



Civil Resolution Tribunal

Date Issued: March 20, 2023

File: ST-2022-002629

Type: Strata

Civil Resolution Tribunal

Indexed as: *Pelosi v. The Owners, Strata Plan BCS 2382*, 2023 BCCRT 226

B E T W E E N :

ROGER PELOSI

APPLICANT

A N D :

The Owners, Strata Plan BCS 2382

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about fencing in a strata corporation.
2. The applicant, Roger Pelosi, co-owns a strata lot (SL18) in the respondent bare land strata corporation, The Owners, Strata Plan BCS 2382.

3. Mr. Pelosi says the strata removed solar lights from SL18's fence without permission, and damaged a fence post cap in the process. Mr. Pelosi asks for an order that the strata reimburse Mr. Pelosi \$290.08 the costs of replacing the solar lights and damaged fence post cap. Mr. Pelosi also asks for an order that the strata "refrain from entering Strata Lot 18 property and or making modifications to any fence, lighting fixture, plants or any other item located on the property".
4. The strata disputes Mr. Pelosi's claims. In its Dispute Response, the strata initially said Mr. Pelosi improperly installed solar lights on a common property fence, and says the lights were non-functional, unsightly and broken. In its submissions, the strata said that the fence was located partially on SL18, partially on common property, and partially on city property, but did not take a position on which portion of the fence the lights were located on.
5. Mr. Pelosi is self-represented. The strata is represented by a strata council member.

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 submitting evidence

10. In submissions, the strata said it attempted to upload evidence, but the evidence was not saving properly. Given these submissions, I asked CRT staff to confirm whether the strata had been able to provide all its evidence. CRT staff confirmed that the strata had reported the evidence issue, and CRT staff had asked the strata to email all of its evidence, which was then uploaded. CRT staff also asked the strata to review the uploaded evidence, and the strata did not report any issues. I find the strata had the opportunity to provide its evidence in this dispute, and did so.

ISSUES

11. The issues in this dispute are:
 - a. Was the strata entitled to remove solar lights from the fence under the *Strata Property Act* (SPA) or its bylaws?
 - b. If not, what remedies are appropriate?

EVIDENCE AND ANALYSIS

12. In a civil proceeding such as this one, as the applicant Mr. Pelosi must prove their claims on a balance of probabilities (meaning more likely than not). I have reviewed all the parties' submissions and evidence, but I only refer to what I find relevant to provide context for my decision.

13. The strata was created in 2007, and is a bare land strata corporation. The strata filed consolidated bylaws in the Land Title Office (LTO) in 2019 that repealed and replaced all previous bylaws. Under SPA section 120(1), the standard bylaws also apply, but only where there is no conflicting strata bylaw filed in the LTO.

Was the strata entitled to remove solar lights from the fence under the SPA or its bylaws?

14. It is undisputed that Mr. Pelosi installed small solar lights on top of 5 fence posts. It is also undisputed that the strata hired a contractor to remove them. Photographs in evidence shows small solar lights on top of fence posts in September 2021. It is unclear exactly when the lights were removed, but based on correspondence in evidence I infer they were removed around March 2022.

15. The strata initially took the position that the fence was located on common property. On April 14, 2022, the strata manager wrote to Mr. Pelosi following a council hearing and said that although the fence was “aligned with SL18 lot boundary, the fence is common property and adjacent to SL18”. Based on this, the strata manager said the strata determined that the solar lights were placed on common property without permission, and given the “inoperative and unsightly condition of the lights”, they were removed. The strata maintained this position in a May 18, 2022 letter to Mr. Pelosi.

16. As noted, in its submissions, the strata says that the fence is located partially on SL18, partially on common property, and partially on city property. However, the strata did not clarify which portion of the fence it says the lights were located on. Mr. Pelosi says the strata was not entitled to remove the solar lights because the lights were on SL18’s fence, and Mr. Pelosi did not give the strata permission to remove the lights.

17. If the fence is common property, I find the strata would have been entitled to remove the alleged inoperative lights as part of its repair and maintenance obligations under SPA section 72. SPA section 72 says the strata must repair and maintain common property and common assets. The strata would also have been entitled to remove the solar lights if they are a common property alteration done without the strata’s

approval, which is required under standard bylaw 6. I find standard bylaw 6 applies here because there is no different bylaw filed in the LTO that addresses common property alterations. So, the question then is whether the solar lights were on a common property fence, SL18's fence, or city property.

18. The strata provided a November 9, 2022 survey from Target Land Surveying (Target). The Target survey shows the fence that surrounds SL18 is located almost entirely within SL18's boundaries, apart from a small section of fencing that extends beyond the south east edge of SL18 and onto the strata's common property. Mr. Pelosi provided an October 3, 2022 survey from Evolution Land Surveying Ltd. (Evolution). The Evolution survey surveyed a smaller section of the fence, in the area where the solar lights were installed. The Evolution survey also shows this section of fence is located almost entirely within SL18, except for a few small areas where it appears a small portion of the fence itself, as constructed, encroaches slightly over SL18's property line to the east. However, where this specific section of fence encroaches over the SL18's property line to the east, the Evolution survey show that it does so onto city property, not the strata's common property. Consistent with the Target Survey, the Evolution survey also shows a small section of fencing that extends beyond the south east edge of SL18 and onto the strata's common property.
19. Mr. Pelosi also provided photographs that show the portion of fencing where the solar lights were located. The strata does not dispute that these photographs show the section of fencing where the solar lights were installed. Based on the location of the lights in the photographs, I find both surveys support Mr. Pelosi's position that the lights were installed on SL18's fence. I find the portion of fencing where the solar lights were installed is located within SL18. I find the photographs do not show any lights installed on the small section of fence that extends beyond the south east edge of SL18 and onto the strata's common property.
20. As noted, the strata removed the solar lights on the basis that the fence was common property. The strata did not say on what basis it would be entitled to remove the solar lights in the event the lights were on SL18's fence rather than a common property fence.

21. I note that bylaw 38.1 allows the strata to arrange for professional landscaping services when an owner fails to maintain their strata lot's "lawns, gardens, and surrounding areas", but the strata may do so only after providing the owner with a written warning. The strata can also charge the landscaping costs back to the owner. However, I make no finding about whether bylaw 38.1 applies to solar lights on a fence. I say this because even if the bylaw is applicable, the evidence does not show that the strata ever provided Mr. Pelosi with any written warning about the solar lights. Therefore, I find the strata would not be entitled to remove the solar lights from SL18's fence based on bylaw 38.1 in any event. I find no other bylaw or SPA provision that would allow the strata to unilaterally remove the solar lights from SL18's fence.
22. Therefore, I find the strata had no authority under its bylaws or the SPA to remove the solar lights from SL18's fence.

What remedies are appropriate?

Costs of replacing solar lights and damaged cap

23. Mr. Pelosi claims \$290.08 for the costs to replace the solar lights and the damaged fence post cap.
24. The strata admits that it removed the solar lights, and I find a photograph in evidence shows one damaged fence post cap. I note that the strata's correspondence to Mr. Pelosi said the strata removed the solar lights because the lights were "non-functional, unsightly, and broken". However, the strata did not argue that it should not be responsible for the cost of replacing the lights because they were allegedly inoperative, and I find the evidence does not show that the solar lights were inoperative when the strata removed them.
25. Mr. Pelosi submitted a receipt for \$6.14 for a new fence post cap. They also submitted a screen shot of an incomplete online order for 5 solar lights that totalled \$223.94. Although the online order for the 5 solar lights was not completed, I accept that it reasonably reflects the replacement cost for the 5 removed solar lights. I find no reduction is warranted because I am not satisfied on the evidence that the lights were inoperative when the strata undisputedly removed them. Mr. Pelosi also claims \$60

for “installation” but did not explain the basis of this claimed amount, or provide documentary evidence to support it. Without more, I find Mr. Pelosi has not proved any installation costs.

26. Therefore, I find it appropriate to order the strata to reimburse Mr. Pelosi \$230.08 for the cost to replace the solar lights and the damaged fence post cap.

Refrain from entering SL18 or making modifications to any fence, lighting fixture, plants or any other item located on SL18.

27. Mr. Pelosi also asks for an order that the strata refrain from entering SL18 or making modifications to any fence, lighting fixture, plants or any other item located on SL18.

28. As noted, the CRT has jurisdiction to order parties to stop doing something. Orders of this nature are called injunctions. In *Nova Scotia v. Doucet-Boudreau*, 2003 SCC 62, the Supreme Court of Canada said that an injunction must give the parties proper notice of the obligation imposed on them and clearly define the standard of compliance. This is because injunctions can be enforced by the court in contempt proceedings. I find Mr. Pelosi’s requested order lacks the required precision for injunction. Further, the bylaws give the strata authority to enter onto strata lots in certain situations, including, as discussed above, to maintain landscaping when an owner has failed to maintain their strata lot. I find the circumstances of this dispute do not support granting such a broad injunctive order, particularly when doing so would restrict the strata’s authority as explicitly allowed under the strata’s bylaws. Given all the above, I decline to grant this requested order.

CRT fees, expenses and interest

29. 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. Mr. Pelosi was successful in this dispute. I therefore order the strata to reimburse Mr. Pelosi \$225 in paid CRT fees.

30. Mr. Pelosi also claims reimbursement of \$1,296.75 for the cost of obtaining a land survey. I relied on the land survey in this dispute, and I find the land survey was

necessary because the strata disputed whether the solar lights were located on SL18's fence or a common property fence. Therefore, I find the land survey cost is a reasonable dispute-related expense. I find Mr. Pelosi is entitled to reimbursement of \$1,296.75 for the land survey.

31. The *Court Order Interest Act* applies to the CRT. Mr. Pelosi is entitled to prejudgment interest on the \$230.08 from September 10, 2022, the date of the evidence for Mr. Pelosi's fence post cap invoice, to the date of this decision, which I find is reasonable in the circumstances. This equals \$3.43.
32. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Mr. Pelosi.

ORDERS

33. Within 30 days of the date of this order, I order the strata to pay Mr. Pelosi \$1,755.26, broken down as follows:
 - a. \$230.08 for the solar lights and damaged fence post cap,
 - b. \$3.43 in interest under the *Court Order Interest Act*,
 - c. \$225 in CRT fees, and
 - d. \$1,296.75 in dispute-related expenses.
34. Mr. Pelosi is also entitled to postjudgment interest as applicable.

35. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under CRTA section 58, 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.

Leah Volkens, Tribunal Member