



# Civil Resolution Tribunal

Date Issued: December 19, 2023

File: ST-2022-007391

Type: Strata

Civil Resolution Tribunal

Indexed as: *Tai v. The Owners, Strata Plan EPS7516*, 2023 BCCRT 1114

**B E T W E E N :**

EDWARD TAI

**APPLICANT**

**A N D :**

The Owners, Strata Plan EPS7516

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This dispute is about an exterior shade screen.
2. The applicant, Edward Tai, owns strata lot 113 (SL113) in the respondent strata corporation, The Owners, Strata Plan EPS7516 (strata). The strata fined Mr. Tai for

failing to remove a shade screen from the balcony outside SL113 because the strata said Mr. Tai installed the screen without its permission. Mr. Tai later uninstalled it.

3. Mr. Tai argues that the developer installed the shade screen before he took possession of SL113. So, Mr. Tai says the screen was common property, and he did not need the strata's approval for it. Mr. Tai seeks orders that he be permitted to re-install the screen, and that the strata pay all expenses related to removing and re-installing it. Mr. Tai also wants the strata to reverse \$3,200 in unpaid fines and refund a further \$400 in paid fines.
4. The strata says Mr. Tai failed to prove the developer installed the screen or that it was otherwise authorized. So, the strata says it properly imposed the bylaw fines and demanded that Mr. Tai remove the screen.
5. Mr. Tai 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). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must act fairly and follow the law. It must also recognize any relationships between the 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.
9. Mr. Tai provided evidence and submissions about other allegations that he had breached the bylaws, including alleged unauthorized access of a construction area, improper use of common property electrical outlets, and parking his vehicle in a loading bay area, among others. Mr. Tai requests in his final reply submissions an order that the strata “remove all other unsupported warnings and fines” imposed against SL113. Mr. Tai also alleges the strata has failed to enforce the bylaws against other owners. However, none of these other allegations or the requested order were raised in the Dispute Notice. Therefore, I find it would be procedurally unfair to consider them in this dispute. I have not addressed any alleged bylaw infractions below that do not relate to the shade screen.

## **ISSUES**

10. The issues in this dispute are:
  - a. Was the shade screen an unauthorized alteration?
  - b. Should Mr. Tai be permitted to re-install the shade screen?
  - c. Must the strata reverse the bylaw fines imposed for the shade screen?

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, the applicant Mr. Tai must prove his claims on a balance of probabilities (meaning “more likely than not”). I have read all of the parties’ evidence and submissions, but I refer only to what I find is necessary to explain my decision.
12. The strata was created in June 2021. It consists of 140 strata lots in a high-rise residential tower and some townhouses.

13. The strata's developer filed a notice of different bylaws in the Land Title Office on June 1, 2021, which replaced the standard bylaws in the *Strata Property Act* (SPA). The strata filed subsequent bylaw amendments on December 23, 2022, which I find are not relevant to this dispute. I discuss the relevant bylaws as necessary below.
14. Mr. Tai is SL113's first owner, having bought it from the developer. Mr. Tai took possession of SL113 on July 17, 2021. SL113 is on the tower's 16<sup>th</sup> floor. The strata plan shows there is a balcony that wraps around the outside of the north side and part of the west side of SL113. The balcony is designated as limited common property (LCP) for SL113's exclusive use.
15. The shade screen that is the subject of this dispute was installed on the balcony outside SL113. It was a retractable screen mounted onto the bottom of the balcony above SL113. I infer that when pulled down, the screen provided shade for the balcony's north facing side and one of SL113's west facing windows.

***Was the shade screen an unauthorized alteration?***

16. As noted, the strata fined Mr. Tai because it says he installed the shade screen on LCP without the strata's approval. The strata relied on bylaw 9.1, which says an owner must obtain the strata's written approval before making an alteration to common property, including LCP.
17. Mr. Tai says that the developer installed the screen on the balcony before he had possession of SL113. So, it is Mr. Tai's position that the screen was common property, and he should be entitled to keep it.
18. Mr. Tai provided several documents related to his purchase of SL113, including the contract of purchase and sale, a letter confirming his possession date, diagrams of SL113's layout, and several emails between Mr. Tai and the developer about custom upgrades and changes to SL113's original plans that Mr. Tai requested before the purchase completion. I find that none of these documents mention a shade screen on the balcony. Specifically, I find there is no evidence that Mr. Tai requested the

developer install a shade screen, nor do any of the developer's documents suggest a shade screen was planned for or installed on the balcony.

19. The only supporting evidence Mr. Tai provided that the developer might have installed the shade screen before he had possession of SL113 is a photo taken at 1:35 pm on July 17, 2022. The photo was taken on the balcony and shows the screen already installed. A July 2, 2021 letter from the developer stated that Mr. Tai would have possession of SL113 at 12:00 pm on July 17, 2022. Mr. Tai argues that 1.5 hours was not enough time for him to meet with the agent, sign paperwork, obtain keys, review the strata lot for deficiencies, and install the shade screen, before taking the photo.
20. When Mr. Tai alleged that the developer installed the screen, the strata contacted the developer. In a September 16, 2022 email, the developer stated that it had "not supplied nor installed" the fixture seen in the strata's photo, referring to the shade screen. Further, in a February 17, 2023 email, Mr. Tai also asked the developer to confirm it had installed the shade screen, and the developer responded that it could not find any record of it installing the screen.
21. I acknowledge that it seems unusual for an owner to install a shade screen on the balcony immediately upon getting possession of their new strata lot. However, there is simply no evidence that the developer installed the screen on the balcony for SL113 before the possession date, as Mr. Tai alleges. No other balconies in the strata have such a shade screen. I find there is no reasonable explanation for the developer to have installed a screen only for SL113 with no record of it doing so and no record of Mr. Tai requesting it. I also note that Mr. Tai provided no evidence from his real estate agent or anyone else present in SL113 on the July 17, 2022 possession date to support his version of events.
22. As noted, Mr. Tai bears the burden to prove the developer installed the shade screen on the balcony before he had possession of SL113. I find he has failed to do so. Therefore, I find the screen was not part of the common property.
23. As the shade screen was undisputedly screwed into the balcony ceiling and intended to be permanently affixed, I find it constituted an alteration to common property. Bylaw

9.1 requires such alterations to have the strata's written approval. I accept the strata's evidence that the strata did not provide its written approval for the screen, which Mr. Tai does not dispute. So, I find that Mr. Tai breached bylaw 9.1 by installing the screen without the strata's approval to do so.

***Should Mr. Tai be permitted to re-install the shade screen?***

24. Mr. Tai's request that he be permitted to re-install the shade screen was based on his argument that the screen was installed by the developer and, therefore, common property. As I have found that position unproven, Mr. Tai requires the strata's approval to alter the LCP balcony by installing the shade screen. In the circumstances here, I find it would be inappropriate to interfere with the strata's discretion to approve such a request to alter common property.
25. Further, I find that the shade screen likely constitutes a significant change to the appearance of common property under section 71 of the SPA. This means that the owners must first pass a  $\frac{3}{4}$  vote resolution at an annual or special general meeting before the strata can approve such an alteration. For these reasons, I decline to order that Mr. Tai be permitted to re-install the shade screen.

***Must the strata reverse the bylaw fines imposed for the shade screen?***

26. As I have found Mr. Tai breached bylaw 9.1 by installing the shade screen without the strata's approval, I find the strata was entitled to take steps to remedy the contravention, including imposing fines.
27. Section 135 of the SPA sets out the procedural requirements a strata corporation must follow when imposing bylaw fines. Section 135(1) says that a strata corporation cannot impose a fine unless it has first received a complaint, given the owner the details of the complaint, in writing, and given the owner a reasonable opportunity to respond to the complaint, including by holding a hearing if requested. Section 135(2) requires the strata to notify an owner in writing as soon as feasible of its decision to impose fines. Section 135(3) says that once the strata has complied with these

procedural steps, it may impose a fine for a continuing contravention of that bylaw without further compliance with section 135.

28. These procedural requirements are strict, with no leeway. If the strata does not strictly comply with section 135, the resulting fines are invalid. See *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449, and *The Owners, Strata Plan NW 307 v. Desaulniers*, 2019 BCCA 343.
29. Mr. Tai did not expressly argue that the strata failed to comply with SPA section 135 when imposing the fines. However, he says the strata's correspondence was confusing because it first alleged a bylaw contravention, then issued a warning, and then changed its mind and issued a fine.
30. For the reasons that follow, I find the strata complied with SPA section 135, and so the bylaw fines it imposed were valid.
31. The strata issued an initial bylaw infraction notice on September 13, 2022, setting out the complaint and providing an opportunity for Mr. Tai to respond. Mr. Tai responded with much of the same documentation he provided in this dispute, including the July 17, 2022 photo. It was then that the strata contacted the developer and confirmed the developer did not accept responsibility for the shade screen.
32. The strata then issued a second infraction notice to Mr. Tai on October 6, 2022. I find this letter also sufficiently described the complaint. It referred to bylaw 9.1 and demanded that Mr. Tai remove the shade screen and restore the area to its original condition by October 30, 2022, failing which the strata would do the repairs and charge the costs back to SL113. The letter provided Mr. Tai with the opportunity to answer the complaint before the strata would decide whether to impose a fine, including fines every 7 days for a continuing contravention.
33. In a November 17, 2022 decision letter, the strata confirmed it had met and decided to issue a \$200 fine for breach of bylaw 9.1. This letter also referred to bylaw 29.1, which permits the strata to impose a fine every 7 days for a continuing bylaw contravention.

34. I find that the strata's October 6 and November 17 letters show it complied with SPA section 135. Therefore, I find the strata's initial fine imposed on November 17, 2022, was valid. This means the strata was entitled to impose fines for a continuing contravention without further compliance with section 135.
35. On December 2, 2022, the strata issued another decision letter. It referred to the strata's September 13, 2022 infraction notice, before the strata had received Mr. Tai's and the developer's evidence about when the shade screen was installed. The letter stated that the strata had met and decided to issue a warning not to repeat the contravention again. It did not refer to the November 17, 2022 letter or the initial fine imposed. While a decision to issue a warning after imposing a fine was potentially confusing, I find this letter did not invalidate the fine imposed on November 17, 2022, nor the strata's entitlement to impose fines for a continuing contravention.
36. In any event, the strata did not impose further fines for a continuing contravention at that time. It first issued another infraction notice on December 14, 2022, and stated the contravention of bylaw 9.1 remained ongoing as of November 23, 2022. I find that the letter complied with SPA section 135(1). The strata then sent a January 17, 2023 letter, following a strata council meeting. It stated the strata had decided to uphold their decision to impose a fine for the unauthorized common property alteration, and that it would continue to issue a \$200 fine every 7 days until the alteration was removed and repaired. I find that this letter complied with SPA section 135(2).
37. So, even if Mr. Tai was confused by the strata's December 2, 2022 letter about a warning, I find the strata remedied that confusion through its December 14, 2022 and January 17, 2023 letters. That is, I find the strata essentially started the fine process again, and that it complied with SPA section 135 before imposing the next fine on January 17, 2023.
38. Mr. Tai's strata lot account shows the initial \$200 on November 17, 2022, and then further \$200 fines imposed every 7 days from January 17, 2023, to April 25, 2023, when Mr. Tai removed the shade screen. This totals \$3,200 in fines. Mr. Tai undisputedly paid \$400, which leaves \$2,800 in unpaid fines. As I have found the



strata complied with the procedural requirements in SPA section 135, I find the fines were validly imposed for Mr. Tai's breach of bylaw 9.1. I dismiss Mr. Tai's claims for a \$400 refund and for the strata to reverse the unpaid fines.

39. The strata requested an order that Mr. Tai pay the outstanding fines. While the strata initially filed a counterclaim, it decided to withdraw it before Mr. Tai filed a response. As there is no counterclaim before me, I decline to make an order that Mr. Tai pay the outstanding fines.

## **CRT FEES AND EXPENSES**

40. 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. As Mr. Tai was unsuccessful, I find he is not entitled to any reimbursement. The strata did not pay any fees or claim dispute-related expenses, so I make no order.
41. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Tai.

## **ORDER**

42. I dismiss Mr. Tai's claims, and this dispute.

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Kristin Gardner, Tribunal Member