Civil Resolution Tribunal

Date Issued: January 16, 2024

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ST-2023-007023

Type: Strata

Civil Resolution Tribunal

Indexed as: *Evdokimenko v. The Owners, Strata Plan EPS1131*, 2024 BCCRT 045

B E T W E E N :

MERVYN EVDOKIMENKO

APPLICANT

A N D :

The Owners, Strata Plan EPS1131

RESPONDENT

A N D :

MERVYN EVDOKIMENKO

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This strata property dispute is about repair and maintenance of a walkway and related expenses charged to a strata lot owner. It involves 2 disputes which I find are a claim

and counterclaim so, I have issued a single decision.

2. The applicant, Mervyn Evdokimenko, co-owns strata lot 7 (SL7) in the respondent strata corporation, The Owners, Strata Plan EPS1131 (strata). Mervyn Evdokimenko (owner) is self-represented. A strata council member represents the strata. The strata is the applicant in the counterclaim and the owner is the respondent.

3. The owner says the strata is responsible for repair and maintenance of a paving stone walkway located next to SL7 because it is common property. They seek an order that the strata repair and maintain the walkway, which they estimate to be $1,000.00.

4. The strata disagrees that it is responsible for repair and maintenance of the walkway. Among other things discussed below, it says the owner entered into an agreement with the strata's owner developer at the time they purchased SL7, which was not approved by the strata and to which the strata was not a party. The strata says the owner is responsible for repair and maintenance of the walkway.

5. In its counterclaim, the strata says the owner is responsible to reimburse it $245.70 for repairs the strata completed to the walkway plus $1,120.00 for legal fees under its bylaws. This totals $1,365.70. The strata seeks an order that the owner reimburse it this amount.

6. The owner disagrees on the basis the strata is responsible for the common property walkway repairs.

7. As explained below, I find in favour of the owner.

JURISDICTION AND PROCEDURE

8. 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.

9. 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.

10. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

11. I was initially unable to view most of the strata's evidence, so, through staff, I requested the strata resubmit it, which it did. The strata also asked to add a reference to a recent CRT decision to its submissions. The owner was given the opportunity to review the strata's re-submitted evidence and its additional submission request and did so. They objected to the strata adding the additional reference primarily because the deadline for submissions and evidence had passed and they said the CRT decision was not relevant. They also said the CRT decision was issued after the deadlines for this dispute, which is precisely why the strata made its request. The strata also provided reply submissions. I find that neither party is prejudiced if I admit the additional submissions. Given the CRT's mandate to be flexible, I accept the submissions and have considered them in my decision.

ISSUES

12. The issues in this dispute are:
    a. Who is responsible for repair and maintenance of the walkway?
    b. Must the owner reimburse the strata $245.70 for walkway repairs?
    c. Must the owner reimburse the strata $1,120.00 for legal fees?

BACKGROUND, EVIDENCE AND ANALYSIS

13. As applicant in a civil proceeding such as this, the owner must prove their claims on a balance of probabilities, meaning more likely than not. The strata must prove its claims to the same standard. I have considered all the parties' submissions and evidence but refer only to information I find relevant to explain my decision.

14. The strata plan shows the strata was created in June 2013 under the *Strata Property Act* (SPA). It consists of 44 townhouse-style strata lots in 23 buildings. SL7 is 1 of 2 strata lots located in building 6. The walkway in question is constructed with paving stones and runs the entire length of the east side of building 6, between a perimeter fence and SL7, and partially along the north side of the building near the entrance to SL7. It is not shown on the strata plan.

15. On March 10, 2022, the strata filed a complete new set of bylaws with the Land Title Office which I infer replaces all Standard Bylaws. No bylaw amendments have been filed since, so I find the 2022 bylaws apply to this dispute. I discuss the relevant bylaws below, as necessary.

Who is responsible for repair and maintenance of the walkway?

16. For the following reasons, I find the strata is responsible for repair and maintenance of the walkway. I have reviewed the CRT decisions cited by the parties and find that none apply to the circumstances here.

17. SPA section 1(1) defines common property to include that part of the land and buildings shown on the strata plan that is not part of a strata lot. As noted, the walkway is not shown on the strata plan, but it is undisputedly located on common property next to SL7. SPA section 72 and bylaw 8 make the strata responsible for repair and maintenance of common property. Under SPA section 72, the strata cannot make an owner responsible for repair and maintenance of common property unless it has been designated as limited common property, which the walkway has not.

18. Even if there is a valid arrangement where the owner takes responsibility for the walkway repair expenses, such as a signed assumption of liability agreement which

does not exist here, the strata is still responsible for the walkway repair and maintenance but may charge the expense to the owner. See *Vairo v. The Owners, Strata Plan EPS 2102*, 2023 BCCRT 1122.

19. Despite this, the strata makes several arguments as to why the walkway is not its responsibility. The strata argues the walkway was a temporary installation of the owner developer but there is no evidence this was case. For example, the strata did not provide a written statement from the owner developer stating the walkway was temporary. Further, the walkway is a significant fixture about 3 – 4 feet wide. As noted, it consists of paving stones that run the entire length of building 6. Without any supporting evidence, I am not persuaded the owner developer would have gone to the expense of installing the walkway with the intention of removing it a later date.

20. The strata also argues the walkway was not included in the development permit issued by the City of Coquitlam (City), where the strata is located, because the City's approved landscape drawings show vegetation where the walkway is located. It says this implies the walkway was put in place contrary to the City's approval. However, an email exchange between a strata council member and City staff in October 2023 suggests otherwise. In the email, the City says, in part, which is it up to the strata to decide if the walkway should remain or be removed and that the City does not have an issue if the walkway remains.

21. The strata also argues the owner developer's disclosure statement does not include the walkway. The strata provided the third (last) amendment to the disclosure statement but no earlier amendments nor the original disclosure statement. So, based on the evidence, I cannot determine if the walkway was included in the disclosure statement. In any event, a disclosure statement is a document required under the *Real Estate Development Marketing Act* (REDMA). The owner developer must provide it to prospective purchasers of a development property as defined under REDMA, which includes a strata lot in a strata corporation comprised of 5 or more strata lots. Generally speaking, the purpose of a disclosure statement under REDMA is to describe the owner developer's intentions about developing the strata property. A disclosure statement is not binding on a strata corporation. See *Yaremko v. The Owners, Strata Plan 1601*, 2020 BCCRT 289, *Ojani v. The Owners, Strata Plan*

EPS3505, 2021 BCCRT 14 and *The Owners, Strata Plan BCS 2429 v. Onni Development (The Point) Corp*., 2019 BCCRT 1177.

22. The strata also argues the inclusion of the walkway was a term of the owner's purchase and sale agreement (PSA) for SL7. Based on the partial agreement provided in evidence, I agree a term of the owner's purchase of SL7 was that the walkway remain. The strata makes 2 arguments here. First, it says allowing the walkway to remain was a contractual agreement between the owner developer and the owner. Since the strata was not a party to the agreement, the agreement did not bind the strata so, the strata is not responsible to repair and maintain the walkway.

23. While I agree the strata was not a party to the PSA and therefore not bound by it, I find the term to leave the walkway in place is not relevant to repair and maintenance requirements. The walkway existed at the time the PSA was entered into, and the owner developer simply agreed the walkway would remain. Since I have already found the walkway was not a temporary installation, I do not agree with the strata that the owner developer changed its mind or provided a concession to the owner and agreed not to remove the walkway because of the owner's request. Nor do I agree that the PSA confirms the owner purchased the walkway because the PSA does not state this.

24. Second, given the PSA was made after the strata's first AGM, the strata argues the owner developer did not have authority to leave the walkway in place. It says the decision to leave the walkway or remove it was the strata's. I agree. I also note the strata still has the authority to keep or remove the walkway (subject to SPA section 71 about significant changes to common property). Again, however, the decision whether the walkway remains does not affect the strata's obligation to repair and maintain it while it still exists.

25. Finally, the strata argues it treated the walkway as an approved alteration to common property, presumably granted by the owner developer to the owner prior to the first AGM when the owner developer had such authority. However, there is no evidence the walkway exists as an approved alteration and there is no alteration agreement in evidence. I find it more likely the owner developer installed the walkway during the

course of developing the strata property before the strata was created or when it had control of the strata's governance.

26. For all of these reasons, I find the walkway is common property and the strata is responsible for its repair and maintenance. The owner did not specify what repairs, if any, were still required to the walkway, so I make no orders about further repairs.

Must the owner reimburse the strata $245.70 for walkway repairs?

27. The evidence is that the owner first requested the walkway be repaired in July 2021. The strata initially said the walkway was the owner's responsibility essentially for the reasons set out above. There is also some evidence the parties attempted to share the repair costs. However, the strata wrote to the owner on May 30, 2022, following a May 24, 2022 council hearing, expressly stating the strata would repair the walkway at its cost.

28. The strata wrote to the owner again on October 11, 2022, and included a contractor's invoice dated August 2022 for $245.70 to repair the walkway. The strata said the owner was responsible for the walkway repair cost because it, with input from the contractor, found the irrigation system installed by the owner caused the walkway damage. The strata relied on 2016 assumption of liability agreement signed by the owner taking responsibility for the irrigation system installation. It asked the owner to reimburse the strata $245.70 for the walkway repairs.

29. A copy of the irrigation agreement was provided as part of the counterclaim. It refers to the installation of landscape irrigation ***within the yard*** of SL7, but there is no SL7 yard shown on the strata plan. I infer the irrigation system was installed on the common property next to SL7. In any event, the owner does not dispute they signed an assumption of liability agreement, but they dispute the walkway damage was caused by the irrigation system. The owner contacted the strata's contractor, who denied the strata's implication that they found the walkway damage was caused by the irrigation system. A letter dated June 4, 2023, from the contractor to the owner confirms this. In the letter, the contractor confirms he met with the strata council on site "last year" to review settlement of the walkway pavers. The contractor says there

were several possible causes of the paver settlement that included water runoff towards the building, insufficient soil compaction, buried organic materials present in the soil, and excess water introduced by sprinklers. The contractor said that any or all of the factors could cause settlement and that they did not believe it was caused by a single factor alone.

30. I have also reviewed the photographs of the walkway repair and do not find the irrigation system caused the walkway damage. A photograph of the area before the repair shows the pavers had separated and settled. A photograph of the repair shows a wooden support installed beside the pavers to hold the pavers in place after they had been leveled. With this in mind, I find the lack of proper support of the pavers caused the walkway repairs.

31. Given the above, I dismiss the strata's claim that the owner must reimburse it $245.70 for walkway repair expenses. If applicable, the strata must immediately remove the charge from the owner's account.

Must the owner reimburse the strata $1,120.00 for legal fees?

32. On April 13, 2022, the strata manager wrote to the owner. The strata said it would obtain a legal opinion on the walkway repairs and that the owner may be held responsible for the expense under bylaw 2.1 and 2.2, which the manager cited in the letter.

33. On April 18, 2023, the strata manager again wrote to the owner advising it would file a counterclaim against the owner. The letter said the strata had charged the owner $1,120.00 for its lawyer's June 1, 2022 invoice for that amount under bylaws 2.1 and 2.2. A copy of the invoice was attached to the letter and the strata asked the owner to pay it within 30 days. The strata also gave the owner 14 days to respond to the letter or request a hearing under SPA section 135.

34. For the reasons that follow, I find the owner is not responsible to reimburse the strata for legal fees.

35. As noted in the letters, the strata relies on bylaw 2 in support of its claim for legal

fees. The relevant parts of bylaw 2.1 say an owner must reimburse the strata for all legal fees relating to:

a. Recovering costs of repairing damage to common property caused by an owner,

b. Recovering the costs to investigate and correct any unauthorized alterations to common property, and

c. Recovering or collecting chargebacks when access to a suite is provided.

36. Bylaw 2.2 defines the term "chargebacks", but based on the language of bylaw 2.1, I find chargebacks are only valid when an owner fails to provide access to their strata lot, which is not the case here.

37. The strata's letters and lawyer's invoice clearly indicate the legal fees were for a legal opinion on the walkway repair and maintenance responsibilities. I do not find that bylaw 2.1 applies to the strata obtaining a legal opinion. Based on the language used in bylaw 2.1, the bylaw only applies to recovery of common property expenses caused by an owner or as a result of unauthorised alterations to common property. Neither of those situations apply here so, I find the owner cannot be held responsible to repay the legal fees.

38. I will also address SPA section 135 given the strata referenced it in its correspondence. That section sets out procedural requirements the strata must follow to impose fines or require a person to pay the costs of remedying a bylaw contravention. Fines do not apply here, so the strata must be arguing the legal fees are reasonable costs of remedying a bylaw contravention as set out under SPA section 133. As I have found there is no bylaw contravention, the owner cannot be held responsible to pay the cost of legal fees.

39. Finally, under SPA section 135(1), 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. This must be done ***before*** requiring a person to pay fines or the cost of remedying a bylaw contravention or the fines or costs 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. Since the April 18, 2023 letter says the strata had already charged the owner the legal fees before it gave the owner an opportunity to respond, I would find the owner is not responsible to repay the strata $1,120.00 for legal fees.

40. For these reasons, I dismiss the strata's claim that the owner must reimburse it $1,120.00 for legal fees. If applicable, the strata must immediately remove the charge from the owner's account.

CRT FEES AND EXPENSES

41. 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 owner was the successful party and paid $225.00 in CRT fees. I order the strata to reimburse the owner this amount within 15 days of the date of this decision. I dismiss the strata's claim for CRT fees. Neither party claimed dispute-related expenses.

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

DECISION AND ORDER

43. I order the strata to immediately remove charges for the walkway repair ($245.70) and legal fees ($1,120.00) from the owners account, if applicable.

44. Within 15 days of the date of this decision, I order the strata to pay the owner $225.00 for CRT fees.

45. The owner is entitled to post-judgement interest under the *Court Order Interest Act*, as appropriate.

46. I dismiss the strata's claims.

47. 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