



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Bahmutsky v. The Owners, Strata Plan KAS 3860*, 2022 BCCRT 617

B E T W E E N :

MICHAEL BAHMUTSKY and IRINA BAHMUTSKY

APPLICANTS

A N D :

The Owners, Strata Plan KAS 3860

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. The applicants, Michael Bahmutsky and Irina Bahmutsky, own strata lot 8 (unit 8029) in the respondent strata corporation, The Owners, Strata Plan KAS 3860 (strata).
2. As set out in the Dispute Notice, the Bahmutskys described their claim against the strata in this way (as written):

- a. Strata Owners KAS3860 failed to provide proper managing and maintaining of the strata common property for the benefit of the owners.
 - b. Violation of the Strata Bylaws and BC *Strata Property Act* (SPA) by Strata Owners KAS3860 to hold Hearing meeting between 28-Jul-21 and 28-Aug-21 requested by the Strata Owner.
 - c. Violation by Strata Owners KAS3860 to hold Hearing meeting in fair and respectful way on 9-Jun-21.
 - d. Ignoring to accept written messages from Strata Owner sent by email and delivered by hand to Strata Owners KAS3860
 - e. Necessity for having surveillance video camera (safety reasons).
3. The Bahmutskys provided no further details in the Dispute Notice, which I come back to below.
 4. As a remedy, the Bahmutskys seek \$500 in damages, plus an order that the strata manage and maintain the common property (CP), communicate with owners honestly and decently, and follow the bylaws and the SPA.
 5. The strata says it does not know what specific issues the Bahmutskys are referring to in the Dispute Notice. It says it has responded to the Bahmutskys' concerns and held a fair hearing but cannot explain "vague unknown events". It says it intends to amend its bylaws at the 2022 AGM to address video surveillance.
 6. The Bahmutskys are represented by Mr. Bahmutsky and the strata is represented by a council member.
 7. For the reasons that follow, I refuse to resolve the Bahmutskys' claims about ignoring messages and video surveillance and I dismiss their remaining claims.

JURISDICTION AND PROCEDURE

8. 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.
9. 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 and neither party requested an order hearing. 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.
10. 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.
11. 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.

Preliminary Issues

Broad Claims and Remedies

12. In the Dispute Notice, the Bahmutskys included no specifics about the ignored messages, the video surveillance, or what the strata allegedly did wrong with respect to managing and maintaining the CP. The Bahmutskys say they could not "define their requested resolution" because of the CRT's character limit for written

submissions. The CRT permits a total of 20,000 characters for each substantive claim. The Bahmutskys do not say they requested more characters and nor have they shown they needed any more characters to define their requested resolutions. I find the CRT's forms and character limits were sufficient for the Bahmutskys to define their claims and their remedies.

13. I start with the Bahmutskys' allegation or claim that the strata ignored their written messages. The Bahmutskys did not identify the subject matter, the date range, nor give any other details about the messages in Dispute Notice. The submitted evidence shows the parties exchanged multiple pieces of written correspondence or messages over the years. I find the requested remedy in the Dispute Notice does not help to identify what specific messages the strata allegedly ignored. I find the strata did not have enough information in the Dispute Notice to adequately respond to this vague claim about messages and it would be procedurally unfair to decide it here. I also find the requested remedy that the strata essentially comply with the law would serve no practical purpose in the circumstances.
14. The CRT may decline to resolve a claim where the request for resolution does not disclose a reasonable claim under CRTA section 11(1)(b). I find that a vague claim about undefined messages does not raise a reasonable claim and I refuse to resolve it under CRTA section 11(1)(b). I note that I have reviewed and considered all the parties' written correspondence submitted in this dispute when resolving the other claims in this dispute.
15. I turn next to the Bahmutskys' claims about CP repair and maintenance. In argument the Bahmutskys allege the strata failed to replace a light bulb, adequately trim a tree and shrubs, and install handrails on a passageway between strata lots. Unlike the ignored messages, I find the strata had sufficient notice during the CRT process about each of these CP items as it was able to respond to each specific issue in its submissions. Because of the parties' ongoing relationship, I find it would benefit these parties to bring some finality to the CP repair and maintenance issues by resolving them in this dispute. Further, I find the strata is not prejudiced by me resolving the claims. So, I have resolved the Bahmutskys' claims over the strata's response to their

complaints about the light bulb, tree, shrubs, and their recommendation over the handrails.

16. As for the video surveillance, the Dispute Notice does not contain any specific allegation of wrongdoing against the strata and nor does it request a specific remedy about it. In argument, the Bahmutskys ask the CRT to “explain to Strata Owners KAS 3860 the importance of having our video surveillance to monitor our Limited Common Property for Safety reasons exclusively”. The evidence indicates that the strata intends to propose a resolution about video surveillance at a future general meeting.
17. While it is not entirely clear, the Bahmutskys seem to be asking the CRT to help the Bahmutskys’ communicate their position to the strata about video surveillance before the general meeting. I find it is not within the CRT’s jurisdiction, (authority), to assist or advocate for an owner over any issue. Also, their request for an explanation is essentially a form of “declaratory” relief. The CRT has no statutory authority to grant declaratory relief, except in very specific circumstances which I find do not apply here. Under CRTA section 11(1)(e), the CRT has discretion to decline to resolve a dispute if it decides, on satisfactory evidence, that the claim is outside its jurisdiction. I find the Bahmutskys’ request that the CRT provide the strata with an explanation about video surveillance is outside the CRT’s jurisdiction and I refuse to resolve it under CRTA section 11(1)(e).

ISSUES

18. The issues in this dispute are:
 - a. Did the strata breach its duty to repair and maintain the CP?
 - b. Did the strata hold an unfair hearing on June 9, 2021?
 - c. Did the strata fail to hold a subsequent hearing within a required time?
 - d. What, if any, are the appropriate remedies?

EVIDENCE AND ANALYSIS

19. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (meaning more likely than not). I have read all the parties' argument and evidence but refer only to what that I find relevant to provide context for my decision.

Did the strata breach its duty to repair and maintain the CP?

20. As discussed, the Bahmutskys say the strata breached its duty to repair and maintain the CP, which the strata disputes. I find the Bahmutskys have not established this claim as I discuss below.

The Legal Framework

21. SPA sections 3 and 72(1) require a strata corporation to repair and maintain the CP and common assets, subject to the bylaws.

22. The strata's bylaws are the Standard Bylaws under the SPA, with some additions, as shown in documents filed with the Land Title Office (LTO). Those additions are not relevant to this dispute. Under Standard Bylaw 8, the strata must repair and maintain the CP and the common assets. I find this includes the light fixtures, trees, shrubs, and passageways at issue in this dispute as they are on the CP.

23. The courts (and CRT) have held that a strata corporation must act reasonably in carrying out its repair and maintenance duties. The standard is not one of perfection. See for example, *Wright v. Strata Plan No. 205*, 1996 CanLII 2460 (BCSC), aff'd 1998 CanLII 5823 (BCCA).

24. A strata is entitled to decide between different options for repairing and maintaining CP and it will not have breached its duty by choosing a more cautious or conservative approach, or by choosing a "good" solution rather than the "best" solution: see *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784.

25. The CRT in *Warren v. The Owners, Strata Plan VIS 6261*, 2017 BCCRT 139, held that an owner does not have the right to demand certain maintenance as a priority or

to impose deadlines for their requests to be fulfilled. Rather, a strata is entitled to consider an owner's repair and maintenance requests with a view to the financial circumstances of the community and the strata's capacity to manage its overall maintenance needs. The CRT's conclusions in *Warren* are not binding on me, but I find the reasoning is persuasive, consistent with the case law, and I adopt it here.

Light Bulb

26. As shown in the submitted photographs, there is an outdoor light fixture above the exterior stairs on part of the strata building. The Bahmutskys say they noticed 1 of 2 bulbs was burnt out and asked the strata manager to replace the bulb in May 2021. They say the strata manager told them the strata would replace it as soon as "practical". The Bahmutskys felt this was not a sufficient answer and so they requested a hearing about it.
27. Following the hearing, the strata told the Bahmutskys that the cost to hire someone to replace the bulb was too much, but a council member agreed to attend to the issue. The council member undisputedly replaced the bulb on August 10, 2021.
28. I find the Bahmutskys have not established that the strata unreasonably delayed replacing the burnt-out bulb. The photographs show the light fixture had 1 working bulb. While the 1 burnt-out bulb darkened part of the area, the evidence does not establish there was a serious safety risk and I find the strata had no obligation to replace the lightbulb on the Bahmutskys' schedule. Given the strata replaced the bulb, I find no live issue remains and I dismiss the Bahmutskys' claim over the bulb.

Trees and Shrubs

29. As shown on the strata plan filed in the LTO, the strata CP consists of expansive grounds that include a small lake. In 2021, the Bahmutskys asked the strata to trim a tree that blocked a pathway, plus some shrubs on the CP grounds that front the lake. The strata undisputedly trimmed both the tree and the shrubs as shown on the Bahmutskys' video evidence and the strata's photographs following the Bahmutskys' complaints.

30. In this dispute, the Bahmutskys argue that the strata did not properly or adequately trim the tree or the shrubs. They say the tree still blocks the pathway and should be trimmed back more. They also say their view is still obscured by the shrubs and seek an order that the strata trim the tree and shrubs again.
31. The submitted photographs show the tree is already trimmed back so that it is not blocking the path. A photograph that I infer was taken from the Bahmutskys' strata lot or patio shows a clear view of the lake even though there are some short shrubs in the foreground. I find the Bahmutskys had no right to demand that the strata trim these items to their personal satisfaction and nor did strata have to trim them to perfection. Based on the photos in evidence, I find the strata reasonably maintained the CP tree and shrubs by trimming them back and I dismiss the Bahmutskys' claim about these items.

Handrails

32. On June 3, 2021, the Bahmutskys emailed the strata manager with a "recommendation" for a handrail along a "steep pass" between units 8025 and 8023. The Bahmutskys say the slope is 40-45 degrees and as an elderly couple, it is difficult for them to use the passageway without a handrail. The Bahmutskys say the strata did not respond and ask the CRT to order that the strata install handrails.
33. The strata says it already sourced contractors to construct the handrails and the cost is about \$6,500, which undisputedly exceeds the strata's unapproved expenditures limit. It says the expenditure requires a vote of the ownership at an annual or special general meeting.
34. Unless it is urgently needed for safety or to prevent significant loss or damage, I agree with the strata that the expenditure for a new handrail would require a 3/4 vote approval at a general meeting: see SPA 96 and 98(1). The strata could also raise funds by special levy, which would also require a 3/4 vote approval at a general meeting: see SPA 108.

35. The photographs show there is a stairway with handrails immediately adjacent to the passageway and Bahmutskys say they have “no problem with the stairway access”. The evidence does not establish that a handrail is immediately needed to ensure safety or prevent significant loss. In the circumstances, I find no basis for the CRT to intervene in this strata governance issue and I dismiss the Bahmutskys’ claim over the handrail.

Did the strata hold an unfair hearing on June 9, 2021?

36. SPA section 34.1(1) says an owner may request a hearing at a council meeting by making an application in writing. Section 4.01 of the *Strata Property Regulation* says that for the purposes of section 34.1, a “hearing” means an opportunity to be heard in person at a council meeting.

37. The Bahmutskys requested a hearing at a council meeting under SPA section 34.1(1), which was undisputedly held on June 9, 2021. The Bahmutskys’ written submissions and the strata’s written decision following the hearing indicate the hearing was mostly about CP repair and maintenance, second-hand smoke, and children entering the Bahmutskys’ LCP to retrieve balls.

38. The Bahmutskys say they were treated unfairly and disrespectfully at this June 9, 2021 hearing. They allege the meeting chair and council member yelled at them, interrupted them, spread rumours, and tried to “demonize” them. In addition to their requested remedy that the strata communicate honestly and decently in the future, they ask for \$500 in compensation from the strata.

39. The strata says it was the Bahmutskys who were “abusive” towards the council members and this caused the hearing to degenerate. It also says that the strata has all new council members and it cannot comment or apologize for actions that occurred before its time. It says it is sorry if the Bahmutskys were subject to “rude behaviour” and the new council will ensure “all concerns, comments and issues brought before [council] are dealt with in an appropriate, fair, and polite manner”.

40. There is no audio recording, no witness statements or other independent evidence to corroborate either party's assertions about what happened at the hearing. I find the Bahmutskys' own description about what happened is vague and lacks objectivity. While I accept there was some sort of conflict at the hearing, the evidence is insufficient to draw a conclusion about any particular person's conduct or the reason for their conduct. I find the Bahmutskys have not established that the strata, through its council members, treated them unfairly, indecently or disrespectfully at the hearing and nor have they established a basis to award them monetary compensation. I dismiss their claim over the June 9, 2021 hearing.

Did the strata fail to hold a subsequent hearing within a required time?

41. On July 28, 2021, the Bahmutskys requested a hearing under SPA section 34.1 about the strata's decision on trimming the tree, a prior response about second-hand smoke, and a decision on their recommendation to alter the passageway, including by adding a railing (hearing issues). The strata scheduled a hearing for September 9, 2021, which was the next council meeting. The Bahmutskys were not able to attend the September 9, 2021 council meeting. The strata permitted them to provide written submissions instead, which they did submit.

42. Section 34.1(2) requires the strata to hold a hearing within 4 weeks after receiving the written request. The Bahmutskys say the strata should have held the hearing between July 28 and August 28, 2021 and it did not do so.

43. The records indicate that the strata had already held a hearing about the Bahmutskys' second-hand smoke complaints on June 9, 2021 and gave them a written decision following that hearing. I find the council was not required to hold a second hearing about the same historical complaints. The CRT also issued a decision about second-hand smoke complaints on June 10, 2021 and concluded the strata reasonably enforced its bylaws and dismissed their claim: *Bahmutsky v. The Owners, Strata Plan KAS 3860*, 2021 BCCRT 642. That CRT decision is binding on the strata.

44. However, there is no dispute that the strata missed the statutory 4-week deadline to schedule a hearing on the other issues. According to the strata manager's emails at

the time, the delay was due to changes within the council, including council members selling their strata lots, making it difficult to schedule a council meeting or meet quorum.

45. Section 34.1(3) says that if the purpose of the hearing is to seek a decision of council, the council must give the applicant a written decision within 1 week. I agree with the Bahmutskys that the correspondence shows council did not send them a written decision within that time limit. However, the strata trimmed the tree following the Bahmutskys' complaints and obtained quotes for handrails on their recommendations. So, I find the strata dealt substantively with the hearing issues.
46. In any event, the only related remedy the Bahmutskys sought in the Dispute Notice was that the strata comply with its statutory obligations. In the circumstances, I find no useful purpose in making a broadly requested order about something the strata is already required to do because of the missed deadlines and so I decline to grant this remedy.
47. In argument, the Bahmutskys seek an additional order that the strata answer their questions about insurance and cannabis. I note that the Bahmutskys stated in their September 9, 2021 hearing submission that they were worried a neighbour might be growing cannabis, though they had not seen it themselves. They asked council for a written decision in response to 1 question: "Is Johnston Meier Insurance Agencies aware about planting and growing cannabis in Strata KAS3860?". There is no dispute that council never provided a written response to this question.
48. As mentioned, the purpose of section 34.1 is to give an owner an opportunity to be heard at a council meeting. I find it is not a forum for an owner to demand answers to things they have general questions about. I find that council was not required under section 34.1(3) to answer the Bahmutskys' question about its insurer or what its insurer might know. I decline to order the strata to answer the Bahmutskys' additional question or questions and I dismiss the Bahmutskys' claim over this section 34.1 hearing.

CRT FEES AND EXPENSES

49. 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. As the unsuccessful party, I find the Bahmutskys are not entitled to any reimbursement. The strata paid no CRT fees nor claimed any expenses.
50. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the Bahmutskys.

ORDERS

51. I refuse to resolve the Bahmutskys' claims about messages and video surveillance under CRTA section 11.
52. I dismiss all the Bahmutskys' remaining claims in this dispute.

Trisha Apland, Tribunal Member