



# Civil Resolution Tribunal

Date Issued: May 4, 2022

File: ST-2021-007544

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan NW 1730 v. Jeannotte*, 2022 BCCRT 531

**BETWEEN:**

The Owners, Strata Plan KAS 2717

**APPLICANT**

**AND:**

DARYL CHARLES JEANNOTTE and GAIL AUGUSTA JEANNOTTE

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. This dispute is about lawns in a bare land strata corporation.

2. The respondents, Daryl Charles Jeannotte and Gail Augusta Jeannotte, own a strata lot in the applicant bare land strata corporation, The Owners, Strata Plan KAS 2717 (strata).
3. The strata says the respondents installed artificial turf in the front yard of their strata lot, contrary to the strata's landscaping bylaws. The strata seeks an order that the respondents remove the artificial turf and reinstall a grass lawn, at their own cost.
4. The respondents say the strata's bylaw requiring lawn in front yards does not specify that the lawn be made of grass. Further, they say they have a small patch of grass in their front yard, in addition to the artificial turf, so they have complied with the strata's landscaping bylaw.
5. The strata is represented by a council member. The respondents represent themselves.

## **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.

## **ISSUES**

10. The issues in this dispute are:
  - a. Whether the respondents' front yard artificial turf violates the strata's landscaping bylaw,
  - b. Whether the strata's request that the respondents remove the artificial turf was procedurally unfair or significantly unfair, and
  - c. What remedy is appropriate, if any?

## **EVIDENCE AND ANALYSIS**

11. In a civil dispute like this one the applicant strata must prove its claims on a balance of probabilities (meaning "more likely than not"). I have reviewed the parties' submissions and weighed the evidence submitted but only refer to that necessary to explain and give context to my decision.
12. The bare land strata was created in 2004 and consists of 32 strata lots. The respondents purchased strata lot 2 (SL 2) in 2015. None of this is disputed.
13. The strata's bylaws are the Schedule of Standard Bylaws set out in the *Strata Property Act* (SPA), as amended by the strata from time to time. Under section 128(2) of the SPA, bylaw amendments are not enforceable until filed in the Land Title Office (LTO). On July 24, 2021 the strata filed its first set of bylaw amendments in the LTO.

The document does not set out complete bylaws, but rather describes how and where to add or strike out words to amend existing bylaws. The difficulty is the section numbers in the amendments and the wording references do not align with the words and section numbers in the Standard Bylaws. This leads me to conclude the strata is likely relying on a set of amended bylaws, some of which have not been filed in the LTO and therefore may not be enforceable. In these circumstances I recommend the strata review the bylaws filed in the LTO, although I make no order in this regard. For the purposes of this dispute, I rely only on the bylaws filed in the LTO, since they are binding.

***Does artificial turf violate the strata’s landscaping bylaw?***

14. On July 14, 2017 the strata filed bylaw amendments and added a new bylaw section 5.5 which requires owners to comply with certain restrictions when altering their strata lots. Specifically, bylaw 5.5(d) requires that all front yard areas “be landscaped with lawns, shrubs and flower beds. Lawn only is not adequate.”
  
15. Based on an August 3, 2021 strata council email, I find a council member (P) saw that SL 2’s front yard grass had been removed and some workers from an artificial turf company were working in the front yard. Another strata council member (M) also went to SL 2 and saw the yard. As the respondents do not dispute it, I accept the strata’s submission that Mr. Jeannotte told P that he was installing artificial turf in his front yard.
  
16. The strata council discussed the issue at their August 4, 2021 meeting. Based on an excerpt from the meeting minutes, I find the council decided not to take action against SL 2 until the strata passed a new bylaw to clarify whether artificial turf was allowed in front yards. This was conveyed to the respondents in an August 6, 2021 letter.
  
17. However, excerpts from the strata council’s September 1, 2021 meeting show the strata decided bylaw 5.5(d) was not ambiguous and that it prohibited artificial turf. The council decided to require the respondents to remove the artificial turf and

replace it with lawn. The strata's decision was conveyed in a September 1, 2021 letter to the respondents. The letter gave the respondents the opportunity to dispute the strata's decision, including requesting a hearing if desired.

18. The strata says the artificial turf contravenes bylaw 5.5(d), while the respondents say the bylaw does not define lawn and so it does not exclude "artificial grass".
19. While bylaws are not statutes, the basic rules of statutory interpretation should be used to understand how bylaws work together. Bylaws must be read as a whole to determine their intended meaning (see *Semmler v. The Owners, Strata Plan NES3039*, 2018 BCSC 2064). Further, the words used should be given their plain and ordinary meaning (see *The Owners, Strata Plan LMS 3259 v. Sze Hang Holdings Inc.*, 2016 BCSC 32).
20. As noted above, the bylaw amendments filed at the LTO do not set out a full set of coherent bylaws. The filed bylaws do not mention lawns or landscaping anywhere other than in bylaw 5.5(d). Reading bylaw 5.5(d) as a whole, I find its intent is to require landscaping that includes lawn, shrubs and flower beds, rather than "lawn only" landscaping. I acknowledge that the bylaw does not specifically exclude artificial turf. However, I find the plain and ordinary meaning of the words used in the bylaw impliedly exclude synthetic materials, such as artificial turf.
21. According to the Merriam-Webster online dictionary ([www.merriam-webster.com](http://www.merriam-webster.com)), "landscaping" means to modify or ornament by altering the plant cover. "Lawn" is defined as ground that is covered with grass and is kept mowed. At [www.dictionary.com](http://www.dictionary.com) landscaping means to improve the appearance of an area of land by planting trees, shrubs, or grass, or altering the contours of the ground. "Lawn" is defined as open, grass-covered land, especially one closely mowed. So, I find the plain and ordinary meaning of the words "lawn" and "landscaping" refer to live grass, plants and land, rather than artificial turf or artificial grass. This is consistent with the terms shrubs and flower beds used in bylaw 5.5(d), which also imply live materials, rather than artificial or synthetic ones. On balance, I find bylaw 5.5(d) requires front yard landscaping to consist of live plants and lawn and not artificial ones.

22. I acknowledge the respondents have now planted a small patch of live grass on the edge of their front yard, opposite the artificial turf. However, I find that including live grass along with the artificial turf does not bring their landscaping into compliance with bylaw 5.5(d). As explained above, I find the bylaw impliedly excludes synthetic or artificial lawn, shrubs, and flowers.

***Was the strata's decision procedurally unfair?***

23. First, the respondents argue that the strata did not receive a formal bylaw contravention complaint and that the strata did not give the respondents a chance to dispute the complaint. Under SPA section 135, the strata must meet these procedural requirements and give the owners sufficient details of the complaint, before imposing a fine, denying recreational facility use, or requiring reimbursement of the costs to remedy the contravention.

24. I find SPA section 135 does not apply here because the strata has not taken any of these enforcement actions yet. Rather, the strata has requested the respondents remedy the situation themselves. Should the respondents fail to comply with bylaw 5.5(d) and should the strata choose to take any of the SPA section 133 steps to enforce the bylaw, then the strata must comply with SPA section 135. In any event, I find the strata's September 1, 2021 letter provided the respondents with the opportunity to dispute the strata's request. It is undisputed the respondents did not request a strata council hearing to discuss the matter.

25. Second, the respondents argue that strata council members are not entitled to file bylaw violation complaints or vote on bylaw enforcement.

26. Contrary to the respondents' submissions, I find strata council members are entitled to file complaints of alleged bylaw violations, as they are also strata lot owners. There is nothing in the SPA that restricts a council member from making a complaint. Further, a complaint need not be in writing, but can be verbal (see *The Owners, Strata Plan NW3075 v. Stevens*, 2018 BCPC 2). I find that either P or M, or both, notified the other strata council members of the respondents' alleged violation of bylaw 5.5(d). I consider that a valid bylaw violation complaint.

27. I also find that P or M were not required to abstain from voting on council decisions surrounding this particular complaint. SPA section 136 specifically prohibits a council member from participating in a decision about an allegation that council member violated a bylaw. However, there is no corresponding provision about complaints made by council members. I acknowledge that situations could arise where a complaining council member may be in a conflict in deciding what to do about the complaint, such as when the council member has specific knowledge about the alleged violation or is the victim of the behaviour complained of. I find that is not the case here. Rather, I find any strata lot owner could easily observe the artificial turf in SL 2's front yard and file a bylaw complaint. I do not find that making the compliant means that either P or M are biased toward the respondents in this matter.
28. Contrary to the respondents' submissions, I find the strata council does not need to obtain an owners' vote in deciding how to interpret or enforce the bylaws. I acknowledge that the strata initially decided not to pursue the respondents' alleged bylaw breach until after it proposed a clarified landscaping bylaw. However, the strata was entitled to decide on a different course of action, which I find it did by a 4 to 2 vote, at the September 1, 2021 strata council meeting.
29. SPA section 26 requires the strata council to carry out the duties of the strata, including enforcing its bylaws. The strata has limited discretion in enforcing bylaws where the effect of the breach is trivial or trifling (see *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32). I do not find this is a trifling or trivial breach, given the turf is not a temporary or momentary action. Further, the parties agree that bylaw 5.5 adopts the strata development's statutory building scheme registered at the LTO. So, I find enforcing the landscaping provisions of bylaw 5.5 is not a trivial or trifling matter.
30. Overall, I find the strata's decision making process about the respondents' artificial turf was not procedurally unfair.

### ***Is the strata's decision significantly unfair?***

31. The respondents also say the strata is unfairly enforcing bylaw 5.5(d) against them yet failing to enforce the bylaw against other strata lot owners. Although the respondents did not use this term, I find they argue the strata's decision is significantly unfair.
32. 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 court 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 court confirmed that the reasonable expectations of an owner may also be relevant to determining whether the strata's actions were significantly unfair.
33. In *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, the court applied a "reasonable expectations" test when considering whether a discretionary action of council was significantly unfair. The test asks: What was the applicants' expectation? Was that expectation objectively reasonable? Did the section violate that expectation with a significantly unfair action or decision?
34. I find the respondents' expectation that the strata would not enforce bylaw 5.5 against them is not objectively reasonable, given my interpretation of the bylaw above and given the strata's duty to enforce its bylaws set out in SPA section 26.
35. The respondents say that there are 6 to 14 other strata lots that do not comply with the strata's interpretation of bylaw 5.5(d) because they have gravel or crushed rock in their front yards. The respondents provided no supporting evidence of the alleged bylaw contraventions, such as photos. Further the respondents provided no evidence the strata has received complaints about those strata lots or failed to consider the alleged bylaw contraventions. For example, the respondents did not submit strata council minutes about other bylaw 5.5(d) complaints. On balance, I find the respondents have not shown the strata treated them any differently than any other strata lot in enforcing bylaw 5.5(d).



36. I find the strata's decision is not significantly unfair to the respondents.

### ***Remedy***

37. I find the respondents have contravened bylaw 5.5(d) and order them to remove the artificial turf from their front yard within 45 days.

38. I decline to order the respondents to replace the artificial turf with lawn, or natural grass, as requested by the strata. This is because I find the respondents have the option to replace the artificial turf with lawn, shrubs or flower beds under the bylaw. I leave it to the respondents to decide how to replace the artificial turf, provided the landscaping complies with bylaw 5.5(d).

39. The respondents asked the CRT to direct strata council to act in a reasonable and fair manner in enforcing bylaw 5.5(d), to advance options to the owners to repeal or amend bylaw 5.5(d) at the next annual general meeting. Even if the respondents had succeeded in defending this dispute, I would not have made the requested orders, as the respondents did not file a counter claim.

### **CRT FEES and EXPENSES**

40. 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 acknowledge the respondents' argument that the strata chose to file this dispute and so should have to pay its own filing fees. However, the strata filed the claim because the respondents failed to comply with the bylaw. So, I find the strata is entitled to reimbursement of its filing fees, which is \$225. The strata claimed no dispute-related expenses.

41. The strata must comply with section 189.4 of the SPA, which includes not charging the respondents their proportionate share of the strata's costs of this dispute.

### **ORDERS**

42. I order that within 45 days of this order the respondents shall:

- a. Reimburse the strata \$225 in CRT fees,
- b. Remove the artificial turf from their front yard, and
- c. Replace the artificial turf with landscaping that complies with strata bylaw 5.5(d).

43. The strata is entitled to post judgment interest, as applicable.

44. 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.

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Sherelle Goodwin, Tribunal Member