



Civil Resolution Tribunal

Date Issued: July 20, 2022

File: ST-2021-007912

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan K603 v. Bakajic*, 2022 BCCRT 825

B E T W E E N :

The Owners, Strata Plan K603

APPLICANT

A N D :

MICHAEL BAKAJIC

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about bylaw fines.
2. The respondent, Michael Bakajic, co-owns and lives in a strata lot in the applicant strata corporation, The Owners, Strata Plan K603 (strata). The strata says it fined Mr. Bakajic for several bylaw contraventions, but Mr. Bakajic has refused to pay the fines.

The strata asks for orders that Mr. Bakajic pay fines totalling \$43,000. The strata also asks for an order that Mr. Bakajic pay \$362.25 for extra strata management time to enforce the bylaws and fines. In total, the strata claims \$43,362.25.

3. Mr. Bakajic disputes the strata's claims and says he does not want to pay any fines.
4. The strata is represented by a strata council member. Mr. Bakajic is self-represented.

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.

9. Under CRTA section 61, the CRT may make any order or give any direction in relation to a CRT proceeding it thinks necessary to achieve the objects of the CRT in accordance with its mandate. The CRT may make such an order on its own initiative, on request by a party, or on recommendation by a case manager.
10. CRT documents incorrectly show the name of the respondent as The Owners, Strata Plan, KAS 603. Based on section 2 of the SPA, the correct legal name of the strata is The Owners, Strata Plan K603. Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, I have exercised my discretion under section 61 to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the strata's name above.

ISSUE

11. The issue in this dispute is whether Mr. Bakajic must pay:
 - a. \$43,000 in bylaw contravention fines, and
 - b. \$362.25 in strata management fees.

EVIDENCE AND ANALYSIS

12. In a civil proceeding such as this one, as the applicant the strata must prove its claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence, but I only refer to what I find relevant to provide context for my decision.
13. The strata repealed and replaced its bylaws in the Land Title Office on October 1, 2020. I will refer to the specific bylaws relevant to this dispute below.
14. In order to collect bylaw fines from Mr. Bakajic, the strata must show that Mr. Bakajic breached a particular bylaw, and must satisfy the requirements of sections 130 and 135 of the *Strata Property Act* (SPA).

15. SPA section 130 allows the strata to fine an owner if a bylaw or rule is contravened by the owner, a person who is visiting the owner, or an occupant if the strata lot is not rented by the owner to a tenant. The strata must fine a tenant directly for any bylaws contravened by a tenant. Mr. Bakajic does not dispute that he primarily resides in his strata lot, and provided submissions that other people have lived with him there. He also says there was a period of time where he left his strata lot, and left other people “to their own devices within [his] home”. However, he did not say when he left his strata lot, and it is unclear whether any of the strata lot’s occupants became tenants during that time, or any other time. I find it unlikely on the available evidence that the strata lot was rented to a tenant at the time of the alleged bylaw contraventions. So, I find it likely that Mr. Bakajic and other occupants resided in his strata lot at the time of the alleged bylaw contraventions. Given this, I find the strata complied with SPA section 130 when it fined Mr. Bakajic directly for the bylaw contraventions at issue in this dispute.
16. SPA section 135 explains the procedure the strata must follow when imposing a bylaw fine. The strata must strictly comply with section 135 in order to collect fines (see *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449).
17. Section 135(1) says that the strata must not impose a fine against a person for a bylaw contravention unless the strata has given the owner or tenant the particulars of the contravention complaint in writing and a reasonable opportunity to answer the complaint, including a hearing if requested.
18. So, in order for the bylaw fines at issue in this dispute to be valid, the particulars of each bylaw complaint first must be given to Mr. Bakajic in writing along with a reasonable opportunity to answer them, including at a hearing if requested. The strata was also required to notify Mr. Bakajic of any decision to impose a fine.
19. The strata says it sent bylaw contravention notices, but Mr. Bakajic never responded, never asked for a hearing, and did nothing to address the contraventions.
20. The strata council voted to impose fines totalling \$43,000 at the September 20, 2021 strata council meeting. On September 28, 2021, the strata manager sent a letter to

Mr. Bakajic advising him that fines had been imposed, and that the strata had also charged \$362.25 in extra strata management consulting time for the bylaw contraventions back to Mr. Bakajic.

21. Mr. Bakajic says he cannot believe the strata has been allowed to bring “such wild claims and lies about [his strata lot] and its occupants”. However, Mr. Bakajic also acknowledged that “there have been some contraventions” from his strata lot. Mr. Bakajic also does not dispute receiving notice of all the alleged bylaw contraventions at issue in this dispute.
22. Much of Mr. Bakajic’s submissions consisted of a lengthy explanation of his relationship with two other people that he says stayed at his strata lot and caused significant damage to it. However, Mr. Bakajic also alleges that the strata, strata council members and others have ignored, bullied and attacked him. He says a strata council member entered his home unannounced and uninvited, to accuse him and his guests of stealing the strata council member’s bike. Finally, he says that the strata has not enforced bylaws against other strata lot owners, including when he has complained. Mr. Bakajic did not file a counterclaim or seek any specific remedy for these issues. However, I have considered the evidence, where relevant, as context in my assessment of whether the strata treated Mr. Bakajic fairly in enforcing its bylaws.
23. As noted, Mr. Bakajic disputes the fines imposed in this dispute. However, he did not do so when he received notice of the alleged bylaw contraventions, or notice of the fines imposed. Mr. Bakajic did not explain why he did not dispute the alleged bylaw contraventions with the strata before the strata filed this dispute.

Bylaw fines

24. I will first address the following bylaw contravention fines:
 - a. \$200 for hanging sheets in a solarium,
 - b. \$200 for harassment,

- c. \$200 for damage to common property,
- d. \$400 for parking contraventions,
- e. \$400 for storage on common property,
- f. \$600 for unlicensed motorcycle and oil spills,
- g. \$200 for storage in an undesignated area, and
- h. \$1,600 for undue noise between 10:30 p.m. and 7:00 am.

25. I find the evidence shows the strata sent warning letters to Mr. Bakajic for all of the above-listed bylaw contraventions before the fines were imposed. The warning letters detailed the complaints received and identified the specific alleged bylaw contraventions. The warning letters also advised Mr. Bakajic that he had the opportunity to answer the complaints, including by requesting a hearing.

26. Given the above, I find the strata complied with SPA section 135 before it imposed the above-noted fines. As noted, the strata also advised Mr. Bakajic of its decision to impose the fines.

27. In *The Owners, Strata Plan LMS 3289 v. Sze Hang Holding Inc.*, 2016 BCSC 32 at paragraph 208, the court said under the SPA's scheme, owners have an obligation to either rectify the bylaw contravention or challenge the bylaw violation notice. This means that if an owner disputes an alleged bylaw contravention, the owner has a positive obligation to respond to it when the strata provides notice of the complaint as required by SPA section 135.

28. As noted, Mr. Bakajic does not dispute receiving the warning letters for the alleged bylaw contraventions. If Mr. Bakajic did not agree with the alleged bylaw contraventions, it was open to him to respond in writing or request a hearing with the strata to answer the complaints. He did not do so. Given this, I find it is not open to Mr. Bakajic to now challenge the fines on the basis that the underlying bylaw contraventions are unproven. I say this because when Mr. Bakajic did not respond to the warning letters, the strata had no reason to further investigate the alleged bylaw

contraventions set out in the complaints before imposing fines. In this specific circumstance, I find the strata was reasonably entitled to rely on the complaints to impose the fines. I find that the complaints, undisputed at the time the warning letters were sent, establish on a balance of probabilities that the bylaw contraventions occurred as the complaints allege. For clarity, the complaints must still on their face establish bylaw contraventions, and the fines must still be imposed in accordance with the SPA requirements in order to be valid. I also note that Mr. Bakajic has not provided specific contrary evidence that shows no bylaw contraventions occurred.

29. I have already found the complaints establish bylaw contraventions and the strata complied with the procedural requirements of SPA section 135 when it imposed the above-noted fines. Given all the above, and based on *Sze Hang*, I find Mr. Bakajic is responsible for all of the above noted fines, totalling \$3,800.

\$200 noise fine

30. The strata also fined Mr. Bakajic for a contravention of bylaw 3(1)(b) on August 10, 2021. This fine was based on a complaint that described renovation noises coming from Mr. Bakajic's strata lot at 10:00 p.m. on August 10, 2021.
31. Bylaw 3(1)(b) says an owner must not use a strata lot, the common property or common assets in a way that causes unreasonable noise, among other things.
32. Bylaw 3(8)(o) says an owner must not (without the written permission of the strata) use the strata lot for any purpose that involves undue traffic or noise between 10:30 p.m. and 7:00 a.m., or encourages loitering in or about the strata lot or common property.
33. I find the August 10, 2021 fine for alleged renovation noises at 10:00 p.m. on August 10, 2021 contrary to bylaw 3(1)(b) is invalid. The renovation noises occurred outside the 10:30 p.m. to 7:00 a.m. time frame that restricts undue noise under bylaw 3(8)(o). Based on the complaint alone, it unclear on what basis renovation noises occurring at 10:00 p.m. is unreasonable noise that contravenes bylaw 3(1)(b). So, I find this \$200 fine is invalid.

\$39,000 in short term accommodation fines

34. Finally, the strata also fined Mr. Bakajic for 39 contraventions of bylaw 3(10)(b).
35. Bylaw 3(10) says an owner must not use or permit the use of a strata lot as short-term accommodation for a period of less than 30 consecutive days by anyone who directly or indirectly pays or gives the owner any fee, compensation or other remuneration. Bylaw 3(10)(b) says an owner must not permit any strata lot to be used or occupied as vacation, travel or temporary accommodation for any period of time.
36. The strata only sent a warning letter to Mr. Bakajic for one alleged August 13, 2021 bylaw contravention, and there is only one complaint. The strata then imposed fines for the strata lot being used as temporary accommodation for 39 days, but did not indicate how it arrived at 39 days, or which 39 days it was imposing the fines for.
37. The warning letter did not indicate that the strata was alleging any further bylaw contraventions beyond the August 13, 2021 contravention, and did not allege that the bylaw had been contravened for 39 days at that time. There is only one complaint for this alleged bylaw contravention. It says that the RCMP attended and confirmed that Mr. Bakajic's strata lot was a known "flop house". It also said that one of the strata lot's "frequent stayers" voluntarily confirmed this. Mr. Bakajic did not specifically dispute this. However, the strata did not explain how it determined that the bylaw had been contravened for a period of 39 days. It did not provide further complaints or other evidence that supports 39 separate fines. I find the strata failed to comply with SPA section 135 before imposing \$39,000 in fines for 39 days, because there is only one complaint, and it only provided notice of one August 13, 2021 bylaw contravention.
38. Despite this, the evidence shows the strata complied with SPA section 135 for the August 13, 2021 bylaw contravention and fine. As with the other fines I have already allowed above, Mr. Bakajic did not respond after receiving the strata's warning letter. So, I find that he is responsible for the \$1,000 fine imposed for the August 13, 2021 bylaw contravention based on the complaint, on the same basis as the other fines

discussed above in paragraphs 27 to 29. I find the remaining \$38,000 in fines are invalid because the strata did not comply with SPA section 135 before imposing them.

Strata management time

39. I turn to the strata's claim for \$362.25 in strata management fees incurred in dealing with the bylaw contraventions.
40. In the September 28, 2021 letter imposing the above fines, the strata manager also noted that the strata would be charging back the cost to have the strata manager enforce the bylaws, and said that the extra strata management time totalled \$362.25. Mr. Bakajic's strata lot account ledger shows \$362.25 charged back to his strata lot.
41. However, the strata did not provide a breakdown of the strata manager's time or their invoice. So, I find the strata has not met its burden of proving that it incurred these costs, or that any of the fees were incurred dealing with Mr. Bakajic's alleged bylaw contraventions. Given this, I find it is not necessary to determine whether the strata is entitled to reimbursement of these alleged costs under the SPA or its bylaws. I dismiss the strata's claim for strata management fees.

Summary

42. In summary, I find that Mr. Bakajic is responsible to pay \$4,800 in bylaw contravention fines.

CRT FEES, EXPENSES AND INTEREST

43. 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. The strata did not prove all of the alleged fines against Mr. Bakajic, and was only partially successful in this dispute. I therefore order Mr. Bakajic to reimburse the strata for half its paid CRT fees, which equals \$112.50. The strata did not claim any dispute-related expenses, so I award none.

44. The *Court Order Interest Act* (COIA) applies to the CRT. The strata is entitled to prejudgment interest on the \$4,800 from October 15, 2021, the date the fines were due to the date of this decision. This equals \$33.50.
45. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Bakajic.

ORDERS

46. Within 30 days of this order, I order Mr. Bakajic to pay the strata a total of \$4,946.00, broken down as follows:
 - a. \$4,800 in bylaw fines,
 - b. \$33.50 in COIA interest, and
 - c. \$112.50 in CRT fees.
47. The strata is also entitled to postjudgment interest under the COIA.
48. 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.

Leah Volkers, Tribunal Member