



Civil Resolution Tribunal

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File: ST-2023-000538

Type: Strata

Civil Resolution Tribunal

Indexed as: *Martin v. The Owners, Strata Plan LMS 26*, 2024 BCCRT 67

B E T W E E N :

HEIDI MARTIN

APPLICANT

A N D :

The Owners, Strata Plan LMS 26

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This strata property dispute is about enforcement of a property use bylaw.
2. The applicant, Heidi Martin, co-owns strata lot 20, also known as unit 127, in the respondent strata corporation, The Owners, Strata Plan LMS 26 (strata).
3. Mrs. Martin claims the strata is not enforcing its bylaw 13(3)(b), which prohibits the use of a strata lot for commercial or professional purposes. She says her neighbour

in unit 115 uses her strata lot for dog care services contrary to bylaw 13(3)(b). She says although the strata fined the neighbour, the strata improperly exempted the neighbour from the bylaw for a period of 8 months. Mrs. Martin seeks orders that the strata immediately “shut down” the neighbour’s dog care service and impose fines of \$200 every 7 days. She estimates the value of fines to be \$5,000. In submissions, Mrs. Martin says the fines should be \$5,000. Mrs. Martin is self-represented.

4. The strata says it permitted a reasonable exemption (which it later described as a delay of the bylaw’s application) based on the neighbour’s financial hardship. It says the strata’s practice to exempt an owner from bylaws (or reasonably delay a bylaw’s application) has been in place since 1991 and has even applied to Mrs. Martin. I infer the strata asks that I dismiss Mrs. Martin’s claims. A strata council member represents the strata.
5. As explained below, I find the issues are moot, but I order the strata to reimburse Mrs. Martin ½ of the CRT fees she paid, which is \$112.50.

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

8. 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.

Preliminary Matters

Claims Not Included in the Dispute Notice

9. I note the parties provided a significant amount of evidence and submissions about historical issues between them. This included issues about speed bumps, a speed limit sign, and Mrs. Martin's dog, which were raised by the strata. Mrs. Martin did not include these things in the Dispute Notice and the strata did not file a counterclaim, so I find it would procedurally unfair if I considered them in this decision. As such, I make no findings about claims or issues that were not included in the Dispute Notice.

Claims and Orders Against a Non-party

10. In submissions, Mrs. Martin also made claims and sought orders against the neighbour, who is not a party to this dispute. I cannot make orders against a non-party, so I have not considered Mrs. Martin's claims or requested orders about the neighbour.

End of the Dog Care Services

11. The parties agree the neighbour ceased providing dog care services on May 31 or June 1, 2023. This raises the question of whether Mrs. Martin's claims are moot (of no legal consequence), which I have considered in my decision below. I did not seek further submissions from the parties on the mootness issue because I decided the dispute on its merits, even though I found Mrs. Martin's claims were moot.

ISSUES

12. The issues in this dispute are:
 - a. Are Mrs. Martin's claims moot?
 - b. Did the neighbour contravene the strata's bylaws by providing dog care services?

- c. Did the strata have authority to exempt the neighbour from its bylaws?
- d. What is an appropriate remedy, if any?

BACKGROUND, EVIDENCE AND ANALYSIS

- 13. As applicant in a civil proceeding such as this, Mrs. Martin must prove her 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.
- 14. The strata plan shows the strata was created in May 1991. It continues to exist under the *Strata Property Act* (SPA) and consists of 62 residential strata lots in several buildings. The strata lots consist of townhouse and apartment strata lots. Unit 127 is a townhouse strata lot located in building 5 with 1 other strata lot. Unit 115 is also a townhouse strata lot but is located in building 8, which is across the street and a few strata lots away from unit 127.
- 15. On December 18, 2001, the strata filed a complete new set of bylaws with the Land Title Office. I infer the Standard bylaws were replaced at this time. Bylaw amendments filed by the strata after December 2001 are not relevant, so I find the 2001 bylaws apply to this dispute.
- 16. I note the bylaws create separate sections for the townhouse and apartment strata lots as permitted under SPA Part 11. I considered whether the strata is the proper respondent in this dispute. Given the relevant bylaws apply to the strata and not solely to a section, I find that it is. I discuss the relevant bylaws below, as necessary.

Are Mrs. Martin's claims moot?

- 17. A claim is considered moot when something happens after a legal proceeding starts that removes any "present live controversy" between the parties. Generally, moot claims will be dismissed. However, the CRT has discretion to decide otherwise moot claims if doing so would have a practical impact and potentially avoid future disputes. See *Binnersley v. BCSPCA*, 2016 BCCA 259.

18. The neighbour's dog care services ceased on May 31 or June 1, 2023, a few months after Mrs. Martin filed her dispute application. Mrs. Martin's requested remedies were for orders that the services be shut down and that the strata impose bylaws fines, so I have considered whether her claims are moot.
19. Given the dog services have ended, which is what Mrs. Martin requested, I find that there is no longer a live controversy about the neighbour providing dog care services.
20. I infer Mrs. Martin's request that the strata impose bylaw fines is about imposing fines while the alleged bylaw contraventions were ongoing. In its October 7, 2022 letter to the neighbour, the strata found they had contravened the bylaws and imposed fines totaling \$200. The strata did not impose any further fines. Given the neighbour is no longer contravening the bylaws, I cannot make an order that the strata impose further fines.
21. To the extent Mrs. Martin argues the CRT should order the strata to impose retroactive fines, I disagree. SPA section 135 requires the strata to follow specific procedures before imposing fines, which if not strictly followed is sufficient reason for the fines to be set aside. See *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449. I have found that imposing retroactive fines is akin to imposing fines without following the section 135 procedures. See for example, my decision in *Shen v. The Owners, Strata Plan LMS 970*, 2020 BCCRT at paragraph 53.
22. For these reasons, I find Mrs. Martin's claims are moot.
23. Following *Binnarsley*, I have considered whether deciding this dispute anyway would have any practical impact or potentially avoid future claims. I find that it would. I say this because of the history between the 2 parties and because of the strata's submission that it has been exempting owners from bylaws (or reasonably delaying a bylaw's application) since 1991. As noted below, I find the strata's bylaw enforcement practice for this dispute is contrary to the SPA.

Did the neighbour contravene the strata's bylaws?

24. Bylaw 13(3)(b) prohibits the use of a strata lot for commercial and professional purposes. The parties agree the neighbour provided pet care services in unit 115. The neighbour also admitted providing such services in emails that are before me. Based on the neighbour's admission, and copies of some of the neighbour's signed dog care service agreements in evidence, I find the neighbour clearly contravened bylaw 13(3)(b) by providing the services.
25. Bylaws 14(2) and (8) are also relevant. Bylaw 14(2) limits the number of pets in a strata lot to 1. Bylaw 14(8) prohibits guests and visitors from bringing animals and pets on to the strata property. Therefore, the neighbour also contravened bylaws 14(2) and (8).

Did the strata have authority to exempt the neighbour from its bylaws?

26. SPA section 26 says the strata council ***must*** exercise the powers and perform the duties of the strata including bylaw enforcement, unless the SPA, regulations, or bylaws state otherwise. Therefore, bylaw enforcement is mandatory.
27. When performing the strata's 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.
28. The strata's bylaw enforcement options are set out in SPA section 129(1). The only relevant options available to the strata for this dispute are for the strata to impose a fine under section 130 or remedy a bylaw contravention under section 133. The section 133 option potentially includes the strata retaining a lawyer to help it enforce the bylaw, and then recover the legal fees from the offending owner.
29. SPA section 129(2) permits the strata to warn the offending person or give that person time to comply with the bylaw before enforcing it.
30. Mrs. Martin first complained of the neighbour's dog care services in September 2022. The strata exchanged correspondence with the neighbour, who admitted to providing dog care services. In an October 7, 2022 letter to the neighbour, the strata found the

neighbour had contravened the bylaws noted above and imposed fines. Yet, in the same letter, despite suggesting in this dispute that bylaw enforcement was delayed, the strata expressly exempt the neighbour from the bylaws for 8 months, or until May 31, 2023.

31. There are no provisions of the SPA, regulations, or bylaws that permit the strata to exempt an owner from its bylaws. While SPA section 121 says, in part, a bylaw is not enforceable if it contravenes other legislation, including the BC *Human Rights Code*, that is not the case here. There is no suggestion any of the applicable bylaws contravene the *Human Rights Code* or any other legislation. In any event, bylaw exemption and enforceability are not the same. Based on these parts of the SPA, the strata does not have authority to exempt an owner from its bylaws.
32. I find the strata's actions to exempt the neighbour from the bylaws were both contrary to the SPA and unreasonable. Had the strata decided to give the neighbour a warning or time to comply with the bylaws before imposing fines, I might have reached a different conclusion.
33. For the reasons stated above, I do not make Mrs. Martin's requested orders.

CRT FEES, EXPENSES, AND INTEREST

34. 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. Absent the mootness issue, Mrs. Martin was partially successful because the neighbour contravened the bylaws after October 7, 2022, even though the strata incorrectly determined the neighbour was exempt from the bylaws.
35. I likely would not have made the orders requested by Mrs. Martin even if I did not find the claims were moot. I say this because the strata has discretion on how to enforce bylaw contraventions as I noted above. Several Court decisions state that a court should not interfere with the democratic governance of a strata unless absolutely necessary. See for example, *Norenger Development (Canada) Inc. v. Strata Plan NW*

3271, 2016 BCCA 118. Several CRT decisions have found this reasoning applies to the CRT, with which I agree. See for example, *Zoetica Wildlife Research Services Inc. v. The Owners, Strata Plan LMS2749*, 2023 BCCRT 486.

36. In the circumstances of this dispute, I find it appropriate to order the strata to reimburse Mrs. Martin ½ of the \$225.00 CRT fees she paid. This equals \$122.50. The strata must pay Mrs. Martin this amount within 14 days of the date of this decision.

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

38. Under section 189.4 of the SPA, the strata may not charge any dispute-related expenses against Mrs. Martin.

DECISION AND ORDER

39. Within 14 days of the date of this decision, I order the strata to pay Mrs. Martin \$112.50 for CRT fees.

40. Mrs. Martin is entitled to post-judgement interest under the *Court Order Interest Act*, as appropriate.

41. I dismiss Mrs. Martin's remaining claims.

42. 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