



Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

ARASH KHODADADI

APPLICANT

A N D :

The Owners, Strata Plan VR 1294

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. Arash Khodadadi co-owns strata lot 1 (SL1) in The Owners, Strata Plan VR 1294 (strata). SL1 is a ground floor unit. Mr. Khodadadi claims that the strata has failed to reasonably maintain the common property at the north end of the strata. He says that the lack of fencing or hedging impacts his privacy. He asks for an order that the strata

install a fence or replant cedar hedges, which he says will cost \$3,200. Mr. Khodadadi represents himself.

2. The strata says that the owners have already voted on Mr. Khodadadi's proposed fence. The strata says that it the vote needed a $\frac{3}{4}$ vote because the money for the fence would have to come out of the contingency reserve fund (CRF). The resolution received 4 out of 6 votes, so the strata says it failed. The strata therefore says that it cannot install Mr. Khodadadi's proposed fence because it has no means to pay for it. A strata council member, GP, represents the strata.

JURISDICTION AND PROCEDURE

3. 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). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.
4. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.
5. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
6. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the tribunal 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

7. The issues in this dispute are:
 - a. Does the strata's obligation to repair and maintain common property require it to build a fence or install a hedge?
 - b. If so, what remedy is appropriate?

BACKGROUND AND EVIDENCE

8. In a civil claim such as this, Mr. Khodadadi as the applicant must prove his case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
9. The strata consists of 6 residential strata lots in a 3 floor building. Two strata lots, including SL1, are on the ground floor. The remaining strata lots are on the top 2 floors. The strata was built in the early 1980s.
10. SL1 takes up about half of the north side of the building. It includes a patio to the building's northeast corner. The area between the property's north boundary and the building's north end and SL1's patio is common property. The strata says that this common property strip is roughly 10 feet wide, which I accept based on the photos and strata plan. The precise distance does not matter to this dispute.
11. There is another strata development immediately to the strata's north. That development includes a walkway from a public sidewalk to a back entrance. From the photos, it appears that about half of the strata's northern border along SL1's patio is lined with bushes or trees. The other half includes no visual or physical barrier between the walkway and SL1 and its patio. So, passersby can see directly onto SL1's patio and into at least one of its main windows. Passersby can also easily walk onto SL1's patio. Mr. Khodadadi installed a security camera to monitor the patio. While there is no evidence that any people have accessed the patio from the walkway, there is video of a dog wandering around the patio at night. Mr. Khodadadi says that this easy access makes him and his family feel vulnerable and unsafe.

12. GP is an original owner, so he is familiar with the strata's history. It is undisputed that the developer's initial plan called for a fence along the north border, but for unknown reasons, the developer ultimately planted a cedar hedge instead. It is also undisputed that the development to the north also used to include trees and hedges beside the walkway. Together, the cedar hedge and adjacent trees created a physical and visual barrier between the walkway and SL1. There has never been a fence.
13. According to the minutes of a 2005 special general meeting, the northern neighbours had removed all but one of their trees and were expected to remove the remaining tree. A resident planted some replacement plants. The strata also budgeted to replace some dead trees in the cedar hedge on the north border, which suggests that the hedge was not in perfect health at that time. It is unclear whether the strata planted any new plants.
14. According to the minutes of an October 2012 strata council meeting, the northern neighbours had "severely trimmed back" their hedges, leaving the SL1 patio "somewhat open to the public". The former SL1 owner agreed to contact their neighbours to determine if they were going to replant the hedge. Based on the photos in evidence, it appears that they never did. GP says that by 2012, most or all of the plants in the cedar hedge were dead.
15. Mr. Khodadadi bought SL1 on October 19, 2021. At the November 29, 2021 strata council meeting (which all 6 owners attended), he raised the issue that SL1's yard was exposed to the public. He agreed to investigate different options for a barrier and present his findings to the strata.
16. At the February 2, 2022 annual general meeting (2022 AGM), the owners considered a resolution that the strata pay for a fence along the northern boundary, at a cost of \$3,200, to be paid out of the CRF. Because the resolution proposed spending money from the CRF for repair and maintenance that was not recommended in a depreciation report, section 96(b)(i)(B) of the *Strata Property Act* (SPA) required approval by a $\frac{3}{4}$ vote. The resolution was defeated, with 4 votes in favour and 2 against.

17. Mr. Khodadadi then proposed a resolution for permission to build a fence at his own expense, subject to the strata receiving a “favourable opinion” from the Condominium Home Owners Association (CHOA) that the SPA would permit an owner to build a fence on common property. This motion carried unanimously. It is unclear whether the strata ever received any advice from CHOA. In any event, instead of building a fence at his own expense, Mr. Khodadadi started this CRT dispute based on his belief that the strata’s repair and maintenance obligations require it to build a fence or other barrier along the northern boundary.

ANALYSIS

Does the strata’s obligation to repair and maintain common property require it to build a fence or install a hedge?

18. I start with the applicable law. Under section 72 of the SPA, the strata must repair and maintain common property. The strata is held to a standard of reasonableness, not perfection. The obligation to repair and maintain can include an obligation to replace if replacement is the only reasonable option. In assessing the strata’s decisions, the starting point is deference. This because the strata often must balance competing interests between owners, as is the case here where Mr. Khodadadi has an interest in having a barrier between SL1 and the walkway, and the other owners have an interest in keeping strata costs low. Owners may disagree about how best to balance these considerations, and it is not the CRT’s role to second guess owners’ decisions unless they are unreasonable. See *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784 and *The Owners of Strata Plan NWS 254 v. Hall*, 2016 BCSC 2363.

19. Mr. Khodadadi makes 2 somewhat related arguments. The first is that the strata must install a barrier to protect Mr. Khodadadi’s privacy and security. On this point, Mr. Khodadadi notes that there is fencing around the rest of the property, which protects the other residents’ privacy and security. The second is that the strata must install a hedge to replace the previous hedge that died.

20. The strata’s position is that it supports Mr. Khodadadi’s claim on behalf of the majority of its owners. However, the strata provided an email from one of the opposing owners,

SF, that sets out the argument against Mr. Khodadadi's claim. I have accepted these comments as submissions about why the strata should not be forced to build a fence or install a hedge. SF says that the strata has always taken a "hands-off" to the common property along the northern boundary. SF says that it has never been formally landscaped but has a reasonably tidy appearance. In short, SF says that Mr. Khodadadi's request for a fence goes beyond repair and maintenance.

21. I will address the barrier issue first. In short, I do not agree with Mr. Khodadadi that the strata's repair and maintenance obligations require it to build a barrier where none currently exists. I find that the walkway behind the strata is no different than a public sidewalk. I find that there is no general obligation on a strata corporation to erect barriers between public areas and strata property. I also find that a strata corporation does not need to entirely enclose its property in a fence just because some portions are fenced. While Mr. Khodadadi's desire for a fence is understandable, I do not find it unreasonable for the strata to decide against paying for one.
22. I turn then to the issue of replacing the old hedge. Before turning to the specifics, I find that when considering a strata corporation's repair and maintenance obligations over landscaping, I must account for the reality that landscaping is not a static component of common property like a building. Plants may grow, may be pruned or trimmed, and may eventually die. I find that it would be unrealistic to expect a strata corporation to keep landscaping exactly the same over time. Rather, I find that a strata corporation need only ensure that a landscaped area retains its overall character.
23. It is undisputed that there was a hedge along the northern boundary for about 30 years. It is also undisputed that there has been no hedge for the past 10 years. The question is whether the historical existence of a hedge means that the strata must indefinitely maintain a hedge there, including by now replacing it long after it died.
24. I find that the answer to that question is no. I find that the strata does not have to permanently maintain the same species or density of plants in a particular area of common property. I find that the strata is entitled to make reasonable choices about

how the landscaped areas will look as long as it maintains the same general aesthetic. There are no photos of the previous hedge, but I agree with SF that the lack of records about its maintenance suggest that the area has always had a “natural aesthetic” rather than a heavily manicured one. I find that it still does. Based on the photos, I find that the area does not appear to be overgrown, neglected, or unsightly.

25. In short, I find that the erection of a fence or installation of a new privacy hedge would be an improvement to common property, not repair or maintenance of common property. Decisions to pay to improve common property must be made by the owners.
26. With that, I find that section 72 of the SPA does not require the strata to plant a hedge, build a fence, or otherwise erect a barrier along the northern boundary. For that reason, I dismiss Mr. Khodadadi’s claim.
27. While Mr. Khodadadi did not ask for an order about it, there is a remaining issue between the parties. As mentioned above, at the 2022 AGM, the owners unanimously approved Mr. Khodadadi’s request to pay for a fence himself, subject to receiving advice from CHOA that the SPA allows this. I note that the strata has filed 2 bylaws with the Land Title Office, but neither deals with alterations to common property. So, I find that under section 120 of the SPA, the Standard Bylaws apply with respect to common property alterations. In particular, Standard Bylaw 6(1) allows owners to alter common property with the strata’s written permission. Standard Bylaw 6(2) allows the strata to require an owner to agree, in writing, to take responsibility for any expenses relating to the alteration as a condition of that approval. Therefore, I find that the strata’s bylaws permit Mr. Khodadadi to construct a fence on common property at his own expense if the strata provides written permission.

TRIBUNAL FEES AND EXPENSES

28. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Mr. Khodadadi was unsuccessful, so I dismiss his claim

for CRT fees and dispute-related expenses. The strata did not claim any dispute-related expenses or pay any CRT fees.

29. The strata must comply with the provisions in section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Khodadadi.

DECISION AND ORDER

30. I dismiss Mr. Khodadadi's claims, and this dispute.

Eric Regehr, Tribunal Member