” Bylaw 13.1(a) is only about exhibiting signs, and does not refer to or imply any relationship with parking or vehicles. The fact that the disputed printing was displayed on a parked vehicle does not mean the alleged signage contraventions were parking or vehicle violations.
26. I also find that the alleged bylaw 13.1(a) violation was not a trespass/common property violation. No trespass is alleged here. Further, bylaw 13.1(a) specifically applies on both strata lots and common property including limited common property. I find the question of whether bylaw 13.1(a) was violated is not affected by what type of strata property the driveway was, or whether a trespass occurred on it. I find the fact that the disputed printing happened to be exhibited on common property does not make the alleged signage contraventions trespass/common property violations.
27. I find that under bylaw 38.1, the alleged bylaw 13.1(a) violation is an “other violation of these bylaws or rules”, and that the maximum fine is \$25 for a first offense and \$50 for a second offense. So, I find the 3 disputed fines each exceeded these applicable maximums. I find the fines contravened bylaw 38.1 and are therefore invalid. This means I need not consider whether Ms. Loyer actually contravened bylaw 13.1(a).
28. As noted, Ms. Loyer requests an order for the strata to reverse \$702.50 in charges on her strata lot account. I find this includes charges for the disputed fines, plus \$227.50 in “fees” and \$75 in interest. However, other than an overall account balance of \$702.50, neither party submitted evidence showing what amounts were charged to Ms. Loyer’s strata lot account or why. Ms. Loyer does not explain the alleged \$227.50 claimed for “fees” or the alleged \$75 interest charge, or why each should be reversed. I find Ms. Loyer has failed to prove that the strata charged her \$227.50 for fees and \$75 for interest, and that those charges were incorrect and should be reversed. I dismiss Ms. Loyer’s claims for those alleged fees and interest charges.

29. I find the evidence shows the strata issued \$500 in invalid bylaw 13.1(a) and rule 1.1 violation fines against Ms. Loyer's strata lot account, which is the amount counterclaimed by the strata for those fines. So, I order the strata to remove \$500 in charges from Ms. Loyer's strata lot account for those invalid fines, and I dismiss the strata's counterclaim for those fines.

Is the strata responsible for \$308 in magnetic sheet costs?

30. I found above that Ms. Loyer offered to cover the van's printing with white magnetic sheets to avoid bylaw and rule fines. I find the van's printing was covered with those sheets for a time, and that the strata did not fine Ms. Loyer during that period. I infer that because Ms. Loyer believes exposing the van's printing while it was parked in her driveway was not a bylaw or rule violation, she should not have had to purchase the magnetic sheets. She claims \$308 for the sheets' cost from the strata.

31. Although Ms. Loyer says it was difficult to find suitable parking arrangements for the van outside of the strata complex, I find nothing required the van to be parked in her driveway. Ms. Loyer proposed covering the van's printing, and I find she voluntarily purchased magnetic sheets for that purpose. So, I find the strata was not responsible for Ms. Loyer's decision to purchase the magnetic sheets, and I dismiss her \$308 claim.

CRT Fees, Expenses, and Interest

32. My only orders in this dispute are for the removal of amounts charged to Ms. Loyer's strata lot account, which she has not paid. So, I find she is not entitled to pre-judgment interest on those amounts.

33. 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.

34. I find Ms. Loyer was partly successful in her claims, so she is entitled to half the CRT fees she paid, which equals \$112.50. I order no other CRT fee reimbursements.

35. Ms. Loyer claims \$2,000 in legal fees, and the strata counterclaims \$638.45 for legal fees. I find each of these fee claims relate to the cost of paying a lawyer to issue a demand letter about the signage fines before this CRT dispute was initiated. So, I find these claimed legal fees are not CRT dispute-related expenses. In any event, under CRT rule 9.5(3), such fees are only recoverable in extraordinary circumstances, which I find are not present here.
36. Ms. Loyer says she retained a lawyer to investigate the disputed fines and issue a demand letter, but does not sufficiently explain why the strata should be responsible for those non-CRT-dispute-related legal fees. I find Ms. Loyer has not proven that the strata is responsible for her legal fees, so I dismiss her \$2,000 claim.
37. The strata says it was “forced to retain a lawyer” because of Ms. Loyer’s demand letter. I find nothing before me shows that the strata was “forced” to retain a lawyer to write a letter in response. Further, given that the bylaw fines at issue were invalid, I find the strata’s related fine enforcement attempts were also invalid. So, I find that Ms. Loyer should not have to bear such enforcement costs. I dismiss the strata’s claim for \$638.45 for legal fees.
38. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Loyer.

ORDERS

39. Within 30 days of the date of this decision:
- a. I order the strata to cancel the \$500 in bylaw 13.1(a) and rule 1.1 violation fines on Ms. Loyer’s strata lot account, and
 - b. I order the strata to pay Ms. Loyer \$112.50 in CRT fees.
40. Ms. Loyer is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
41. I dismiss the remaining aspects of Ms. Loyer’s claims, and the strata’s counterclaims.

42. 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.

Chad McCarthy, Tribunal Member