



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Reeves v. The Owners, Strata Plan EPS5625*, 2022 BCCRT 911

B E T W E E N :

MELVIN REEVES and KIMBERLEY REEVES

APPLICANTS

A N D :

The Owners, Strata Plan EPS5625

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This strata property dispute is about alleged bylaw infraction about waiting for a parking gate to close and a related fine.

2. The applicant, Kimberley Reeves, owns a strata lot (SL21) in the respondent strata corporation, The Owners, Strata Plan EPS5625 (strata). The applicant, Melvin Reeves is Mrs. Reeves' spouse. Both Mrs. and Mr. Reeves reside in SL21.
3. The Reeves say the strata improperly fined them \$200 for allegedly contravening a bylaw by not waiting for the parking gate to close when entering the parking area. The Reeves' main argument is that the strata does not have bylaw that requires residents to wait for the parking gate to close. The Reeves also provided alternate arguments including that camera angles showed areas that were too small to determine if vehicles stopped, and that the gate closing could be seen through rear and side view mirrors of a vehicle as it was travelling some distance from the gate.
4. As remedy, the Reeves seek orders that the strata:
 - a. Remove the \$200 bylaw fine assessed against SL21,
 - b. Repay all other bylaw fines charged to other residents within the past 2 years for failing to wait for the parking gate to close, and
 - c. Reimburse them approximately \$21,500 in legal fees.
5. The strata disagrees with the Reeves. It relies on its bylaws that it says require residents entering the parking area to wait for the gate to close and that video footage confirms the bylaw contravention occurred. The strata says the CRT lacks jurisdiction to make orders about other residents' fines because the other residents are not parties to this dispute. I infer the strata asks that the CRT dismiss the Reeves' remaining claims.
6. The Reeves are represented by Mr. Reeves, who is a lawyer. A strata council member represents the strata.
7. For the reasons that follow, I order the strata to remove the \$200 bylaw fine from SL21. I dismiss the Reeves' 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. 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.
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 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.

Preliminary Matters

Standing

12. I am advised by CRT staff that Mr. Reeves is a tenant of Mrs. Reeves. The strata did not dispute Mr. Reeves' status. Under SPA section 189.1, only owners and tenants may request dispute resolution services of the CRT. So, I find that Mr. Reeves has standing (legal authority) to bring his claims under the CRTA. I also note that in his email exchanges with the strata manager, Mr. Reeves identifies a Declaration of Trust

and Power of Attorney that he had provided to the strata. Neither document is before me, but I infer Mr. Reeves position is that these documents disclose his interest in SL21 or authorize him to act on behalf of his spouse. In a reply email the strata manager accepted his status. So even if Mr. Reeves is not a tenant, I find the strata accepts he has standing to bring his claims.

Requested Remedies for Other Residents

13. As noted, 1 of the Reeves' requested remedies is that the strata must reimburse other strata residents the fines charged to them for failing to wait for the parking gate to close. As noted by the strata, the Reeves are the only named applicants in this dispute. I find the Reeves lack standing to bring claims against the strata on behalf of other strata residents. I also find it would be procedurally unfair for me to make an order involving non-parties. For these reasons, I dismiss the Reeves' claim that other strata residents' fines be repaid.

Claims against Strata Council Members

14. In submissions, the Reeves claim the strata council, and in particular 2 members of the strata council, were grossly negligent for not approving their request to remove the bylaw fine in question, allegedly creating the need for their CRT application. I find this to be a claim that the individual strata council members failed to meet the standard of care set out under SPA section 31.

15. I dismiss the Reeves' claim for 3 reasons. First, they did not name any strata council members as respondents. Second, there were no section 31 claims in the Dispute Notice, nor was the Dispute Notice amended to include the council members as respondents or the section 31 claims. I find it would be procedurally unfair for me to make orders against non-parties or consider claims that were not contained in a Dispute Notice or an Amended Dispute Notice.

16. Third, and most importantly, the court has found that individual strata lot owners, such as Mrs. Reeves, do not have standing to make claims for breaches of SPA section 31.

See *Rochette v. Bradburn*, 2021 BCSC 1752. I find the decision reached in *Rochette* applies equally to tenants, which would include Mr. Reeves.

ISSUES

17. The issues before me in this dispute are:

- a. Did the Reeves contravene the strata's bylaws and if so, is the strata entitled to a \$200 bylaw fine?
- b. Are the Reeves entitled to reimbursement of legal expenses?

BACKGROUND, REASONS AND ANALYSIS

18. As applicants in a civil proceeding such as this, the Reeves must prove their claims on a balance of probabilities, meaning "more likely than not". I have reviewed all the submissions and evidence provided by the parties, but I refer only to information I find relevant to give context for my decision.
19. The strata plan shows the strata was created under the SPA in March 2019. It consists of 67 strata lots in an 8-storey building.
20. The strata's owner developer filed amendments to the Standard Bylaws with the Land Title Office (LTO) on March 13, 2019 when the strata was created. I note that in correspondence exchanged between Mr. Reeves and the strata manager, the strata manager says the bylaws were "repealed and replace[d] at the [annual general meeting] in 2020". LTO documents do not show the bylaws were ever repealed and replaced so I find that the Standard Bylaws as amended on March 13, 2019 are the strata's bylaws applicable to this dispute. Subsequent bylaw amendments were filed with the LTO that I find are not relevant to this dispute. I address relevant bylaws applicable to this dispute below, as necessary.

Did the Reeves contravene the strata's bylaws or rules?

21. On December 7, 2021, the strata corresponded with Mrs. Reeves through its strata manager. The correspondence notified Mrs. Reeves that “individuals associated with [her] unit were reported for not waiting for the gate to close on December 6, 2021 contrary to the strata’s bylaws. The letter cited bylaw 3(1)(a) and General Parking Rule 2. I reproduce this content of the letter here for clarity:

3. Use of Property

(1) An owner, tenant, occupant or visitor must not use a strata lot, common property or common assets in a way that

(a) causes a nuisance or hazard to another person,

General Parking Rules

2. Owners/Residents are responsible for ensuring other unauthorized vehicles or persons do NOT follow them into the visitor parking garage. Any incidents resulting from the owner/resident failure to ensure security, will be subject to fines as determined by the strata council.

22. Although the letter cited General Parking Rule 2, it went on to say the information was provided under SPA section 135 and if the strata did not receive a response or a request for a hearing within 14 days, the strata might decide to “take action”, including assessing a fine of up to \$200 for each **bylaw** infraction.

23. Mr. Reeves replied by email dated December 17, 2021 on behalf of Mrs. Reeves and requested a hearing. The hearing occurred in January and on January 14, 2022 the strata informed the Reeves it had imposed a \$200 bylaw fine.

24. As noted, the Reeves’ main argument is that the strata does not have a bylaw that requires residents to wait for the parking gate to close. I agree.

25. The strata's December 7, 2021 letter cited bylaw 3(1)(a) as the bylaw that the Reeves contravened. For the bylaw to apply, the Reeves must have created a nuisance or hazard. I do not find that failing to wait for the parking gate to close in and of itself causes a nuisance or hazard. Nuisance in the strata context is an 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. Even if the Reeves' vehicle did not stop to wait for the gate to close as alleged by the strata, there is no evidence a nuisance occurred. Also, there is no evidence that a hazard resulted from the Reeves' vehicle not stopping to wait for the gate to close if that was indeed the case.
26. Although the December 7, 2021 letter also cites General Parking Rule 2, it does not say the rule was contravened and only refers to possible bylaw fines as I have noted. There is also no alleged contravention of any strata rule contained in any other correspondence exchanged between the parties about the December 6, 2021 incident. Significantly, a January 17, 2022 email from the strata manager to Mr. Reeves confirms the strata only issued a bylaw fine. Therefore, I find the strata clearly decided the Reeves contravened a bylaw and the fine was assessed for a bylaw contravention only. There is no mention of any fines assessed for a rule contravention.
27. Even if the strata relied on the cited rule, which I have found it did not, I find the rule cannot be interpreted to include waiting for the parking gate to close. My interpretation of the cited rule is that it only holds an owner or resident responsible for incidents that occur if the owner or resident permits an unauthorized vehicle or person to enter the parking area. That is not the strata's allegation here.
28. Finally, the strata says there was signage on the parking gate that requires vehicle drivers entering the parking area to wait for the gate to close fully. The photographs in evidence clearly show the signage is in place, but that does not mean a bylaw contravention occurs if a vehicle driver fails to obey the sign.

29. For these reasons, I find the Reeves did not contravene the strata's bylaw 3(1)(a). Therefore, I find in favour of the Reeves and order the strata to immediately remove the \$200 fine from SL21.

30. Given my conclusion above, I find I do not to address the Reeves' alternate arguments.

Are the Reeves entitled to reimbursement of legal expenses?

31. For the following reasons, I dismiss the Reeves' claim for legal expenses.

32. The Reeves did not submit copies of any legal invoices, information on how their claimed legal expenses were calculated nor what the legal fees were for. Without any information, I can not assess their claim. I note that in submissions, the Mr. Reeves reserved the right to submit additional documentation, but all parties are notified by CRT staff during the tribunal dispute process to submit all relevant evidence.

33. Further, as correctly noted by the strata, CRT rule 9.5(3) says the CRT will not order 1 party to pay another party's legal fees in a strata property dispute, except in extraordinary circumstances. As correctly noted by the strata, CRT rule 9.5(5) say the CRT will not order 1 party to pay another party compensation for time spent dealing with a CRT proceeding, except in extraordinary circumstances. Given Mr. Reeves was representing himself, I find rule 9.5(5) applies here. Overall, I do not find extraordinary circumstances exist here as the dispute was not complex and there were no other factors evident for me reach such a conclusion.

34. For these reasons, I dismiss the Reeves' claim for reimbursement of legal fees.

CRT FEES AND EXPENSES

35. 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 not to follow this general rule in this dispute. The Reeves were partially successful, so I find it appropriate to order the strata to reimburse them 50% of the \$225.00 CRT fees they paid or \$112.50.

36. The strata paid no CRT fees and neither party claimed dispute-related fees other than the legal fees I have already discussed.
37. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the Reeves.

ORDERS

38. I order the strata:

- a. Immediately remove the \$200.00 bylaw fine from SL21, and
- b. Within 15 days of the date of this decision, pay the Reeves \$112.50 for CRT fees.

39. I dismiss the Reeves' remaining claims.

40. The Reeves are entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.

41. 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