Civil Resolution Tribunal

Date Issued: May 19, 2022

File: ST-2021-002159

Type: Strata

Civil Resolution Tribunal

Indexed as: *Colabraro v. Adams*, 2022 BCCRT 592

B E T W E E N :

DOMENICO COLABRARO, EMILIA COLABRARO and The Owners, Strata Plan VR 1879

APPLICANTS

A N D :

DEREK ADAMS and RUTH ADAMS

RESPONDENTS

A N D :

DOMENICO COLABRARO, EMILIA COLABRARO and The Owners, Strata Plan VR 1879

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute about alleged noise, repair and maintenance, and alteration issues in a 2-unit strata corporation.

2. The applicants, and respondents by counterclaim, Domenico Colabraro and Emilia Colabraro own strata lot 2 (SL2) in The Owners, Strata Plan VR 1879 (strata). The Colabraros are represented by Emilia Colabraro. The strata consists of 2 strata lots in a main building plus a separate garage building. The Colabraros do not reside in SL2, and it is undisputed that at all material times, their son and daughter-in-law occupied SL2 as tenants.

3. The respondents, Derek Adams and Ruth Adams, own strata lot 1 (SL1) in the strata. Derek Adams did not provide a Dispute Response to the applicants' claims and is technically in default. However, based on the overall submissions, I find his position is the same as that of Ruth Adams, who I find represents both herself and Mr. Adams in defending against the Colabraros' claims. Ruth Adams is the only applicant in the counterclaim and is self-represented there.

4. I note, and the individual parties agree, the strata does not operate according to the *Strata Property Act* (SPA). The strata was added as a party to the Calabraro's original dispute at the Civil Resolution Tribunal's (CRT's) intake stage before facilitation started. Ms. Colabraro filed a Dispute Response to Ms. Adams' counterclaim on behalf of the strata, but I find the strata is not represented in this dispute as I explain below.

5. The Colabraros say they met with the Adams in July 2020 and agreed to paint the buildings. The Colabraros say that agreement included the paint colours and areas to be painted, and that each owner would retain their own painting contractor to paint "their side" of the buildings. The Colabraros say there was agreement to exclude painting the buildings' soffits and include painting the flashing of the "roof box" that houses gas fireplace vents for both strata lots. I find the roof box could also be described as a chimney or chimney chase, but I will use the term "roof box" since this is the description used by the individual parties.

6. The Colabraros also say there was agreement about when, and to what height, the Yew hedge in front of the main building would be trimmed, also separately by each owner. The Colabraros say the Adams did not honour the agreement, in that the Adams painted the soffits but did not paint the roof box flashing, and did not trim the hedge as agreed. The Colabraros also say the Adams' painting of the soffits was a significant change to common property that required the Colabraros' approval under the SPA.

7. The Colabraros also say the Adams relocated a common property hose bib at the front of the building from outside SL2 to an area outside SL1 without authority and refuse to provide the Colabraros use of the hose bib.

8. Finally, the Colabraros say the Adams have breached the strata's noise bylaw by playing music with intense base at unreasonable times.

9. The Colabraros seek orders that the Adams:

    a. Remove the paint from the buildings' soffits,

    b. Paint the roof box flashing,

    c. Trim the Yew hedge at the front of the main building to 6 feet by May 31st of each year,

    d. Relocate the hose bib back to its original location outside SL2 and allow them uninterrupted access to it, and

    e. Cease playing music "with intense base at unreasonable times".

10. The Adams deny the Colabraros' claims. They say there was agreement reached with the Colabraros to paint the soffits grey, that the hose bib is part of SL1 and not common property, and the remaining claims have been resolved. I infer the Adams' request the Colabraros' claims be dismissed.

11. In her counterclaim, Ms. Adams says the Colabraros installed an air conditioner, and later a cover over it, outside SL2 without her consent or approval by the City of Vancouver (City). Ms. Adams asks for an order that the air conditioner be removed.

12. The Colabraros say the Adams provided consent that appropriate permits were obtained. They also say the counterclaim is out of time under the *Limitation Act*. In any event, the Colabraros say Ms. Adams' counterclaim should be dismissed.

13. As explained below, I largely find in favour of the Colobraros. Specifically, I find the Adams must paint the roof box flashing and allow the Colobraros access to and use of the hose bib as common property, and that both owners must trim the hedge to about 6 feet in height by June 1st of each year. I dismiss the Colabraros' remaining claims and the Adams' counterclaim.

JURISDICTION AND PROCEDURE

14. These are the formal written reasons of the 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.

15. 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. To some extent, the parties on each side of this dispute question the truthfulness of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

16. 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.

17. Under section 123 of the CRTA and the CRT rules, 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.

Strata as a party

18. As noted, the strata was added as an applicant before facilitation started. This was done at the direction of a CRT vice chair under CRTA section 61. Section 61 gives the CRT authority to make any order or give any direction in relation to a tribunal proceeding it thinks is necessary to achieve the objects of the tribunal in accordance with its mandate. I understand the strata was added as a party with the consent of Colabraros as applicants and note an amended Dispute Notice was issued as a result. I further understand that the amended Dispute Notice was provided to both parties and the Adams, as respondents, were given an opportunity to amend their Dispute Response, which they chose not to do. Neither party objected to this process. Therefore, I find there are no procedural fairness issues that arise from the process followed by the CRT to add the strata as a party and amend the Dispute Notice.

19. Also as noted, Ms. Colabraro provided a Dispute Response on behalf of the strata to Ms. Adams' counterclaim. The Dispute Response showed the strata had no opinion on the counterclaim. While I appreciate Ms. Colabraro was doing what she thought was best in providing a response for the strata, and Ms. Adams did not object, I do not accept the strata's Dispute Response and find the strata is not represented in this dispute. I say this because there is no evidence that Ms. Colabraro has authority from the Adams to act on the strata's behalf. In a 2 unit strata corporation, where the 2 different sets of owners do not agree, I find it is unlikely the strata council would agree that one council member represent the strata in a CRT dispute.

20. Therefore, I have not requested separate submissions from the strata on the issues in this dispute. The Colabraros and the Adams are the only members of the strata council, and it is undisputed that the strata council has never met. The parties have each provided evidence and submissions on the issues before me, so I find it would serve no practical purpose in the circumstances to request further submissions from the same individuals in their role as strata council members. Rather, I accept the

parties' submissions as submissions from separate strata council members, as there is no consensus among them.

ISSUES

21. One of the Colabraros' claims involving an alleged "over height wall" was resolved during the facilitation phase of this dispute so I will not address it here. Despite the Adams' submissions that other claims have also been resolved, CRT staff confirmed that no other claims were resolved prior to this dispute being assigned to me. Therefore, it is only the "over height wall" claim that I find was resolved and I address below the Colabraros' remaining claims set out in the amended Dispute Notice and the Adams' counterclaim.

22. The remaining issues in this dispute are:

    a. Did the parties agree on painting the soffits and roof box flashing, and the hedge trimming? If not, what is an appropriate remedy, if any?

    b. Must the Adams relocate the hose bib to its original location and allow the Colabraros uninterrupted use of the hose bib?

    c. Are the Colabraros entitled to an order that the Adams cease playing music "with intense base at unreasonable times"?

    d. Must the Colabraros remove their air conditioner?

BACKGROUND, EVIDENCE AND ANALYSIS

23. In a civil proceeding such as this, the Colabraros, as applicants, must prove their claims on a balance of probabilities, meaning more likely than not. Ms. Adams must prove her counterclaim on the same basis. I have read all the submissions and evidence provided by the parties, but refer only to information I find relevant to explain my decision.

24. The strata was created in May 1982 and exists under the SPA. As earlier noted, and shown on the strata plan, the strata consists of 2 strata lots in the main building and

a separate single-level garage building containing 2 parking stalls. The strata property fronts on West 15th Avenue to the north and a lane to the south or rear of the property. SL1 is located on the west half of the main building and SL2 is located on the east half. Both strata lots are 2 levels, and each have a second floor balcony at the rear. The strata plan also shows the yard areas, which are split equally from front to back. The yard areas on the front, back and sides of the building are identified on the strata plan as limited common property (LCP) designated for the exclusive of the owners of each respective strata lot. In other words, the property is split in half and each strata lot owner has exclusive use of the property nearest their strata lot.

25. Consistent with SPA section 120(1), the strata bylaws are the Schedule of Standard Bylaws as no other bylaws have been filed with the Land Title Office. I discuss bylaws relevant to this dispute below as necessary.

26. Even though the strata has chosen not to follow the SPA, the provisions of the SPA still apply, as they apply to all strata corporations located in British Columbia. Some of the claims in this dispute relate to common property, LCP, and common expenses, so I summarize the relevant parts of the SPA definitions of those terms found under SPA section 1(1).

    a. Common expenses means expenses relating to common property of the strata corporation.

    b. LCP means common property designated for the exclusive use of the owners of one or more strata lots.

    c. Common property includes:

        i. that part of the land and buildings shown on a strata plan that is not part of a strata lot, and

        ii. pipes … and other facilities for the passage or provision of water if they are located:

            A. within a floor wall or ceiling that forms a boundary between 2 strata lots or a strata lot and the common property, or

B. “wholly or partially within a strata lot, if they are capable of being and intended to be used in connection with the enjoyment of another strata lot or the common property.”

27. Further, SPA section 68 defines the boundaries of a strata lot as “midway between the surface of the structural portion of the wall, floor or ceiling” that separates 2 strata lots or a strata lot and common property. There is an exception to this boundary definition that does not apply here. The strata plan does not identify any common property that is not designated as LCP. Therefore, based on the definition of common property that includes parts of the building that are not part of a strata lot, and SPA section 68 that defines a strata lot boundary as the midpoint of an exterior wall or ceiling, I find the main building exterior is common property. This includes the roof, roof box, roof box flashing and exterior hose bib.

Did the parties agree on painting the soffits and roof box flashing, and the hedge trimming?

28. It is undisputed that in July 2020, the individual parties agreed to complete exterior painting of the buildings including the roof box and it’s flashing, and agreed on the colours that would be used. It is also undisputed that the parties could not agree on a painter, so they agreed that each would hire their own painter to paint “their half” of the building.

29. The Colabraros say they and the Adams agreed ***not*** to paint the soffits, but the Adams say there was agreement the soffits would be painted grey.

30. It is also undisputed the individual parties discussed maintenance of the Yew hedge located at the front of the property in July 2020, although agreement was not reached about its maintenance at that time. I will discuss each maintenance matter in turn.

Soffits

31. As I have mentioned, the building exterior is common property, which I find includes the soffits of both buildings and the undersides of the LCP balconies. It is undisputed and photographs in evidence confirm, that prior to the exterior painting being completed, the soffits were white. The Adams’ contractor painted the soffits on the

west half of the building outside SL1 grey, and the Colabraros' contractor did not paint the soffits on the east side of the building. The individual parties have opposing views on whether there was agreement to paint the soffits. Based on my review of the overall evidence, I find there is no evidence to establish what, if any, agreement may have been reached about soffit painting.

32. The Adams say a July 25, 2020 meeting of the owners never happened, although they agree painting of the building was discussed. They provided a photocopy of a handwritten journal that they say supports their position because it does not show a meeting was held. I disagree the lack of a note in journal is proof the meeting never happened. Likewise, I also disagree that written statements from Mr. Colabraros and his son alleging a physical meeting was held is proof that it was. Other than these statements, and the Colabraros' submissions, there is no evidence a meeting was held or that agreement was reached about soffit painting. Further, the evidence that Mr. Colabraros' son contacted Ms. Adams on August 31, 2020 by text and telephone to request the soffit painting stop, does not prove there was agreement.

33. Finally, the Colabraros say they expressed concern that painting the soffits would restrict attic ventilation by plugging the holes in the soffit material. However, they did not provide any evidence to contradict a written statement from the Adams' painter that the soffit painting did not cause any "blockage or clogging" of soffit ventilation holes. Based on the evidence before me, I am unable to conclude whether agreement was reached about the soffit painting. Given the Colabraros have the burden of proof and have not proved agreement was reached, I dismiss this aspect of the Colabraros' claim that agreement was reached to exclude painting the soffits.

34. I turn now to the requirements of the SPA. Section 71 says that, except in cases of safety or to prevent significant loss or damage from occurring, significant changes to the use or appearance of common property cannot be made without the strata approving the change by passing a ¾ vote. There is no evidence of safety risk, loss or damage, so I find the section 71 exception does not apply.

35. The criteria for determining what is a significant change in use and appearance under section 71 of the SPA was correctly identified by the Colabraros. *Foley v. The*

Owners, Strata Plan VR 387, 2014 BCSC 1333 at paragraph 19 lists the following non-exhaustive factors for consideration:

a. A change would be more significant based on its visibility or non-visibility to residents and its visibility are non-visibility towards the general public;

b. Whether the change to common property affects the use or enjoyment of the unit or number of units or an existing benefit of all unit or units;

c. Is there a direct interference or disruption as a result of the change to use?

d. Does the change impact on the marketability or value of the unit?

e. The number of units the building may be significant along with the general use, such as whether it is commercial, residential or mixed-use;

f. Consideration should be given as to how the strata corporation has governed itself in the past and what it is followed. For example, has it permitted similar changes in the past? Has it operated on a consensus basis or has it followed the rules regarding meetings, minutes and notices as provided in the SPA?

36. Based on the photographs in evidence, I find the different soffit colours are more visible to the residents from their strata lots than the general public from the street or lane. I find the change affects only the Colabraros' strata lot and there is not a direct interference or disruption as a result in a change of use. Both the Colabraros and the Adams provided letters from real estate agents that address marketability of the strata lots but overall, I am not persuaded the correspondence proves the different soffit colours alone would negatively impact a strata lot's sale price.

37. The most important factor under *Foley* in this case is that the strata has never governed itself in accordance with the SPA and has historically operated on a consensual basis by verbal agreement. This is admitted by both the Colabraros and the Adams.

38. Weighing all the evidence, I find painting the soffit grey is not a significant change in the use or appearance of common property. This, together with my finding that there

was no agreement reached on whether the soffits would be painted, leads me to dismiss the Colobraros' claim about the soffit painting.

Roof box flashing

39. Based on the photographs submitted in evidence, I find the roof box is located on the roof partially above SL1 and partially above SL2. The flashing in question is located on top of the roof box. The roof box and flashing are common property under the SPA as discussed earlier. The Colabraros say that when the main building was being painted, there was agreement that the Adams would paint the roof box flashing in exchange for the Colabraros' painting the entire roof box. The Adams agree that such an arrangement was made, and they were responsible to have the roof box flashing painted. However, the Adams say the Colabraros' daughter-in-law refused to allow their painter access to the flashing in early September 2020, so they were unable to complete the painting.

40. Each party disputes the other's allegation about access. While the Adams say access was denied, the Colabraros' say it was not and cite a different issue that is not before me. It is unclear how access to the roof box flashing could have been denied when it appears the roof box could easily have been reached from the Adams' side of the building roof. However, I find I do not need to assess credibility and whether access was denied, because in submissions, the Adams agree to have the flashings painted as soon as access to roof box is granted by the Colabraros. The roof box flashing paint colour chosen by the parties is not in dispute.

41. For these reasons, I order the Adams' to arrange, at their cost, for the roof box flashing to be painted the agreed colour within 120 days of this dispute and provide the Colabraros with 72 hours written notice, by email or otherwise, of the date the painting will occur. The Colabraros must ensure access to the roof box flashing is not restricted on that date.

Hedge trimming

42. The Yew hedge in question is located along the dividing line between the LCP yard areas at the front of the main building. It also extends along the front of the property

parallel to the City sidewalk, such that it is shaped like a "T". As I understand the history, up until about July 2020, the parties each trimmed the part of the hedge that is located on their LCP yard area. This includes "their half" of the hedge dividing the LCP yard areas as well the entire portion of the hedge running parallel to the City sidewalk located on or near their LCP yard. It is undisputed that the Adams' did not trim their portion of the hedge in 2020.

43. The Colabraros rely on bylaw 8(c)(ii)(E) that says the strata must repair and maintain LCP, which includes "fences, railings, and similar structures that enclose yards, no matter how often the repair or maintenance ordinarily occurs. They say the hedge is LCP as it is a "similar structure" that encloses the LCP yards and is captured by the bylaw. While I agree the hedge is LCP and that it is a strata corporation responsibility to repair and maintain, the bylaws do not address the height of the hedge or when it must be trimmed. Those details must be decided by the strata council, which in the case of this strata, includes a unanimous vote of the 2 sets of owners. That has not been achieved and would not have been achieved if the strata was functioning properly, because the owners don't agree. I turn then to the correspondence in evidence and the parties' submissions.

44. In February 2021, the Colabraros proposed that the parties trim their agreed portions of the hedge to 6 feet in height by May 31st of each year. While the Adams say they agreed through correspondence from their lawyer dated April 1, 2021, to "trim hedges to a height of approximately 6ft annually around June 1st", that letter is not before me. The Adams also say that on July 13, 2021, they communicated to the Colabraros that the trimming would be done "once a letter was signed between both parties", and that the Colabraros did not sign such a letter. The Colabraros deny receiving "a letter" but an August 26, 2021 email from the Adams' lawyer to the Colabraros' lawyer supports the Adams' position that they were willing to settle most issues if the settlement was "memorialized' in a signed letter. Based on that email, I conclude a settlement was not reached, so a letter setting out the terms of settlement, including the hedge trimming, was not drafted.

45. Despite the back and forth between the parties and their lawyers, the Adams submit the issue is minor and that they now agree to cut the hedge "as agreed on or around

the 1st of June". Based on these submissions, I find the parties have reached an agreement on the hedge and order ***both parties*** to trim the Yew hedge bordering their respective LCP yard areas at the front of the main building to a height of approximately 6 feet by June 1st of each year.

46. I note the Adams provided evidence and argument that the Yew hedge might be partially located on City property, but that does not change my conclusion or order.

Must the Adams' relocate the hose bib to its original location and allow the Colabraros uninterrupted use of the hose bib?

47. As earlier noted, the Adams relocated an exterior hose bib from the outside of SL2 to the outside of their SL1. It is undisputed the work was done on approximately February 16, 2020. Photographs in evidence show the hose bib was originally located on the exterior of the building and was moved a distance of approximately 1 foot. Essentially, from the outside of SL2 to the outside of SL1.

48. The Adams say that because the water shutoff was located in their strata lot, and the plumbing line was on their side of the building, the hose bib was their property and the Colabraros do not have the right to use it. The Adams have now "decommissioned" the plumbing line and exterior hose bib "to avoid any future leaks or insurance issues".

49. The Colabraros say the hose bib was always available for them use before it was relocated. They also say the hose bib and plumbing line are common property, so they have a right to use it, implying the Adams do not have a right to shut it off. For the following reasons, I agree with the Colobraros.

50. As earlier noted, the hose bib itself is common property because it is located on the exterior of the building. This is true of both the old hose bib and newly located one. Photographs of the plumbing line in evidence clearly show the line runs through holes drilled in wooden studs before it connects to hose bib. It is also undisputed that the wooden stud wall divides the 2 strata lots. I infer the stud wall is located in the crawlspace. The strata plan does not identify the crawlspace as LCP, and is it unclear whether the crawlspace is common property or part of each respective strata lot.

However, because the plumbing line is located within a wall that divides the 2 strata lots, I find it must be common property by definition because of its location, and because the hose bib was originally capable and intended to be used in connection with common property. It does not matter that the shutoff valve for the plumbing line and hose bib is located SL1, or that additional hose bibs are located on the south or rear of the building for the Colabraros to use.

51. Given my conclusion, I find the Adams must allow the Colabraros and their tenants reasonable, uninterrupted access to and use of the hose bib, and I so order.

52. As for the relocating the hose bib to its original location, I find such an order would serve no useful or practical purpose, given my order that the Colabraros may use the hose bib at its current location, which I have noted is approximately 1 foot away from its original location. Therefore, I decline to order the hose bib be relocated to its original location as requested by the Colabraros.

Are the Colabraros entitled to an order that the Adams' cease playing music "with intense base at unreasonable times"?

53. The evidence suggests a history of noise complaints from the Colabraros' tenants about the Adams' sound system since 2018, as set out in a written statement from the Colabraros' son. Although there have been regular complaints, there have also been times when the complaints subsided. This is likely during times when the Adams reside at their second home and SL1 is unoccupied. However, the Colabraros say noise from the Adams' sound system is contrary to bylaw 3(1)(b), which says an owner must not use a strata lot in a way that causes unreasonable noise.

54. The Adams admit to knowing of the complaints and say they have taken steps to eliminate the issue, suggesting the issue is now resolved. They say the steps they have taken include relocating speakers away from walls, decommissioning a base speaker (subwoofer), and installing soundproofing in the common wall and floors in 2020. The Adams also object to the noise from the Colabraros' tenants and their children, but I find that issue is not before me to decide in this dispute.

55. While I appreciate the base noise from the Adams' sound system may be objectionably loud to the Colabraros' tenants, no objective evidence has been provided to establish whether the noise is unreasonable, which is required to establish whether noise is unreasonable. See for example, *The Owners, Strata Plan LMS 1162 v. Triple P Enterprises Ltd*., 2018 BCSC 1502 at paragraph 33 and *Suzuki v. Munroe*, 2009 BCSC 1403.

56. I also accept the Colabraros' position that, even if the noise was unreasonable and the strata had established a strata council, the strata has no ability to impose fines because both strata council members would not agree to fines. I note the strata has the ability to amend its bylaws to address other ways to establish bylaw breaches, such as with the assistance of an independent third party. However, it appears no steps to amend bylaws have been taken and no other advice has been sought.

57. The Colabraros' only requested resolution is for an order that the Adams' cease playing music with intense base at unreasonable volumes. In other words, the Colabraros ask for an order that the Adams abide by bylaw 3(1)(b), which is something they are already required to do under the SPA. Given this, and the fact the Adams have recognized there was an issue with noise from their sound system and undisputedly taken steps to address it, I decline to make the order requested by the Colabraros about a breach bylaw 3(1)(b). I dismiss the Colabraros' noise claim.

Must the Colabraros remove their air conditioner?

58. The Adams' say the Colabraros' claims discussed above were retribution to requests the Adams made about the Colabraros' tenants harassing the Adams. The Adams' allege the harassment started in about December 2019 when they began renovating SL1 and had their lawyer write to the Colabraros on that subject. However, the alleged harassment issue is not before me to decide.

59. The Adams say they never approved the Colabraros' air conditioner installation and that it is a significant change in the use or appearance of common property. They also say a permit was required from the City of Vancouver (City), which required their approval because they were part of the strata.

60. The Colabraros effectively say the installation of the air conditioner was verbally approved by the Adams in May 2019, installed in June 2019 and received the City's approval in December 2021. They also say the Adams are out of time under the *Limitation Act* to commence their claim.

61. I dismiss the Adams' claim for the reasons that follow.

62. I will first address the approval process. In submissions, the Adams make the following comment, which I find to be the real reason they object to the installed air conditioner:

> Given that the Colabraros would now retrospectively like to manage the strata formally, we would like the air-conditioner removed as it was installed illegally, without strata consent and permission from the City of Vancouver.

63. However, as noted earlier, the strata did not operate according to the SPA, but has historically operated on a consensual basis by verbal agreement. There is no evidence before me to suggest the Adams objected to the air conditioner until they filed their counterclaim. I would have expected to receive copies of correspondence or text messages issued by the Adams or their lawyer if they objected to the installation. It appears that the Adams' claim is in response to the Colabraros' claims, which is the reverse of what the Adams say.

64. Based on the manner in which the strata historically operated, namely informally and with verbal consent, I cannot conclude the Adams approved the installation based on the evidence before me. It is the Adams' obligation to prove that their approval was not given, and I find they have not. I note that bylaws 5 and 6 require the written approval of the strata prior to alterations being completed to a strata lot or common property. The Adams did not raise these bylaws in their submissions, but if they had, I would not have changed my conclusion because of the way the strata corporation historically operated, which is not disputed.

65. The Adams also argue that SPA section 71 required their approval to the air conditioner installation because it is a significant change in use or appearance of common property. The Colabraros submit the air conditioner installation was not a

significant change in use or appearance of common property and therefore did not require the Adams' approval under section 71. I agree with the Colabraros following the factors set out in *Foley* described above.

66. The air conditioner is located next to the main entrance to SL2 on the LCP yard. It is not visible to the public nor to the Adams as it is located on the opposite side of the building from the entrance to SL1. There is no evidence of a direct interference or disruption to the Adams as a result of the air conditioner's installation and, as mentioned, there is no evidence of the Adams making any complaints about the air conditioner prior to this dispute. Further, the Adams did not provide any evidence about how the air conditioner might impact the marketability of their strata lot. In weighing all of the factors in *Foley*, I find installation of the air conditioner was not a significant change in use or appearance of common property, so the strata's approval was not required. I find the same analysis applies to the wooden cover the Colabraros placed over the air conditioner.

67. As for the need for a building permit, in a February 23, 202 email to Ms. Adams, the City's lawyer confirmed an electrical permit was issued by the City for the air conditioner (referenced by the City as a heat pump) wiring on November 10, 2021 and the installation passed inspection on December 1, 2021. The email also stated "the City has no concerns with the heat pump installation from the perspective of compliance with the City's bylaws". That the City did not obtain written permission from the strata before it wrote that it "approved" the air conditioner installation, weighs in favour of the Colabraros. In other words, the City's process for approving the installation, including issuing the electrical permit, did not require the Adams' approval.

68. I also note the Adams statement that a permit was not required for their "garden sprinkler system" did not require strata approval because it was "only for [their] side of the house", seems to contradict the nature of their claim that the Colobraros' air conditioner, which relates only to SL2, did require a permit.

69. For these reasons, I dismiss the Adams' claim and decline to order the Colabraros' air conditioner removed.

70. Given this conclusion, I find I do not need to address the Colabraros' allegation that the Adams' claim is out of time under the *Limitation Act*.

CRT FEES AND EXPENSES

71. Under CRTA section 49 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.

72. The Colabraros were partially successful in their claims and the Adams were not successful in their counterclaim. I find it appropriate to order the Adams to reimburse the Colabraros ½ of the $225.00 CRT fees they paid, or $112.50. No other dispute-related expenses were claimed by either party, so I order none.

ORDERS

73. I dismiss Ms. Adams' counterclaim about the air conditioner.

74. Within 21 days of the date of this decision, I order the Adams to pay the Colabraros $112.50 for CRT fees.

75. Within 120 days of the date of this decision, I order the Adams to arrange to paint the roof box flashing the agreed colour at their expense. The Adams must provide the Colabraros with 72 hours written notice, by email or otherwise, of the date the painting will occur. The Colabraros must ensure access to the roof box flashing is not restricted on that date.

76. I order the Adams and Colobraros to trim the Yew hedge bordering their respective LCP yard areas at the front of the main building to a height of approximately 6 feet by June 1st of each year.

77. I order the Adams to allow the Colabraros and their tenants reasonable, uninterrupted access to and use of the hose bib located on the exterior of the main building facing the front of the property.

78. I dismiss the Colabraros' remaining claims.

79. The Colabraros are entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

80. 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.

J. Garth Cambrey, Vice Chair