Civil Resolution Tribunal

Date Issued: March 7, 2024

File: ST-2023-000677

Type: Strata

Civil Resolution Tribunal

Indexed as: *Taylor v. The Owners, Strata Plan LMS 2612*, 2024 BCCRT 235

B E T W E E N :

CAROLYNN TAYLOR

APPLICANT

A N D :

The Owners, Strata Plan LMS 2612

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Nav Shukla

INTRODUCTION

1. Carolynn Taylor owns strata lot 35 (SL35) in the strata corporation, The Owners, Strata Plan LMS 2612 (strata). Ms. Taylor says that the strata failed to repair and maintain uneven patio tiles located on a portion of the limited common property (LCP) yard designated for SL35's exclusive use. She claims $700 plus GST from the strata for paying to re-level the tiles herself. Ms. Taylor is self-represented.

2. The strata says it is not responsible for repairing and maintaining the patio tiles. It says the patio tiles were an unapproved alteration made by a previous owner. The strata further says that Ms. Taylor has agreed to be responsible for the patio tiles by signing an indemnity agreement. I infer the strata asks that this dispute be dismissed. The strata is represented by a strata council member.

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). 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.

4. 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 and that an oral hearing is not necessary.

5. 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.

ISSUE

6. The issue in this dispute is whether the strata must reimburse Ms. Taylor $700 plus GST for re-leveling the patio tiles.

EVIDENCE AND ANALYSIS

7. In a civil proceeding like this one, Ms. Taylor 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 the evidence and argument that I find necessary to explain my decision.

8. The strata was created in 1996. It consists of 83 residential townhouse-style strata lots. Ms. Taylor purchased SL35 in July 2019 and resides there.

9. The strata filed a complete set of bylaws in the Land Title Office on February 27, 2012. More recent bylaw amendments are not relevant. I discuss the bylaws that apply to this dispute in detail below.

10. The strata plan in evidence shows the paving tiles at issue here are located on a part of SL35's LCP backyard that Ms. Taylor uses as a patio. Ms. Taylor says the unevenness in the patio tiles occurred in the fall of 2021 after the strata hired a contractor to install new fencing at the strata. It is undisputed that one of the new fence posts the contractor installed damaged a nearby drain, resulting in water pooling in SL35's LCP backyard patio area. Ms. Taylor says she reported the drainage issue to the strata immediately, but the strata did not address it until a year later in October 2022. Ms. Taylor says that this drainage issue ultimately caused the patio tiles to be uneven, affecting their appearance and causing a potential safety issue.

Who is responsible for repairing and maintaining the patio tiles?

11. The key issue between the parties is whether the strata or Ms. Taylor is responsible for repairing and maintaining the patio tiles located in SL35's LCP yard.

12. *Strata Property Act* (SPA) section 72 says that a strata corporation must repair and maintain common property, which includes LCP, and common assets. SPA section 72(2) says that a strata corporation may, by bylaw, make an owner responsible for repair and maintenance of LCP the owner has a right to use.

13. Here, strata bylaw 3.2 makes an owner who has the use of LCP responsible for its repair and maintenance, except for repair and maintenance that is the strata's responsibility under the bylaws.

14. Bylaw 11.1(c) makes the strata responsible for all LCP repair and maintenance that, in the ordinary course of events, occurs less often than once a year, as well as LCP repair and maintenance on patios, chimneys, stairs and other things attached to a building's exterior, no matter how often the repair or maintenance occurs.

15. Further, bylaw 8.1 requires an owner to obtain the strata's written approval before making an alteration to LCP. The parties agree that a previous owner likely added the patio tiles without the strata's prior written authorization. So, at the time Ms. Taylor purchased SL35, the patio tiles were an unapproved alteration.

16. As an unapproved alteration to LCP, I find that without an agreement saying otherwise, Ms. Taylor was not automatically responsible for the patio tiles under the bylaws. Although it is not specifically designated as a patio on the strata plan, based on photographs in evidence, and since the strata does not dispute it, I find the area in SL35's yard where the paving tiles are located is a patio. So, under bylaw 11.1(c)(ii)(C), the strata is responsible for repairing and maintaining the patio area in SL35's LCP yard. Given that the patio tiles were an unapproved alteration, the strata could have removed them to remedy a contravention of bylaw 8.1 under SPA section 133. However, the strata did not do so and instead took the position that Ms. Taylor, as SL35's current owner, was responsible for the unapproved alteration.

17. In support of its position imposing responsibility for the tiles on Ms. Taylor, the strata relies on bylaws 8.4 and 8.5. Bylaw 8.4 says, in part, that if an owner had altered LCP before bylaws 8.1 to 8.3 were passed, the owner who benefited from the alteration would be responsible for any damage or costs due to the alteration. Bylaw 8.5 says that an owner who made an LCP alteration after bylaws 8.1 to 8.3 were passed without adhering strictly to those bylaws must restore the LCP to its pre-altered condition at their expense. I find neither of these bylaws assist the strata. First, there is no evidence that the strata has suffered any damage or costs due to the patio tiles. Second, and more notably, it is undisputed that the patio tiles were installed by a previous owner, not Ms. Taylor.

18. However, for the reasons that follow, I find Ms. Taylor is responsible for repairing and maintaining the patio tiles. In January 2023, Ms. Taylor asked the strata to approve her alteration request to re-level the patio tiles. The strata agreed, and sent an indemnity agreement to Ms. Taylor on January 31, which she signed and returned to the strata on March 10. Clause 5 of the indemnity agreement says, in essence, that Ms. Taylor agrees to maintain, replace and repair the patio tiles as needed, at her expense. Further, clause 11 says that Ms. Taylor and any subsequent owners benefiting from the patio tiles must be responsible for all present and future maintenance, repairs and replacements, among other things.

19. So, by entering into the indemnity agreement, I find Ms. Taylor has agreed to take responsibility for the patio tiles, including their repair and maintenance and the associated costs. I find the strata is not responsible for any cost Ms. Taylor has incurred for re-leveling the patio tiles, unless Ms. Taylor can prove the alleged damage to the patio tiles occurred because the strata otherwise failed to meet its repair and maintenance obligations under SPA section 72 and the bylaws.

Did the strata fail to meet its repair and maintenance obligations?

20. It is undisputed the strata has a statutory duty of care based on the SPA and its bylaws to repair and maintain the fencing and the drainage system. I have also found above that under the bylaws, the strata is responsible for repairing and maintaining the patio area located on SL35's LCP yard, except for the patio tiles which Ms. Taylor has agreed to be responsible for. Previous court decisions have found the standard of care for a strata corporation's repair and maintenance obligations is reasonableness (see *John Campbell Law Corp. v. Owners, Strata Plan 1350*, 2001 BCSC 1342, and *Wright v. The Owners, Strata Plan #205*, 1996 CanLII 2460 (BC SC)).

21. In *Wright*, the BC Supreme Court said at paragraph 30 that a strata corporation is not an insurer and is not responsible for damage as long as it acted reasonably in the circumstances. This means a strata corporation will not be found responsible for damage even if its contractors fail to carry out work effectively unless it acted unreasonably when choosing and instructing the contractors.

22. The evidence shows that in the fall of 2021, the strata's fencing contractor damaged the strata's drainage system which led to water pooling in SL35's LCP patio area. There is no evidence that the contractor was not qualified to do the work or that the strata was unreasonable in selecting it. So, to the extent Ms. Taylor argues the strata is responsible for the fencing contractor damaging the drainage system, I find this unproven.

23. The next question is whether the strata unreasonably delayed addressing the drainage issue, resulting in damage to the patio tiles. It is undisputed that the drainage issue was not fixed until October 2022. However, the strata says, and the evidence shows, that the strata received advice in November 2021 from Clearview Lawn & Landscape, the contractor that ultimately repaired the drainage issue, that the ground was too wet to be digging large holes and connecting drainage at that time. Clearview advised that it would be best to wait until the spring. I find that the strata reasonably relied on Clearview's advice when deciding not to repair the damage over the winter. The strata says that since the summer and fall in 2022 were very dry, it waited to do the repairs until October 2022.

24. I find the strata likely could have had the drainage repairs done in the spring or summer of 2022 but felt no urgency to do so because of the dry weather. On the evidence before me, I find it unproven that the strata's decision to wait was unreasonable, and there is no evidence that any delay caused further alleged damage to the patio tiles.

25. Overall, I find the evidence does not show that the strata failed to meet its repair and maintenance obligations under SPA section 72 and the bylaws. So, I find no basis on which to find the strata responsible for reimbursing Ms. Taylor for re-leveling the patio tiles and I dismiss her claims.

CRT FEES AND EXPENSES

26. Under section 49 of the CRTA, 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. Since Ms. Taylor was unsuccessful, I dismiss her reimbursement claim for her paid CRT fees. The strata did not pay any fees and neither party claims any dispute-related expenses, so I award none.

27. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Taylor.

ORDER

28. I dismiss Ms. Taylor's claims and this dispute.

Nav Shukla, Tribunal Member