



Civil Resolution Tribunal

Date Issued: February 27, 2024

File: ST-2022-006545

Type: Strata

Civil Resolution Tribunal

Indexed as: *Michaels v. The Owners, Strata Plan NW526*, 2024 BCCRT 183

B E T W E E N :

CELESTE MICHAELS and SEAN MICHAELS

APPLICANTS

A N D :

The Owners, Strata Plan NW526

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr, Vice Chair

INTRODUCTION

1. Celeste and Sean Michaels own a strata lot in the strata corporation The Owners, Strata Plan NW526. They argue that the strata has failed to repair and maintain common property adjacent to their strata lot. They ask for an order that the strata “properly” maintain a front garden plot by weeding, trimming plants, and replacing garden ties, and a backyard by weeding, mowing grass, and repairing a concrete

slab. They also want an order that the strata paint a fence that surrounds the backyard and repair a gate in that fence. Celeste Michaels represents the applicants.

2. The strata acknowledges that these areas are common property but argues that the applicants should have to maintain them. The strata also says it is in the process of having both the front gardens and backyards designated as limited common property so it can make adjacent owners formally responsible for them. A council member represents the strata.

JURISDICTION AND PROCEDURE

3. 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. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.
4. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I have considered the potential benefits of an oral hearing. Here, I am properly able to assess and weigh the documentary evidence and submissions before me. So, the CRT's mandate to provide proportional and speedy dispute resolution outweighs any potential benefit of an oral hearing. I find that an oral hearing is not necessary in the interests of justice. I therefore decided to hear this dispute through written submissions.
5. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.
6. Under section 123 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

7. In submissions, the applicants asked the CRT to decide whether the strata breached section 98 of the *Strata Property Act* (SPA) when it paid for certain expenses. That claim is not in the Dispute Notice, so I find the strata did not have reasonable notice of it. I find it would be procedurally unfair for me to address this issue, so I have not done so.

ISSUES

8. The issues in this dispute are:
 - a. Is the strata responsible for repairing and maintaining the front garden and backyard?
 - b. If so, has the strata done so to a reasonable standard?

BACKGROUND AND EVIDENCE

9. In a civil claim such as this, the applicants must prove their claims on a balance of probabilities. This means more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. The strata was created in 1976. It consists of 272 residential strata lots in 31 buildings on over 16 acres of land. Some are apartments and others are townhouses. All the outdoor areas of the strata are common property. No part of the strata is designated as limited common property for the exclusive use of a particular owner or set of owners.
11. The applicants' strata lot is a townhouse end unit in a building with five other strata lots. There is a fenced area behind their strata lot that functions as a private backyard. There is a concrete slab in the backyard that the applicants use as a patio. There is a gate in one corner of the fence that leads onto a common pathway. In front of the applicants' strata lot is a large garden bed enclosed by railway ties. These areas are all common property.

12. The strata filed a complete set of bylaws in the Land Title Office on November 12, 2008. More recent bylaw amendments are not relevant. Bylaw 8.1 generally requires the strata to repair and maintain common property and common assets. This reflects the strata's obligations under SPA section 72. There are no relevant bylaws about the yards or landscaping.
13. The strata does not particularly dispute what the SPA and bylaws say. They make several other arguments about why the applicants should do the landscaping themselves despite these provisions.
14. First, the strata says that the applicants were each on strata council at various times over the years and never brought up landscaping. They say that if the applicants truly thought that the strata should be maintaining the front gardens and backyards, they would have made sure this happened while they were on strata council. I find this has no bearing on this dispute. The strata's obligations do not change just because a particular owner is or used to be on the strata council.
15. The strata also points out that it has been trying for years to have the backyards and front gardens (and other parts of the strata) designed as limited common property. The evidence suggests that there may be broad support for this, but for various reasons the owners have not voted on it yet. If the backyards and front gardens become limited common property, the adjacent owners would become responsible for most regular, periodic maintenance under the strata's existing bylaws such as mowing and weeding. The strata says it hopes to put this issue to the owners at the next annual general meeting in April 2024. I agree with the applicants that these efforts do not affect its past or existing repair and maintenance obligations.
16. The strata makes two additional arguments that just apply to the backyard. First, the strata argues that the strata's backyards should be treated as limited common property even though they have not been designated as such. They point out that it would be impractical to treat the backyards as true common property because any resident could then freely access everyone else's backyards, including their back patios. Strange as that may be, it is the current legal situation. There is no provision

in the SPA for custom or precedent to establish informal limited common property. The only way for owners to have the permanent right to exclusively use common property is for the strata to designate it as limited common property. I note that SPA section 76 allows the strata to give a resident permission to exclusively use common property for up to a year at a time. If the strata is concerned about residents using each other's yards, it can address it through section 76.

17. The strata also says that the applicants bear some blame for the current state of their backyard. As discussed more below, no one has maintained the backyard in years and it is badly overgrown. The strata questions why the applicants allowed it to become as bad as it is. The strata says even a minor effort would have prevented the scale of the current problem. It is of course true that the backyard would be in better shape if the applicants had maintained it, but that does not mean that they had a legal obligation to do so.
18. Finally, the strata argues that in its 40 year existence, no owner has ever asked the strata to maintain their backyard. They say it would be unfair to everyone else for the strata to pay for a single owner's landscaping. While it may be true that all the other residents maintain their own yards. These residents are essentially volunteering to assist the strata. There is nothing wrong or unusual about this, but that does not mean that the strata has formally delegated its responsibility to those residents. The strata retains ultimate responsibility for and authority over the repair and maintenance of all common property, including common property that functions as private yards.
19. For these reasons, I find that the strata must repair and maintain all common property to a reasonable standard, including the front garden and backyard.
20. When fulfilling its repair and maintenance responsibilities, the strata must act reasonably. Perfection is not required. The strata must act in the best interests of all owners and try to achieve the greatest good for the greatest number by implementing necessary repairs within a budget the owners can afford. Because of this, the strata is entitled to some deference in their repair and maintenance decisions because it is best placed to balance competing interests within its community.ⁱ

21. These repair and maintenance obligations operate somewhat differently when applied to landscaping. For the most part, landscaping choices are aesthetic choices and different people will have different preferences. Some might prefer a more manicured look with sparse plantings while others might prefer a lush, more natural appearance. The CRT has consistently concluded that owners have no right to dictate how a strata corporation fulfills its repair and maintenance responsibilities, which I agree with.ⁱⁱ So, it will not be unreasonable for a strata corporation to make an aesthetic choice that an individual owner disagrees with. That said, strata corporations still must ensure that outdoor areas are landscaped to a reasonable standard while being sensitive to the area's intended use.
22. The parties disagree about when exactly the applicants first requested that the strata maintain the front garden or backyard. I find nothing turns on this, because the strata's repair and maintenance obligations exist regardless of whether an owner specifically requests them.
23. Photos from 2019 through 2023 show that the backyard has not been maintained at all in years. The strata admits that it has never done any landscaping in the backyard. I agree with the applicants that the state of their backyard is unreasonable. Even though it is common property, it is clearly intended to be a functional backyard for the applicants. It is overgrown to the point of being completely unusable. I order it to landscape the backyard within 60 days.
24. As for the front garden, in September 2022, the strata removed almost all of the plants, leaving only two trees that were significantly pruned. Before then it was overgrown with weeds. The applicants say that the area was "devastated, bare, and butchered". I do not agree that there is anything objectively unreasonable about the scope of plant removal at that time. In any event, it does not matter how much the strata removed in September 2022 because the most recent photos from October 2023 show that the garden is overgrown with weeds once again. I order the strata to landscape the front garden within 60 days.

25. For both areas, the applicants asked for specific landscaping work to be done. I do not order any specific work, as the strata retains discretion about how to reasonably maintain the front garden and backyard.
26. I turn next to the concrete pad. The strata says it cannot currently assess what, if any, repairs it needs because the adjacent lawn is so overgrown it covers a large portion of the pad. It has committed to repairing the concrete pad if it needs repair. The applicants' photos show that there are cracks in the concrete pad, but I find this is insufficient to prove that the pad needs immediate repair. So, I dismiss the applicants' claim for an order that the strata repair the pad. That said, the strata's repair and maintenance obligations are ongoing, and if it discovers that the pad reasonably needs repair, it must do so.
27. Turning to the gate, the strata at some point removed its latch and screwed it shut, leaving it inoperable. I find this was a clear breach of its repair and maintenance obligations, as it was unreasonable to "repair" the gate by effectively turning into another fence panel. The strata says the gate has recently been repaired but provided no evidence to support this. I order the strata to repair the gate so that it is operable within 60 days.
28. Finally, the applicants provided photos showing that the fence is old and, in parts, deteriorating. It is missing at least one plank and has at least one rotten post cap. I find the evidence does not establish a need for extensive repairs, but some work is clearly necessary. I order the strata to repair the fence by repairing or replacing any missing planks or rotten components within 60 days.
29. I acknowledge the strata's evidence that it hired a new landscaper in October 2023, and instructed the new landscaper to attend to the front garden and backyard. I also acknowledge the strata's evidence that it has instructed its maintenance contractor to repair the fence. There is no evidence that this has been done. Given that the strata gave this evidence in the same submissions that it denied any obligation to landscape, I decided it was appropriate to order compliance even though the some or all of the necessary work may already be done.

30. Finally, I will comment on the strata's submissions about the applicants' attempts to dictate the details of any landscaping work. Here, I agree with the strata. As noted above, the applicants have no right to direct how the strata repairs and maintains common property. As a matter of courtesy, the strata may decide to collaborate with the applicants, but the applicants cannot have it both ways. By arguing that the strata bears the sole responsibility to maintain the front garden and backyard, the applicants also must accept that the strata has the sole authority to decide how to fulfill that responsibility, as long as its decisions are objectively reasonable and not significantly unfair. I note that SPA section 71 prevents the strata from making a significant change in the use or appearance of common property without a $\frac{3}{4}$ vote resolution at a general meeting.

TRIBUNAL FEES AND EXPENSES

31. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. The applicants were substantially successful, so they are entitled to reimbursement of \$225 in CRT fees. Neither party claimed any dispute-related expenses.

32. The applicants ask for an order that the strata comply with section 189.4 of the SPA, which requires the strata to ensure the applicants do not contribute to any dispute-related expenses. I do not make an order to that effect, but I agree that the strata must follow section 189.4. The strata acknowledges this in submissions.

DECISION AND ORDERS

33. I order that within 60 days of this order, the strata:

- a. Landscape the raised garden in front of the applicants' strata lot and the yard behind the applicants' strata lot,
- b. Repair or replace any missing panels and rotten components of the fence around the yard behind the applicants' strata lot, and

- c. Repair the gate in the fence behind the applicants' strata lot by ensuring it opens and closes.
34. I order the strata to pay the applicants \$225 in CRT fees within 30 days of this order.
35. The applicants are entitled to post judgement interest under the *Court Order Interest Act*.
36. I dismiss the applicants' remaining claims.
37. 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.

Eric Regehr, Vice Chair

ⁱ *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113, at paragraph 69.

ⁱⁱ *Swan v. The Owners, Strata Plan LMS 410*, 2018 BCCRT 241.