



Civil Resolution Tribunal

Date Issued: June 29, 2023

File: ST-2022-007376

Type: Strata

Civil Resolution Tribunal

Indexed as: *Behnsen v. The Owners, Strata Plan VIS6832*, 2023 BCCRT 548

B E T W E E N :

GARY BEHNSEN

APPLICANT

A N D :

The Owners, Strata Plan VIS6832

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about money spent by a strata lot owner to fix common property. The applicant, Gary Behnsen, previously co-owned strata lot 26 (SL26) in the strata corporation, The Owners, Strata Plan VIS6832 (strata). Mr. Behnsen says that he spent \$2,064.78 to fix common property. I note that in the Dispute Notice he says he paid to fix a drainage pipe but in other submissions he denies this and says it was to

fix drainage issues. I comment on these contradictory statement below. Mr. Behnsen seeks an order for reimbursement of the repairs.

2. The strata disagrees. It says Mr. Behnsen claims for drainage pipe repairs but is actually impermissibly seeking reimbursement for landscaping. The strata also says it did not approve any of Mr. Behnsen's work or otherwise agree to reimburse it.
3. Mr. Behnsen represents himself. A strata council member represents the strata.
4. For the reasons that follow, I dismiss Mr. Behnsen's claim.

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.
9. I note that in submissions, Mr. Behnsen said that I should order a strata council member, IO, to provide a witness statement. Parties are told during the CRT's process to submit all relevant evidence, including witness statements. In general, it is not the CRT's role to conduct investigations and I find it would be disproportionate at this late stage of the proceeding to pause this dispute to obtain information from IO. This would also require an opportunity for the strata to respond. I find this would be counter to the CRT's mandate that includes speed and efficiency.

ISSUE

10. Must the strata reimburse Mr. Behnsen \$2,064.78?

BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Mr. Behnsen as the applicant must prove his claim 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.
12. As noted above, Mr. Behnsen co-owned SL26 with another individual, SB, since January 2018. A title search shows that they sold SL26 around November 2022.
13. The strata plan shows that the strata consists of several duplexes. Photos show that SL26 has an outdoor patio area. The strata filed a complete set of bylaws in the Land Title Office in November 2016. It filed subsequent amendments that I find are irrelevant to this dispute. Bylaw 8 says that the strata must repair and maintain common property and certain forms of limited common property. This parties agree that the exterior work at the centre of this dispute affected common property.

14. I turn to the chronology. A February 26, 2020 email to SB documents that the strata had a contractor to dig a trench behind SL26's patio to address "soggy ground" in the area. The contractor's May 13, 2020 email to the strata shows it placed a PVC drain pipe in the trench, and filled and covered it with a combination of rocks, filter cloth, and replacement sod.
15. According to an invoice, in April 2021 SB hired Damian Designs (DD) to do exterior work near SL26. The parties dispute the nature of this work. As I said in my introduction, Mr. Behnsen says in the Dispute Notice that he hired DD to repair an exterior drainage pipe. The strata disagrees. In reply submissions, Mr. Behnsen says he instead hired DD to "improve drainage" in SL26's backyard area.
16. I find it clear that DD did not fix any drainage pipes. Currently, no party says this is the case. Further, the invoice shows DD charged \$3,023.97 for a combination of labour, waste removal, fertilizer, soil, sod, and use of a dump truck, sod cutter, and 2-stroke augur. The invoice entries lack any mention of piping, plumbing, or other items that would be consistent with fixing drainage pipes.
17. Photos also show that DD covered the area with landscaping, including rocks. I find it unproven that DD improved drainage by doing so, as it is not apparent from the photos or DD's invoice. I find that, at most, the rocks would cover any potentially soggy ground in the area and make it easier to step on.
18. Mr. Behnsen claims partial reimbursement for DD's invoice. He says he ultimately paid DD \$2,064.78 for its work. There is no evidence to show he actually paid this specific amount. Given my conclusion however, nothing turns on how much he ultimately paid.

Must the strata reimburse Mr. Behnsen \$2,064.78?

19. Mr. Behnsen says he had to pay DD because the strata breached its duty to repair and maintain common property. In particular, he says the strata neglected drainage near the SL26 patio.

20. The *Strata Property Act* (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 areas where DD did its work.
21. The strata's obligation to repair and maintain such property is measured by the test of what is reasonable in all circumstances and can include replacement when necessary. The standard is not one of perfection. The strata has discretion to approve "good, better or best" solutions. The CRT will not interfere with a strata's decision to choose a "good", less expensive, and less permanent solution although "better" and "best" solutions may have been available. See *Ricci v. The Owners, Strata Plan LMS 3940*, 2021 BCCRT 755 at paragraph 40, citing *The Owners of Strata Plan NWS 254 v. Hall*, 2016 BCSC 2363 and *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784.
22. An owner is not entitled to direct the strata on how to conduct its repairs or maintenance. In general, an owner cannot unilaterally spend money to repair or maintain common property and then expect the strata to reimburse them. See *Garry v. The Owners, Strata Plan EPS2501*, 2021 BCCRT 409, citing *Swan v. The Owners, Strata Plan LMS 410*, 2018 BCCRT 241.
23. The evidence shows that strata took measures to address the exterior drainage issues affecting SL26. This included the work it paid for in February 2020. There is no indication that the strata authorized DD's work or agreed to reimburse Mr. Behnsen for it. Mr. Behnsen says he asked the strata to do this work, but I find this unproven in the emails or other evidence. For example, there is no correspondence that shows Mr. Behnsen requested the type of landscaping DD complete in this dispute. I also find that there were no emergency drainage issues or risk of imminent harm to the property that required immediate action without the strata's approval.
24. Although CRT decisions are not binding, I agree with the reasoning in *Garry* and *Swan* and find that Mr. Behnsen could not expect the strata to reimburse him. So, I dismiss Mr. Behnsen's claim for this reason.

25. I note that in February 2021, SB asked the strata to approve their request to alter common property near SL26. In the request, SB said it would remove and replace certain concrete pads in the patio area, with a combination of larger pads and newly poured concrete. The evidence before me is vague on whether the strata approve this request. However, I find nothing turns on this for 2 reasons.
26. First, DD's work differs from the alteration request as it did not involve pouring concrete or the use of any concrete pads. So, I find DD's work was not authorized by the strata. Second, there is no evidence or submission that the strata would have agreed to pay for the work in the alteration request in any event. The strata says, and I accept, that it would instead have required the SL26 owners to indemnify it for any loss resulting from any proposed alteration.
27. Finally, I also find it unproven Mr. Behnsen paid \$2,064.78 to fix a common property drainage pipe. Mr. Behnsen now denies he did so, and this is the actual claim outlined in the Dispute Notice.
28. For all those reasons, I dismiss Mr. Behnsen's claim.

CRT FEES AND EXPENSES

29. 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. Behnsen's claim for reimbursement of CRT fees. The parties did not claim any specific dispute-related expenses.
30. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Behnsen.

ORDER

31. I dismiss Mr. Behnsen's claims and this dispute.

David Jiang, Tribunal Member