



Civil Resolution Tribunal

Date Issued: May 27, 2022

File: ST-2021-009437

Type: Strata

Civil Resolution Tribunal

Indexed as: *Grant v. The Owners, Strata Plan EPS3940, 2022 BCCRT 627*

B E T W E E N :

BILL GRANT

APPLICANT

A N D :

The Owners, Strata Plan EPS3940

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about common property use in a strata corporation.
2. The applicant, Bill Grant, co-owns strata lot 37 (SL 37) in the respondent strata corporation, The Owners, Strata Plan EPS3940 (strata). Mr. Grant says the common

property green space located beside his strata lot (greenspace) is intended as a children's play area but has become a site for noisy adult gatherings. He says the strata has failed to enforce its bylaws. Mr. Grant asks for an order that the strata enforce its bylaws and create a rule requiring adult social gatherings to be held only in the outdoor amenity area.

3. The strata says adult gatherings in the greenspace do not violate any of the strata's bylaws. The strata also says the common property greenspace is for the use of all owners.
4. Mr. Grant represents himself. A strata council member represents the strata.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.

8. 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

9. The issues in this dispute are:
 - a. Did the strata fail to enforce its bylaws?
 - b. If so, was this significantly unfair to Mr. Grant?
 - c. Did the strata act significantly unfairly in failing to create a rule about adult social gatherings on common property?
 - d. If any of the above answers are “yes”, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil dispute like this one the applicant, Mr. Grant, must prove his 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.

Background

11. The strata was created in 2017. It consists of 95 townhouse style residential strata lots. Mr. Grant’s strata lot is 1 of 3 2-storey units in building 14 and is located on the south end of the building. According to the strata plan, there is a triangular area located south of building 14 labelled as “Child friendly amenity area 3” and designated as a common facility.
12. Mr. Grant’s photos show that most of the greenspace is a large grassy area, along with a small dirt play area landscaped with various sized stumps. There is also a large paved and covered outdoor amenity area with picnic tables further away from building 14.

13. The strata filed an amended set of bylaws in the Land Title Office on July 18, 2018, which I find apply here. I find the strata's later filed bylaw amendments are not relevant to the issues in this dispute. I will address the bylaws in more detail below.
14. On September 9, 2021, Mr. Grant reported to the strata that the greenspace had become a gathering area for owners. Mr. Grant provided a photo that he said showed 30 to 40 people gathered 10 feet from his front window. He said when he entertained, his guests found the outside gatherings intimidating. Mr. Grant asked the gatherings to be moved to the designated outdoor amenity area. He asked the strata to make this a rule or bylaw.
15. The strata council considered Mr. Grant's letter at its September 13, 2021 meeting. According to the minutes, the council members agreed that the gatherings did not violate any strata bylaws. The strata reported the decision to Mr. Grant in a September 17, 2021 email.
16. At Mr. Grant's request, the strata council held a hearing on November 8, 2021. In a November 12, 2021 letter the strata identified Mr. Grant's concerns as a 'nuisance complaint'. The strata said that the gatherings violated no bylaws but agreed to ask owners to be considerate and respect owners living near common areas by holding larger gatherings in the main amenity area.
17. In a November 16, 2021 email Mr. Grant clarified that he wanted council to make a rule that all social gatherings be in the outdoor amenities area. Mr. Grant asked several questions about nuisance, bylaws, and social gatherings. On November 22, 2021, the strata responded to Mr. Grant's questions. It noted that the strata found the complained of gathering was a social gathering without unreasonable noise or activity which could cause nuisance, as confirmed by the owners present at the gathering, including some strata council members. The strata noted that Mr. Grant's complaint was the first of its kind and that council would continue to monitor gatherings and act on any complaints it received. The strata confirmed that council's findings were made by majority vote.

Alleged Failure to Enforce Bylaws

18. Under section 26 of the SPA, a strata corporation must enforce its bylaws, subject to some limited discretion, such as when the effect of the breach is trivial (see *The Owners, Strata Plan LMS 3259 v. Sze Hang Holdings Inc.*, 2016 BCSC 32). A strata may investigate bylaw contravention complaints as it sees fit, provided it complies with the principles of procedural unfairness and is not significantly unfair to any person appearing before the council (see *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148). The standard of care that applies to a strata council is not perfection, but rather “reasonable action and fair regard for the interests of all concerned” (see *Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74 at paragraph 61). Section 27(2) of the SPA states that the owners may not interfere with council’s discretion to determine, based on the facts of a particular case, whether a person has breached a bylaw, whether a person should be fined, or the amount of the fine.
19. Mr. Grant says the strata failed to enforce, the Schedule of Standard Bylaws in the *Strata Property Act* (SPA), its own bylaws about noise and nuisance, and the Langley Township Age Friendly Amenity requirements in section 11 of the Zoning Bylaw.
20. SPA section 120 says that a strata corporations’ bylaws are the Schedule of Standard Bylaws, except to the extent different bylaws are filed in the LTO. As the strata filed its own bylaw 3 governing the use of property, I find that bylaw applies here, rather than the standard bylaw.
21. The strata’s bylaw 3(1) prohibits anyone from using common property in a way that:
 - a. causes a nuisance to another person,
 - b. causes unreasonable noise,
 - c. unreasonably interferes with another person’s right to use and enjoy the common property, and
 - d. is contrary to the purpose for which the common property is shown expressly or by necessary implication on or by the strata plan, namely as residential premises.

22. Mr. Grant says the greenspace social gatherings are a nuisance, noisy, and unreasonably interfere with his own enjoyment of his strata lot. He says the gatherings lasted past 8 p.m. and include alcohol. As noted above, Mr. Grant says his indoor guests are intimidated by the greenspace gatherings.
23. In the strata context, nuisance is a substantial, non-trivial and unreasonable interference with an owner's use and enjoyment of their property (see *The Owners, Strata Plan LMS 1162 v. Triple P Enterprises Ltd.*, 2018 BCSC 1502). The test of whether noise is unreasonable is objective and is measured with reference to a reasonable person occupying the premises (see *Sauve v. McKeage et al.*, 2006 BCSC 781). The test for nuisance depends on several factors, such as its nature, severity, duration, and frequency (see *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64).
24. Mr. Grant submitted 1 photo which shows approximately 20 camping chairs arranged in a large circle in the greenspace, with approximately 17 people sitting in them. The chairs are separated from Mr. Grant's front window by a short hedge and other plants. There is no indication of picnic coolers, food, alcohol, music, dancing, games or typical party items. Although I acknowledge Mr. Grant would see the gathering from his front window, I find the people sitting do not block the view from his window or appear to be intimidating in any manner.
25. Mr. Grant submitted no further photos or any witness statements. Nor did he explain why he could not provide witness statements from his guests whom he says were intimidated by the gatherings. The strata says this was 1 of 4 gatherings that occurred over the course of the summer months, each of which lasted approximately 2 hours. As Mr. Grant does not dispute this, I accept the statement. I find no evidence that the gatherings are frequent, of long duration, loud or unusually disturbing. Based on the limited evidence before me, I find Mr. Grant has not proven the greenspace social gatherings substantially and unreasonably interfered with his strata lot use and enjoyment or were unreasonably noisy. I do not find 8 pm to be a late hour for conversation, particularly in the absence of any strata rules or bylaws about quiet hours.

26. Contrary to Mr. Grant's argument, I find he has not proven the social gatherings unreasonably interfere with childrens' ability to use the play area. This is because the group of chairs is on the green space, beside the dirt play area landscaped with stumps and climbing areas. Further, I note the chairs used were temporary and there is no indication that any other owner, including Mr. Grant, was impeded from using the common property greenspace in any other way.
27. Mr. Grant argues adult social gatherings were not the intended use for the greenspace. I note bylaw 3(1)(g) specifies the intended use for the strata property is "residential". Further, the greenspace is specifically identified as a "child friendly" area on the strata plan, not a children only area. So, I find using the greenspace for adult social gatherings is not contrary to either the residential purpose indicated on the strata plan, or the "child friendly" area designation.
28. To the extent Mr. Grant argues the social gatherings violate the municipality's amenity area zoning bylaws, I find the strata has no authority to enforce those bylaws. Rather, the strata can only enforce its own bylaws and rules, under section 26 of the SPA.
29. I note that strata bylaw 3(1)(d) prohibits anyone from using common property in an illegal manner. However, I find Mr. Grant has not proven that the greenspace gatherings are an "illegal" use of the space because they violate the municipal zoning bylaw. This is because section 111.5 of Zoning Bylaw 2500 requires that townhouse developments provide a minimum amount of age friendly amenity area space per unit, containing children's play space and other components to provide opportunities for children's play and social gatherings. I find that adult social gatherings do not violate that amenity area provision requirement in the zoning bylaw. So, I find adult gatherings are not an "illegal" use of the space.
30. Overall, I find Mr. Grant has not proven that the strata failed to enforce its bylaws against the adult gatherings in the greenspace.

Significant Unfairness

31. Mr. Grant argues the strata did not act procedurally fairly in investigating his nuisance complaint. He also says the strata failed to properly review his complaint and incorrectly interpret the bylaws. I infer he argues that the strata's decision that the adult gatherings did not breach the bylaws was significantly unfair to him.
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 Mr. Grant's expectation that the strata act in a procedurally fair manner when considering his complaint is objectively reasonable. Mr. Grant argues the strata breached that duty in 2 ways. First, he argues 2 strata council members who regularly attend the greenspace social gatherings failed to recuse themselves from discussion about Mr. Grant's complaint
35. SPA section 32 addresses conflicts of interest by strata council members. It says that when a strata council member has a direct or indirect interest in a contract or transaction with the strata, or a decision before the strata council, that council member must disclose their interest, abstain from voting, and leave the strata council meeting during the discussion and voting.

36. In *Dockside Brewing Company Ltd. v. The Owners, Strata Plan LMS 38371*, 2007 BCCA 183, the BC Court of Appeal said that all remedies for breaches of SPA section 32 are set out in SPA section 33. CRTA section 122(1) specifically says the tribunal has no jurisdiction under section 33. CRTA section 10(1) says the CRT must refuse to resolve a claim over which it does not have jurisdiction. So, I find I have no jurisdiction to consider Mr. Grant's argument about the strata council members' alleged conflict of interest.
37. Second, Mr. Grant argues the strata council did not properly vote on whether the social gatherings breached any bylaws.
38. I acknowledge that the September 13, 2021 strata council meeting minutes do not refer to any votes, or record voting results, as required by the strata's bylaws 24(1) and (3). However, the minutes say that the strata council "agreed" there was no bylaw violation. I find this shows unanimous agreement amongst the council members. I find the council's procedural irregularity of not recording the vote result does not void the council's decision that there was no bylaw infraction.
39. Mr. Grant provided an excerpt from the November 22, 2021 strata council minutes which says the strata held a meeting on Sunday, November 14, 2021 to discuss his November 8, 2021 hearing. The minutes say council discussed if there was a strata bylaw or rule contravention and voted there was not (4 in favour, 1 abstention, 0 opposed). I agree with Mr. Grant that this vote appears to have occurred after the strata made its decision there was no bylaw contravention, as set out in its November 12, 2021 letter. The strata did not address this date discrepancy in its dispute submissions. I find it likely the strata council did not vote following the November 8, 2021 hearing but rather discussed the matter and together decided by majority there was no bylaw or rule violation, without specifically holding a vote. However, as noted above, I find the procedural irregularity does not void the strata's decision that no bylaw was violated. This is because the later November 14, 2021 vote results show that a vote taken would have resulted in the same outcome.

40. On balance I find Mr. Grant has not shown that individual votes would have resulted in a different decision from the strata. I find he has not proven the procedural vote irregularities were oppressive, burdensome or harsh toward him. As noted above, I find the strata's decision no bylaw was broken was a reasonable one and I further find that decision is not significantly unfair to Mr. Grant, as he has not proven the gatherings are noisy, a nuisance, or interfere with his strata lot enjoyment. Overall, I find Mr. Grant has not proven the strata acted significantly unfairly in finding the adult social gatherings did not violate the bylaws.

Strata's Failure to Create a Rule about the Gatherings

41. Contrary to Mr. Grant's argument, I find the strata did address his request that it create a rule about adult gatherings following the November 8, 2021 hearing and decided not to impose a rule. In the November 22, 2021 minutes, the strata specifically said it did not want to create rules or bylaws governing common area enjoyment, so instead requested that owners keep larger gatherings in the main amenity areas.

42. I find any expectation Mr. Grant may have that the strata create such a rule is objectively unreasonable given his is the first and only complaint the strata has received about the greenspace gatherings and given the strata's reasonable finding that the gatherings are not unreasonably noisy or a nuisance. In other words, I find Mr. Grant has not proven that his expectations about greenspace use reflect the wishes of any owners other than himself. Strata governance, including rule creation, reflects the will of the majority of owners, not any 1 specific owner. The courts, and the CRT, should not interfere with the democratic governance of a strata corporation except where absolutely necessary (see *Oldaker v. The Owners, Strata Plan VR 1008*, 2007 BCSC 669).

43. Even if Mr. Grant's expectations were reasonable, I would not find the strata's refusal to implement a rule is significantly unfair to Mr. Grant. This is because he has not shown how the lack of rule is prejudicial or oppressive to him. As noted, I find the social gatherings are not unreasonably noisy, a nuisance, or interfere with Mr. Grant's reasonable enjoyment and use of his own strata lot. So, I find any lack of rule prohibiting or governing the greenspace social gatherings is not significantly unfair.

44. In any event, I find the strata acted reasonably by alerting owners to Mr. Grant's concerns and respectfully asking that larger gatherings take place away from the common property greenspace, in the outdoor amenity area.
45. On balance, I find Mr. Grant has not proven the strata failed to enforce its bylaws or acted significantly unfairly. So, I decline to order the strata to enforce its bylaws or create a rule governing the use of the greenspace. I dismiss Mr. Grant's claims.

CRT FEES and EXPENSES

46. 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. As Mr. Grant was unsuccessful in his claims, I find he is not entitled to reimbursement of his paid CRT fees. As the successful party the strata claimed no dispute-related expenses.
47. The strata must comply with section 189.4 of the SPA, which includes not charging any proportion of its costs for this dispute against Mr. Grant.

ORDER

48. I dismiss Mr. Grant's claims and this dispute.

Sherelle Goodwin, Tribunal Member