



Civil Resolution Tribunal

Date Issued: October 10, 2023

File: ST-2022-009075

Type: Strata

Civil Resolution Tribunal

Indexed as: *Hanlon v. The Owners, Strata Plan LMS 422*, 2023 BCCRT 850

B E T W E E N :

JOHN HANLON and JO-ANNE HANLON

APPLICANTS

A N D :

The Owners, Strata Plan LMS 422

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute about marijuana smoke.
2. The applicants, John Hanlon and Jo-Anne Hanlon, co-own and live in strata lot 18 (SL18) in the respondent bare land strata corporation, The Owners, Strata Plan LMS 422 (strata). Mrs. Jo-Anne Hanlon represents the applicants. A strata council member represents the strata.

3. The Hanlons say marijuana smoke from their neighbours' strata lots is a nuisance and health risk to Mrs. Hanlon that prevents them from enjoying their patio and air conditioner. They also say they are unable to control the marijuana smoke that comes into their house despite having 2 air purifiers. The Hanlons ask for an order that the strata enforce bylaw 3.1(a), which prohibits the use of a strata lot or common property in a way that causes a nuisance or hazard to another person.
4. The strata says the Hanlons did not provide sufficient details of the marijuana smoke source nor specific information on the dates and times of the nuisance to allow it to enforce the bylaw. Despite the lack of details provided, the strata says it reasonably investigated the Hanlons' complaints. The strata asks that the Hanlons' claim be dismissed.
5. As explained below, I dismiss the Hanlons' claim and this dispute.

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. 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.

Preliminary Matter – Conflict of Interest

8. In submissions, the Hanlons say their neighbour in strata lot 19 (SL19), who was the strata council president at the time of this dispute, is in a conflict of interest. I infer the reason for the Hanlons' objection was that the SL19 owner was 1 of the owners involved in their allegations of marijuana smoking. I decline to address the alleged conflict of interest issue for 2 reasons. First, the Hanlons did not include the issue in the Dispute Notice or any amended Dispute Notice. The purpose of a Dispute Notice is to define the issues and provide notice to the respondent of the claims against it. Procedural fairness requires that a party must be notified of claims against it and have a fair opportunity to respond. Therefore, I find it would be procedurally unfair for me to consider an additional claim about conflict of interest here.
9. Second, SPA section 32 addresses conflicts of interest for strata council members. In *Dockside Brewing Company Ltd. v. The Owners, Strata Plan LMS 38371*, 2007 BCCA 183, the BC Court of Appeal said that all remedies for breaches of SPA section 32 are set out in SPA section 33. CRTA section 122(1) specifically says the CRT has no jurisdiction to decide claims under SPA section 33. So, even if the conflict of interest claim was set out in the Dispute Notice, I would refuse to resolve it.

ISSUES

10. The issues in this dispute are:
 - a. Did the strata reasonably investigate the Hanlons' marijuana smoke complaints?
 - b. If not, what is an appropriate remedy?

BACKGROUND, EVIDENCE AND ANALYSIS

11. As applicants in a civil proceeding such as this, the Hanlons must prove their claims on a balance of probabilities, meaning more likely than not. I have reviewed all the parties' submissions and evidence but refer only to information I find relevant to explain my decision.

12. The strata plan shows the strata was created in June 1992 under the *Condominium Act*. It comprises 49 bare land strata lots and continues to exist under the *Strata Property Act* (SPA). SL18 is located along the northern boundary of the strata's property between strata lot 17 (SL17) and SL19. To the north of these 3 strata lots are houses outside of the strata. To the south is a common property roadway that separates the strata lots from other strata lots in the strata.
13. The strata filed a complete set of consolidated bylaws with the Land Title Office on July 14, 2014, which I find are the bylaws applicable to this dispute. The relevant bylaws are 3.1(a) and (c). They read as follows:
 - 3.1 An Owner, tenant, occupant or visitor must not use a strata lot, the common property or common assets in a way that:
 - (a) causes a nuisance or hazard to another person,
...
 - (c) unreasonably interferes with the rights of another person to use and enjoy the common property, common assets or another strata lot,
14. The parties agree that the strata considered a "nonsmoking" bylaw at its May 31, 2023 annual general meeting. They also agree the proposed bylaw failed to pass, but I find nothing turns on this.
15. The following facts are undisputed.
16. On October 17, 2022, the Hanlons wrote to the strata that "pot and cigarette smoke has become an issue" because Mrs. Jo-Anne Hanlon was very sensitive to it. They stated their doctor requested they "phone the ambulance" the next time she had "a problem" but did not state what that problem was. The Hanlons requested the strata take "immediate action" and referred it to bylaw 3.1.
17. Mr. Hanlon attended the November 2, 2022 strata council meeting to address the October 17, 2022 letter, although it is unclear if he requested a hearing under SPA

section 34.1. His written presentation states marijuana smoke from both neighbours (SL17 and SL19) was affecting Mrs. Jo-Anne Hanlon and reiterates the health points made and alleged doctor's direction stated in their October 17, 2022 letter.

18. On November 14, 2022, the strata manager wrote to the Hanlons in response to their letter, and I infer Mr. Hanlon's attendance at the November 2, 2022 strata council meeting. The letter stated the strata council had investigated the Hanlons' concern but was unable to confirm the origin of the nuisance, which made it difficult to enforce bylaw 3.1. It is unclear what investigation the strata conducted as there is no evidence about that. However, I agree with the strata that the Hanlons' concerns were general in nature and lacked details about when the nuisance occurred. Based on this, I find it was reasonable for the strata to request the Hanlons to provide specific times and dates of the smoking nuisance and evidence of which of their neighbours was allegedly causing it.
19. Mrs. Jo-Anne Hanlon asked the SL19 owner to meet with her in October 2022, which the owner did. The SL19 owner, who was also the strata council president at the time, acknowledged a friend of theirs who frequently visited SL19 smoked marijuana, but that neighbours outside the strata to the north also smoked marijuana. The owner alleges they told Mrs. Jo-Anne Hanlon that they would remind their friend not to smoke marijuana when the Hanlons were on their patio, but that when the Hanlons' patio was vacant, they could smoke marijuana at the entrance to SL19's patio. The SL19 owner says this was the arrangement they already had with their friend. The SL19 owner provided this information in a March 13, 2023 letter to the strata. Given the Hanlons did not object to the content of the March 13, 2023 letter, I find it is accurate.
20. In November 2022, a strata council member talked to Mrs. Jo-Anne Hanlon about marijuana smoke coming from SL17. I note details of the conversation were not provided in evidence and the Hanlons made no further complaints to the strata about marijuana smoke from SL17.
21. The Hanlons attended the next strata council meeting on December 7, 2022. A copy of Mrs. Jo-Anne Hanlon's written presentation was provided in evidence. The written

presentation went into greater detail about how the smoke affected Mrs. Jo-Anne Hanlon. It also confirmed the Hanlons had spoken to both immediate neighbours about marijuana smoke, suggesting the SL17 had agreed not smoke marijuana “on the premises in the future”.

22. The strata submitted a letter from a strata council member that contained a list of 19 dates when the smell of marijuana was alleged to be “very strong” around SL18. The logged dates are between November 24, 2022 and January 17, 2023 and the strata submits the SL19 guest was not visiting and the occupants of SL17 were not at home. The strata council member states in the letter that they were unable to determine the source of the marijuana with any certainty but believed it to be coming from the houses to the north of SL17, SL18, and SL19.
23. The Hanlon’s applied to the CRT for dispute resolution in January 2023.

Did the strata reasonably investigate the Hanlons’ marijuana smoke complaints?

24. SPA section 26 requires the strata council to exercise the powers and perform the duties of the strata, including bylaw enforcement. This includes a duty to enforce bylaws, such as the nuisance or noise bylaws in bylaw 3(1). When performing these duties, the strata council must act reasonably: see *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 at paragraph 237.
25. The SPA does not set out any procedures for assessing bylaw complaints. The bylaws are also silent on this process. The courts have held that a strata corporation may investigate bylaw contravention complaints as its council sees fit, so long as it complies with the principles of procedural unfairness and is not significantly unfair to any person appearing before the council. See *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148 at paragraph 52. In other words, the strata must also act reasonably when assessing bylaw complaints.
26. The strata’s investigation must also be objective as established in *The Owners, Strata Plan LMS 1162 v. Triple P Enterprises Ltd.*, 2018 BCSC 1502 at paragraph 33. In *Triple P*, the court found that nuisance in the strata corporation context is an

unreasonable interference with an owner's use and enjoyment of their property. Whether an interference is unreasonable depends on several factors, such as its nature, severity, duration, and frequency. The interference must also be substantial such that it is intolerable to an ordinary person. See *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64.

27. Here, I find the strata has acted reasonably. I take from the strata council member's letter that logged dates when the smell of marijuana was strong near SL18, that it attempted to determine the source of Hanlons' complaints. The letter suggests the council member determined the source was not SL17 or SL19 on the dates listed in the letter, which was not argued by the Hanlons. Through this preliminary investigation, I find the strata identified various sources of marijuana smoke, including from outside the strata's property. While the investigation appears to have been completed after the strata's November 14, 2022 letter, I find it was reasonable for the strata to ask the Hanlons to provide specific times and dates of the smoking nuisance and evidence of which neighbour was allegedly causing it. There is no evidence the Hanlons did this until March 2023, when the Hanlons submit they started keeping a log of marijuana smoke incidents that affected them. The Hanlons did not provide their log into evidence, nor did they say they gave it to the strata.
28. Based on the information the Hanlons provided to the strata, I find the strata could only determine the Hanlons were negatively affected by marijuana smoke and suspected their neighbours were the cause of their complaints. While there is evidence that occupants or visitors of SL17 and SL19 both smoked marijuana, I find the Hanlons have not proved that either of these strata lots are the source of their complaints. Specifically, I find they have not provided objective evidence that marijuana smoke from either SL17 or SL19 was unreasonable or substantial as required by the case law discussed above.
29. The Hanlons provided written statements from their grandson and daughter-in-law about an alleged incident of marijuana smoke in SL18 on March 5, 2023. I place little weight on the statements because I find both the grandson and daughter-in-law are not independent witnesses. Further, the grandson's statement only alleges marijuana smoke was present in SL18. It does not identify a source of the smoke. While the

daughter-in-law's statement implies SL19 was the source of the marijuana smoke, the statement only proves a single incident, which is not sufficient to establish nuisance.

30. I also place little weight on witness statements from 2 other strata lot owners. In both statements, the witnesses say they smell marijuana smoke when they walk past SL19, but that does not mean smoke from SL19 is the source of the Hanlon's complaint.

31. As mentioned, it is up to the Hanlons to prove their claim. Based on the foregoing, I find they have not. I dismiss the Hanlons' claim and this dispute.

32. Nothing in this decision restricts the Hanlons from filing a fresh dispute with the CRT about a future marijuana smoke nuisance.

CRT FEES AND EXPENSES

33. 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. Here, the Hanlons were not successful, and strata did not claim dispute-related expenses. Therefore, I make no order for CRT fees or dispute-related expenses.

34. Under section 189.4 of the SPA, the strata may not charge any dispute-related expenses against the Hanlons.

DECISION AND ORDER

35. I dismiss the Hanlons' claim and this dispute.

J. Garth Cambrey, Vice Chair