



Civil Resolution Tribunal

Date Issued: July 5, 2022

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Fincham v. Greer*, 2022 BCCRT 772

B E T W E E N :

FRANCINE FINCHAM

APPLICANT

A N D :

NORMA JEAN GREER, LILY GREER and The Owners, Strata Plan
VIS4978

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about duplex owners' use of the common property and their yard. The applicant, Francine Fincham owns strata lot B in the respondent 2-unit strata corporation, The Owners, Strata Plan NW2128 (strata). The respondents, Norma Jean Greer and Lily Greer co-own strata lot A.

2. Ms. Fincham claims that the Greers have breached the strata's bylaws by parking cars on the road, leaving items and trash on the road and in their backyard, operating a business on the road, letting visitors enter the property, letting people sleep in cars parked on the road and the garden shed, threatening her and letting their dog roam unleashed.
3. Ms. Fincham claims the following relief:
 - a. An order enforcing the strata's bylaws.
 - b. An order stopping the Greers from operating a business on the common property.
 - c. An order requiring the Greers to remove all trash and debris from the common property and their yard.
 - d. An order restricting the entry of the Greers' visitors.
 - e. An order stopping the Greers from letting people sleep in cars on the road or in the garden shed.
 - f. An order requiring the Greers to remove a plastic roof from their backyard.
 - g. An order authorizing the construction of a privacy fence between the strata lots.
4. The Greers deny Ms. Fincham's claims. The Greers say that they did not breach the strata bylaws and that their use of the common property and their backyard was reasonable.
5. Ms. Fincham is self-represented. Norma Greer represents herself and Lily Greer. The strata is in default.

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. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
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.

Late evidence

10. Ms. Fincham has submitted late evidence relating to the Greers' plastic roof, allegations that the Greers have performed further construction on the common property and allegations that her cat was harmed. I find that the Greers were not prejudiced by Ms. Fincham's late evidence because they had an opportunity to respond. However, I find that the evidence relating to further construction and Ms. Fincham's cat are not relevant because these claims were not included in the Dispute Notice and they have allegedly occurred after the dispute started. So, I have not considered this evidence in my decision. However, I find that the late evidence

relating to the Greers' plastic roof is relevant and I have considered this evidence in my decision.

Privacy fence

11. In the Dispute Notice, Ms. Fincham requested an order allowing the construction of a privacy fence between the parties' strata lots. However, after this dispute started, both parties said that they have agreed to this. Based on this agreement, I find that this issue is moot and no longer in dispute (see, *Binnersley v. BCSPCA*, 2016 BCCA 259). So, I find it unnecessary to make any findings about this requested relief.

Allegation of threats

12. Ms. Fincham claims that Norma Greer has threatened her on 2 occasions. She provided a November 10, 2021 email statement from BB, an electric utility technician who serviced the property. BB wrote that Greers were hostile and rude to Ms. Fincham when he inspected the parties' electrical service. Norma Greer admits that she was upset. Ms. Fincham did not provide any details about the other alleged incident or state the specific threats that she alleges.

13. I find that Ms. Fincham is essentially claiming that Norma Greer has harassed her. Previous CRT decisions have held that absent a bylaw about harassment, such claims are outside the CRT's strata property jurisdiction. See for example, *Wolff v. The Owners, Strata Plan NE3191*, 2021 BCCRT 987, citing *Tomlinson v. The Owners, Strata Plan EPS 938*, 2021 BCCRT 331 and *Larocque v. The Owners, Strata Plan VR 255*, 2021 BCCRT 617. While prior CRT decisions are not binding on me, I agree with the reasoning in these decisions. So, I decline to address Ms. Fincham's allegation that Norma Greer threatened or harassed her.

Claim not raised in the Dispute Notice

14. In her submissions, Ms. Fincham added a claim requesting an order requiring the Greers to remove a gazebo from their limited common property (LCP) backyard. This claim was not included in the Dispute Notice. Though the CRTA and CRT rules permit applicants to request to amend the Dispute Notice to add new claims or remedies,

the applicants did not do so. I find the purpose of a Dispute Notice is to define the issues and provide notice to the respondents of the claims against them. CRT rule 1.17 says that the Dispute Notice will only be amended after the dispute has entered the CRT decision process where exceptional circumstances apply. I find no exceptional circumstances here that would justify adding new claims or remedies at this late stage in the CRT process. Therefore, I decline to address the Ms. Fincham's claim about the Greers' gazebo.

ISSUES

15. The remaining issues in this dispute are:

- a. Must the Greers stop operating a business on the road?
- b. Must the Greers stop parking cars on the road?
- c. Must the Greers remove trash and items from the road and their backyard?
- d. Must the Greers stop letting their dog roam the property unleashed?
- e. Must the Greers stop letting individuals sleep in parked cars and in the garden shed?
- f. Must the Greers remove a plastic roof from their backyard?
- g. Must the strata enforce its bylaws?

EVIDENCE AND ANALYSIS

16. In a civil claim such as this, Ms. Fincham, as the applicant, must prove her claims on a balance of probabilities, meaning "more likely than not." I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.

17. The strata is a side-by-side duplex. There is no evidence that the parties were following the procedural requirements of the *Strata Property Act* (SPA). It is clear from

the parties' submissions that they were operating the strata informally with no strata council meetings, contrary to the SPA. The strata did not pass amended bylaws, and therefore, the SPA's Schedule of Standard Bylaws apply to this dispute. These bylaws are discussed further below.

18. The registered strata plan shows that the strata consists of a residential building, divided into two strata lots. The strata plan also shows that each strata lot has LCP front yards, side yards and backyards. The parties' backyards are separated by a fence.
19. The strata has a road that fronts both strata lots. Based on the strata plan's designation, I find that the road is common property. The road travels past strata lot B and ends in front of strata lot A. The Greers have installed a tent structure at the end of the road, in front of their strata lot. As discussed below, the Greers performed work in the tent structure and they store items and park vehicles on the road in front of their strata lot.

Business operation

20. Ms. Fincham claims that the Greers' relative operates a business on the common property road. Ms. Fincham says this individual performs car mechanic work, welding, metal grinding, painting and they buy and sell items from the tent structure on the road. Ms. Fincham says that she had agreed to let the Greers place the tent there in 2015 so the Greers' elderly relative could avoid rain while entering and exiting their car. However, Ms. Fincham says the Greers now let a different relative use the tent structure for commercial work. Ms. Fincham provided a video that appears to show the tent structure brightly illuminated at night and emitting a loud grinding noise.
21. Though the Greers deny operating a business on the common property road, they admit that a relative who lives at their strata lot does work in the tent. The Greers say that this relative buys and sells used items to earn income, which involves disassembling and reassembling items and metal grinding. Based on this admission, I find that the Greers are letting their relative operate a business on the common property road.

22. Ms. Fincham says the Greers' work affects her electricity supply. She provided a November 10, 2021 statement from BB, an electric utility technician who inspected electrical issues at the property. Since BB is an electrical technician, I am satisfied that they have sufficient expertise, as required by CRT rule 8.3, to provide expert opinions about the electrical system.
23. BB says Ms. Fincham complained that the lights in both strata lots dimmed when the Greers operated welding and electrically powered equipment on the road. BB inspected the property's electrical system and they wrote that the strata lots share a common service wire which is split and separately metered to each strata lot. BB wrote that the Greers could be temporarily overloading their available power by operating heavy equipment, which could reduce Ms. Fincham's power supply. In contrast, the Greers say that the electrical issues were caused by their own electrical contractor's faulty outlet installation work, which the Greers say they could repair. However, the Greers have not provided any supporting expert electrical evidence. Based on BB's expert opinion, I find that the Greers' use of mechanical equipment likely interferes with Ms. Fincham's electrical supply.
24. Bylaw 3(1) prohibits owners, occupants or visitors from using the common property in a way that causes a nuisance or hazard to another person, causes unreasonable noise or unreasonably interferes with the rights of other persons to use and enjoy the common property, is illegal, or contrary to a purpose for which the common property is intended as shown expressly or by necessary implication on or by the strata plan.
25. In *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64, at paragraph 77, the Supreme Court of Canada defined a nuisance as an unreasonable interference with the use of land. Nuisance occurs in the strata context when there is a substantial, non-trivial interference with an owner's use and enjoyment of their property, and that interference is unreasonable (see *The Owners, Strata Plan LMS 1162 v. Triple P Enterprises Ltd.*, 2018 BCSC 1502). The test is an objective one, measured with reference to a reasonable person occupying the premises. In strata living, "...a certain amount of give and take is necessary among neighbours and between users, both of

the strata lots and of the common property” (*Sauve v. McKeage et al.*, 2006 BCSC 781).

26. Based on the video, I find that the Greers’ relatives’ grinding and mechanical work on the road was loud and would be disturbing to a reasonable person living there. I find that this noise would be especially disruptive when performed at night, as shown in the video. Further, I find that the Greers’ relative’s use of the mechanical equipment on the road interfered with Ms. Fincham’s electrical supply. In so doing, I find that the Greers’ relative’s work unreasonably interfered with Ms. Fincham’s use of her strata lot. Also, I find that, by necessary implication from the strata plan, the intended use of the common property road is for vehicle access to the strata lots. I find that the operation of a business on the road is contrary to this intended use. For the above reasons, I find that the Greers have violated bylaw 3(1) by letting their relative work on the road in the tent structure.
27. Since this is a 2-unit strata, with no functioning strata council, I find it appropriate to make an order directed at the Greers. So, I order the Greers to stop letting their relative perform any work or operate any machinery on the road, other than working on passenger vehicle for their personal use. However, since the Dispute Notice does not include a request to remove the tent structure, I make no findings about whether the tent structure presence violates the bylaws or whether the tent structure must be removed.
28. Ms. Fincham also says that the Greers operated a welding business in their LCP backyard. However, since Ms. Fincham did not provide any supporting evidence, I find that this claim is unproven and I dismiss it.

Parked cars on the road

29. Ms. Fincham says the Greers park numerous cars on the common property road. Ms. Fincham provided multiple photographs showing 2 to 3 cars parked on the common property road. Ms. Fincham says that these parked cars interfere with her ability to back out of her strata lot.

30. The Greers say that the parked cars on the road do not interfere with Ms. Fincham's use of the road since she does not need to travel past her strata lot to the road portion in front of strata lot A. The Greers say that they have parked cars there for over 21 years after converting their garage to living space. Further, the Greers also say that they have removed parked cars from the road that were not owned by their residents or visitors. The Greers provided a November 28, 2021 photograph which shows no cars parked on the road.
31. I find that Ms. Fincham has not proved that the Greers have unreasonably interfered with her use of the road by parking cars there. Ms. Fincham did not provide any submissions showing that the parked cars interfered with her use of the road, other than claiming that the parked cars affected her ability to back up from her strata lot. However, I find that the photographs provided do not establish that the Greers' parked cars would reasonably interfere with her car's entry or exit into her strata lot. Further, I find that parking cars on the road is related to the road's intended purpose of providing vehicle access to the strata lots. For the above reasons, I find that Ms. Fincham has not proved that the Greers violated bylaw 3(1) by parking vehicles on the road and I dismiss this claim.

Storage and garbage on the road

32. Ms. Fincham says the Greers store items and leave large amounts of trash on the road. She provided photographs which appear to show large amounts of mechanical devices, supplies and trash stored on the road.
33. The Greers say they have cleaned the area and their trash has been organized into bins at the end of the road. Further, the Greers provided a November 28, 2021 photograph which appears to show the road area in front of strata lot A being significantly cleaner.
34. Though the Greers have appeared to clean up the road area, they still store items and garbage there. I find that this is contrary to the road's intended use for vehicle traffic. So, I find that the Greers have violated bylaw 3(1) and they must remove all

garbage and personal items from the road area, other than parked cars and the tent as discussed above.

Garbage and debris in the Greers' backyard

35. Ms. Fincham also claims that the Greers have left excessive items and garbage in their LCP yard. Ms. Fincham has provided photographs showing large amounts of tools, sports equipment, building supplies and miscellaneous objects crowded in the Greers' backyard.
36. As a result of the excessive trash around strata lot A, Ms. Fincham says that the strata may not be able to obtain property insurance. The Greers say that they have discussed this with the insurance company and the insurance company gave them until October 2021 to clean up the property. The Greers provided November 2021 and December 2021 photographs which appear to show that their LCP yard was significantly cleaned and decluttered.
37. Based on the photographs, I find that the Greers' LCP backyard was messy. However, I find that Ms. Fincham has not proved that this messy state interfered with her use and enjoyment of her strata lot. Though the Greers do not dispute Ms. Fincham's claim that the strata's insurance was jeopardized by the garbage and messy condition of their backyard, there is no evidence showing that the current condition of the Greers yard, after their cleanup, still adversely affects the strata's insurance coverage. I find that Ms. Fincham has not proved that the messy condition of the Greers' backyard violates bylaw 3(1) and I dismiss this claim.

Dog

38. Ms. Fincham say the Greer's dog has been left loose on the common property road and Ms. Fincham's LCP yard unleashed. Ms. Fincham has provided supporting photographs showing the dog on the common property road and Ms. Fincham's side yard unleashed. Ms. Fincham says the dog is a safety concern and it has threatened her dog and her guests. Ms. Fincham says that she has needed to contact animal control services about the Greers' dog 3 times.

39. The Greers admit that their dog has been unleashed in the common property area and in Ms. Fincham's yard. However, they say their dog is not dangerous and that Ms. Fincham has enticed their dog to enter her backyard by leaving treats.
40. Bylaw 3(3) says an owner must ensure that all animals are leashed or otherwise secured when on common property. On the evidence before me, I find that the Greers have allowed their dog to be on the common property road unleashed in violation of bylaw 3(3). I order the Greers to ensure that their dog is leashed at all times when on common property.

Visitors sleeping in cars

41. Ms. Fincham claims that the Greers let people sleep in vehicles parked on the common property road on multiple dates, including a specific incident on November 24, 2021. The Greers say that only one individual slept in a car parked on the road and this stopped after Ms. Fincham complained to the police. However, based on Ms. Fincham's November 24, 2021 photograph, I find that this conduct has continued.
42. I find that sleeping in cars parked on the road is contrary to the road's intended purpose for vehicle travel. So, I find that the Greers have violated bylaw 3(1) by letting individuals sleep in cars parked on the road and I order them to stop letting visitors do so.

Sleeping in the shed

43. Ms. Fincham claims that the Greers are letting people sleep in the garden shed, located in the Greers' backyard. The Greers admit that they previously let an individual stay in their shed. However, the Greers say that this individual left when the Greers received a June 1, 2021 letter from Ms. Fincham's lawyer. The Greers say that neither this individual, nor anyone else, has slept in the shed since that time. Since Ms. Fincham has not provided evidence or submissions disputing this, I find that Ms. Fincham has not proved that individuals still sleep in the garden shed and I dismiss this claim.

Greers' late night visitors

44. Ms. Fincham also claims that numerous people visit the Greers at the property at all hours, and frequently between 11 pm to 5 am. Ms. Fincham claims that these individuals engage in criminal activity, including drug trafficking and exchanging stolen property. However, in the absence of supporting evidence, I find Ms. Fincham's allegation that the Greers' visitors participated in criminal activity to be speculative and unproven. Further, Ms. Fincham has not provided any evidence or submissions showing how the Greers' alleged visitors disturbed her or affected her use of her strata lot or the common property. So, I dismiss Ms. Fincham's claim relating to the alleged Greers' late night visitors.

Plastic roof

45. Ms. Fincham claims that the Greers have improperly installed a plastic roof in their LCP backyard without her permission. Ms. Fincham says this roof drains water into her backyard. In contrast, the Greers say that water drains off the roof at the fence between the strata lots. However, Ms. Fincham provided a video which appears to show the edge of the plastic roof extending slightly over the fence above Ms. Fincham's strata lot. Based on this video, I find that water draining off the roof likely drains into Ms. Fincham's strata lot.

46. SPA section 71 says that a strata corporation must not make a significant change to the use or appearance of common property unless it is approved by a 3/4 vote at a general meeting. While the precise wording of section 71 of the SPA governs the actions of the strata corporation and not individual owners, the court has applied section 71 to owners who make alterations to common property without strata permission (see *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333). Further, bylaw 6(1) says that an owner must obtain the written approval of the strata corporation before altering LCP.

47. So, I must determine whether the Greers' roof installation is an LCP alteration that falls within the scope of bylaw 6 in that they have significantly changed the use or

physical appearance of the LCP (see, *Anthony v. Schnapp*, 2016 BCSC 1839, at paragraph 33)

48. In *Foley*, the court set out the following criteria for determining what is a significant change in use and appearance under section 71 of the SPA:

- a. Is the change visible to other residents or the general public?
- b. Does the change affect the use or enjoyment of another unit or an existing benefit of another unit?
- c. Is there a direct interference or disruption because of the changed use?
- d. Does the change impact the marketability or value of the unit?
- e. How many units are in the strata and what is the strata's general use?
- f. How is the strata governed itself in the past and what has it allowed?

49. Based on the parties' submissions and photographs provided, I find that the Greers' plastic roof is visible from Ms. Fincham's strata lot. Further, I accept that the plastic roof affects Ms. Fincham's sight lines to some degree. However, I find that Ms. Fincham has not provided sufficient evidence to show that this water drainage is a significant volume of water or that the roof has significantly affected her view. On balance, I find that the plastic roof has somewhat negatively affected Ms. Fincham's use of her backyard. However, I find that this impact is minimal. Ms. Fincham did not provide evidence showing that the plastic roof reduced the value of her strata.

50. In weighing the above *Foley* factors, I find that the Greers' plastic roof installation was not a significant change in the use or appearance of the LCP under section 71 of the SPA. So, the Greers are not required to remove the roof.

51. However, as discussed above, the photographs appear to show that the Greers' roof extends partially over Ms. Fincham's LCP. SPA section 1(1) says that strata lot owners have exclusive use of their LCP. I find that the Greers' roof does interfere with Ms. Fincham's exclusive use of her LCP to the extent that it extends over her LCP

So, I find that the Greers must remove any portion of their roof that extends above Ms. Fincham's LCP.

Bylaw enforcement

52. Ms. Fincham also asks for an order requiring the strata to enforce its bylaws. The strata council is obligated to enforce its bylaws under section 26 of the SPA. However, a strata corporation need not enforce a bylaw, even though there is a clear breach, where the effect of the breach on other owners is trifling (see *Abdoh v. The Owners of Strata Plan KAS 2003*, 2014 BCCA 270). So, I find that the strata is required to enforce bylaw breaches, other than when the breach's effect is trifling.

CRT FEES AND EXPENSES

53. 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. Since Ms. Fincham was partially successful, I find that she is entitled to reimbursement of one-half of her CRT fees. This is \$112.50.

54. Ms. Fincham claims reimbursement of dispute-related expenses. Specifically, she claims reimbursement of \$699.04 in legal expenses. Ms. Fincham provided an April 28, 2022 invoice from their lawyer charging July 12, 2021 lawyer's letter saying that they had charged \$549.81 for legal services. CRT Rule 9.5(3) says that except in extraordinary circumstances, the CRT will not order reimbursement of legal fees in a strata property dispute. Rule 9.5(3) says that relevant factors in assessing whether the dispute is extraordinary, the CRT may consider the complexity of the dispute, to what degree representatives were involved, whether there was unnecessary delay or expense. I find that the issues in the dispute were not particularly complex and Ms. Fincham has not established that the Greers caused any unnecessary delay or expense. So, I find that there are no extraordinary circumstances in this dispute to justify reimbursement of legal fees and I dismiss Ms. Fincham's claim for reimbursement of legal fees and disbursements.

55. The Greers did not request reimbursement of dispute-related expenses.
56. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Fincham.

ORDERS

57. I order that:

- a. Within 30 days, the Greers must pay Ms. Fincham \$112.50 in CRT fees.
- b. The Greers must immediately stop letting their occupants and visitors operate any business, perform any work or operate any machinery on the road, other than working on passenger vehicle for their personal use.
- c. Within 30 days of this order, the Greers must remove all garbage and personal items from the road, other than parked cars and their tent structure.
- d. The Greers must keep their dog leashed at all times when on common property.
- e. The Greers must immediately stop letting visitors sleep in cars parked on the road.
- f. Within 2 months of this order, the Greers must remove any portion of the plastic roof that extends over strata lot B's LCP.
- g. The strata must enforce bylaw breaches, other than when the effect of the breach on other owners is trifling.

58. I dismiss all other claims.

59. Ms. Fincham is entitled to post judgment interest from the Greers under the *Court Order Interest Act*, as applicable.

60. 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.

Richard McAndrew, Tribunal Member