



# Civil Resolution Tribunal

Date Issued: December 5, 2022

File: ST-2022-002986

Type: Strata

Civil Resolution Tribunal

Indexed as: *Knox v. Cull*, 2022 BCCRT 1306

**B E T W E E N :**

JAMES KNOX and JESSICA KNOX

**APPLICANTS**

**A N D :**

SANDY CULL and The Owners, Strata Plan VIS 4155

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kate Campbell, Vice Chair

## **INTRODUCTION**

1. This dispute is about use of common property (CP) in a duplex strata corporation.

2. The applicants, James Knox and Jessica Knox, own strata lot 2 (SL2) in the respondent strata corporation, The Owners, Strata Plan VIS 4155 (strata). The other respondent, Sandy Cull, owns strata lot 1 (SL1).
3. James Knox represents the Knoxes in this dispute. Ms. Cull is self-represented. As discussed below, the strata did not provide a Dispute Response Form.
4. The Knoxes say Ms. Cull unfairly dominates the CP area on the strata's south side, by using threatening and abusive behaviour. The Knoxes say this interferes with their right to use and enjoy the CP.
5. As remedy in this dispute, the Knoxes request an order that the strata grant the Knoxes exclusive use of some of that CP, under *Strata Property Act* section 76(1).
6. Ms. Cull denies the Knoxes' claim. She says the Knoxes are attempting to dominate and control the CP.
7. For the following reasons, I dismiss the Knoxes' claim.

## **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 which 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 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.
12. As noted above, the strata did not file a Dispute Response Form. This means that under CRTA section 1(1), the strata is in default. However, all the owners in the strata are parties in this dispute, and they disagree on the disputed issues. So, I find the strata could not meaningfully provide evidence or submissions in any event and nothing turns on its default status.

## **ISSUE**

13. Should the CRT make an order granting the Knoxes exclusive use of common property?

## **REASONS AND ANALYSIS**

14. In a civil claim like this one, the Knoxes, as applicants, must prove their claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision.
15. The strata was created in 1996. Documents from the Land Title Office show the strata never filed bylaw amendments, which means the Standard Bylaws in the *Strata Property Act* (SPA) apply.
16. The strata plan shows that the strata consists of 2 strata lots in a 2-storey building with basement. The strata lots are located front-to-back on the lot, with Ms. Cull's SL1 at the front side closest to the street, and the Knoxes' SL2 at the back.

17. The strata plan also shows that the area surrounding the building is CP, with some areas designated as limited common property (LCP) for the exclusive use of either SL1 or SL2.
18. This dispute is primarily about the strip of land along the strata's south side, which is not designated as LCP. Photos and evidence indicate that this strip is a driveway. The strata plan shows that this CP driveway extends along the strata building, from the street in front of the strata, past both strata lots, to approximately the end of the strata building. At the alley end of the driveway (furthest from the street), there is an LCP area designated for the exclusive use of SL1. I infer this LCP area is intended as a parking area for SL1, although the parties disagree about whether Ms. Cull actually parks there. For ease of reference in this decision, I will call this LCP area the "SL1 parking spot".
19. In this dispute, the Knoxes request an order that the CRT grant them exclusive use of the portion of the CP driveway that borders their strata lot and LCP backyard. They propose that the CRT also grant Ms. Cull exclusive use of the front part of the driveway, that borders SL1.
20. In making their request for exclusive use of CP, the Knoxes rely on SPA sections 71(b) and 76(1).
21. Section 71(b) says a strata corporation may make a significant change to the use and appearance of CP if there are reasonable grounds to believe that immediate change is necessary to ensure safety or prevent significant loss or damage. I find section 71(b) does not apply, because it does not permit exclusive use of CP by a particular owner or owners. Also, even if it did apply, as discussed below I find the Knoxes have not proven a safety risk.
22. SPA section 76(1) says a strata corporation may give an owner or tenant permission to exclusively use CP that is not LCP. Section 76(2) says such permission may only last up to one year. I discuss these provisions below.

23. In support of their request for an order granting exclusive use of CP, the Knoxes provided extensive submissions about the history of conflict between the parties. Ms. Cull also provided submissions about her perspective on this conflict history, although Ms. Cull provided no evidence in this dispute.
24. Based on the evidence and submissions before me, I accept that the relationship between the parties has been highly contentious, and is unlikely to be smooth in the future. This means the parties are essentially deadlocked in making any decisions about how to share or maintain common property.
25. The Knoxes submit that giving them exclusive use of the CP driveway would improve the relationship between the parties. They argue that even if the order is only for a fixed period, “permanent change will also come.” They argue that Ms. Cull currently takes no responsibility for the conflicts between the parties, and the order for exclusive use would serve to establish responsibility. The Knoxes say they will have more peace, and more safety.
26. For the following reasons, I do not grant the Knoxes’ requested order.
27. First, the submissions and evidence show that Ms. Cull opposes the requested order, and has opposed it in previous emailed negotiations with the Knoxes. Under SPA section 53(1) and Standard Bylaw 18, Ms. Cull has an equal vote to the Knoxes in all strata decisions. SPA section 76(1) indicates that a strata corporation may grant of exclusive use. Therefore, under the SPA, Ms. Cull would have to agree to grant exclusive use of CP to the Knoxes. I find it would be an exceptional and harsh remedy to effectively take away Ms. Cull’s legal right to access the CP, of which she is a shared owner. For the reasons discussed below, I find that order is not justified based on the evidence before me.
28. Second, as noted above, under SPA section 76(2), exclusive use of CP may only be granted for a maximum period of 1 year. I find that giving the Knoxes exclusive use of the CP driveway for 1 year is unlikely to improve the parties’ relationship. Rather, given that Ms. Cull opposes the request, I find it more likely to exacerbate the conflicts between them. While SPA section 76(3) allows a strata corporation to renew the grant

of exclusive use, this would require an agreement between the owners, and Ms. Cull's submissions indicate that an agreement is unlikely.

29. Third, I find the Knoxes have provided no concrete evidence about why granting them exclusive use of the disputed CP will reduce the conflict between the parties. This is particularly true since they acknowledge that Ms. Cull will still need to use a walkway through the space in order to access other parts of the CP, including the SL1 parking spot.
30. As noted above, in their submissions, the Knoxes set out a history of conflict between the parties dating back to at least July 2013. Both parties described various disagreements and legal proceedings, including police involvement. It is not clear from the evidence before me how granting the Knoxes exclusive use of part of the CP driveway would address those problems, which are now in the past.
31. The more recent conflict giving rise to this CRT dispute involves the Knoxes' allegation that Ms. Cull interfered with the plants in the disputed CP area. In an April 23, 2022 email to Ms. Cull, Mr. Knox said Ms. Cull had "vandalized" the plants, and snapped the plants' heads violently.
32. I reviewed the provided video footage of this incident, which is just over 2 minutes long. I find it shows the following:
  - Ms. Cull attempts to tie up some large plants along the side of the building. The plants are slightly shorter than Ms. Cull, and the end portion was drooping slightly over the paved portion of the driveway.
  - Ms. Cull bends over and appears to snap off the top portion of some lower plants. She also appears to try to tuck in some of the lower plants so they did not encroach on the driveway.
  - Ms. Cull pulls out some short plants, which may be weeds, from along the edge of the pavement

- As she walks away, Ms. Cull raises her arms and middle-finger gesture towards the Knoxes' strata lot.

33. The Knoxes say this behaviour was “transgressive”, and that it shows “either a serious lack of self-control and emotional regulation, or a willful desire to threaten”. Having viewed the video, I do not agree. While Ms. Cull was clearly annoyed, I find the video, and Ms. Cull’s correspondence provided in evidence, establish no safety risk. Rather, I find that Ms. Cull was simply moving somewhat overgrown plants away from the shared CP driveway. The Knoxes say the plants are their property, but are planted in the ground, on land that is CP. This means the Knoxes do not own them. The correspondence in evidence indicates the Knoxes wish to garden in this area, but since it is CP, I find they have no exclusive right to do so.

34. I acknowledge that Ms. Cull provided no evidence in this dispute. However, as noted above, as the applicants, the Knoxes bear the burden of proving their claim.

35. Based on the evidence before me I find there are no safety reasons that justify making an order granting the Knoxes exclusive use of CP that Ms. Cull is otherwise legally entitled to access and use. I also find the Knoxes have not proved other grounds to justify such an order. When the parties bought their strata lots, they effectively agreed to the allocation of CP and LCP set out in the strata plan. The evidence shows this shared use has proven difficult, but that is the ownership model dictated by the SPA and the strata plan.

36. For these reasons, I dismiss the Knoxes’ claims, and this dispute.

## **CRT FEES AND EXPENSES**

37. Under CRTA section 49 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. Ms. Cull is the successful party. She paid no CRT fees and claims no dispute-related expenses. The strata was a party in name only. It also paid no fees. So, I award no reimbursement.

38. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to Ms. Cull.

**ORDER**

39. I dismiss the Knoxes' claims and this dispute.

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Kate Campbell, Vice Chair