



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VR 549 v. Chau*, 2024 BCCRT 240

B E T W E E N :

The Owners, Strata Plan VR 549

APPLICANT

A N D :

SAU MING CHAU

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute about recovery of expenses for the removal of an allegedly unauthorized deck alteration.
2. The respondent, Sau Ming Chau, owns strata lot 34 (SL34) in the applicant bare land strata corporation, The Owners, Strata Plan VR 549 (strata).

3. The strata says SL34's previous owner built an "illegal deck" on common property. It says the previous owner's proposal to keep the deck was defeated at the strata's 2018 annual general meeting (AGM). The strata asked the previous owner to remove the deck, but they did not. The strata says the respondent inherited the deck issue and would have been aware of the issue if he had completed reasonable due diligence when he purchased SL34 in 2019.
4. The strata removed the deck in 2021 and says the respondent is responsible for the removal expenses of \$15,750. It seeks an order that the respondent reimburse it for that amount. A strata council member represents the strata.
5. The respondent agrees with the strata that the previous owner built the deck and says the deck was built in about 2000. She says she reviewed strata documents available at the time of her purchase of SL34 in May 2019 for the 2 preceding years and was not aware of the deck issue. The respondent essentially argues that the strata is out of time under the *Limitation Act* to commence these proceedings. The respondent is self-represented.
6. As explained below, I dismiss the strata claims and this dispute.

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. I note the parties did not participate in facilitation. Given this, through staff I asked the parties to provide further relevant evidence about the removed deck and additional submissions about any new evidence provided, starting with the applicant strata. On February 5, 2024, the strata was given 5 days to provide additional evidence and

submissions. Nine days later on February 14, 2024, CRT staff followed up with the strata and it requested an extension to February 23, 2024. I granted the strata an extension to February 21, 2024. The strata did not provide any further submissions or evidence by that date. Bearing in mind the CRT's mandate includes a prompt resolution of disputes, I asked staff to advise the parties that I would decide the dispute on the parties' submitted evidence and submissions. I find no procedural fairness issues arise from this process and note that neither party objected to my decision about additional evidence and submissions.

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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.
10. 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.

ISSUES

11. The issues in this dispute are:
 - a) Is the strata entitled to recover the cost of removing the alleged unauthorized deck from common property next to SL34?
 - b) If so, is the strata out of time under the *Limitation Act*?
 - c) If not, is the respondent responsible to pay the strata \$15,750?

BACKGROUND

12. As applicant in a civil proceeding such as this, the strata must prove its 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.

13. As mentioned, the strata is a bare land strata corporation. It was created under the *Strata Titles Act* in 1978 and continues to exist under the *Strata Property Act* (SPA). SL34 is at the end of a row of strata lots and is next to strata lot 33 on its east side and strata lot 35 on its south side. The property to the west and north of SL34 is shown as common property, but in 2018 was designated as limited common property (LCP) for the exclusive use of strata lots 1 through 36. I note the strata plan does not show the location of any buildings, including buildings located on SL34.
14. The strata's bylaws create separate sections. Section 1 of The Owners, Strata Plan VR 549 includes strata lots 1 through 36 and is known as the "Townhouse Section". Strata lot 37 is a different section known as the "Inn Section". I discuss relevant bylaws below, as necessary.

EVIDENCE AND ANALYSIS

Is the strata entitled to recover the cost of removing the alleged unauthorized deck from common property next to SL34?

15. The strata filed a complete new set of bylaws with the Land Title Office (LTO) on April 26, 2012, that repealed all previously filed bylaws and the Standard Bylaws under the SPA. As noted, the bylaws create 2 separate sections. Sections are permitted under Part 11 of the SPA and are separate legal entities from the strata. SL34 is located in the Townhouse Section.
16. The following bylaws are relevant.

Bylaws 1.3.2 and 1.5 are similar. They say for matters that relate solely to a section, each section has the same powers and duties as the strata to enforce bylaws, among other things.

Bylaw 2.4.3(iii) requires an owner to indemnify the strata and hold it harmless from the expense of any maintenance, repair, or replacement necessary to

common property, LCP, or common assets “by the owner’s act, omission, negligence, carelessness or otherwise....”

Bylaw 2.7 requires an owner to obtain the prior written permission of the strata before altering common property or a section before altering LCP relating to the section.

Bylaw 3.1 requires the strata to repair and maintain common property of the strata and each section to repair and maintain limited common property relating to the section.

Bylaw 3.2.1 makes the Townhouse Section responsible for the repair, maintenance, and replacement of original building structures, building exteriors, and stairs, balconies and other things attached to the exterior of a building on strata lots 1 – 36.

17. On May 31, 2017, the strata corporation, Townhouse Section, and Vale Inn Ltd., which operates the Inn Section, entered into an agreement that contemplated, among other things, designating the common property located next to SL34 as LCP for the Townhouse Section strata lots. The LCP designations were filed with the LTO on April 16, 2018, under SPA section 74. In the same LTO document, the strata filed bylaws that made the Townhouse Section responsible for the repair, maintenance, and replacement of the new LCP. Therefore, I find that effective April 16, 2018, the Townhouse Section was responsible for repair and maintenance of the former common property (now LCP) next to SL34. This is consistent with SPA Part 11 that makes a section responsible for matters that relate solely to the section.
18. Based on the correspondence in evidence, the previous owner of SL34 constructed a “2-level deck structure” in about May 2010 allegedly on the common property (now LCP) next to SL34. The strata did not approve the alteration. The correspondence confirms the strata asked the previous owner to remove the deck. By April 5, 2011, the previous owner had partially removed the deck. It is unclear whether the part that they removed was on common property. The strata gave the previous owner until May 4, 2011, to fully remove the deck, but they did not comply.

19. There is a large gap in the evidence, but at the strata's August 2018 AGM, a $\frac{3}{4}$ vote resolution to approve a proposal from the previous SL34 owner to construct a deck on common property was defeated.
20. The respondent purchased SL34 on May 21, 2019.
21. It appears the strata held an AGM in December 2019. According to the strata, the owners directed it to remove unauthorized structures from common property, including the deck associated with SL34. Minutes of the December 2019 AGM are not before me, but the respondent does not dispute this.
22. The strata held a special general meeting (SGM) on April 28, 2020. Minutes from that meeting show the "Vale Townhouses" approved a contingency reserve fund expense to remove the unapproved alterations to common property associated with SL34. The preamble to the $\frac{3}{4}$ vote resolution stated the strata could charge the expense of remedying a bylaw contravention to the owner under SPA section 133(2) if the owner did not make an appropriate application to the strata before July 1, 2020. I infer the intention of the resolution was to also approve charging back the deck removal expense to SL34.
23. The strata provided 2 undated letters into evidence. One is addressed to "owner", the other is addressed to the respondent. Both are from the strata council. The first letter says the owner must start removing the deck by August 1, 2020, and must submit a proposal for the deck's removal to the strata by July 1, 2020. If the owner did not comply, the strata would retain a contractor to remove the deck. The second letter states the SL34 deck is located on common property, not LCP, and that due to the respondent's failure to provide a proposal to remove the deck, the strata had engaged a contractor, Whistler Works, to remove the deck. The letter also states the strata was entitled to recover the cost of the work under SPA section 133 and enclosed Whistler Works' estimate to remove the SL34 deck.
24. On October 28, 2021, the strata manager wrote to the respondent advising that the strata had charged her \$15,750. Invoices totaling this amount from Whistler Works

were enclosed. The strata requested payment of the \$15,750, but gave the respondent 14 days to dispute it, which the respondent apparently did.

25. Following a hearing, the strata wrote to the respondent on November 24, 2021 that it would not reverse the chargeback.
26. For the following reasons, I find the strata is not entitled to recover the cost of removing the deck from the LCP next to SL34.
27. First, the strata's argument states that the respondent "inherited" the deck removal issue from the previous SL34 owner. I disagree. There is nothing in the SPA or bylaws that supports this. The bylaws refer to an owner's obligations, which I find means the owner of the strata lot at the time the alteration is made. I do not find a previous owner's obligations or bylaw contraventions transfer to a new owner. This is especially true given the strata admits there was no agreement between it and previous SL34 owner making subsequent SL34 owners responsible for alterations.
28. I also disagree with the strata's allegation that SPA section 133 applies to the respondent. I find the strata's authority to remedy a bylaw contravention under section 133, such as removing the deck, applies to owners and tenants who contravene bylaws. I agree with the respondent that she did not contravene any bylaws. If anyone did, it was the previous owner.
29. Second, I have previously found the BC Court of Appeal's decision in *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512, provides guidance in situations where a strata corporation or section is seeking to charge an owner for costs the strata corporation has incurred. See for example *Rintoul et al v. The Owners, Strata Plan KAS 2428*, 2019 BCCRT 1007. Several other CRT decisions have reached the same conclusion.
30. In *Ward*, the Court found that a strata corporation was not entitled to charge back legal fees to an owner without the authority to do so under a valid and enforceable bylaw or rule that creates the debt. I find the reasoning in *Ward* applies to other charges, such as the deck removal expenses here. Based on the evidence, such a bylaw or rule did not exist when the respondent purchased SL34.

31. Third, the strata has conflated its authority with that of the Townhouse Section. I have found that effective April 16, 2018, the Townhouse Section was responsible for repair and maintenance of the LCP next to SL34 (formerly common property). So, while the strata might have been responsible for that property when dealing with the previous SL34 owner, it was the Townhouse Section that was responsible for the LCP after April 16, 2018. Therefore, only the Townhouse Section had authority to address any alterations to LCP after that date. Some of the correspondence to the respondent appears to have come from the strata rather than from the Townhouse Section. More importantly, the April 28, 2020 SGM was clearly a strata AGM and not a Townhouse Section AGM. Yet, the resolution passed to pursue removal of the deck appears to be that of the Townhouse Section, referenced as the “Vale Townhouses” in the minutes.
32. Fourth, there is no evidence, such as photographs or expert reports, which confirm the SL34 deck was constructed on LCP. So, even if the strata does have authority to enforce matters affecting the Townhouse Section LCP, I find there is no proof the constructed deck contravened the bylaws. Further, the Whistler Works estimates and invoices describe removal of decks (balconies), installation of siding and flashing, and blocking sliding doors which implies the deck were attached to the building located on SL34. Given the strata is a bare land strata and any buildings located on SL34 are not shown on the strata plan, I find that at least part of the deck that was removed was located on SL34. The strata’s arguments and evidence related only a deck located on common property or LCP, not a deck located on SL34.
33. For these reasons, I find the strata is not entitled to recover the cost of removing the alleged unauthorized deck from common property next to SL34. I dismiss its claims and this dispute.
34. As a result of my conclusion, I do not need to address any *Limitation Act* arguments.

CRT FEES AND EXPENSES

35. 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 respondent was the successful party but did not pay CRT fees or claim dispute-related expenses, so I make no order for reimbursement of fees or expenses.
36. Under section 189.4 of the SPA, the strata may not charge any dispute-related expenses against the respondent.

DECISION

37. I dismiss the strata's claims and this dispute.

J. Garth Cambrey, Vice Chair