



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Noriega v. The Owners, Strata Plan BCS 2331, 2022 BCCRT 1232*

B E T W E E N :

ALEJANDRO JOSE NORIEGA

APPLICANT

A N D :

The Owners, Strata Plan BCS2331

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This dispute is about whether an owner in a strata corporation can keep an inflatable spa on the patio outside his strata lot.

2. The applicant, Alejandro Jose Noriega, co-owns strata lot 60 (SL60) in the respondent strata corporation, The Owners, Strata Plan BSC 2331 (strata).
3. Mr. Noriega placed an inflatable spa on the limited common property patio outside SL60. The strata says its bylaws do not permit inflatable spas on patios. It fined Mr. Noriega because it says he breached the bylaws. Mr. Noriega disagrees and seeks cancellation of the fines. He also asks for an order prohibiting the strata from assessing further fines against him for having his inflatable spa on the patio. The strata asks that I dismiss Mr. Noriega's claims.
4. Mr. Noriega is self-represented. The strata is represented by a strata council member.
5. For the reasons below, I allow Mr. Noriega's claim in part and order the strata to cancel all fines related to the spa.

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. 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.
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.

ISSUES

10. The issues in this dispute are:
 - a. Did Mr. Noriega breach the strata's bylaws by placing an inflatable spa on the patio?
 - b. What remedy, if any, is appropriate?

BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Mr. Noriega must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
12. The strata was created in 2007. In November 2017, the strata filed a complete new set of bylaws with the Land Title Office (LTO) that replaced all previously filed bylaws. The strata filed a relevant amendment after that. More on this below.
13. The strata consists of 104 strata lots. The strata plan shows SL60 is 1 of 2 strata lots in Building 30 and occupies 3 levels, with a limited common property patio on the basement level.
14. Mr. Noriega bought SL60 in about March 2021 and in October 2021, began using his inflatable spa on the patio. On November 19, 2021, the strata manager wrote to Mr. Noriega that the strata council had received a complaint the previous day about a "Hot Tub" installed on his patio. The letter indicated potential violations of bylaws 10.1

and 46.1. Bylaw 10.1 is about requests for alterations to common property. Bylaw 46.1 is about items allowed on patios and other limited common property. The strata also told Mr. Noriega how to answer the complaint and request a hearing. The letter gave him 30 days to remove the hot tub (by December 17, 2021) and indicated the strata might impose fines if he did not do this.

15. Under *Strata Property Act* (SPA) section 135, before imposing a fine for a bylaw breach, a strata corporation must receive a complaint about the breach. It must also give the owner written particulars of the complaint and an opportunity to respond, including a hearing if requested. If a strata corporation decides to impose a fine, it must give the owner notice of the decision.
16. Mr. Noriega responded on November 22, 2021 disputing the potential bylaw violations. He said his inflatable spa was patio furniture and did not require any alterations to the limited common property. I pause here to note that Mr. Noriega uses “inflatable spa” or “spa” and the strata uses mostly “inflatable spa” or “spa” and sometimes “hot tub”. For consistency, I use “inflatable spa” or “spa” in this decision.
17. On November 29, 2021, the strata manager reminded Mr. Noriega of his right to request a hearing. They repeated the strata’s position that the inflatable spa was not a permitted item under bylaw 46.1 and the strata’s right to impose a fine if the spa was not removed by December 17, 2021.
18. On December 22, 2021, the strata manager wrote to Mr. Noriega that the strata council had agreed the spa was not a permitted patio item at its December 7, 2021 meeting. The letter said strata council had agreed to impose a \$200 fine and reserved the right to fine Mr. Noriega \$200 every 7 days until the spa was removed. The strata began fining him on December 21, 2021.
19. Mr. Noriega wrote to the strata on January 4, 2022, indicating he had removed the inflatable spa from his patio. The same day, the strata manager emailed him confirming that since the spa had been removed, the strata council would not impose further fines.

20. I find the strata's correspondence, as summarized above, met the procedural requirements of SPA section 135. I note the strata agrees to cancel any fines assessed after January 1, 2022 but not those assessed in December 2021. Based on my conclusions about the alleged bylaw breaches below, I find I do not need to decide the amount of any remaining disputed fines.

Did Mr. Noriega breach the strata's bylaws by placing an inflatable spa on the patio?

21. In most of its correspondence with Mr. Noriega, the strata alleged he breached both bylaws 10.1 and 46.1 by placing his inflatable spa on the patio. In its Dispute Response and submissions, the strata focused its allegations on a breach of bylaw 46.1. Since it is not clear the strata abandoned its allegation about a breach of bylaw 10.1., I address that first.

Bylaw 10.1

22. Bylaw 10.1 as amended in January 2021 reads "Except as provided for under Bylaws 8.1 to 8.15 and 9.1 to 9.4, and 46.1, no requests by owners for alterations to common property (including limited common property) will be considered by the Strata Corporation." It is undisputed that Mr. Noriega did not request permission to make alterations to the patio in connection with the spa. However, nothing turns on this given my conclusion below that Mr. Noriega did not make alterations to the patio.

23. In *The Owners, Strata Plan LMS 4255 v Newell*, 2012 BCSC 1542 (CanLII), the court found a hot tub was not an alteration to limited common property. The evidence here shows the strata acknowledged Mr. Noriega's spa may not be an alteration. However, the strata said the spa might require new 220V electrical services, drains and a gas line which are considered alterations to common property, and therefore require written permission from strata council. Mr. Noriega denied this. He said the spa was portable and required no electrical, plumbing, or structural alterations, and that he drained it using a hose and pump via his downstairs bathroom. Pictures showed the spa is free-standing on the patio with no obvious gas lines serving it. They do not show the type of electrical outlet used. The strata did not dispute Mr. Noriega drained

the spa through his bathroom when he removed it on January 1, 2022. Nor did it provide evidence the spa required electrical or structural alterations to the common property. Based on the evidence before me, I find Mr. Noriega did not alter the limited common property patio outside SL60 when installing and using his inflatable spa and did not breach bylaw 10.1.

Bylaw 46.1

24. Bylaw 46.1 says “The only items that may be kept on patios, balconies, decks and front porches are:

- a. Patio-style furniture
- b. Natural gas, propane gas or electric barbecues,
- c. Non-permanent, CSA approved natural gas or propane gas fire pits,
- d. Non-permanent, CSA approved natural gas or propane gas patio heaters.”

The strata says bylaw 46.1 is now bylaw 44.1. However, the strata has not filed an amendment to bylaw 46.1 in the LTO, so I refer to bylaw 46.1.

25. Bylaw 46.1 does not explicitly prohibit inflatable spas from patios. Instead, by using the word “only” it limits permitted items to those listed. So, I find this part of the dispute turns on the interpretation of “patio-style furniture” under bylaw 46.1. Mr. Noriega says his inflatable spa is patio furniture. The strata says it is not.

26. The evidence shows the strata cited a “common definition” of patio furniture as “Furniture such as chairs, tables, settees or lounges, suited for use on a patio or deck that will not be damaged by exposure to rain, sun or other outdoor elements.” I do not give much weight to this definition because the strata did not identify its source or provide evidence of its common use. I prefer the *Merriam-Webster.com Dictionary* definition of furniture, which the evidence shows the strata also cited. That definition of furniture, used in other non-binding but persuasive CRT decisions, includes equipment that is necessary, useful, or desirable, such as movable articles used in readying an area, such as a room or patio, for occupancy or use (see *Trent v. The*

Owners, Strata Plan EPS3454, 2020 BCCRT 358 and *Balazs v. The Owners, Strata Plan VR420*, 2021 BCCRT 986).

27. The strata cited *Doig et al v. The Owners, Strata Plan VR 1712*, 2017 BCCRT 36 in support of its position. There, the tribunal member concluded “summer furniture” is “generally understood to consist of movable tables and chairs, generally used for sitting or eating”. The tribunal member found in part that a hot tub was not summer furniture because it was not moveable without a crane, and it was not intended to be used for sitting or eating.
28. In *Trent*, the tribunal member did a thorough review of court and CRT decisions involving an interpretation of the terms “furniture” and “patio furniture”. The tribunal member cited *Allwest International Equipment Sales Co. Ltd. v. The Owners, Strata Plan LMS4591*, 2017 BCSC 1646, where the court found all the permitted items under the applicable bylaw were readily moveable on a patio except the item in dispute (a heat pump). I agree with the reasoning in *Trent*, and subsequent CRT decisions that have found a key aspect in determining whether something is furniture is whether it is readily or reasonably moveable (see for example *Emmerton v. The Owners, Strata Plan BCS 3407*, 2022 BCCRT 872, *Carpenter v. The Owners, Strata Plan V.R. 614*, 2022 BCCRT 264 and *Balazs*).
29. In *Balazs*, a crane was used to place a hot tub on a patio and the hot tub was embedded into a deck specifically designed and constructed around it. There was no evidence of the hot tub’s dry weight to prove the applicant’s assertion that 2 people could easily move it when empty. On the available evidence, the tribunal member found the hot tub had a degree of permanence and was not reasonably moveable. So, they found it was not “summer furniture”.
30. On the other hand, in *Emmerton*, the tribunal member found no permanent quality to the applicants’ inflatable hot tub, and found it was patio furniture under the applicable bylaw. The evidence showed the hot tub could be inflated or deflated in 5 minutes and was easily folded and carried by 2 people when deflated. It further showed the device used to inflate and heat the hot tub ran off a standard electrical outlet and could easily be lifted and carried by one person. The tribunal member also accepted

water could be drained from the hot tub relatively quickly and easily with a small pump and standard hose. While I am not bound by *Emmerton*, I find it persuasive.

31. Here, a picture showed the spa arrived in a box that can likely be carried by 1 or 2 people. As noted above, pictures also showed once inflated the spa is free-standing. Mr. Noriega said the spa can be drained with a simple pump and hose, deflated and packed away in 30 minutes. Although he did not provide supporting evidence like a video of the dismantling process, the strata did not dispute this.
32. The strata acknowledges the spa may be reasonably moveable when drained and deflated but says there was no evidence this happened regularly. It says the spa remained full and in place for over two months, which suggests a degree of permanency. However, how often a person moves an item does not determine how reasonably or readily moveable it is. So, I do not consider that Mr. Noriega may not have regularly drained and deflated his inflatable spa significant in deciding whether it is reasonably moveable.
33. The strata also points out the spa takes up a considerable portion of the patio area. It notes in *Emmerton* the tribunal member found the hot tub could be placed in different locations on the large roof-top patio each time it was inflated and filled. This contributed to their finding the hot tub was patio furniture. From the evidence, I acknowledge Mr. Noriega's inflatable spa takes up much of the patio space when inflated and filled. However, I do not consider this critical to deciding if it is reasonably movable.
34. Instead, I am more persuaded by the evidence that the spa is free-standing, takes a relatively short time to drain, deflate and pack away, and appears able to be carried by 1 or 2 people. I also find the spa is something Mr. Noriega can sit in to use and enjoy the patio. So, I find it is reasonably moveable and properly considered patio furniture under bylaw 46.1. I find Mr. Noriega did not breach bylaw 46.1 by placing his inflatable spa on the limited common property patio outside SL60.

Additional concerns

35. The strata raised additional concerns about the inflatable spa. It alleged Mr. Noriega may have contravened a municipal bylaw by not getting a permit for the spa, as it appeared to have a depth capacity exceeding 450mm and a surface area exceeding 14m². The evidence showed the strata acknowledged it did not undertake a detailed inspection of the spa's size and dimensions. Mr. Noriega also did not confirm the spa's size and dimensions. He denied needing a permit and said the spa was equipped with a lid and locking mechanism to keep it secure.
36. The strata also pointed out Mr. Noriega did not provide engineering studies to confirm the patio's structural stability and his plumbing system's capability to accommodate draining the inflatable spa. It raised concerns about the apparent lack of connection to the sanitary sewer system to dispose of the treated water. The strata said Mr. Noriega did not provide evidence the spa would not damage the patio, adjacent common property or landscaping, and did not pose a risk to any person or animal due to lack of fencing and/or a locking cover. The strata indicated this raised concerns about potential increases to its insurance.
37. The strata's concerns are legitimate but not supported by evidence. It did not allege bylaw breaches other than of bylaws 10.1 and 46.1, nor did it file a counterclaim against Mr. Noriega. In the circumstances, I make no finding about whether the placement of the inflatable spa on the patio breaches any other strata bylaws.
38. Finally, nothing in this decision prevents the strata from amending its bylaws to specifically prohibit inflatable or permanent spas.
39. In summary, I find Mr. Noriega did not breach the strata's bylaws 10.1 and 46.1 by placing an inflatable spa on the limited common property patio outside SL60.

What remedy, if any, is appropriate?

40. Mr. Noriega says he keeps receiving notices that his account has a \$600 balance owing in connection with assessed fines. I infer he has not paid this amount. Mr. Noriega requests an order that the strata cancel all assessed fines. He also requests

an order that the strata stop assessing fines against him for using his inflatable spa on the patio on the grounds it was not a permitted item and required approval from the strata. Since the strata stopped assessing fines against Mr. Noriega once he removed the spa, I find what he seeks is an order he be permitted to keep the spa on the patio.

41. I found Mr. Noriega did not breach bylaws 10.1 and 46.1 as alleged by the strata. So, I find the appropriate remedy is an order that the strata cancel all fines related to the spa.
42. I decline to order that the strata permit Mr. Noriega to keep the inflatable spa on the patio. As I concluded the spa is patio furniture, I find the bylaws expressly permit Mr. Noriega to have it on the patio. In the absence of a bylaw contravention, I find the strata has no authority to require Mr. Noriega to remove the spa. Therefore, I find it is unnecessary to specifically order Mr. Noriega be permitted to keep the inflatable spa on the patio.

CRT FEES AND EXPENSES

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. I therefore order the strata to reimburse Mr. Noriega \$225 for CRT fees. Mr. Noriega did not claim any dispute-related expenses, so I order none.
44. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Noriega.

ORDERS

45. Within 30 days of this decision, I order that:
 - a. The strata cancel all fines assessed against Mr. Noriega related to the spa.
 - b. The strata reimburse Mr. Noriega \$225 for CRT fees.

46. Mr. Noriega is entitled to post-judgment interest under the *Court Order Interest Act*.
47. 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.

Megan Stewart, Tribunal Member