



Civil Resolution Tribunal

Date Issued: December 8, 2022

File: ST-2022-003137

Type: Strata

Civil Resolution Tribunal

Indexed as: *Buzzard v. The Owners, Strata Plan EPS396*, 2022 BCCRT 1322

BETWEEN:

GORDON BUZZARD

APPLICANT

AND:

The Owners, Strata Plan EPS396

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about repair and maintenance of common property (CP). The applicant, Gordon Buzzard, co-owns strata lot 29 (SL29) in the respondent strata corporation, The Owners, Strata Plan EPS396 (strata). Mr. Buzzard seeks an order for the strata to repair or replace certain sets of CP stairs so that they meet BC

building code requirements. He says this work is necessary to prevent accidents. He provided 3 quotes for this work, ranging from \$65,000 to \$101,000.

2. The strata disagrees. It says the CP at issue is actually landscaping and not meant to be used as stairs at all. The strata says that Mr. Buzzard's orders would require approval by a $\frac{3}{4}$ vote by the owners and should be left for owners to decide.
3. Mr. Buzzard represents himself. A strata council member represents the strata.
4. For the reasons that follow, I dismiss Mr. Buzzard's claims.

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. 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.
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 questions of the parties and witnesses 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.

ISSUE

9. The issue is whether the strata breached its repair and maintenance obligations and whether any remedies are appropriate.

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Mr. Buzzard must prove his claims on a balance of probabilities. This means 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.
11. As noted above, a title search shows Mr. Buzzard became the registered co-owner and an occupant of SL29 in September 2021. The strata plan shows the strata's buildings consists of several duplexes and 1 triplex. The strata was created in July 2011.
12. The strata's bylaws consist of the Schedule of Standard Bylaws in the *Strata Property Act* (SPA). There are registered amendments in the Land Title Office, but I find they are inapplicable to this dispute. Bylaw 8 says the strata must repair and maintain certain forms of property, including common assets and CP. It is undisputed that the strata must repair and maintain the CP at issue. I will refer to it as the terraced areas and I will describe it in detail here.
13. Mr. Buzzard provided an overhead diagram of the strata's buildings from the City of Nanaimo. He annotated it to show the location of the terraced areas, which he says consists of several sets of stairs. The diagram shows the terraced areas are located both between and along the sides of the buildings on the west side of the strata.

14. Mr. Buzzard's photos show that the terraced areas consist of several sets of terraced retaining walls made of wood landscaping railroad ties. Each tie resembles a wooden beam with a flat top and bottom and rounded sides. Each wall consists of 2 or more such ties, stacked on top of each other. They form a series of box-like structures that hold gravel inside. The side of the walls holding the gravel is partially buried by the gravel and the other side is exposed.
15. The parties disagree on whether the terraced areas consist of sets of stairs. I find this significant as it assists in determining whether the strata has met its repair and maintenance obligations for that area. For the reasons that follow, I find a reasonable person would conclude from the visible construction that the terraced areas may be used as "stairs" but are primarily intended as landscaping.
16. The strata plan does not show any stairs in the terraced area or elsewhere. The terraced areas use railroad ties and loose gravel, instead of concrete or flat wood planks, in their construction. I find they resemble a series of tiered flowerbeds rather than stairs, though filled with loose gravel or rocks instead of dirt and vegetation. Notably, their design and materials are consistent with larger nearby boxes, raised significantly above the ground. I find these boxes are too high to be used as stairs and are clearly used for landscaping.
17. I accept that a person could travel up and down the terraced area by stepping on the retaining walls or gravel inside the walls. However, I do not find this determinative. For example, a person can walk through a flowerbed, but this does not make it primarily a path or a sidewalk.
18. I find the terraced areas provide unstable footing, for several reasons discussed below, and I find this consistent with my determination that the terraced area is primarily for landscaping. Notably, the terraced area lacks handrails. The ties appear too narrow to fit a person's foot. Their tops lack any additional surface texture to prevent slipping. The gravel held by the ties is loose. The gravel is also below the level of the ties, rather than flush. I find this would increase the difficulty of walking up and down the terraced area. Some "steps" are also of irregular size. Consistent with

my conclusion, Mr. Buzzard submits their construction does not comply with BC building codes for stairs.

19. For those reasons, I agree that using the terraced area as a set of stairs is unsafe to the extent that they cannot be used like normal stairs and would likely require greater care. I find the most likely explanation for this is that they were not built primarily to be stairs and are primarily used as landscaping.
20. Mr. Buzzard says the minutes refer to the terraced area has having stairs. However, the minutes in evidence, discussed below, show that some strata council members disagreed with this characterization. So, I find nothing significant turns on this.
21. Mr. Buzzard also says the strata has sidewalks made of gravel and the stairs connect to those sidewalks. From my review of the pictures, some of the “stairs” appear to connect to or end in dead ends or dirt flowerbeds. Some walking areas use gravel, but they are not raised off the ground, so I do not find this determinative.
22. Mr. Buzzard says the marketing materials for the strata lots refer to the terraced areas as stairs. Those materials are not before me, so I find this submissions unsupported by evidence.
23. I turn to the chronology. On February 24, 2022, Mr. Buzzard emailed the strata council to request a meeting about the terraced area. He said the terraced areas were a safety risk and the strata’s insurance would not cover resulting injury claims.
24. The April 20, 2022 strata council meeting minutes show the strata council discussed options to repair, maintain, or replace the terraced areas. Some council members said the terraced area consisted of landscaping and not stairs. A strata council member, D, reported discussions with a city representative. D said that “initial findings” suggested they needed to be repaired. There is no direct evidence from the city on this matter. The strata council decided by a majority to wait for insurance and depreciation reports before making further decisions. The depreciation report is not in evidence, but the strata provided copies of its insurance documents.

Did the strata breach its repair and maintenance obligations in connection with the CP at issue?

25. The SPA and the strata's bylaws set out the repair and maintenance obligations of the strata and its owners. SPA sections 3 and 72 require the strata to repair and maintain common property and common assets. As noted above, bylaw 8 also requires the strata to repair and maintain such property. It is undisputed this includes the terraced areas.
26. In discharging its repair and maintenance obligation, the strata must act reasonably. The starting point for the analysis should be deference to the decisions made by the strata council as approved by the owners: *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784 at paragraphs 23 to 32. Similarly, an owner cannot direct the strata how to conduct its repairs: *Swan v. The Owners, Strata Plan LMS 410*, 2018 BCCRT 241 at paragraph 51.
27. Mr. Buzzard says the ties are rotting and some have collapsed. The strata admits that some ties are rotten. I find the ties do not appear obviously damaged or unsuitable for holding gravel. There is nothing in the photos to indicate they fail to function as landscaping. For example, they do not appear rotten to the point of a displeasing appearance. So, I find it unproven that the strata has failed to meet its repair obligations in connection with the terraced areas.
28. In any event, Mr. Buzzard does not allege that the ties fail to function reasonably as landscaping. Instead, he says the strata failed to repair and maintain them, so they work poorly as stairs. In particular, Mr. Buzzard says some of the ties "failed" when he used them to move a grand piano. In his February 24, 2022 email to the strata he noted that it weighed 900 pounds. I find this is clearly outside the ties' intended use. Further, as noted above, I find that the terraced areas would function poorly as stairs even if they were brand new. This is because they lack basic features such as handrails or a stable surface to stand on.
29. Mr. Buzzard also says that the strata should change the terraced areas because, regardless of the designer's original intent, people use the terraced areas as stairs

and injure themselves. He says this presents an insurance risk for the strata. In the April 2022 emails to the strata, Mr. Buzzard said that 3 individuals injured themselves on the terraced areas.

30. Overall, I find this unproven. There is no evidence from the 3 individuals to corroborate Mr. Buzzard's account. Further, in an undated email, another person, KB said they told Mr. Buzzard about 1 of the injuries, but Mr. Buzzard misunderstood or misrepresented his comments. KB said he told Mr. Buzzard someone had injured themselves, but this was while using a sidewalk. Given this, I must conclude that Mr. Buzzard's account is unproven on a balance of probabilities.
31. There is also no direct evidence from the strata's insurer that it concluded the terraced areas presented an uninsurable or unreasonable risk. The strata's insurance policy, renewed as of July 2022, says its coverage includes commercial general liability, including bodily injury.
32. Even if accept that the terraced areas are unreasonably dangerous in their current state, which I do not, Mr. Buzzard has not explained why replacing the landscaping with stairs is necessary. The strata could, alternatively, post signs or fence off the area to make it impassable. I noted earlier that the April 2022 strata council meeting minutes reported that D spoke to a city representative. However, there is no direct evidence from the city about what particular changes the strata must make, if any. These include whether the strata must make the types of changes Mr. Buzzard seeks in this dispute.
33. Finally, I find the strata has not ignored the issue. The April 2022 minutes indicate that the strata decided to obtain the depreciation report before making changes. There is no evidence of any pressing need for action. So, I find the strata's approach was both reasonable and entitled to the deference described in *Weir*.
34. For all those reasons, find the strata did not breach its repair and maintenance obligations. I therefore dismiss this claim.

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 in this case not to follow that general rule. I dismiss Mr. Buzzard's claims for reimbursement. The parties did not claim for any specific dispute-related expenses.
36. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Buzzard.

ORDER

37. I dismiss Mr. Buzzard's claims and this dispute.

David Jiang, Tribunal Member