



Civil Resolution Tribunal

Date Issued: December 8, 2023

File: ST-2023-000054

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wood v. The Owners, Strata Plan VIS1673*, 2023 BCCRT 1076

B E T W E E N :

BRENDA JUNE WOOD

APPLICANT

A N D :

The Owners, Strata Plan VIS1673

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This strata dispute is about the removal of trellises from common property. Brenda June Wood owns a strata lot in The Owners, Strata Plan VIS1673 (strata). In the fall of 2022, the strata removed portions of 14 trellises from the common property. Mrs. Wood says the strata had repaired some of these trellises in 2021. She says their removal in 2022 was an unauthorized significant change to common property. She

asks for an order that the strata spend up to \$10,000 to replace the portions of the 14 trellises it removed. She also asks for an order that the strata repay \$3,000 to the contingency reserve fund, which she estimates was the cost of the 2021 trellis repairs that the strata removed and discarded in 2022.

2. The strata says it was authorized to remove the trellises under a resolution passed at the August 25, 2022 annual general meeting (AGM). The strata says that even if the resolution did not authorize it to remove the trellises, it was authorized to remove them as part of its duty to repair and maintain common property. It says removing the trellises was not a significant change to the common property.
3. Mrs. Wood is self-represented. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.

7. 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.
8. In her submissions Mrs. Wood says the strata clear cut some common property behind a strata lot in March 2023. She says this shows the strata's pattern of failing to follow the *Strata Property Act* (SPA). She also says the strata has failed to repair the pergola in front of her strata lot. However, Mrs. Wood did not raise these issues in the Dispute Notice. I find these issues are not properly before me, so I decline to consider them in this decision.

ISSUES

9. The issues in this dispute are:
 - a. Did the August 25, 2022 resolution authorize the strata to remove the 14 trellises from the common property?
 - b. If not, was the strata otherwise permitted to remove the 14 trellises from the common property?

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Mrs. Wood must prove her claims on a balance of probabilities, which means more likely than not. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision. For the following reasons, I dismiss Mrs. Wood's claims.
11. The strata was created in 1988. It is a residential strata with 20 townhouse-style strata lots in 7 separate buildings. The front yards of the strata lots are common property, although strata lot owners have historically maintained the gardens and landscaping in front of each of their respective strata lots. Until the fall of 2022, each strata lot had a pergola in its common property front yard with trellises attached.

12. In 2018 the strata filed a new set of bylaws with the Land Title Office which repealed and replaced all previously filed bylaws.
13. In the spring of 2021, Mrs. Wood was strata council president. She says at that time the strata discovered that many of the fences and other wooden structures on the common property were rotting. The strata decided to immediately repair the most seriously affected structures, and to complete the remainder of the repairs in 2022. The evidence shows the strata spent approximately \$5,300 on these repairs in June and July 2021. Mrs. Wood says some of the trellises were replaced as part of this work, but I find the invoices in evidence for this work do not specifically refer to the trellises.
14. On May 2, 2022, the strata received a \$5,170.44 estimate to complete the remainder of the wood structure repairs throughout the complex. The estimate says it was based on the discovery of rotting wooden structures in front of 13 strata lots during an April 25, 2022 inspection. I find it is unclear from this estimate what portion of the recommended work, if any, was related to repairing or replacing the trellises.
15. At the August 25, 2022 AGM, the owners passed a $\frac{3}{4}$ vote resolution for the strata to complete exterior repairs. The resolution stated:

Be it resolved by $\frac{3}{4}$ vote of the Owners of Strata Plan VIS 1673

- a. authorize and expenditure of up to \$10,000.00 to complete painting the trellis and pergola, and repair or replace the fence as needed
 - b. Grant discretion to the strata council to complete the work involved with the project
 - c. Approve significant changes to the use or appearance of the common property arising out of the project, pursuant to section 71 of the Strata Property Act
 - d. Approve up to \$10,000.00 to be taken from the Contingency Reserve Fund.
16. At the August 25, 2022 AGM the entire strata council resigned, including Mrs. Wood. A new strata council was elected. In September 2022 the new council reviewed the

May 2022 estimate for the exterior repairs project and decided to complete the exterior repair work using the expertise of volunteer owners. In September and October 2022, as part of the exterior repair project, the volunteer owners removed portions of the trellises in front of 14 strata lots. The volunteer owners asked Mrs. Wood if she wanted the trellises in front of her strata lot removed. She declined, so the volunteer owners did not remove them.

17. The October 25, 2022 council meeting minutes show that the strata spent approximately \$3,000 of the budgeted \$10,000 to complete the exterior repair project. The minutes say the volunteer owners had completed the work except for the pergolas and trellises in front of 2 strata lots, which they planned to complete the following spring. In an October 25, 2022 letter the strata notified the owners that it planned to hold a special general meeting (SGM) on November 29, 2022. The strata said it planned to propose a resolution at the SGM authorizing it to spend the \$7,000 balance of the exterior repair project budget on other common repairs and expenses.
18. On October 31, 2022, Mrs. Wood emailed the strata asking to add 3 points to the SGM agenda which indicated her disagreement with the trellis removals. Her letter stated that 4 other owners supported her request. On November 3, 2022, Mrs. Wood requested a hearing with the strata about its removal of the trellises. She also asked for the strata's agreement in writing to replace the trellises. The strata subsequently cancelled the November SGM.
19. The parties attended the hearing on November 28, 2022. On December 5, 2022, the strata sent Mrs. Wood its decision to schedule an SGM in early 2023 to propose a $\frac{3}{4}$ vote resolution about whether the strata should replace the trellises it removed. After Mrs. Wood started this dispute in January 2023 the strata cancelled its plans to hold the SGM.

Did the August 25, 2022 resolution authorize the strata to remove the 14 trellises from the common property?

20. The parties disagree about whether the wording of the August 25, 2022 resolution authorized the strata to remove the 14 trellises. Mrs. Wood says the resolution only permitted the strata to paint and repair the trellises, not to remove them. The strata says the resolution permitted it to remove the trellises because the resolution specifically gave it discretion to decide how to complete the work, and specifically authorized any significant changes to common property resulting from that work. The strata says the resolution should be interpreted liberally. The strata also says it acted on advice it received from the strata manager that the resolution authorized it to remove the 14 trellises.
21. For the following reasons, I find the resolution did not give the strata authority to remove the trellises. First, I find any advice the strata may have received from the strata manager is irrelevant. This is because the advice the strata received was not necessarily correct, and it was the strata's responsibility to act within the authority of the resolution, SPA, and bylaws regardless of any advice it received.
22. The resolution authorized the strata "to complete painting the trellis and pergola, and repair or replace the fence as needed". I find that on a plain reading of this sentence, the resolution only gave the strata authority to paint the trellises and pergolas, not to repair or replace them. I find it gave the strata authority to repair or replace only the fence. I find the comma in the middle of the sentence makes the distinction clear. I agree with the strata that the wording of the resolution gave it discretion to decide how to complete the work and permitted it to make significant changes to common property resulting from that work. However, I find that discretion and authority did not extend to removing the trellises since the work described in the resolution only refers to painting the trellises. So, I find the resolution did not permit the strata to remove the trellises.

Was the strata otherwise permitted to remove the 14 trellises from the common property?

23. Section 72 of the SPA requires the strata to repair and maintain common property and common assets. The strata says it was permitted to remove the 14 trellises as part of this duty. However, Mrs. Wood says the strata's removal of the trellises was an unauthorized significant change to the common property. The strata denies that the trellis removals were a significant change.
24. Section 71 of the SPA prohibits a strata from making a significant change in the use or appearance of common property unless the change is approved by a resolution passed by a $\frac{3}{4}$ vote at an annual or special general meeting, or unless there are reasonable grounds to believe that immediate change is necessary to ensure safety or prevent significant loss or damage.
25. The SPA does not define "significant change". However, in *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333, the BC Supreme Court set out the following criteria for deciding what is a significant change:
- a. Is the change visible to other residents or the general public?
 - b. Does the change affect the use or enjoyment of a unit or existing benefit of another unit?
 - c. Is there a direct interference or disruption because of the changed use?
 - d. Does the change impact the marketability or value of a strata lot?
 - e. How many units are in the strata and what is the strata's general use?
 - f. How has the strata governed itself in the past and what has it allowed?
26. Mrs. Wood says the strata's removal of 14 trellises is highly visible to other owners and to the public from the road or walkway. She submitted photos showing strata lots with and without trellises in their front yards. The strata says that by Mrs. Wood's own admission, she cannot see the front yards of the other strata lots from her strata lot. As noted above, each strata lot owner has historically maintained the gardens and

landscaping in their front yard, and each garden is undisputedly different. The strata says that because each front yard has different gardens, the removal of the trellises in front of the 14 strata lots is not very noticeable. Based on the photos in evidence, I agree with the strata that the change in the general appearance of strata lots with trellises removed is minimal. Mrs. Wood says that in the winter when gardens are not in bloom the change is more noticeable. However, she did not submit any winter photos of the front yards with trellises removed.

27. Mrs. Wood says the 14 strata lots without trellises in their front yard have lost the benefit of privacy, a noise barrier, and wind and snowdrift mitigation. She also says those owners are no longer able to use the trellises for physical support while walking or to rest heavy objects on. However, she did not submit any evidence to show that the owners who had trellises removed from their front yards lost any of these alleged benefits. Mrs. Wood does not claim that the removal of any of the trellises impacted her directly. The strata says that since some of the trellises were rotting and unsafe, they were not reliable supports for walking or resting objects on.
28. Mrs. Wood also says the yards with removed trellises look “unfinished”. She submitted an email from another owner who shares that opinion, though it is not clear whether that owner had the trellises removed from their front yard. However, I find that preference for trellises is highly subjective. The strata submitted statements from several other owners who said they preferred the look of their yard without the trellises. Some said it gave them better access to their gardens.
29. The strata says it only removed trellises in front of strata lots whose owners agreed to their removal. I understand from the strata’s evidence that the volunteer committee obtained these owners’ agreement informally. Mrs. Wood says one of the owners died in 2022 and their strata lot was in probate, so they could not have given their permission for the trellis removal. However, I find it is unclear from the evidence whether the trellises in that owner’s front yard were removed.
30. In balancing the *Foley* factors, I find the strata’s removal of the 14 trellises was not a significant change to the use or appearance of common property. I rely heavily on the

lack of evidence that any owners were negatively affected by the trellises' removal, aside from 2 owners who think the yards without trellises look unfinished. Although I find the change is visible to the public, I find the trellis removals caused relatively minor changes to the overall appearance of the front yards. I am also persuaded by the fact that owners have historically maintained their own landscaping and gardens in their common property front yards. There is also no evidence that the marketability of any strata lot has been negatively affected by the change.

31. Having found the strata's removal of the 14 trellises was not a significant change, I find I do not need to address whether the strata had reasonable grounds to believe the trellis removals were necessary to ensure safety or prevent significant loss or damage.
32. I turn now to whether the strata was permitted to remove the trellises as part of its duty to repair and maintain common property and common assets under section 72 of the SPA. Mrs. Wood argues it was not. She says the words "repair" and "maintain" do not include removal. She cites *Taychuk v. The Owners, Strata Plan LMS744*, 2002 BCSC 1638, in which the court adopted a definition of "repair" that did not include the word "remove". She also cites *Rettie v. Owners of Strata Plan LMS2429*, 2011 BCSC 1611 in which the court referred to a definition of "maintain" that did not include the word "remove". However, neither of these decisions involved a strata's removal of a trellis or other landscaping feature from common property. It is undisputed that the trellises in this case were purely aesthetic landscaping features. I find the repair and maintenance of landscaping necessarily involves some removal. In the circumstances, I find the strata was permitted to remove the trellises as part of its duty to repair and maintain common property under section 72 of the SPA.

33. I dismiss Mrs. Wood's claims.

CRT FEES AND EXPENSES

34. 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. Since Mrs. Wood was unsuccessful, I find she is not entitled to reimbursement of the \$225 she paid in CRT fees or the unspecified amount she claims for courier expenses and legal fees. The strata did not pay any CRT fees or claim any dispute-related expenses.

35. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mrs. Wood.

ORDER

36. I dismiss Mrs. Wood's claims and this dispute.

Sarah Orr, Tribunal Member