



Civil Resolution Tribunal

Date Issued: December 27, 2023

File: ST-2022-006506

Type: Strata

Civil Resolution Tribunal

Indexed as: *Goldsmith v. The Owners, Strata Plan NW 3008*, 2023 BCCRT 1137

B E T W E E N :

JOHN GOLDSMITH

APPLICANT

A N D :

The Owners, Strata Plan NW 3008

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This strata property dispute is about a garage door repair and bylaw fines about privacy screen installation.
2. The applicant, John Goldsmith, co-owns strata lot 42 (SL42) in the respondent strata corporation, The Owners, Strata Plan NW 3008 (strata). Mr. Goldsmith is self-represented. A strata council member represents the strata.

3. Mr. Goldsmith makes 2 claims against the strata. Both occurred in April 2022. First, Mr. Goldsmith says the garage door for SL42 would not close. He unsuccessfully tried to contact the strata manager to find out who was responsible for the repair and ultimately arranged and paid for the door repair. Mr. Goldsmith says the strata is responsible for the \$125.00 garage door repair expense.
4. Mr. Goldsmith also says the strata improperly fined him for installing a privacy screen on a limited common property patio next to a fence between SL42 and a neighbouring strata lot (SL43). He says he installed the screen because a cedar hedge, which was next to and higher than the fence, had died. He says the strata removed the hedge but refused to replace it or build a new, higher fence, so the privacy screen was necessary. Mr. Goldsmith says the strata fined him \$400.00 for breaching its bylaws, even though he removed the screen as the strata had asked. He paid the fines but says he did not contravene any bylaws. He seeks orders that the strata repay him a total of \$525.00 for the \$125.00 garage door repair and \$400.00 for improper fines.
5. The strata admits responsibility for repairs to the garage door itself, but not for the opening and closing mechanisms, which it says are Mr. Goldsmith's responsibility. It also says the privacy screen was an alteration to the common property fence and that Mr. Goldsmith failed to obtain the strata's prior written approval to install it, contrary to the bylaws. The strata says it fined Mr. Goldsmith when he refused to remove the privacy screen in compliance with its bylaws. The strata asks the CRT to dismiss Mr. Goldsmith's claims.
6. As explained below, I dismiss Mr. Goldsmith's \$125.00 claim for the garage door repairs, but I find the strata must reimburse Mr. Goldsmith \$400.00 plus interest for the bylaw fines.

JURISDICTION AND PROCEDURE

7. 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.

8. 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. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.

ISSUES

9. The issues in this dispute are:
 - a. Must the strata reimburse Mr. Goldsmith \$125 for the garage door repair?
 - b. Must the strata reimburse Mr. Goldsmith \$400 for the bylaw fines?

BACKGROUND, EVIDENCE AND ANALYSIS

10. As applicant in a civil proceeding such as this, Mr. Goldsmith must prove his 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.
11. The strata plan shows the strata was created in June 1989 under the *Condominium Act*. It continues to exist under the *Strata Property Act* (SPA) and consists of 178 townhouse-style strata lots in 64 buildings. SL42 is an interior strata lot located in building 15, which contains a total of 4 strata lots. It shows a garage on the front or west side of SL42 that is part of SL42.
12. The strata plan also shows a patio on the rear or east side of the building which is designated as LCP for the exclusive use of the SL42 owner. SL43 is another interior strata lot in building 15, which is located immediately next to SL42. It has an LCP patio that abuts to SL42's patio. From the photographs provided, there is a dividing fence between the 2 patios that runs perpendicular to the building.

13. On December 14, 2021, the strata filed a complete new set of bylaws with the Land Title Office. No bylaw amendments have been filed since, so I find the 2021 bylaws apply. I discuss the relevant bylaws below, as necessary.

The Garage Door Repair

14. Mr. Goldsmith argues the garage door is an integral component of the building envelope. He says the strata is responsible for the building envelope so it must also be responsible for the garage door. The \$125.00 repair invoice describes that the repair contractor reset the door's cables and spring. There is no dispute Mr. Goldsmith paid the invoice amount to the contractor on April 19, 2022 as shown on the invoice copy in evidence.
15. The strata argues the door's operation is Mr. Goldsmith's responsibility and that it is only responsible for the garage door itself.
16. Neither party clearly explains why they take their respective positions. However, based on the SPA and the strata's bylaws, I find Mr. Goldsmith is responsible for garage door repair. My reasons follow.
17. As mentioned, SL42's parking garage is part of SL42. Bylaw 2 makes an owner responsible for repair and maintenance of their strata lot except if the bylaws say otherwise. Here, the bylaws do not make the strata responsible for any parts of a strata lot. Bylaw 10 makes the strata responsible for common property and certain LCP that does not apply.
18. Common property is defined under section 1(1) of the SPA to include that part of the land and buildings shown on the strata plan that is not part of a strata lot. Garage doors are not shown on the strata plan their repair responsibility is not addressed in the bylaws. However, as I have noted, the SL42 garage is part of a SL42.
19. Section 68(1) of the SPA defines the boundaries of a strata lot and states:

Unless otherwise shown on the strata plan, if a strata lot is separated from another strata lot, the common property or another parcel of land by a wall, floor or ceiling, the boundary of the strata lot is midway between the surface of

the structural portion of the wall, floor or ceiling that faces the strata lot and the surface of the structural portion of the wall, floor or ceiling that faces the other strata lot, the common property or the other parcel of land.

20. In this case, the owner's strata lot is separated from common property by the garage wall. The strata lot boundary is the midpoint of the structural portion of the garage wall because the strata plan does not show otherwise.
21. I do not need to determine responsibility for repairs to the garage door itself, because the repairs paid by Mr. Goldsmith were to the cables and spring, which I infer are attached to or form part of mechanisms located on the inside of the garage walls. Given the cables and spring are located within Mr. Goldsmith's strata lot, I find they are part of SL42.
22. Therefore, under bylaw 2, Mr. Goldsmith is responsible for the garage door repairs he incurred. I dismiss his claim for reimbursement of \$125.00.

The Privacy Screen

23. In order to be successful, the strata must prove that Mr. Goldsmith breached the strata's bylaws and that it properly followed SPA section 135 when it imposed bylaw fines against him.
24. As mentioned, Mr. Goldsmith argues he did not violate the strata's bylaws. He says the privacy screen was placed on the LCP patio, which is permitted under the strata's bylaws. In particular, he notes bylaw 3(8)(t), which allows "summer furniture accessories" among other things, to be placed on patios. He says the privacy screen was an accessory. He also says the strata asked him to remove it by July 15, 2022, which he did, but that the strata still imposed 2-\$200.00 fines.
25. The strata has a slightly different version of events. It says Mr. Goldsmith installed the privacy screen and the SL43 neighbour complained that the screen affected their use and enjoyment of their back patio. The strata says the privacy screen was attached to the fence and was therefore an alteration. It also says that Mr. Goldsmith failed to remove the screen after it sent 4 requests that he do so. Finally, the strata

says it was only after it imposed the 2-\$200.00 bylaw fines that he removed the privacy screen.

26. I have reviewed the correspondence in evidence and find I do not have determine if the privacy screen was an alteration or an accessory. This is because the strata did not properly follow SPA section 135 when it imposed the fines against SL42's account.
27. 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 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". 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.
28. The evidence shows the SL43 resident complained to the strata about the privacy screen. The strata wrote to Mr. Goldsmith on April 26, May 16, and June 9, 2022. In each letter, the strata informed Mr. Goldsmith of various bylaw breaches, which may or may not have been valid. No fines were imposed. In a June 30, 2022 letter, the strata gave Mr. Goldsmith until July 15, 2022 to remove the screen. Mr. Goldsmith emailed the strata manager on July 14, 2022 stating the screen was removed. He provided a photograph of the fence without the screen. I accept the screen was removed on July 14, 2022 as the strata does not say otherwise.
29. However, despite the strata giving Mr. Goldsmith until July 15, 2022 to remove the screen before it imposed fines, an SL42 account statement shows 2-\$200.00 fines were imposed on June 30, 2022. The strata's imposition of the fines before the deadline given to Mr. Goldsmith to remove the screen had passed is contrary to SPA section 135(1). As a result, I find the strata was not entitled to impose the fines.
30. The evidence shows Mr. Goldsmith paid the \$400.00 fines on October 14, 2022. The

strata does not dispute this, so I accept it is accurate. Therefore, I find the strata must reimburse Mr. Goldsmith \$400.00 and I so order. The strata must do this within 30 days of the date of this decision.

CRT FEES, EXPENSES, AND INTEREST

31. 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. Mr. Goldsmith was partially successful and paid \$225.00 in CRT fees. I order the strata to reimburse Mr. Goldsmith $\frac{1}{2}$ of his CRT fees, or \$112.50 within 30 days of the date of this decision. Neither party claimed dispute-related expenses.
32. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Goldsmith is entitled to pre-judgement interest under the COIA on the \$400.00 payment he made to the strata for fines. Interest is calculated from October 14, 2022, the date he paid the fines, to the date of this decision. I calculate pre-judgement interest to be \$20.06.
33. Under section 189.4 of the SPA, the strata may not charge any dispute-related expenses against Mr. Goldsmith.

DECISION AND ORDER

34. Within 30 days of the date of this decision, I order the strata to pay Mr. Goldsmith \$532.56 broken down as follows:
 - a. \$400.00 for reimbursement of bylaw fines,
 - b. \$20.06 for pre-judgement interest under the COIA, and
 - c. \$112.50 for CRT fees.
35. Mr. Goldsmith is entitled to post-judgement interest under the COIA, as appropriate.
36. 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