



Civil Resolution Tribunal

Date Issued: May 31, 2023

File: ST-2020-009583

Type: Strata

Civil Resolution Tribunal

Indexed as: *Skelly v. Fayad*, 2023 BCCRT 461

B E T W E E N :

JULIA SKELLY

APPLICANT

A N D :

NABIL GABRIEL FAYAD and The Owners, Strata Plan 1318

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Eric Regehr, Vice Chair

INTRODUCTION

1. This is a final decision of the Civil Resolution Tribunal (CRT) following a judicial review by the BC Supreme Court.
2. Julia Skelly and Nabil Gabriel Fayad each own a strata lot in the duplex strata corporation, The Owners, Strata Plan 1318 (strata). Ms. Skelly brought a CRT claim

against Mr. Fayad seeking orders that he remove an outdoor squash court, move and complete a storage shed, and stop operating a business out of his strata lot. Mr. Fayad undisputedly operates a furniture manufacturing and repair business within his strata lot, which Ms. Skelly argued breached several strata bylaws.

3. On July 22, 2021, a CRT member granted Ms. Skelly's orders about the squash court and shed but found that Mr. Fayad had not breached the strata's bylaws by operating his business: *Skelly v. Fayad*, 2021 BCCRT 802.
4. Ms. Skelly applied for judicial review by the BC Supreme Court. The court issued its decision on December 16, 2022: *Skelly v. Fayad*, 2022 BCSC 2205. In that decision, Justice Caldwell found that the CRT member's conclusion about Mr. Fayad's business was patently unreasonable. The court remitted the dispute back to the CRT for reconsideration on the sole issue of Mr. Fayad's compliance with bylaw 3(1)(e), which prohibits owners from using their strata lot in a way that is contrary to a purpose found on the strata plan. Ms. Skelly did not ask the court to review any other aspect of the initial CRT decision. Mr. Fayad did not participate in the judicial review.
5. The only issue before me in this decision is whether Mr. Fayad's business operation breaches bylaw 3(1)(e). For the reasons set out below, I find that it does.
6. The parties are each self-represented.

JURISDICTION AND PROCEDURE

7. 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). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.
8. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I note that at paragraph 22

of his decision, Justice Caldwell confirmed that the CRT retained discretion about the procedure for this reconsideration. I gave both parties the opportunity to provide further evidence and submissions about bylaw 3(1)(e) in light of Justice Caldwell's reasons, which they both did. I also reviewed everything that was before the CRT in the original decision. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided. I only refer to the evidence and submissions I consider necessary to explain my decision.

9. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
10. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the tribunal 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

11. The issue in this reconsideration is whether Mr. Fayad is in breach of bylaw 3(1)(e) because he operates a business in his strata lot.

BACKGROUND AND EVIDENCE

12. In a civil claim such as this, Ms. Skelly as the applicant must prove her case on a balance of probabilities, which means more likely than not.
13. The strata is comprised of 2 strata lots in a side-by-side duplex building. Ms. Skelly owns strata lot 1 and Mr. Fayad owns strata lot 2. The strata plan shows that both strata lots include a carport. The strata plan also includes the following declaration: "The strata plan is entirely for residential use".

14. The strata has not filed any bylaws with the Land Title Office, so the Standard Bylaws under the *Strata Property Act* (SPA) apply. As mentioned above, the only bylaw at issue in this decision is bylaw 3(1)(e), the full text of which is as follows:

An owner, tenant, occupant or visitor must not use a strata lot, the common property or common assets in a way that is contrary to a purpose for which the strata lot or common property is intended as shown expressly or by necessary implication on or by the strata plan.

15. There is little evidence about Mr. Fayad's business. It is undisputed that he manufactures and repairs furniture in an enclosed area that used to be a one-vehicle carport, which again is depicted on the strata plan as part of his strata lot. Mr. Fayad refers to it as a workshop. There is car and truck traffic associated with his business, although the parties dispute the frequency. Mr. Fayad provided a letter from a "friend and colleague" who described the workshop as a "small one man operation" that "bears no resemblance to a 'full-blown industrial type factory'". However, it is undisputed that the workshop's sole use is for Mr. Fayad's business. There is no suggestion that Mr. Fayad uses common property for his business.

ANALYSIS

16. In the original CRT decision about bylaw 3(1)(e), the CRT member interpreted the phrase "entirely for residential use" on the strata plan by referring to the definition of "residential strata lot" in section 1 of the SPA. That definition says that a strata lot is residential if it is designed or intended to be used primarily as a residence. The CRT member found that despite the presence of the furniture business, Mr. Fayad primarily used his strata lot as a residence. She concluded that Mr. Fayad did not breach bylaw 3(1)(e) because he was using his strata lot as a residential strata lot, as defined by the SPA.
17. Justice Caldwell said that it was an error to rely on this SPA definition. This is because bylaw 3(1)(e) is based on a strata lot's intended use as set out in the strata plan. The strata plan does not say that the strata lots are "residential strata lots" or otherwise

incorporate that SPA definition. Instead, it says that the entire strata plan is for residential use.

18. Justice Caldwell found that the word “entirely” does not allow for weighing different uses to determine what the strata lot’s “primary” use is. He referred to dictionary definitions of “entirely”, which confirm that it is an absolute, categorical word. If almost all of a strata lot is used as a residence, then it is not “entirely” for residential use. This means that to comply with bylaw 3(1)(e), Mr. Fayad must use his whole strata lot for residential use. Based on this reasoning, Ms. Skelly submits bylaw 3(1)(e) prohibits all activities in a strata lot with a commercial or business purpose.
19. In his responding submissions, Mr. Fayad questions Ms. Skelly’s interpretation of Justice Caldwell’s reasons. He says that if Ms. Skelly is correct, any strata resident with a home office would be in breach of bylaw 3(1)(e). I note that not every residential strata plan includes the same use declaration, but it is very common.
20. I agree with Mr. Fayad, to an extent. Justice Caldwell’s reasons focused on the definition of the word “entirely”. He did not consider the term “residential use”. The usual rules of statutory interpretation apply to strata bylaws (see *Semmler v. The Owners, Strata Plan NES3039*, 2018 BCSC 2064), which I find includes the declaration on the strata plan because bylaw 3(1)(e) incorporates it by reference. With that, the words must be read in context and using their plain and ordinary meaning. I find that an ordinary reading of “residential use” in the context of a strata bylaw includes the possibility that residents may engage in some forms of work or business. To take Ms. Skelly’s argument to its logical extreme, it would be a breach of bylaw 3(1)(e) for a self-employed person to write a work email from their kitchen table or living room couch because this would be a “business activity” within the strata lot. Contrary to this, I find that those sorts of work activity are normal and accepted uses of a residence. So, I do not agree with Ms. Skelly’s argument that bylaw 3(1)(e) prohibits any business or commercial activity in a strata lot. What matters is whether the business, commercial, or employment activity in question is consistent with a residential use.

21. The difficulty for Mr. Fayad is that operating a furniture manufacturing and repair business is clearly not a normal and accepted use of a residence. He converted a portion of his strata lot into a workshop solely to operate this business. Customers and suppliers pick up and drop off supplies and furniture. I find that there is nothing residential about his use of the workshop. It follows that his entire strata lot is not being used as a residence.
22. I acknowledge Mr. Fayad's submission that his business is not disruptive. However, bylaw 3(1)(e) does not say anything about the impact of a particular use on other strata residents. Under the clear language of the bylaw, any use that contravenes the strata plan is prohibited whether it is disruptive or not. I therefore find that his use of the workshop to operate his business breaches bylaw 3(1)(e). I order him to stop operating his furniture manufacturing and repair business in his workshop.
23. I do not, however, order him to stop operating any aspect of his business from any part his strata lot or common property. This is because there is no evidence before me about whether, or to what extent, Mr. Fayad conducts other business activities that may be consistent with a residential use based on my reasoning above, such as corresponding with customers. There is also no evidence that he does manufacture or repair work anywhere other than the workshop. For these reasons, my order is limited to his use of the carport as his business's workshop.

CRT FEES AND EXPENSES

24. 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. In the initial CRT decision, the CRT member ordered Mr. Fayad to reimburse Ms. Skelly half of her \$225 in CRT fees because she was only partially successful. I find that Ms. Skelly has now been substantially successful. I find she is entitled to be reimbursed the other half of her CRT fees, which is \$112.50.

DECISION AND ORDERS

25. I order that:

- a. Mr. Fayad immediately stop operating his furniture manufacturing and repair business from strata lot 2's workshop, which is the area marked as a "carport" on the strata plan.
- b. Within 30 days of this decision, Mr. Fayad pay Ms. Skelly \$112.50 in CRT fees.

26. Ms. Skelly is also entitled to post judgement interest under the *Court Order Interest Act*, as applicable.

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

Eric Regehr, Vice Chair