Civil Resolution Tribunal

Date Issued: December 20, 2023

Files: ST-2022-004325,
ST-2022-005368, and
ST-2022-005370

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan BCS 1955 v. Topliss*, 2023 BCCRT 1118

B E T W E E N :

The Owners, Strata Plan BCS 1955

APPLICANT

A N D :

PETER TOPLISS AND FRANCES TOPLISS

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This strata property dispute is a about alleged unauthorized alterations and bylaw fines. It involves 3 linked disputes (ST-2022-004325, ST-2022-005368 and ST-2022-005370) with the same parties, so I have issued a single decision.

2. The respondent, Frances Topliss, owns strata lot 4 (SL4) in the applicant strata corporation, The Owners, Strata Plan BCS 1955 (strata). The respondent, Peter Topliss, lives with Mrs. Topliss in SL4. He is not an owner and is identified as a tenant in the Dispute Notice. The respondents had a lawyer when submitting arguments and evidence. First, Timothy S. Bhullar and then Chandi Ghei. I understand the respondents are now self represented. A strata council member represents the strata.

3. In dispute ST-2022-004325, the strata argues the respondents installed 5 skylights in the roof of SL4 without its approval contrary to the strata's bylaws. The strata seeks an order that the respondents remove the 5 skylights and return the roof to its previous condition, which the strata values at $25,000. The strata also seeks an order the respondents pay it $2,200 in fines.

4. The respondents deny the strata's claims and argue the strata misinterpreted their request. In submissions, the respondents argue they were treated significantly unfairly because the strata did not give a reason for denying their request and did not give them a council hearing. I infer the respondents ask the CRT to dismiss the strata's claims. I note the respondents did not file a counterclaim to retain the additional skylights.

5. In dispute ST-2022-005368, the strata argues the respondents do not store their garbage containers within SL4, contrary to bylaw 3.1.3. The strata seeks orders that the respondents store all garbage containers out of sight in compliance with the strata's bylaws and pay it fines of $3,000.

6. The respondents deny the strata's claims. I infer they ask the CRT to dismiss them.

7. In dispute ST-2022-005370, the strata argues the respondents installed a fireplace in SL4's garage and a chimney through the SL4 roof without its approval, contrary to the strata's bylaws. The strata seeks orders that the respondents remove the fireplace and chimney and return the roof to its previous condition, which the strata values at $25,000. The strata also seeks an order the respondents pay it fines of $3,000.

8. The respondents deny the strata's claims. The evidence is that the respondents admit to installing a fireplace and chimney in the garage. I infer they ask the CRT to dismiss the strata's claims. I again note the respondents did not file a counterclaim.

9. As explained below, I largely find in favour of the strata, except I dismiss all but $400.00 of the strata's bylaw fine claims.

JURISDICTION AND PROCEDURE

10. 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.

11. 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.

12. 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.

Preliminary Decision

13. Neither of the respondents submitted their evidence and arguments by the CRT's initial deadline in February 2023. Based on an application from Ms. Gei, the respondents' lawyer at the time, the CRT issued a preliminary decision on June 20, 2022. In that decision, a CRT vice chair granted Mr. Topliss an extension until July

24, 2023 to submit his evidence and arguments because of his recently identified medical condition, which required hospitalization.

14. The respondents' lawyer made submissions on behalf of both respondents in October 2023. The strata did not make further objections about the respondents' submissions, including the late timing, except in its reply submissions. Given the CRT's mandate calls for informal and flexible dispute resolution and that the strata provided final reply submissions, I find there is no procedural fairness issue and I accept the parties' submissions. I have therefore decided this dispute on its merits.

ISSUES

15. The issues in each of these linked disputes are:

    a. Did the respondents obtain approval under the bylaws?

    b. Did the strata treat the respondents significantly unfairly?

    c. What must the respondents do if anything?

    d. What amount of fines, if any, must the respondents pay the strata?

16. An additional issue in dispute ST-2022-005368 is whether the strata is out of time under the *Limitation Act* to file its claim.

BACKGROUND, EVIDENCE, AND ANALYSIS

17. As applicant in a civil proceeding such as this, strata must prove its claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' submissions and evidence but refer only to information I find relevant to explain my decision. I note the respondents did not provide any evidence, despite being given the opportunity to do so. I also note the respondents made essentially identical arguments in all 3 disputes, except as noted. I will first set out the background and the law, and then separately address the 3 disputes.

18. The strata was created in October 2006 under the *Strata Property Act* (SPA). It

contains 44 strata lots in 22 buildings. Each building contains 2 strata lots. The strata plan shows SL4's garage is part of the strata lot. The strata plan also shows the roof of SL4 and the land between the buildings is common property.

19. The strata filed a complete new set of bylaws with the Land Title Office on September 26, 2016, which I find are the bylaws applicable to this dispute. Bylaw amendments filed later do not apply.

The law on significant unfairness

20. The CRT has authority to make orders remedying a significantly unfair act or decision by a strata corporation under section 123(2) of the CRTA. The legal test for significant unfairness is the same for CRT disputes and court actions. See *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113.

21. As discussed in *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, strata corporations must often utilize discretion in making decisions which affect various owners or tenants. At times, the strata corporation's duty to act in the best interests of all owners is in conflict with the interests of a particular owner, or group of owners. Following *Reid*, this means in order for the CRT to intervene, a strata corporation must act in a significantly unfair manner, resulting in something more than mere prejudice or trifling unfairness. Conduct may be significantly unfair to one owner even if it benefits a majority of other owners.

22. The basis of a significant unfairness claim is that a strata corporation must have acted in a way that was "burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable." See *Reid, Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, and *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173.

23. In *Dollan*, the BC Court of Appeal established the following reasonable expectations test:

    a. Examined objectively, does the evidence support the asserted reasonable expectations of the owner?

b. Does the evidence establish that the reasonable expectation of the owner was violated by the action that was significantly unfair?

24. In *Kunzler*, the Court determined the reasonable expectations test set out in *Dollan* is not determinative. Rather, the Court found the test is a factor in deciding whether significant fairness has occurred, together with other relevant factors, including the nature of the decision in question and the effect of overturning or limiting it.

The law about bylaw fines

25. SPA section 135 sets out procedural requirements the strata must follow to impose fines for a bylaw contravention. Under SPA section 135(1), before imposing fines, the strata must have received a complaint and given the owner and tenant written particulars of the complaint and a reasonable opportunity to answer the complaint, including a hearing if one is requested. Under section 135(2), the strata must give the owner written notice of its decision to impose fines "as soon as feasible". SPA section 135(3) says that once the strata has complied with these procedural steps, it may impose fines or penalties for a continuing contravention without further compliance with the steps. If a strata corporation fails to strictly follow these procedural requirements, the bylaw fines can be found to be 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.

26. In *Cheung v. The Owners, Strata Plan VR 1902*, 2004 BCSC 1750, the court found that a procedural error under section 135 of the SPA may be corrected by reversing the fines, and essentially re-starting the section 135 requirements.

27. The court has also found that continuing fines under section 135(3) are invalid if the strata does not follow the procedural steps under sections 135(1) and (2). See *Dimitrov v. Summit Square Strata Corp*., 2006 BCSC 967, at paragraph 33.

Dispute ST-2022-004325 – Skylights

28. The respondents argue the roof is part of SL4 but, as I have noted, the strata plan clearly identifies the roof above SL4 as common property. Bylaw 3.1.8 addresses alterations to common property. I summarize the relevant subsections of bylaw 3.1.8:

    a. A resident must obtain the written approval of the strata council before making an alteration to common property.

    b. The strata council may require as a condition of its approval that the owner agree, in writing, to take responsibility for any expenses relating to the alteration, to obtain all required permits and approvals of all governmental authorities, and to provide, at the request of the strata council, evidence of appropriate insurance coverage relating to the alteration.

    c. Any alteration made without approval may be restored or removed by the strata council and any costs incurred shall forthwith be paid by the resident.

29. The respondents purchased SL4 in October 2021. At some point they requested permission to install a skylight in the roof above the kitchen and main bathroom. On February 15, 2022, the strata manager wrote to the respondents and confirmed the respondents' request to install the skylights was approved subject to the respondents obtaining "proper permits", "construction insurance", and hiring "trade certified contractors". The letter enclosed a form entitled "Assumption of Liability Agreement for Modifications to Strata Lots and Common Property" (alteration request form). The alteration request form had the respondents' names handwritten in the blank section for owners' names and a handwritten request to "put a skylight above the kitchen and master bathroom" for the requested alteration.

30. The alteration request form also contained 2 blank signature lines for the respondent owners. The strata manager signed the form on the strata's behalf. I conclude the respondents initially submitted a partially completed alteration request form to the strata for approval, and that the strata manager signed the submitted form authorizing the requested alterations. Nothing turns on the fact the respondents did not sign the

form because the strata clearly accepted the request was from the respondents, and the respondents proceeded with their alterations on that basis.

31. On April 8, 2022, the strata manager wrote to the respondents advising, among other things, that they had installed 7 skylights when only 2 were approved, contrary to bylaw 3.1.8. The letter said the strata council had not and would not approve the additional 5 skylights and asked the respondents to remove the unauthorized skylights and restore the common property roof. The strata gave no reasons for denying the additional skylights. Finally, the letter advised the respondents they had 14 days to respond under SPA section 135, failing which the strata may impose a $200 fine.

32. On April 15, 2022, Mr. Topliss wrote to the strata manager and apologized for installing the additional skylights. He said Mrs. Topliss expected the skylights would be 2 feet by 4 feet, which was not possible because of the roof structure. Mr. Topliss said they proceeded to install 2 smaller skylights measuring 2 feet by 2 feet since the they had already accepted responsibility for the roof. Mr. Topliss admitted they were unfamiliar with strata corporations and said that Mrs. Topliss had medical conditions that required additional natural light in SL4. Mr. Topliss asked the strata to reconsider approving the additional skylights and said they would take responsibility for the roof, which I understand to mean they would accept responsibility for installation of the additional skylights.

33. On April 25, 2022, the strata manager wrote to the respondents and began imposing fines for the respondents' failure to obtain the strata's approval for the 5 additional skylights, which I discuss below. The letter did not acknowledge Mr. Topliss' April 15, 2022 email, even though the strata manager acknowledged receipt of the email on April 18, 2022. The April 25, 2022 letter also advised of the potential of continuing fines under bylaw 6.1.2.

34. On April 27, 2022, the strata manager wrote another letter imposing additional fines. The strata manager acknowledged Mr. Topliss' April 15 email and said the strata council had reviewed it and denied the additional unapproved alternations. Again, the strata did not give any reasons for denying the additional skylights.

35. On May 9, 2022, the strata manager wrote to the respondents to impose additional fines and gave the respondents until May 15, 2022 to remove the 5 additional skylights and restore the common property roof. The strata manager wrote another similar letter on June 6, 2022. In June and July 2022, the parties' lawyers exchanged correspondence, which did not resolve the issues.

Did the respondents obtain proper approval?

36. It is clear the respondents obtained approval for the installation of 2 skylights - 1 above the kitchen and 1 above the main bathroom. I note that neither party mentioned the size of the skylights in the original request or approval. It is also clear the strata required the respondents to obtain permits and insurance for the alterations, to use certified contractors and to provide any required documents to the strata. I understand the respondents have not yet provided the requested documents to the strata and it is unclear whether the respondents actually obtained the documents.

Significant unfairness

37. SPA section 26 requires the strata council to exercise the powers and perform the duties of the strata, including bylaw enforcement. 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.

38. The courts have also held that a strata corporation may investigate bylaw 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.

39. As noted, the respondents say the strata treated them significantly unfairly because it did not give a reason for denying their request and did not give them a council hearing. Based on the evidence, I find it clear that the strata denied the respondents' request for the additional 5 skylights because the respondents did not request permission to install them as required under bylaw 3.1.8 noted above. The respondents argue that where a bylaw gives a strata council discretion to allow or disallow a request, the strata council must have a justifiable reason for refusing

permission citing *Maslek et al v. The Owners, Strata Plan LMS 2778*, 2018 BCCRT 106. For the reasons that follow, I disagree with the respondents, and I find the strata has not treated them significantly unfairly.

40. In *Maslek*, the CRT was asked to decide a pet bylaw dispute. In essence the strata was found to have acted significantly unfairly because it interpreted its bylaws incorrectly, stating it had no ability to grant permission for the pets, when in fact it did. That was the reason the CRT found the strata corporation acted significantly unfairly. I do not agree with the respondents' interpretation that *Maslek* suggests a strata council must have a justifiable reason for refusing permission.

41. To the extent the respondents argue the strata did not give a substantive reason for denying their additional skylight request, I find the strata is not obligated to do so under the SPA or its bylaws.

42. While this dispute is also about a strata corporations' ability to exercise discretion under its bylaws, I find the respondents expectations that the strata approve 5 additional skylights was not reasonable. I appreciate the respondents were unfamiliar with the strata's operation when they purchased SL4. However, as the strata says, the respondents made their skylight application in compliance with the strata's bylaws and the alteration request form says they have read and agree to comply with the bylaw. Therefore, I find the respondents were aware of or ought to have been aware of the bylaws. I find it was not reasonable to expect the strata to approve 5 additional skylights, especially considering the respondents did not provide the permits and other documents required as a condition of the strata's approval for the 2 skylights. Further, the respondents did not amend their approval request when they discovered they wanted more light with additional skylights. Rather, the respondents proceeded to install the additional skylights knowing they needed the strata's approval.

43. As for the respondents' suggestion the strata's denial of a council hearing was significantly unfair, the strata advised the respondents they had an opportunity to request a hearing in the strata's April 8, 2022 letter. They chose to respond by email on April 15, 2022 and did not request a hearing. It was not until a June 6, 2022 letter

from the respondents' lawyer that the respondents requested a hearing. I discuss the hearing request below when I consider the fines.

44. I also find the respondents' reason that additional skylights were necessary is unproven. There is no evidence of Mrs. Topliss' medical condition, such as a doctor's note. The respondents' explanation about the size of the skylights also does not make sense. From the photographs provided, 4 of the 7 skylights appear to be 2 feet by 4 feet and 3 appear to be 2 feet by 2 feet. This does not align with Mr. Topliss' explanation that they intended on installing 2 – 2 foot by 4 foot skylights and then changed to 4 – 2 foot by 2 foot skylights. That explanation does not account for 3 skylights that were installed elsewhere on the roof.

45. For these reasons, I find the strata did not treat the respondents significantly unfairly.

What must the respondents do?

46. Given my findings above, the respondents must remove the 5 unapproved skylight alterations and restore the roof to its original condition. They must do this at their cost within 6 months of the date of this decision. They are also liable for any damage that occurs as a result of the alterations in the intervening time. If the respondents do not complete this work as ordered, the strata may do so under its bylaw 3.1.8(c) and charge all reasonable related costs to the respondents. The respondents must pay the charged costs within 30 days of being notified.

Bylaw fines

47. I note correspondence about fines addressed all alleged bylaw infractions in this dispute plus 1 other about a fence installation. The fence installation issue is not before me.

48. As mentioned, the strata manager wrote to the respondents on April 8, 2022 about the unapproved skylights. They asked the respondents to remove the skylights and restore the roof. The letter gave the respondents 14 days to respond or request a hearing, failing which the strata could impose a $200 fine. The respondent emailed their response to the strata manager on April 15, 2022, within the 14-day period, asking that the strata reconsider. The strata manager wrote to the respondents on

April 25, 2022, that a $200 fine was imposed. That letter did not mention the respondents' April 15, 2022 email. On April 27, 2022, 2 days later, the strata manager wrote a similar letter to the respondents stating that a $200 fine was imposed, but this time confirmed the strata had considered their April 15, 2022 email and denied the additional unapproved alternations. On my review of the account information provided for SL4, I find only 1 $200 fine was imposed for the skylights on May 1, 2022, which I find was consistent with SPA section 135 and *Terry,* and therefore valid.

49. The strata's April 27, 2022 letter advised the respondents that bylaw fines could be imposed every 7 days if the bylaw violations continued. It requested the respondents remove the 5 additional skylights by May 15, 2022. However, on May 9, 2022, the strata manager wrote to the respondents that the skylights had not been removed, so the strata would continue with imposing fines of $200 for each bylaw contravention every 7 days as permitted under its bylaw 6.1.2. Because the strata had given the respondents until May 15, 2022 to remove the skylights, I find the May 9, 2022 fine is invalid. Following *Dimitrov,* I also find any continuing bylaw fines are invalid.

50. I also note the respondents' lawyer requested a council hearing on behalf of the respondents on June 21, 2022. On the same day, the strata's lawyer denied the request for a hearing because they said the time for a hearing had passed. SPA section 34.1 addresses requests for council hearings. It says in part that upon a written request from an owner, the strata must hold a hearing within 4 weeks of the request. Section 34.1 is not discretionary. So in addition to my finding above that all bylaw fines after April 27, 2022 are invalid, I note the strata also contravened SPA section 34.1 when it refused to hold a council hearing. That is another reason I would find ongoing bylaw fines invalid.

51. For these reasons, I find the respondents must pay the strata $200 in bylaw fines for the installation of the 5 additional skylights. I dismiss the strata's claim for all additional fines.

Dispute ST-2022-005370 – Fireplace and Chimney

Did the respondents obtain proper approval?

52. In the same April 8, 2022 letter noted above, the strata noted the respondents installed a chimney pipe through the SL4 roof and a fireplace in the SL4 garage. It said the respondents completed both alterations without the strata's approval as required under the bylaws. The strata asked the respondents to remove the fireplace and chimney and restore the roof to its original condition.

53. There is no evidence the respondents requested approval to install the fireplace and chimney. In their April 15, 2022 email response, the respondents stated the garage was cold and that Mrs. Topliss uses it as an office and workout space. They admitted installing the fireplace and said that it was approved by the municipality.

54. The strata's April 27, 2022 letter also stated the fireplace was installed contrary to bylaw 3.1.3(e) which requires an owner to obtain approval to alter their strata lot if that alteration may materially increase the risk of fire or interfere with a fire prevention system. The letter also cited bylaw 3.1.8 about common property alterations. The strata requested the fireplace and chimney be removed by May 15, 2022

55. The chimney installation is clearly an alteration to the common property roof and bylaw 3.1.8 applies. Given the respondents did not request the strata's approval to install it, I find they contravened bylaw 3.1.8(a).

56. The fireplace installation is not an alteration to common property. It is an alteration to SL4. So, I agree with the strata that bylaw 3.1.3(e) applies as noted above and that the respondents were required to obtain the strata's permission under that bylaw.

57. I also find bylaw 3.1.7 applies, which is about alterations to a strata lot. I summarize the relevant subsections of bylaw 3.1.7 as follows:

    a. An owner must obtain the written approval of the strata council, which may be arbitrarily withheld, before making an alteration to a strata lot that involves the exterior of a building, among other things that do not apply here, and

b. Any alteration or improvement made by a resident without approval may be restored or removed by the strata council and any costs incurred shall be paid by the resident.

58. Although the type of fireplace the respondents installed is not identified, it was clearly a type that required venting through the roof. Therefore, I find the fireplace installation involved the building exterior (roof) and is captured by bylaw 3.1.7(a). As a result, the fireplace installation required the strata's approval, which the respondents did not obtain.

59. For these reasons, I find the respondents breached bylaws 3.1.3(e), 3.1.7(a) and 3.1.8(a) when they installed the fireplace and chimney.

Did the strata treat the respondents significantly unfairly?

60. Given the respondents acted contrary to the bylaws by not obtaining approval to install the fireplace and chimney, I find the strata did not treat them significantly unfairly by refusing to allow the alterations. I say this because I do not find the strata's refusal meets the definition of significant unfairness set out in *Reid, Dollan and Kunzler* as burdensome, harsh, wrongful, done in bad faith, unjust or inequitable.

61. In addition, the respondents' expectations the strata would approve the fireplace and chimney alteration after the fact, was not objectively reasonable given the strata's bylaw about fire safety concerns. Therefore, the strata's decision is not captured by the reasonable expectations test in *Dollan*.

62. As for the respondents' argument the strata failed to present alternative acceptable ways to heat their garage, that is not the strata's responsibility. Had the respondents properly followed the bylaws and sought the necessary approval, it is possible a different method of heating the garage could have been explored if the strata did not approve what they installed.

What must the respondents do?

63. The respondents must remove the chimney from the SL4 roof and restore the roof to its original condition. As with the unapproved skylights, they must do this at their cost

within 6 months of the date of this decision. The respondents are also liable for any damage that occurs as a result of the chimney alteration before the roof is restored. If the respondents do not complete this work as ordered, the strata may do so under its bylaws 3.1.7(j) and 3.1.8(c) and charge all reasonable related costs to the respondents. The respondents must pay the charged costs within 30 days of being notified.

64. As for the fireplace itself, I order the respondents to either remove it or make it non-operational at their expense and provide the strata with appropriate proof within 30 days of the date of this decision. I consider a letter from a qualified contractor that the fireplace is non-operational is sufficient proof.

Bylaw fines

65. As noted, correspondence about fines addressed all alleged bylaw infractions in this dispute. For the same reasons noted in Dispute ST-2022-004325 above, I find the respondents must pay $200 for installing the fireplace and chimney without the strata's approval, contrary to bylaws 3.1.3(e), 3.1.7(a) and 3.1.8(a). I dismiss the strata's claim for all additional bylaw fines.

Dispute ST-2022-005368 – Garbage Containers

66. Bylaw 3.1.3(c)(V) says a resident must not keep trash, rubbish, waste material or other garbage except in proper receptacles within the strata lot until removed and not in the common property except as may be approved by the strata council.

67. Bylaw 3.1.3(c)(VI) all garbage receptacles must be kept stored and out of sight until garbage collection day.

68. The strata says the respondents keep trash cans on common property contrary to its bylaws. It says the bylaws require them to keep their containers inside their garage. The respondents argue the strata's claim is out of time because they became aware of the claim in March 2020, so the limitation period has expired. They say the strata has treated the respondents significantly unfairly, although they did not clearly identify

what the significant unfairness was. They also say the strata's claim is false and ill-founded.

Limitation Period

69. I infer the respondents' argument about the limitation period is in reference to the *Limitation Act.* Section 13 of the CRTA confirms the *Limitation Act* applies to CRT claims. The basic period to file a claim is 2 years after the claim is "discovered". At the end of the 2-year limitation period, the right to bring a claim disappears. A claim is "discovered" on the first day the person (here the strata) knew, or reasonably ought to have known, that the loss or damage occurred, that it was caused or contributed to by an act or omission of the person against whom the claim may be made (here the respondents), and that a court or tribunal proceeding would be an appropriate way to remedy the damage.

70. Section 1 of the *Limitation Act* defines "claim" to mean a claim to remedy an injury, loss or damage that occurred as a result of an act or omission. I find the strata's claim for the respondents to properly store the garbage containers is not captured by that definition. I also note the courts have determined a bylaw fine under the SPA is a penalty and is not caught by the *Limitation Act* because a claim under the *Limitation Act* does not include a penalty. See *The Owners, Strata Plan KAS 3549 v. 0738039 B.C. Ltd.*, 2015 BCSC 2273, affirmed *The Owners, Strata Plan KAS 3549 v. 0738039 B.C. Ltd.*, 2016 BCCA 370.

71. For these reasons, the *Limitation Act* does not apply to this claim.

Did the respondents obtain proper approval?

72. There is no evidence the respondents requested permission to keep their garbage containers outside their strata lot. So, bylaws 3.1.3(c)(V) and (VI) apply and require the respondents to keep their containers inside their strata lot except when the garbage is picked up.

Did the strata treat the respondents significantly unfairly?

73. It is unclear why the respondents say the strata treated them significantly unfairly. I infer it is because the strata fined them for leaving their garbage containers on common property contrary to bylaw 3.1.3. If the respondents did contravene the bylaw, then the strata is entitled to fine them, provided it follows the procedural requirements of SPA section 135. I discuss the fines in further detail below.

74. Here the strata provided 1 photograph of what appears to be a container lying open on the ground. Given the respondents do not dispute it was their container, or that it was located on common property, I accept that it was both. I accept this occurred on a day that was not a collection day. Based on the limited evidence and submissions on this claim, I cannot find the strata treated the respondents significantly unfairly about its enforcement of bylaw 3.1.3 in this claim.

What must the respondents do?

75. I have found the respondents' container was on common property on a non-collection day, contrary to bylaws 3.1.3(c)(V) and (VI). As such, the respondents must immediately comply with the current bylaws by keeping their garbage containers inside SL4 except on collection days, unless the strata approves a different location.

Fines

76. On April 7, 2022, the strata manager wrote to the respondents about keeping their garbage container on common property on days other than collection days. The letter citied bylaw 3.1.3(c)(IV) but not bylaw 3.1.3(c)(V). The letter gave the respondents 14 days to respond or request a hearing, failing which the strata may impose a $200 fine. The respondents did not provide a response.

77. On April 27, 2022, the strata imposed a $200 fine for contravening bylaws 3.1.3(c)(V) and (VI). However, the strata did not provide any further evidence that the garbage container was not removed from common property other than its own assertions this occurred 2 more times. Therefore, I find the strata has not proved the respondents continued to violate bylaws 3.1.3(c)(V) and (VI) after being notified of the bylaw violations. Therefore, I find the bylaw fine was invalid. Given subsequent bylaw

infractions were not proven, I dismiss the strata's claim for fines about the respondents' contravention of bylaws 3.1.8(c)(V) and (VI).

Summary

78. The respondents must immediately keep their garbage containers inside SL4 in compliance with bylaws 3.1.3(a)(V) and (VI).

79. Within 30 days, the respondents must provide proof to the strata that the fireplace installed in SL4's garage is inoperable or removed from SL4.

80. Within 6 months, the respondents must remove the 5 unapproved skylights and fireplace chimney and restore the common property roof to its condition before the unauthorized work was completed. The respondents are liable for any damage that occurs as a result of the unapproved alterations until they are corrected as ordered.

81. If the respondents do not complete the ordered work, the strata may do so under its bylaws 3.1.7(j) and 3.1.8(c) and charge all reasonable related costs to the respondents. The respondents must pay the charged costs within 30 days of being notified.

82. The respondent must pay the strata a total of $400.00 for bylaw fines within 15 days of the date of this decision.

CRT FEES AND EXPENSES

83. 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. The strata was partly successful and paid $475.00 in CRT fees. I find it appropriate to order the respondents to reimburse the strata ½ of the CRT fees it paid, or $237.50, within 15 days of this decision.

84. Neither party claimed dispute-related expenses, so I order none.

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

DECISION AND ORDERS

86. I order the respondents to:

a. Immediately comply with the current bylaw 3.1.3 by keeping their garbage containers inside SL4 except on collection days unless the strata approves otherwise.

b. Within 15 days of the date of this decision, pay the strata $637.50, broken down as follows:

   i. $237.50 for CRT fees, and

   ii. $400.00 for bylaw fines.

c. Within 30 days of the date of this decision, at their cost, make the SL4 garage fireplace non-operational or remove it from SL4. The respondents are liable for any damage that occurs as a result of the fireplace continuing to operate. If the respondents do not complete this work as ordered, the strata may do so under its bylaw 3.1.7(j) and charge all reasonable related costs to the respondents, who must pay them within 30 days of being notified.

d. Within 6 months of the date of this decision, at their cost:

   i. Remove the 5 unapproved skylight alterations in the SL4 roof and restore the roof to its original condition. The respondents are liable for any damage that occurs as a result of the alterations until the roof is restored. If the respondents do not complete this work as ordered, the strata may do so under its bylaw 3.1.8(c) and charge all reasonable related costs to the respondents, who must pay the costs within 30 days of being notified.

   ii. Remove the chimney alteration in the SL4 roof and restore the roof to its original condition. The respondents are liable for any damage that occurs as a result of the chimney installation until the roof is restored. If the respondents do not complete this work as ordered, the strata may

do so under its bylaw 3.1.8(c) and charge all reasonable related costs to the respondents, who must pay them within 30 days of being notified.

87. I dismiss the strata's remaining claims.

88. The strata is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.

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

J. Garth Cambrey, Vice Chair