Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Hallman v. The Owners, Strata Plan KAS 1821*, 2022 BCCRT 1036

B E T W E E N :

ANNE HALLMAN and ALAN HALLMAN

APPLICANTS

A N D :

The Owners, Strata Plan KAS 1821

RESPONDENT

A N D :

ANNE HALLMAN and ALAN HALLMAN

RESPONDENTS BY COUNTERLCAIM

REASONS FOR DECISION

Tribunal Member: Micah Carmody

INTRODUCTION

1. The applicants, Anne Hallman and Alan Hallman, own strata lot 18 (SL18) in the respondent strata corporation, The Owners, Strata Plan KAS 1821 (strata).

2. In November 2020, the strata determined that the applicants contravened bylaws related to their limited common property (LCP) yard and deck and asked the applicants to attend to repairs and maintenance. The applicants did not meet the strata's deadline and the strata imposed two $200 fines. The applicants addressed their yard issue but did not address the deck, and so the strata continued to fine them for the unrepaired deck. The applicants say the strata did not comply with the *Strata Property Act* (SPA) and was procedurally unfair to them when imposing the fines. They say I should order the strata to reverse all fines. The strata disagrees, and in the counterclaim the strata seeks an order that the applicants complete necessary repairs to their deck and pay all associated fines, which totalled $4,600 in the Dispute Notice.

3. While the strata was investigating bylaw complaints against the applicants, the applicants made several bylaw complaints against their neighbours in SL19. The complaints were about many things, but primarily SL19's LCP rear patio, which the applicants say is unsafe and was never validly approved by the strata. The applicants say the strata's investigation of their complaints was inadequate and significantly unfair to them. They seek an order that the strata enforce its bylaws against SL19 and a declaration that certain bylaws deeming previous alterations approved are unenforceable. The strata says it investigated the applicants' complaints fairly and its bylaws are valid.

4. The applicants are represented by Anne Hallman. The strata is represented by a strata council member. For the reasons that follow, I dismiss the applicants' claims and order them to pay the applicable bylaw contravention fines.

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. Based on the evidence and submissions provided, I am satisfied that I can fairly decide this dispute without an oral hearing.

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 the parties and witnesses questions of 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.

Strata council hearing

9. Section 189.1 of the SPA says a strata lot owner may not ask the CRT to resolve a strata dispute unless the owner has requested a strata council hearing under SPA section 34.1, or the CRT waives the hearing requirement under section 189.1(2)(b). It is undisputed that the applicants did not request a strata council hearing under section 34.1 before applying for CRT dispute resolution on November 30, 2021.

10. The strata does not say it objects to waiving the hearing requirement. I note this is the third CRT dispute between the parties. The parties' views on the issues in this dispute have been expressed in detail in numerous letters exchanged before this

dispute. I find it very unlikely that a hearing would help the parties resolve their dispute.

11. In the circumstances, I find it is reasonable to waive the council hearing requirement. I find it would be inconsistent with the CRT's mandate to be accessible, speedy, economical, informal, and flexible to require the applicants to request a hearing at this late stage of the dispute process. So, I waive the hearing requirement under SPA section 189.1(2)(b).

ISSUES

12. The applicants agreed to remove one of their claims in facilitation, so I have not addressed issues relating to that claim in this decision.

13. The issues in this dispute are:

    a. Did the applicants contravene the strata's bylaws?

    b. Must the applicants pay the bylaw contravention fines?

    c. Did the strata adequately investigate the applicants' bylaw contravention complaints and enforce its bylaws against SL19?

    d. Is the strata entitled to reimbursement of its claimed legal expenses?

EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities, meaning more likely than not. The strata must prove its counterclaims to the same standard. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

15. The strata was created in 1996 and includes 20 strata lots. Each strata lot is a detached dwelling surrounded by an LCP yard. Most of the yards, including SL18's, face onto a common property access road running down the middle of 2 perpendicular rows of strata lots. The strata is built on a slope, along a lake. SL19 is

next to and slightly higher than SL18. Many owners, including the applicants, only occupy their strata lots during the summer months.

16. In August 2017, the strata repealed its previous bylaws and replaced them with a complete set of bylaws filed at the Land Title Office (LTO). The strata filed amendments in 2018 and 2021. I discuss the specific bylaws where relevant below.

17. This is the applicants' third CRT dispute against the strata resulting in a CRT decision. The first, *Hallman et al v. The Owners, Strata Plan KAS 1821*, 2019 BCCRT 1179, involved cedar trees on the applicants' LCP that the strata was ordered to replace after trimming too short. The second, *Hallman v. The Owners, Strata Plan KAS 1821*, 2021 BCCRT 1052, involved claims about the cedar trees, replacement trees, SL19's front deck (not SL19's rear patio at issue in this dispute), allegedly abusive conduct, council meeting minutes, and document production. I am satisfied that the issues before me in this dispute do not overlap with the issues adjudicated in the previous decisions.

Correspondence and background on the strata's imposition of bylaw contravention fines

18. I begin by summarizing the strata's bylaw enforcement actions against the applicants as documented in the parties' correspondence.

19. On October 8, 2020, the strata wrote to the applicants advising that it had received several verbal complaints that their "front, side and rear LCP deck alteration" was in a state of disrepair, unsafe, and unsightly. The letter said this may contravene bylaw 3(3)(b), which requires owners to maintain decks, patios and any structures attached to their strata lot "in a state of good and proper repair and attractive condition." Appended to the letter were photos showing that the applicants' LCP deck was not level where it ran around the side of the strata lot. Deck boards did not run the full width of the deck in some places and were popping off the deck in other places.

20. The October 8 letter also mentioned complaints that the side and rear LCP yard were not kept neat and tidy. The letter said this may contravene bylaw 3(3)(a), which

requires owners to maintain and repair their LCP yards "in a neat, tidy and well-kept manner".

21. There was a further complaint that the applicants had been abusive to others, but it led to a warning rather than a fine. As well, the strata's decision to warn the applicants was considered in 2021 BCCRT 1052, so I have not addressed that issue here.

22. The applicants responded in an October 25, 2020 email in which they said they did not want a hearing. They denied that their deck was unsafe or unsightly. They said the deck was built in 2010 by a licensed and qualified contractor, and it was just showing normal wear and tear. However, they said they intended to complete repair or replacement by July 1, 2021. As for the side and rear yards, they said they had a perennial garden, the plants were naturally dying back and moving into dormancy, and over the last 15 years the applicants had never been asked to prune the garden before departing for the season.

23. Council documented its decision about the bylaw contravention complaints in its November 24, 2020 council meeting minutes and a November 30, 2020, "Notice of Decision" (NOD) to the applicants.

24. According to the NOD, the strata determined that the applicants' LCP deck alteration was no longer in a state of good and proper condition, was potentially unsafe, and required repair. The strata also determined that the side and rear yards were not kept in a neat, tidy and well-kept manner. The strata acknowledged that the applicants were away until spring 2021, and so it gave the applicants until June 1, 2021 to bring their LCP deck and yard into compliance with bylaw 3(3).

25. In April and June 2021, the applicants said that COVID-19-related travel restrictions prevented them from repairing the deck or weeding their yard. In response, the strata extended its June 1, 2021 deadline to rectify the bylaw contraventions to June 30, 2021. It is undisputed that the applicants did not do any work on any LCP by that deadline.

26. On July 7, 2021, the strata wrote to the applicants and said it was imposing a $200 fine for contravening bylaw 3(3)(b) for the LCP deck. The strata also imposed a $200 fine for contravening bylaw 3(3)(a) and bylaw 31(1) for the yard. Bylaw 31(1) is about landscaping side and rear yards. The strata said it would temporarily suspend further fines for repairs to the LCP deck until after Labour Day, due to bylaw 4(3) which prohibited construction between July 1 and Labour Day.

27. As documented in a July 14, 2021 email, the applicants removed the weeds from their yard on July 8, 2021. The strata was satisfied with this action and did not impose any additional fines for bylaw 3(3)(a) or 31(1).

28. On September 20, 2021, the strata advised that it had determined that the applicants continued to contravene bylaw 3(3)(b), so it imposed another $200 fine. The strata relied on its bylaws 25 and 26, which allow it to impose fines of up to $200 for each bylaw contravention, and to impose a fine every 7 days for a contravention that continues without interruption for longer than 7 days.

29. In an October 2, 2021 email, the strata said that if the applicants did not make efforts to repair their deck, it would continue to fine them on the 15th of each month until repairs were made. However, at the October 13, 2021 council meeting, the strata decided to impose a fine every week. The strata communicated this decision to the applicants in an October 15, 2021 letter. At that point, the fines totalled $800.

30. As of May 27, 2022, the most recent statement in evidence for SL18, the applicants owed $7,200 in bylaw contravention fines, which included $7,000 for bylaw 3(3)(b) and $200 for bylaw 3(3)(a).

Did the applicants contravene the strata's bylaws?

31. The applicants argue that their LCP deck did not contravene bylaw 3(3)(b). They say the contravention was based solely on council's determination that the deck was unsafe, rather than a professional assessment. They say council's determination has was proven incorrect when the deck withstood 2 subsequent winters of heavy snowfall.

32. Bylaw 3(3)(b) requires owners to maintain their decks in “a state of good and proper repair and attractive condition”. Nothing in the bylaw says council requires assistance from a professional to make that assessment, so I find council only had to be reasonable in determining whether the deck was in good repair and attractive condition. The complaints and photos confirmed that it was not. In contrast, the applicants provided no compelling evidence that the deck was in good repair, such as a professional opinion. The applicants provided photos of other decks in the strata, but I find the photos do not show any other decks in a similar state of disrepair as the applicants’ deck, which as noted above is not level and has receding boards. Further, the applicants do not explain why they initially agreed to replace their deck by July 1, 2021 if it was not in disrepair. I find the applicants contravened bylaw 3(3)(b).

33. As for the contravention of bylaw 3(3)(a), the applicants do not strenuously dispute that their yard required weeding. I am satisfied that he applicants contravened bylaw 3(3)(a). The applicants argue that they were fined on July 7, 2021 for contravening bylaw 31(1), which is about landscaping, without any previous notice about any allegation of contravening bylaw 31(1). This is true, but I find the strata’s July 7 reference to bylaw 31(1) was unnecessary. The strata said it was imposing a $200 fine for contravening bylaw 3(3)(a) as well as bylaw 31(1). The applicants contravened bylaw 3(3)(a) and the strata was entitled to fine them $200 on that basis.

Must the applicants pay the bylaw contravention fines?

34. SPA section 135(1) says the strata must not fine a person unless it has received a complaint and given the person particulars of the complaint in writing and a reasonable opportunity to answer the complaint, including a hearing if requested. Section 135(2) says the strata must also give the person written notice of its decision “as soon as feasible.” Strict compliance with section 135 is required before a strata corporation can impose fines (see *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449). The requirements of section 135 of the SPA are essentially the principles of procedural fairness contemplated in *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148). Procedural fairness means the opportunity for an affected person to present their case and to have decisions affecting them made using a fair, impartial and open

process appropriate to the statutory, institutional and social context of the decision: see *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), paragraph 28.

35. First, the applicants say strata council did not receive a complaint as required. The September 28, 2020 council meeting minutes indicate that after some discussion, council agreed to send the applicants a notice letter to address “these complaints”. The strata provided a written statement from strata council member JJ, who said in September 2020 they received verbal complaints from at least 5 owners about the condition of SL18’s deck, and a written complaint about the state of SL18’s yard. While it appears that at least some of the complaints came from council members, nothing prevents council members from making complaints. On balance, I find the strata validly acted based on complaints it received.

36. Next, the applicants say the strata council decided the applicants had contravened the bylaws before giving the applicants an opportunity to respond. This argument is based largely on the same council meeting minutes, which said SL18’s deck and yard “have not been maintained as required by the strata bylaws.” The minutes also said enforcement may be required “if the bylaw violation is not remedied.”

37. The strata says the process set out in SPA section 135 relates to the imposition of penalties such as fines, not the determination of whether a bylaw has been contravened. On a plain reading, I agree. I also find that while the language used in council meeting minutes or correspondence may, in some circumstances, be an indication that a strata council did not approach the bylaw complaints with impartiality, such language is not conclusive and must be considered together with all the other evidence to determine whether the strata was procedurally fair (see *Wright v. The Owners, Strata Plan BCS 4303*, 2021 BCCRT 1161). Here, the strata council did not decide to impose fines against the applicants until after it gave them multiple opportunities to respond to the complaints and considered the applicants’ written submissions. In the circumstances, I find a reasonable person would not conclude that the strata had “predetermined the matter” as it was put in *McLachlan v. Burrard Yacht Club*, 2008 BCCA 271, a case the applicants rely on.

38. The applicants acknowledge that 2 strata council members who had complained about SL18 recused themselves from the November 24, 2020 meeting at which council decided to issue the NOD. However, the applicants argue that the same council members should have recused themselves from the September 28 council meeting at which the complaints were discussed. I disagree, as the council did not make any decision to impose fines at that September 28 meeting.

39. Next, the applicants say it was unfair of the strata not to grant them further extensions to comply with the bylaws given they live outside of BC and there were pandemic-related travel restrictions in effect until July 1, 2021. The strata disputes the level of travel restriction in effect, but I find it unnecessary to resolve that issue. The applicants had 7 months to arrange for a contractor to repair the deck and address the weeds. Further, after the strata granted an extension to June 30, 2021, the applicants did not ask for a further extension or state when they anticipated completing the deck repairs or weeding their yard. They simply stated their position that it would be significantly unfair for the strata to fine them. I find that the applicants had sufficient time to comply with both bylaws and it was not unfair for the strata to impose fines on July 7, 2021. For certainty, I reject the applicants' submission that deck repair was impossible during the "winter months". The bylaw prohibition on construction between July 1 and labour day indicates that owners accept that renovations can be completed outside of those dates.

40. Next, the applicants say that the strata's decision to impose those July 7, 2021 fines was not made at a "duly convened" council meeting. It is undisputed that the decision was made by email between council members on July 6, 2021.

41. In *Kayne v. The Owners, Strata Plan LMS 2374,* 2007 BCSC 1610, the court held that a decision made at an electronic meeting has no validity unless it is ratified at a properly constituted and minuted council meeting. Minutes show that the strata ratified the July 6, 2021 decision at the May 20, 2022 strata council meeting when the omission was brought to its attention. I find the misstep has been rectified in accordance with *Kayne* and did not prejudice the applicants given they undisputedly received the July 7 letter advising them of the decision in a timely way.

42. The applicants argue that the strata's July 14 and October 2, 2021 "decisions to refuse" their fine reversal requests were also not made at duly convened strata council meetings and therefore had no effect. I find that a refusal to reverse course on a decision is not truly a "decision" as contemplated in *Kanye.* I am not aware of any obligation on a strata corporation to meet and document a decision to do keep doing what it is doing simply because a request is made to do something else. Requiring strata councils to do this would impose too great a burden.

43. Next, the applicants say they were not advised of council's decision to assess fines until after the fines were applied to their strata lot account. SPA section 135(2) only requires notice of a decision "as soon as feasible", and I find the strata gave notice of its decision on July 7, 2021 the same day it applied the first fines. I find the strata complied with the notice requirements. Section 135(3) says once a strata has complied with section 135(1) and (2), it may impose a penalty for a continuing contravention without further compliance with this section. So, I find the strata was not required to give notice before assessing fines for ongoing contraventions of bylaw 3(3)(b).

44. The applicants' strata lot account statement shows that fines were not always imposed exactly 7 days apart. The applicants say this contravenes bylaw 26, which allows fines every 7 days, and section 7.1(2)(a) of the *Strata Property Regulation*, which says the maximum frequency with which such bylaws may permit fines is every 7 days. On review of the account statement it is clear for what 7-day period each fine was imposed. The strata imposed 1 fine per week from October 15, 2021 to May 27, 2022, the last date shown. I find the strata did not contravene the Regulation or bylaw 26.

45. Lastly, the applicants say that by entering their LCP yard without notice or permission to take photos, council contravened SPA section 77. That section says an owner who has the right to use common property, including LCP, must allow the strata corporation reasonable access to exercise its powers and perform its duties. Several CRT decisions, which I agree with, have held that reasonable access does not mean

the strata is entitled to enter LCP without any notice (see, e.g., *Section 2 of The Owners, Strata Plan BCS 4327 v. Fan*, 2019 BCCRT 1087).

46. The strata does not deny accessing the applicants' LCP and taking photos without the applicants' permission, so I find it likely did. However, I find the impact was minimal. I say this because it is undisputed the applicants were not residing in the strata lot when the photos were taken, at most the strata entered their LCP front or perhaps side yard, the photos are minimally invasive, and they were taken for a proper purpose of investigating complaints. Overall, I find the breach of SPA section 77 had minimal impact on the overall fairness of the strata's bylaw contravention investigation process.

47. For the above reasons, I find the strata complied with SPA section 135 and was procedurally fair to the applicants. I dismiss the applicants' claim for an order that the strata rescind its notices and reverse all bylaw contravention fines. I find the applicants must pay the fines.

48. Although the strata claimed $4,600 in the Dispute Notice, I find the applicants' obligation to pay the weekly fines is ongoing. The most recent statement in the evidence showed the applicants owed $7,200 as of May 27, 2022, so I order them to pay that amount.

49. The strata requests an order that the applicants bring their deck into compliance by doing the necessary repairs. The applicants are already required to comply with the strata's bylaws. I find that ordering the applicants to pay the bylaw contravention fines will likely accomplish the compliance objective, so I decline to make this order.

50. I decline to grant the strata's requested order that the applicants continue being fined $200 weekly. The CRT cannot impose fines. The SPA empowers the strata to do so.

Did the strata fail to investigate the applicants' bylaw contravention complaints and enforce its bylaws against SL19?

51. The applicants say the strata failed to adequately investigate their bylaw contravention complaints against their immediate neighbours in SL19. SL19 is owned

by GA, who was a strata council member when the applicants complained on October 25, 2020.

52. The applicants' October 25, 2020 email made several complaints against SL19, including that:

    a. SL19's owners were verbally abusive to them,

    b. The number of cannabis plants in SL19's LCP yard and being transported was contrary to the *Cannabis Control and Licensing Act*,

    c. Various things, mostly in SL19's LCP yard but also a truck parked in SL20's yard, unreasonably interfered with their right to use and enjoy their LCP deck, and

    d. SL19's rear raised patio had no railing as required under the BC Building Code.

53. As these complaints were intermingled with the applicants' response to the complaints against them, the strata asked the applicants if they wanted the strata to investigate the complaints or to simply consider them as part of the applicants' response to the complaints against them. The applicants confirmed that they expected the strata to investigate these complaints.

54. On January 18, 2021 strata wrote a detailed letter to SL19's owners setting out the alleged bylaw contraventions. GA requested a hearing, which was held on February 17, 2021. The minutes document that GA did not participate in council's post-hearing decision.

55. The council set out its determination in detail in the minutes, and again in a February 24, 2021 letter to the applicants and a separate letter to SL19. In brief, council decided that some of the complaints did not amount to bylaw contraventions. For others, council decided to give GA a warning. Council found the absence of a patio railing was a regulatory matter and was not illegal within the meaning of bylaw 4(1)(d). Council also found the absence of a railing did not pose a serious hazard to others given its location on LCP.

56. I find council’s determinations about whether or not SL19’s owners contravened its bylaws were reasonable and supported by the evidence before council. I find the decision to warn SL19’s owners rather than impose fines was reasonable and was consistent with how the strata treated the applicants, who were given warnings and sufficient time to comply with the bylaws before fines were imposed.

57. On March 30, 2021, the applicants wrote to council advising that council’s understanding of the strata plan, approvals and its responsibilities around repair and maintenance of common property were “flawed and must be rectified.” They alleged that SL19’s rear LCP patio encroached onto common property and the strata was responsible for its maintenance and repair, and liable for injuries related to it. I find no support for this assertion in the strata plan, which shows that all the yard surrounding each side of each strata lot is LCP.

58. Nonetheless, the strata council appeared to be concerned with the lack of a “set back” from SL19’s patio and held another hearing with GA after the “summer hiatus” on September 15, 2021. Council accepted GA’s evidence, which included emails from the original owners of SL18 and SL19, and determined that SL19’s patio had been in place since 2004 or earlier, and in any event was deemed approved under bylaw 34(1).

59. Bylaw 34(1) says that certain common property or LCP alterations made by an owner or a pervious owner before the date the bylaws took effect (August 4, 2017) are deemed to have been approved by the strata to the extent that such approval is required under the bylaws. LCP decks and patios are among the alterations listed.

60. In this dispute, the applicants say bylaw 34 is unenforceable under the SPA. Because the strata’s decision turned in part on bylaw 34, I address those arguments here.

61. The applicants say bylaw 34 does not comply with “higher levels of the law” and treats one class of owners differently from others. SPA section 121 says, among other things, that a bylaw is unenforceable to the extent that it conflicts with the SPA, the Regulation, the Human Rights Code or any other enactment or law.

62. In brief, I find the applicants' arguments unpersuasive. They say bylaw 34(1) "deems approval of an LCP alteration that is non-compliant with Building Code regulations, therefore is illegal." However, strata approval does not mean an alteration complies with the Building Code. Strata corporations are free to require compliance with the Building Code before approving alteration requests, but I find nothing in the SPA, including section 121, requires strata corporations to enforce the Building Code against previous LCP alterations. The applicants referred me to several CRT decisions but none of them addressed a similar bylaw aimed at previous LCP alterations.

63. Bylaw 34(2) assigns responsibility for repair and maintenance of LCP alterations to the owner of the strata lot to which the LCP is designated. Contrary to the applicants' submissions, I find SPA section 72(2)(a) specifically authorizes such bylaws.

64. In summary, I find the applicants have not established that bylaw 34 is unenforceable, and I find the strata was entitled to rely on it. I decline to make any order about bylaw 34.

65. In any event, given that SL19's LCP patio was in place since before the applicants purchased SL18, I find it was not unfair to the applicants for the strata to allow SL19's patio to remain in place.

66. I also do not agree with the applicants that the strata's timeline of "almost a year" to make a decision was unreasonable. I find the strata addressed most of the complaints within 4 months and responded to the applicants' lingering concerns in a reasonable timeframe.

67. A strata corporation is allowed to address bylaw contravention complaints as it sees fit, as long as it complies with the principles of procedural fairness and is not significantly unfair to any person who appears before it (see *Chorney*). The strata's detailed letters to the applicants setting out its findings and its willingness to address new issues raised indicates that the applicants were treated fairly.

68. Considering all the evidence, I find the strata's investigation of the applicants' complaints and enforcement of its bylaws was not significantly unfair to the applicants. I dismiss the applicants' claim about the strata's bylaw enforcement against SL19.

Is the strata entitled to reimbursement of its claimed legal expenses?

69. The strata seeks reimbursement of the expense of legal advice it sought to argue its counterclaim for payment of bylaw contravention fines. The strata provided a May 27, 2022 invoice from Clark Wilson LLP for $11,312. The subject of the invoice is "SL18 – CRT Defence". In a late submission, the strata asked to add a July 15, 2022 invoice with the same subject for $6,772.52. Because I dismiss the claim, I find nothing turns on the additional invoice and it was not necessary to provide the invoice to the applicants for submissions.

70. The strata says it relies on bylaw 26.1, which is also referred to as bylaw 26(1). That bylaw says an owner is liable for "reasonable legal costs" the strata incurs "as a result of a bylaw infraction." That bylaw became effective when it was filed with the LTO on December 15, 2021, which was after the applicants filed their claim but before the strata filed its counterclaim.

71. The strata relies on *The Owners, Strata Plan KAS 1201 v. Neilson*, 2021 BCCRT 667, and *The Owners, Strata Plan VR 293 v. Bains,* 2019 BCCRT 504. In both decisions, an owner was required to pay a strata corporation's reasonable legal fees related to bylaw enforcement. However, in *Neilson*, the expenses claimed were pre-dispute expenses. In *Bains*, it was unclear whether the expenses were pre-dispute expenses or were incurred as part of the CRT dispute. Here, the strata only claims expenses related to this CRT dispute, not pre-dispute expenses, so I find *Bains* and *Neilson* do not assist the strata.

72. In *The Owners, Strata Plan BCS945 v. Miller*, 2021 BCCRT 1111, a CRT member considered the effect of various SPA provisions that insulate individual owners from the costs of bringing or defending strata claims. The CRT member concluded at paragraph 71 that the strata corporation's bylaw authorizing recovery of legal fees did

not apply to legal fees for bringing or defending a CRT dispute. Instead, CRT Rule 9.5 applies to the reimbursement of those fees. I agree with that reasoning, which is consistent with *The Owners, Strata Plan BCS2438 v. Graham*, 2022 BCCRT 904. I apply that reasoning here and find CRT rule 9.5 governs.

73. Rule 9.5(3) says that the CRT will not order one party to pay another party's legal fees in a strata property dispute unless there are extraordinary circumstances which make it appropriate. Rule 9.5(4) goes on to say that in determining whether a party must pay the fees that a lawyer charged to another party, the CRT may consider:

    a. the complexity of the dispute,

    b. the degree of involvement by the representative,

    c. whether a party or representative's conduct has caused unnecessary delay or expense, and

    d. any other factors the CRT considers appropriate.

74. The CRT's mandate set out in CRTA section 2(2) says that the CRT is to provide dispute resolution services in a manner that is accessible, speedy, economical, informal and flexible. This mandate is reflected in CRT rule 9.5(3) as well as CRTA section 20, which says that unless otherwise provided in the CRTA, the parties in a CRT dispute are to represent themselves. In general, these provisions suggest the CRT will rarely order reimbursement of legal fees in a strata property dispute.

75. This dispute was about bylaw enforcement and was not particularly complex, although the parties' submissions were lengthy and there was a considerable volume of evidence. The strata did not provide evidence about the degree of involvement by its lawyer, other than the invoices. The invoices, as noted, contain no breakdown of what work was done or when, so it is difficult to determine the degree of the lawyer's involvement. The strata does not say that the applicants engaged in any conduct during the CRT dispute that caused delay or expense. I note the applicants agreed to remove one of their claims in facilitation, which generally reduces delay and expense.

76. The applicants raised many arguments in support of their claims. While I acknowledge that responding to the applicants' numerous arguments required considerable effort from the strata, I am not satisfied that this dispute is so extraordinary as to justify departing from the CRT's general rule that parties represent themselves and are not compensated for their time. So, I dismiss the strata's claim for legal fees.

77. I note that in *Graham,* as well as in *The Owners, Strata Plan LMS 2269 v. Tilley*, 2022 BCCRT 318, other CRT members concluded that bylaws allowing a strata corporation to recover legal fees may be a factor to consider in determining whether extraordinary circumstances exist to order reimbursement of CRT-dispute-related legal fees. I am not bound by those decisions, but adopting that approach and considering bylaw 26.1 as a factor here does not change my decision given the CRT's mandate and the ordinary nature of the dispute.

CRT FEES AND EXPENSES

78. 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. The strata was successful, so I order the applicants to reimburse the strata $125 in CRT fees. I dismiss the applicants' claim for CRT fees.

79. The SPA does not permit interest to be charged on fines, although interest under the *Court Order Interest Act* (COIA) applies. I find the strata is entitled to prejudgment interest on each fine that makes up the $7,200 order from the date the strata imposed the fine to the date of this decision. This equals $42.24.

80. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicants.

ORDERS

81. Within 30 days of the date of this order, I order the applicants to pay the strata a total of $7,367.24, broken down as follows:

a. $7,200.00 in fines to May 27, 2022.

b. $42.24 in prejudgment interest under the COIA, and

c. $125.00 in CRT fees.

82. The strata is also entitled to post-judgment interest, as applicable.

83. I dismiss the applicants' claims and the strata's remaining claims.

84. 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.

Micah Carmody, Tribunal Member