



Civil Resolution Tribunal

Date Issued: March 15, 2024

File: ST-2023-002256

Type: Strata

Civil Resolution Tribunal

Indexed as: *Scott v. The Owners, Strata Plan EPS136*, 2024 BCCRT 265

BETWEEN:

DOUGLAS GEORGE SCOTT

APPLICANT

AND:

The Owners, Strata Plan EPS136

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This strata property dispute is about house trim and garage door colours under a registered building scheme and strata corporation bylaws.
2. The applicant, Douglas George Scott, co-owns strata lot 104 (SL104) in the respondent bare land strata corporation, The Owners, Strata Plan EPS136 (strata). Mr. Scott is self-represented. A strata council member represents the strata.

3. Mr. Scott purchased SL104 in 2021. At that time, the house constructed on SL104 was mostly complete and the exterior trim and garage doors were white. He says the strata subsequently requested he repaint the trim and garage doors a different colour, allegedly to comply with a statutory building scheme registered against SL104's title. Mr. Scott argues the building scheme does not prohibit white house trim and garage doors. He also says other houses in the strata complex have white trim and white garage doors, so the strata has treated him unfairly.
4. Mr. Scott seeks orders that the strata allow his house trim and garage door colour to remain white and approve the final inspection of his house. He also seeks reimbursement of dispute-related expenses of \$1,700 that include legal fees.
5. The strata says it has the authority to enforce the terms of the building scheme, which includes the enforcement of the scheme's design guidelines. The strata admits neither the building scheme nor the design guidelines expressly state white is a non-compliant colour. However, the strata argues the design guidelines require house colours to complement the natural environment of the strata complex and include only "muted colour tones". It essentially says white trim and garage doors of Mr. Scott's house are not muted, so the colour does not comply with the design guidelines, and it cannot give final approval of Mr. Scott's home. The strata also says it has not acted unfairly. I infer the strata asks the Civil Resolution Tribunal (CRT) to dismiss Mr. Scott's claims.
6. As explained below, I find in favour of Mr. Scott, except for his claim for dispute-related expenses, including legal fees.

JURISDICTION AND PROCEDURE

7. These are the CRT's formal written reasons. The CRT has jurisdiction over strata property claims under CRTA section 121. 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. 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 written evidence and submissions provided.
9. 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.
10. I note the Dispute Response provided by the strata shows Andrea Scott, the other SL104 owner, as an applicant. However, Mr. Scott is the sole applicant on the Dispute Notice and CRT staff confirmed it was not amended. Therefore, I have exercised my discretion under *Civil Resolution Tribunal Act* (CRTA) section 61 to include Mr. Scott as the sole applicant in these proceedings. The style of cause reflects this.

ISSUES

11. The issues in this dispute are:
 - a. Do the building scheme, design guidelines, and bylaws prohibit Mr. Scott from having white house trim and garage doors?
 - b. Did the strata treat Mr. Scott significantly unfairly?

BACKGROUND

12. In a civil proceeding such as this, Mr. Scott must prove his 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 noted, the strata is a bare land strata corporation. It was created under the *Strata Property Act* (SPA) on December 15, 2009. On the same date, a building scheme was registered against the title of SL104 and other strata lots, which I discuss further below.

14. According to City of Cranbrook (City) records of inspection, construction of the SL104 house started in December 2020. The owner of record was 1244376 B.C. Ltd. (124). The City approved occupancy of the house on June 14, 2021, which is the same day Mr. Scott purchased SL104. It is undisputed that the house exterior had white trim and white garage doors at that time.

Bylaws

15. On December 15, 2009, the strata’s owner developer filed bylaws with the Land Title Office (LTO) that were different from the Standard Bylaws under the SPA. In particular, I note that Standard Bylaw 5 about altering a strata lot was deleted and replaced with the following (reproduced as written):

5(1) An owner, tenant or occupant shall strictly comply with the terms of the statutory building scheme registered against title to the owner’s strata lot and acknowledges and agrees that notwithstanding anything contained in the statutory building scheme the strata corporation may enforce the owner’s compliance with the statutory building scheme pursuant to these bylaws.

16. The owner developer also added bylaw 48, which references an agreement between the owner developer (Shadow Mountain Properties Ltd.) and a society (Shadow Mountain Homeowners Association or SMHOA). The owner developer established SMHOA to maintain certain amenities and provide certain services for what appears to be common property matters. Bylaw 48 states all owners of the strata are also members of SMHOA and subject to its bylaws, rules, and regulations. A copy of the agreement is not before me.

17. On January 25, 2022, the strata filed a complete new set of bylaws with the LTO. The following amendments are notable.

a. Bylaw 5(1) was renumbered as bylaw 5 amended to read (my emphasis):

An Owner, Tenant or Occupant shall strictly comply with the terms of the Statutory Building Scheme, Schedule B, registered against title to the

Owner's strata lot and acknowledges and agrees that notwithstanding anything contained in in the Statutory Building Scheme, Schedule B, the Strata Corporation may enforce the Owner's compliance with the Statutory Building Scheme, Schedule B, and the Design Guidelines, Schedule A, pursuant to these bylaws.

- b. Bylaw 44 was added. It says the strata was appointed the Administrator of the building scheme on February 5, 2021 "acting on behalf of the Owners, for the enforcement of" the design guidelines and the building scheme.
- c. The statutory building scheme and associated design guidelines were also added to the bylaws as Schedules B and A, respectively.
- d. Bylaw 48 about the SMHOA was re-registered as bylaw 42.

Building Scheme

- 18. The registered building scheme requires an Administrator to approve new house construction on the strata lots, including plans and specifications, and building contractors. The building scheme is clear that the Administrator must act in a timely manner and must grant or reject approval or make alteration recommendations. The scheme also states the Administrator has sole discretion to approve alterations and modifications to a strata lot and must not act arbitrarily.
- 19. At the time the strata was created in December 2009, the Administrator was Shadow Mountain Properties Ltd. Clause 7 of the building scheme says Shadow Mountain Properties Ltd. may assign its rights and responsibilities as Administrator and that if it resigns, SMHOA or an Administrator elected by the SMHOA board will become the Administrator. There is no dispute that the original owner developer and a subsequent owner developer both went bankrupt. Based on clause 7 of the building scheme, I accept that the SMHOA became the Administrator when the second owner developer went bankrupt. Although the date of bankruptcy is unclear, from the evidence it appears to have occurred in late 2020. Therefore, I accept the strata assumed the Administrator's rights and responsibilities in February 2021, as confirmed in an April 11, 2021 letter to the strata from the SMHOA board.

20. Also in February 2021, the strata, in its capacity as Administrator, established an Architectural Control Agent to function as what it calls an “unbiased professional third-party agent to assess building and landscaping applications”. The strata first contracted with Graphically Speaking in February 2021 for this purpose. Berry Architecture replaced Graphically Speaking on August 26, 2022.

Design Guidelines

21. The building scheme also gives the Administrator authority to approve criteria and procedures established in design guidelines. There are no design guidelines attached to the registered building scheme. The strata submits that design guidelines under the building scheme have always existed. The earliest set of design guidelines provided in evidence is dated in 2021, which the strata says it amended from previous versions. Mr. Scott provided design guidelines which he says were in effect in May 2021. The strata provided the same design guidelines, so I accept the guidelines before me were in effect at the time Mr. Scott purchased SL104. No one provided copies of any guidelines in effect before May 2021, but I infer the relevant parts of the guidelines were in place at the time of the initial SL104 house application and construction.

22. The same design guidelines were added as Schedule A to the January 2022 bylaws.

EVIDENCE AND ANALYSIS

Do the building scheme, design guidelines, and bylaws prohibit Mr. Scott from having white house trim and garage doors?

23. 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.

What do the building scheme and design guidelines say about house colours?

24. The parties agree that neither the building scheme nor design guidelines state the colour white cannot be used, including for house trim and garage doors. In fact, the

building scheme does not reference colours at all. Relevant references to colour in the design guidelines are as follows:

a. Under the heading “Design Objectives”:

...the improvements must not overwhelm the natural environment.

The colours and materials of Improvements must also complement the natural environment. This can be achieved with natural materials, stone, brick or some man-made materials in appropriate colours. Appropriate colours include the muted colour tones visible in grassy areas, hills, trees and mountains.

Harsh artificial materials and large expanses of primary colours will not achieve this intent....

b. Under the heading “Materials”:

i. And the sub-heading “Windows, doors and Garage Doors”:

Garage doors should blend into the overall colour scheme to de-emphasize the prominence of the door.

ii. And the sub-heading “Colours”:

Colour acts as a critical element reflecting the Community’s integration into the natural landscape and surroundings. Subdued colours, earthy in nature, blend naturally with the setting and should be used as predominate colours throughout the community. All exposed wood must be painted appropriate colours or stained.... A wide range of trim and accent colours are permitted....

25. Under the “Introduction and Overview” heading, the design guidelines state, among other things, that they are intended to:

a. Promote a sense of cohesiveness and standards that visually unite the community with architectural design, landscape design, and site planning, and

- b. Allow strata lot owners the flexibility within the design guidelines, to explore personal expression, resulting in inspiring, innovative, and creative improvements.
26. I find many of the guidelines suggest certain things that owners should or could do. As for colours, the guidelines refer “appropriate colours” but, other than referencing “muted colours”, there are no references to specific colours. It is also unclear what the phrase “large expanses of primary colours” means. White is not defined as a primary colour.
27. The strata submits the guidelines intentionally do not refer to specific colours. It says the guidelines “envision a wide choice of colour schemes with the only caveat being that that the schemes are muted colour tones that blend into the natural setting”.
28. All of this to say that the determination of what is an appropriate colour, and if the white colour used on the SL104 house can be considered appropriate, is a very subjective exercise.
29. I will first consider what happened after Mr. Scott purchased SL104.
30. The strata first wrote to Mr. Scott on August 23, 2021. The letter advised that the house improvements on SL104 had not been submitted for approval and asked that Mr. Scott do so by August 31, 2021.
31. On September 23, 2021, the strata again wrote to Mr. Scott advising that it had not yet received an application nor any response from its August 2021 letter. Mr. Scott spoke to the strata council president on October 4, 2021. In an email the same day from the president to Mr. Scott, the strata confirmed it was not aware Mr. Scott was not the owner when the house was constructed, and that the strata council would follow up with the previous owner (124) about the bylaw contravention.
32. Also on October 4, 2021, the 124 representative emailed Mr. Scott and the strata that its builder had submitted the house application “over a year ago” to the “Design Control Committee”. The email stated the builder did not get a response and

proceeded with constructing the house. The email mentions the name of the individual that headed the committee, which I note was strata council member.

33. I accept that the previous owner of SL104 submitted its house application to the Design Control Committee in about October 2020, based on the owner developer's impending bankruptcy. Further, the strata did not object to the email from the 124 representative stating it made the application. I find if the strata council member did not receive the application as head of the Design Control Committee, the strata council would have said so.
34. In submissions, the strata argues the previous SL104 owner did not submit a house application. The strata appears to have relied on a house application provided by Graphically Speaking that indicates original trim colour was black and the garage door colour was "gray/blue". That application was not signed or dated, and the 124 representative confirmed it did not provide it. Mr. Scott also says he did not provide the application or its information to Graphically Speaking, so it is unclear how and when Graphically Speaking received it.
35. Based on the overall evidence, I am satisfied the previous SL104 owner made the house application through its builder in 2020. I am not persuaded the house application included black trim and blue or grey garage doors. Further, during the time leading up to February 2021, when the strata obtained Administrator status for the building scheme, the owner developer likely was not following the approval process under the building scheme rigidly, if at all, considering its impending bankruptcy. The strata describes this period as being a time of "chaos".
36. Finally, in a November 21, 2022 letter to Mr. Scott, the strata admitted the white trim and garage doors may have been part of the previous owner's application. Bearing all this in mind, I find that no one responded to the application, and thus no one approved or denied the white trim.
37. The strata essentially argues that Mr. Scott is bound by the January 2022 bylaws as they relate to the white trim and garage doors. If the white trim and garages were approved before Mr. Scott's purchase, this would not be the case. However, I find it

does not matter if the house trim and garage door colour was approved, because I find the building scheme and design guidelines do not prohibit white trim and garage doors. My reasons follow.

38. I agree with the parties that neither the building scheme nor the design guidelines say white colours cannot be used. The building scheme is silent about colours and references the design guidelines. The guidelines in place at the time of Mr. Scott's purchase of SL104 are not objective or clearly defined and generally require chosen colours to blend in with the natural environment. I find the colour white does blend in with the natural environment. Had the author of the guidelines believed white was not a suitable colour, I expect they would have said so. Instead, the guidelines state they are intended to promote cohesiveness and standards that visually unite the community while allowing strata lot owners flexibility with design.
39. The strata also submits that there are an "endless" variety of shades of white. From its submissions, I infer the strata could be satisfied with a different shade of white that it considers to be "less harsh". However, from the photographs provided, I do not see that Mr. Scott's house trim and garage doors violate the design guidelines given the guidelines' subjective nature.
40. Overall, I find the strata has acted unreasonably by requiring Mr. Scott to change the colour of his house trim and garage doors. I order the strata to approve the white house trim and garage doors and provide a final approval of his completed house under the terms of the building scheme, design guidelines, and bylaws.
41. If I am wrong in my conclusions above, I have also considered whether the strata has treated Mr. Scott significantly unfairly.

Did the strata treat Mr. Scott significantly unfairly?

42. Mr. Scott argues it is significantly unfair for the strata to require him to change the colour of his house trim and garage doors from white to another colour. I agree.
43. The CRT has authority to make orders remedying a significantly unfair act or decision by a strata corporation under section 123(2) of the CRTA. The legal test for significant

unfairness is the same for CRT disputes and court actions. See *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113.

44. The basis of a significant unfairness claim is that a strata corporation must have acted in a way that was “burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable.” See *Reid, Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, and *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173.
45. In *Dollan*, the BC Court of Appeal established the following reasonable expectations test:
 - a. Examined objectively, does the evidence support the asserted reasonable expectations of the owner?
 - b. Does the evidence establish that the reasonable expectation of the owner was violated by the action that was significantly unfair?
46. In *King Day Holdings Ltd. v The Owners, Strata Plan LMS3851*, 2020 BCCA 342, the Court of Appeal determined the reasonable expectations test set out in *Dollan* is not determinative. Rather, the Court found the test is a factor in deciding whether significant fairness has occurred, together with other relevant factors, including the nature of the decision in question and the effect of overturning or limiting it.
47. Here, the parties agree other houses in the complex also have white trim and white garage doors. The photographs in evidence confirm this. The strata says this is partly because the building scheme was not filed against the title of some strata lots because of the “chaos” resulting from the receivership of the 2 owner developers. As a result, the strata says the terms of the building scheme and design guidelines were not enforceable against these strata lots until January 2022. The strata also says 3 houses with “non-muted white trim” were approved erroneously, so it issued unconditional approval letters for those 3 strata lots.

48. When Mr. Scott questioned the strata about why it did not approve SL104, the strata appears to have relied on the application form generated by Graphically Speaking, that I have found invalid. In its November 22, 2021 letter, the strata admits the previous owner of SL104 may have applied for white trim and garage doors. However, it has not considered whether the owner developer approved the application. Instead, it appears to rely on the invalid application while refusing to consider the state of chaos in 2020 when the SL104 house application was made.
49. I find Mr. Scott initially expected the strata to allow the white trim and garage doors because several houses in the complex had those features. He then expected the colour to be approved based on the circumstances of his dispute, including that the previous owner had made the appropriate house application which was not denied. I find Mr. Scott's expectations were reasonable. I say this because the design guidelines expressly state they are subject to relaxation or variance at the discretion of the strata. The strata admits that white trim and garage doors may have been submitted by the previous SL104 owner. I have also found there is no way to determine if the white colour was approved. Based on this uncertainty, it would have been reasonable for the strata to accept Mr. Scott's house trim and garage door colour.
50. I also find the strata retains control over the design decisions, despite its submission the Architectural Control Agent it retains is an "unbiased professional third-party agent". This is because under the "Introduction and Overview" heading of design guidelines, it expressly states the guidelines are enforced by the strata. The agreement between Graphically Speaking and the strata also allowed the strata to review correspondence and make comments and suggestions relating to the building scheme and design guidelines, suggesting the strata had input into the entire process.
51. In the circumstances of this dispute, I find the strata's decision not to allow the white trim and garage doors to remain was significantly unfair.

52. Based on this, I would order the strata to approve Mr. Scott's white house trim and garage doors and provide a final approval of his completed house under the terms of the building scheme, design guidelines, and bylaws.

CRT FEES AND EXPENSES

53. 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. Mr. Scott was the successful party and claims paid CRT fees of \$225.00, so I order the strata to reimburse him that amount.

54. Mr. Scott also claims dispute related expenses of \$1,700.00. He describes his expenses as \$300.00 for serving the dispute and \$1,400.00 for legal fees. Mr. Scott provided an invoice from his lawyer for \$1,412.11, but nothing for the service fees. I dismiss his claim for service fees because he has not proven it, but I have considered his claim for legal fees.

55. I find the invoice largely relates to a November 5, 2021 letter Mr. Scott's lawyer provided to him about the building scheme. I have considered CRT rule 9.5(3)(a) that says the CRT will not order a party to pay another party's legal fees except in extraordinary circumstances. I find there are no extraordinary circumstances here that justify an order that the strata pay Mr. Scott's legal fees. Rule 9.5(4) sets out factors I may consider when determining whether to order a party to pay another party's legal fees. Those factors include the complexity of the dispute, the degree of involvement of the representative and whether the representative's conduct has caused unnecessary delay or expense. While the dispute was somewhat complex due the building scheme and transfer of ownership, at its basic level, the dispute was about governance, which is an issue the CRT deals with on a regular basis. There was no reprehensible conduct or delay by the strata's representative. I also note lawyer's advice was given over 1 year before the dispute started, and that I did not rely on the lawyer's letter. Therefore, I dismiss Mr. Scott's claims for legal fees.

56. Under section 189.4 of the SPA, the strata may not charge any dispute-related expenses against Mr. Scott.

DECISION AND ORDER

57. Within 15 days of the date of this decision, I order the strata to:

- a. Issue a formal letter to Mr. Scott approving the white trim and garage door colour on his SL104 house. The letter will confirm the strata's approval is final approval under the terms of the building scheme, design guidelines, and bylaws, and
- b. Pay Mr. Scott \$225.00 for CRT fees.

58. Mr. Scott's remaining claims are dismissed.

59. Mr. Scott is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.

60. This is a validated decision and order. 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