



Civil Resolution Tribunal

Date Issued: March 20, 2024

File: ST-2022-010227

Type: Strata

Civil Resolution Tribunal

Indexed as: *Melnyk v. The Owners, Strata Plan LMS 4379*, 2024 BCCRT 291

BETWEEN:

RON MELNYK

APPLICANT

AND:

The Owners, Strata Plan LMS 4379

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This strata dispute is about alterations to common property. Ron Melnyk owns a strata lot in The Owners, Strata Plan LMS 4379 (strata). In 2022, Mr. Melnyk made changes to the limited common property (LCP) patio behind his strata lot and the common property surrounding it.

2. Mr. Melnyk says the changes are not alterations to common property, so he did not need the strata's approval for them. In the alternative, he says the strata granted him either express or implied approval for the changes. He says the changes are not significant changes to the use or appearance of common property, so he did not need the owners' approval through a $\frac{3}{4}$ vote resolution. He also says the strata treated him significantly unfairly by refusing to grant him retroactive approval for the changes. Mr. Melnyk asks for an order that he be permitted to keep all the changes he made to LCP and common property.
3. The strata says Mr. Melnyk's changes are alterations to LCP and common property, so he needed the strata's approval before installing them. The strata says Mr. Melnyk sought approval for 2 of the changes, but never sought approval for the remaining changes. It says the changes are significant changes to the use or appearance of common property, so they required approval from the owners by a $\frac{3}{4}$ vote resolution. The strata says the owners rejected the changes at an August 2023 special general meeting (SGM). It also denies treating Mr. Melnyk significantly unfairly.
4. Mr. Melnyk is self-represented, and the strata is represented by a council member.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.

7. 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. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Under CRTA section 123, in resolving this dispute the CRT 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.
9. Although the strata did not raise this, I note that some of Mr. Melnyk's evidence is confidential written communications between the parties during the negotiation stage of the CRT process. There is no evidence the strata waived the confidentiality of these communications, so I have not considered them in my decision.

ISSUES

10. The issues in this dispute are:
 - a. Are Mr. Melnyk's changes alterations to common property?
 - b. If so, did the strata approve the alterations?
 - c. Are the alterations significant changes to the use or appearance of common property?
 - d. Was the strata's refusal to approve the alterations significantly unfair?
 - e. What is an appropriate remedy?

EVIDENCE AND ANALYSIS

11. As the applicant in this civil proceeding, Mr. Melnyk must prove his claims on a balance of probabilities, which means more likely than not. I have read all the parties'

submissions and evidence but refer only to what I find necessary to explain my decision.

12. The strata was created in 2001. It is a residential strata in Whistler with 26 townhouse-style strata lots in 14 separate buildings. Mr. Melnyk's strata lot is in the north half of a duplex building shared with strata lot 24 (SL24). His front entrance faces west. His strata lot has a rear east-facing patio that is LCP. The land surrounding his strata lot to the north and east is common property. There is a strip of decorative river rock on common property along the north and east perimeter of his strata lot building under the roof line.
13. The Standard Bylaws under the SPA apply to this dispute, subject to some amendments that I find are not relevant to this dispute. Standard Bylaw 6(1) requires an owner to obtain the strata's written approval before making an alteration to common property, including LCP.
14. On February 19, 2022, Mr. Melnyk emailed the strata asking its permission to install 2 wooden planter boxes "on the back of our lot", and a small storage shed on his back patio to store his garden tools and garbage cans. The strata determined that Mr. Melnyk's proposed changes were not alterations to common property under Standard Bylaw 6, so its approval was not required.
15. At some point between May and July 2022, Mr. Melnyk added the 2 wooden planter boxes behind his strata lot. It is unclear whether he placed them on his LCP patio or on the common property surrounding it. However, the strata does not take issue with the wooden planter boxes, and so I decline to address them further in this decision.
16. Between May and July 2022, Mr. Melnyk also installed:
 - a. A storage shed on his LCP patio (patio shed),
 - b. A patio on the common property area behind his LCP patio, on which he placed chairs, a swing, and a fire pit, with pavers connecting it to the LCP patio (new patio),

- c. Pavers on top of the river rock on common property along on the north and east perimeter of his strata lot (paver pathway),
- d. Two concrete steps and a concrete slab over the river rock on common property on the north side of his strata lot, on which he placed a shed (side shed), and
- e. Racks attached to trees on common property to the east side of his strata lot to store watercraft (boat racks).

(together, the installations).

17. Mr. Melnyk was a strata council member when he made his request to the strata and when he installed the installations.
18. On October 5, 2022, the strata notified Mr. Melnyk that it had received a complaint about the installations, which it said were alterations to LCP and common property that he installed in violation of Standard Bylaw 6. The strata demanded that Mr. Melnyk remove the installations within 30 days.
19. On October 19, 2022, Mr. Melnyk had a hearing before the strata council seeking its retroactive approval for the installations. On October 25, 2022, the strata denied Mr. Melnyk's request. It determined that the installations were significant changes to the use or appearance of common property and must be approved by a $\frac{3}{4}$ vote resolution at an annual general meeting or SGM, as required by section 71 of the *Strata Property Act* (SPA). The strata said the installations were not in the interest of the strata community, so it would not convene an SGM. The strata demanded that Mr. Melnyk remove the installations within 30 days, otherwise it said it would remove them at Mr. Melnyk's cost, as authorized by SPA section 133.
20. On November 30, 2022, the strata emailed the owners to notify them about the installations, the ongoing disagreement with Mr. Melnyk, and its position that the installations are not beneficial for the strata. Mr. Melnyk started this CRT dispute on December 29, 2022.

21. At some point Mr. Melnyk installed a wire mesh fence on the common property behind his LCP patio. The fence was not included as one of the installations in the strata's October 5, 2022 letter or at Mr. Melnyk's subsequent hearing. However, the strata included the fence in its list of allegedly unapproved alterations in its May 13, 2023 Dispute Response.
22. On August 2, 2023, the strata held an SGM at which a $\frac{3}{4}$ vote resolution was proposed to the owners to "approve the alterations that have already been made to the common property behind SL#23". The description of these alterations included the installations Mr. Melnyk made in the summer of 2022 as well as the fence. The vote was defeated with 0 in favour, 14 opposed, and 1 abstention.
23. I note here that the parties' submissions and evidence refer to additional changes Mr. Melnyk allegedly made to common property after the summer of 2022 that are not set out in either the Dispute Notice or the Dispute Response. These alleged changes include the installation of outdoor lighting and floodlights, additional boat racks, and additional fencing and decorations. These changes are not addressed in the strata's October 5, 2022 letter to Mr. Melnyk, nor were they included in the $\frac{3}{4}$ vote resolution at the August 2023 SGM. It is unclear from the evidence if or when Mr. Melnyk made these changes, but since they are not included in the Dispute Notice or Dispute Response, I decline to address them further in this decision.

Are the installations and the fence alterations to common property?

24. The courts have found that alterations to common property are those that change the structure of the common property and do not include immaterial changes (see *The Owners of Strata Plan NWS 254 v. Hall*, 2016 BCSC 2363, and *Allwest International Equipment Sales Co. Ltd. v. The Owners, Strata Plan LMS 4591*, 2018 BCCA 187).
25. Several previous CRT decisions have found that while a structural change will likely always be an alteration for the purposes of Standard Bylaw 6, non-structural changes may still be alterations if they involve a material change (see for example *Prenty v. The Owners, Strata Plan NW2603*, 2022 BCCRT 1029). These decisions have also found that adding something that did not exist before is more likely to be a material

change than replacing or supplementing something that was already there. These CRT decisions are not binding on me, but I find them persuasive.

26. Mr. Melnyk says that aside from the concrete steps to the side shed, the other installations and the fence are not alterations, because their degree of attachment is limited and because they do not alter the landscape or structure of the common property. The strata says all of the installations and the fence are alterations.

Patio shed

27. The patio shed is not affixed to Mr. Melnyk's patio or the building, so I find it is not a structural change to LCP. The strata undisputedly approved Mr. Melnyk's request to install a storage shed on his patio. The parties dispute whether the patio shed Mr. Melnyk installed is larger than what the strata approved, but I find its size does not affect its intended use. For these reasons, I find the patio shed Mr. Melnyk installed is not a material change to LCP, and so it is not an alteration to common property.

New patio

28. The strata says Mr. Melnyk removed natural ground cover and levelled the ground on common property to build the new patio. Mr. Melnyk denies this and says there was no ground cover for him to remove. However, he also says he built the new patio over an area that was originally an "uneven muddy knoll". The pictures in evidence show the patio is a raised level area at the top of gentle slope in an otherwise thinly forested area with uneven ground. I find this shows Mr. Melnyk must have levelled the ground to build the new patio. Mr. Melnyk also says he removed dead branches from nearby trees to improve fire safety.
29. Mr. Melnyk says the patio is not permanently fixed because the pavers, garden ties, and planters he used to build it are all moveable. However, I find he built the new patio intending to use it permanently, and that it is a structural change to the common property. I also find it is a material change because he added something that was not there before. In doing so, he has essentially taken over an area of common property for his personal use. For these reasons, I find the new patio is an alteration to common property.

Paver pathway

30. Mr. Melnyk says the river rock around the north and east side of his strata lot building was slippery, uneven, and dangerous, and he twisted his ankle on it several times. He says he added pavers to create a safe, convenient pathway between his front and rear yard. He says the pavers are moveable, so they are not an alteration.
31. The strata says the river rock was designed to provide decorative landscaped separation between strata lots, and to discourage owners from accessing the back of their strata lots through these areas which are exposed to dangerous snow and ice falls from the roof above. The strata says in this way the pavers changed the intended use of the river rock area.
32. The strata submitted a November 25, 2023 email from John Duncan, a Professional Engineer, which generally supports the strata's assertions. The email also says the river rock was designed to maximize stormwater infiltration into the natural soil and to reduce the resulting flows entering the stormwater system. It says this is a stormwater best management practice, and the river rock was never intended to be altered by placing a shed or concrete paving stones over it as Mr. Melnyk did.
33. I find the strata's evidence persuasive, and I find the pavers are a material change to common property. I find they change the use of the river rock from a landscaping feature designed for stormwater absorption, to a pathway under the roof line that may interfere with that stormwater absorption process. So, I find the pavers are an alteration to common property.

Side Shed

34. The side shed is not affixed to the building or the concrete slab on which Mr. Melnyk placed it. However, Mr. Melnyk admits that the concrete steps he installed to access this shed are an alteration to common property. The photos show that the second step is the concrete slab, and it has been poured partially over the river rock. So, I find the concrete steps and slab are both alterations to common property, and I find that without them, Mr. Melnyk would not have been able to place the shed in its current location. I also find the shed is a material change as it creates a new storage

space on the common property that was not there before and that is only for Mr. Melnyk's benefit. For all of these reasons, I find the side shed, the concrete slab underneath it, and the concrete step up to it, are alterations to common property.

Boat Racks

35. The boat racks are undisputedly affixed to trees on common property behind Mr. Melnyk's strata lot, so I find they are a structural change. I find they also create a storage space on common property that was not there before, that is only for Mr. Melnyk's benefit. I find this is a material change. I am satisfied that the boat racks are an alteration to common property.

Fence

36. The fence appears to be placed on the common property leaning against trees and shrubs, so I find there is no evidence it is a structural change. However, I find it adds something that was not there before that is intended to prevent pets from other strata lots entering Mr. Melnyk's patio and surrounding area. I find the natural consequence of the fence's placement means it likely also prevents wild animals and other owners or visitors from moving across that portion of common property. For all of these reasons, I find the fence is a material change, and so it is an alteration to common property.

37. Having found the patio shed is not an alteration to LCP, I find Mr. Melnyk did not need the strata's approval to install it under Standard Bylaw 6(1). However, having found that the new patio, paver pathway, side shed and underlying concrete slab and steps, boat racks, and fence (together, the alterations) are all alterations to common property, I find Mr. Melnyk needed the strata's approval under Standard Bylaw 6(1) before installing them.

Did the strata approve the alterations?

38. Mr. Melnyk did not specifically ask for the strata's approval to install the alterations. However, he says the alterations were within the same parameters of his initial request to the strata in February 2022, so he did not believe that he needed further

strata approval for them as he believed he had its implied approval. He says if he did not have the strata's tacit approval, he would not have proceeded.

39. The strata denies tacitly approving the alterations. It says the alterations are considerably different than what Mr. Melnyk requested in February 2022. I agree. Based on the emails in evidence, I find it was not reasonable for Mr. Melnyk to assume the strata's pre-approval for the alterations. I find there is no evidence the strata approved the alterations in February 2022, or at any time since. So, I find Mr. Melnyk failed to obtain the strata's approval before installing the alterations, in breach of Standard Bylaw 6(1).

Was the strata's refusal to approve the alterations significantly unfair?

40. The CRT has authority to make orders remedying a strata corporation's significantly unfair actions or decisions. The court has the same authority under section 164 of the SPA, and the same legal test applies (see *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113). In *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173, the court confirmed that significantly unfair actions or decisions are those that are burdensome, harsh, wrongful, lacking in probity and fair dealing, done in bad faith, unjust, or inequitable. In applying this test, the owner's objectively reasonable expectations are a relevant factor, but not determinative.
41. Mr. Melnyk says he had a reasonable expectation that the strata would treat his request to approve the alterations fairly and impartially, which it did not do. He says the strata acted in bad faith by failing to provide an orderly and transparent decision-making process and by failing to provide a sufficiently clear explanation for refusing to allow the alterations.
42. Specifically, Mr. Melnyk says the strata refused to provide him with a copy of the initial complaint about the alterations in October 2022, despite his request. However, there is no requirement for a written complaint under SPA section 135, and in any event, there is no evidence the strata fined Mr. Melnyk or required him to pay the costs of remedying a bylaw contravention.

43. Mr. Melnyk also says the strata failed to inform him of the procedure for obtaining formal written approval for the alterations. He says the strata did not tell him a signed letter of indemnity was required, and it neglected to ask for written plans or do a site inspection. However, the strata provided evidence of Mr. Melnyk's November 2021 request for approval to renovate his strata lot. It says this shows he knew the procedure for seeking strata approval for alterations. I agree. I also find that as a strata council member at the time he made the alterations, he should have known the requirement for the strata's advanced approval under Standard Bylaw 6(1).
44. Mr. Melnyk also says that as the only full-time resident amongst the owners, he has unique needs including additional storage space, safe use of the strata lot's exterior, and safe access between the front and rear areas of the strata lot along the northern exterior of the building. He also says the common property surrounding the other strata lots has steep embankments making those areas "unusable", while his strata lot is the only one with relatively flat and "usable" common property around it. He says the strata failed to consider these factors in deciding not to approve the alterations.
45. The strata denies that Mr. Melnyk has unique rights simply because he is a full-time resident, or because the common property around his strata lot is relatively flat. It says all owners are subject to the same rules and bylaws, and the SPA. I agree.
46. Mr. Melnyk also says the strata has treated him unfairly by allowing other owners to breach bylaws with impunity. The strata says it considers all complaints about alleged bylaw infractions equally, and I find the evidence supports this assertion.
47. Mr. Melnyk submitted photos of several strata lots with wood storage piles outside their front entrances which he says are unauthorized changes to LCP. He says the council president owns one of these strata lots, implying that they receive special treatment. However, as the strata notes, there is no bylaw preventing wood storage on LCP, and there is no evidence anyone has ever complained to the strata about the woodpiles before this dispute. The strata says its longstanding practice has been to allow such woodpiles.

48. Mr. Melnyk also submitted photos showing that 2 strata lot owners stored their watercraft on common property in breach of the bylaws. However, there is evidence of only one complaint to the strata about these alleged bylaw infractions, and the evidence shows the strata responded to the complaint promptly in what I find was a reasonable manner.
49. Mr. Melnyk also says the strata manager failed to provide their opinion or advice about his February 19, 2022 request, despite a council member's invitation for them to do so. Mr. Melnyk says I should infer from the strata manager's silence that they knew the proposed changes were not significant and did not need further approval from the strata owners. However, regardless of any advice the strata did or did not receive from the strata manager, I find it was the strata's responsibility to make its decision about the changes. So, I find the strata manager's opinion is not relevant to my analysis.
50. Mr. Melnyk also says the strata treated him unfairly by initially refusing to convene an SGM for him to seek the owners' retroactive approval for the alterations through a $\frac{3}{4}$ vote resolution. The strata admits that it was not prepared to convene an SGM in October 2022 after Mr. Melnyk's hearing. However, as the strata notes, in its November 24, 2022 letter to Mr. Melnyk's lawyer, it offered to hold an SGM. There is no evidence that Mr. Melnyk responded to this offer. In any event, even if it was unfair of the strata not to hold an SGM in October 2022, I find the strata remedied any unfairness by eventually holding the SGM in August 2023. Also, as the strata notes, Mr. Melnyk could have called an SGM at any time under SPA section 43 if he had sufficient support from other owners, but he either chose not to exercise this right or had insufficient support.
51. Mr. Melnyk also says the strata unfairly refused his request to distribute a letter to all owners in advance of the August 2, 2023 SGM. However, there is no requirement under the bylaws or the SPA for the strata to do this.
52. Mr. Melnyk also says the strata treated him unfairly by suggesting he breached the bylaws and SPA by pursuing the CRT process. On the contrary, I find the strata's

communications in evidence are clear that Mr. Melnyk was within his rights to start this CRT claim. Mr. Melnyk also says the strata gave him an insufficient explanation for refusing to approve his alterations. He says it initially alleged the alterations were a bylaw infraction, but later alleged they were a significant change to the use or appearance of common property. However, I find the strata's communications in evidence clearly show the legal basis for its decision not to approve the alterations. I also find the strata was permitted to change its position as it received more information, provided it notified Mr. Melnyk, which I find it did.

53. The strata says it only became aware of the alterations after Mr. Melnyk completed them. It says it has since acted in good faith and in the best interests of the owners to manage its ongoing disagreement with Mr. Melnyk. I agree with the strata. I find there is no evidence the strata's treatment of Mr. Melnyk with respect to the patio shed or the alterations was burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust, or inequitable. I dismiss this claim.

Are the alterations a significant change to the use or appearance of common property?

54. Section 71 of the SPA prohibits a strata from making a significant change in the use or appearance of common property unless the change is approved by a resolution passed by a $\frac{3}{4}$ vote at an AGM or SGM, or unless there are reasonable grounds to believe that immediate change is necessary to ensure safety or prevent significant loss or damage. This provision also prevents a strata from permitting an owner to make significant changes without an owner vote.
55. The SPA does not define "significant change". However, in *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333, the BC Supreme Court set out the following criteria for deciding what is a significant change:
- a. Is the change visible to other residents or the general public?
 - b. Does the change affect the use or enjoyment of a unit or existing benefit of another unit?

- c. Is there a direct interference or disruption because of the changed use?
 - d. Does the change impact the marketability or value of the strata lot?
 - e. How many units are in the strata and what is the strata's general use?
 - f. How has the strata governed itself in the past and what has it allowed?
56. Mr. Melnyk relies on *Frank v. The Owners, Strata Plan LMS 355*, 2016 BCSC 1206 (affirmed 2017 BCCA 92), which says that individual owners have substantial control over and something akin to a “beneficial or equitable interest” in LCP, particularly where the LCP is designated in the original strata plan and can only be removed by a unanimous vote, as is the case here. He says that according to *Frank*, the *Foley* factors must be assessed in the context of this heightened interest where LCP is involved. However, I find the patio shed is the only change to LCP. The other alterations are undisputedly on common property. So, I find this principle from *Frank* only applies to the patio shed.
57. The patio shed is on the southwest corner of Mr. Melnyk's LCP patio up against his building and the fence on the south side of his patio separating it from SL24's. The shed is not taller than the fence, so I find anyone using SL24's patio would likely not see it unless they were peering over the fence. The strata submitted a letter from the owners of strata lot 22 (SL22), which is in the building directly north of Mr. Melnyk's strata lot. They said they can see the alterations from their strata lot, including the patio shed. So, I find the patio shed is visible from SL22, but not to the general public.
58. SL22's owners said the sheds Mr. Melnyk installed are noisy when rained on. However, it is unclear to what extent that noise comes from the patio shed compared to the side shed that is directly adjacent to SL22. This is also the only evidence the strata submitted of any direct interference the patio shed has with another owner's use or enjoyment of their strata lot.
59. There is no evidence the patio shed detracts from any strata lot's marketability or property value. The strata says the patio shed is nearly double the size he initially requested. However, I find it is unclear from Mr. Melnyk's February 2022 request what

size shed he intended to install. I also find the strata did not specify to Mr. Melnyk that the shed had to be under a specific size, and there is no relevant rule or bylaw.

60. There is evidence Mr. Melnyk once left garbage in the patio shed and attracted a bear, which the strata took issue with. However, I find the evidence shows this was an honest mistake on Mr. Melnyk's part, which he acknowledged, and there is no evidence he has stored garbage in the shed since that incident.
61. On balance, and particularly since the patio shed is on LCP, I find it is not a significant change to the use or appearance of common property.

The remaining alterations

62. Mr. Melnyk says the alterations are only visible to other owners looking in his strata lot's direction, and those other owners are not concerned about the appearance of neighboring strata lots. He says that before he installed the alterations the other owners' only view in that area was trees, so their views are not obstructed by the alterations. Mr. Melnyk says the alterations are invisible in the winter months because they are covered in snow. He also says the alterations are not visible to the general public.
63. The strata disagrees. SL22's owners said in their letter that the natural forest area on the common property is an essential part of the owners' enjoyment of their strata lots. They said the alterations are visible from their strata lot, and the side shed is in direct sight line from their front entrance and kitchen. They said the alterations significantly change the character of the area. I find this letter is persuasive evidence that the alterations are visible to other owners.
64. As noted above, SL22's owners also said in their letter that the sheds Mr. Melnyk installed are noisy during rainfall, which disrupts their enjoyment of their strata lot. However, I find there is insufficient evidence to establish whether, and the extent to which, the side shed causes any nuisance in this manner.
65. Mr. Melnyk says the alterations have not disrupted or interfered with other owners' use or enjoyment of their strata lots because there is an unwritten rule that no one

ever enters the common property area behind another owner's strata lot. He says this only happens when there is a specific need to inspect or service something on the property. He says he has not once had anyone come into the common space behind his strata lot without invitation, and that others are still free to use the common property. It is unclear if Mr. Melnyk means that other owners are free to use the alterations.

66. The strata says the alterations do not improve the common property for all owners. Rather, it says the alterations effectively transfer the benefit of a significant part of the common property to Mr. Melnyk's strata lot, which deprives the other owners of the use and enjoyment of those areas. It says that if the alterations are approved, it will set a precedent for other owners to claim private use of common property areas around their strata lots. I agree. Although the strata did not raise it, I note that Standard Bylaw 3(c) prohibits an owner from using the common property in a way that unreasonably interferes with the rights of others to use and enjoy the common property.
67. The strata says it is in an upscale neighbourhood with forest and mountain views and a "carefully preserved and managed pristine natural forest", from which the alterations detract. It says the alterations could negatively affect its marketability or property values, but it submitted no evidence to support this assertion, and I find it unproven.
68. With respect to the strata's past practices, it says there was only one other time in its 22-year history that an owner altered common property resulting in a significant change in its use or appearance. It submitted evidence showing that in 2017 it charged an owner for the cost of cleaning up common property after the strata determined that owner cut down trees from common property without its authorization. I find this shows the strata's treatment of Mr. Melnyk with respect to the alterations is consistent with its past practices.
69. In summary, after considering the *Foley* factors, I find the alterations are a significant change to the use or appearance of common property. I am particularly persuaded

by the fact that by installing the alterations Mr. Melnyk has effectively taken over a portion of the common property for his personal use.

What is an appropriate remedy?

70. The only remedy Mr. Melnyk seeks in this dispute is an order that the strata retroactively approve the patio shed and the alterations. Having found the patio shed is not an alteration, it does not require the strata's approval under Standard Bylaw 6(1). Having found the remaining alterations are significant changes to the use or appearance of common property, I find the strata is not authorized to retroactively approve them without the owners' approval through a $\frac{3}{4}$ vote resolution at an SGM or annual general meeting. As noted above, the owners already voted against retroactively approving the installations at an August 2023 SGM.

71. In its Dispute Response the strata seeks an order that Mr. Melnyk remove the alterations and restore the affected common property to its original condition. However, since the strata did not file a counterclaim, I cannot make this order. Nothing in this decision prevents the strata from bringing its own CRT dispute if Mr. Melnyk does not remove the installations.

72. For all of these reasons, I dismiss Mr. Melnyk's claims.

CRT FEES AND EXPENSES

73. 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. I see no reason in this case not to follow that general rule. Since Mr. Melnyk was unsuccessful, I find he is not entitled to reimbursement of his CRT fees. He did not claim any dispute-related expenses.

74. The strata did not pay any CRT fees, but it claims reimbursement of its legal fees and other administrative costs as dispute-related expenses. However, it does not claim a specific amount for these expenses, and it did not submit any invoices or other evidence to support this claim. The strata also does not argue that there are any

extraordinary circumstances in this case entitling it to reimbursement of its legal fees, as required by CRT rule 9.5(3), and I find there are none. I dismiss the strata's claim for dispute-related expenses.

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

ORDERS

76. I dismiss Mr. Melnyk's claims.

77. I dismiss the strata's claim for dispute-related expenses.

Sarah Orr, Tribunal Member