



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Francis v. The Owners, Strata Plan CR 460*, 2024 BCCRT 342

B E T W E E N :

OMAR FRANCIS

APPLICANT

A N D :

The Owners, Strata Plan VR 460

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This strata dispute is about alterations to a strata lot and strata governance. Omar Francis owns a strata lot in The Owners, Strata Plan VR 460 (strata).
2. In 2022, Mr. Francis renovated his strata lot. The parties initially disagreed about whether the strata authorized the alterations before Mr. Francis completed them.

Between December 2022 and July 2023, the strata imposed weekly fines against Mr. Francis' strata lot account for unauthorized alterations totaling \$6,400. In September 2023 the strata retroactively approved the alterations and in October 2023 Mr. Francis signed an assumption of liability agreement for the alterations.

3. Starting in December 2022, Mr. Francis asked the strata to shut off the building's water supply to allow him to repair a water leak in his strata lot. In September 2023, the strata shut off the building's water so he could complete the repairs.
4. In his Dispute Notice, Mr. Francis asked for orders that the strata stop harassing him about the unauthorized renovations, stop demanding that he return his strata lot to its previous condition, and stop unreasonably delaying repairs to his strata lot by refusing to shut off the building's water supply. Since these issues were resolved in the fall of 2023, Mr. Francis is no longer seeking these orders.
5. Mr. Francis says the strata breached section 135 of the *Strata Property Act* (SPA) when it imposed the weekly fines for the unauthorized renovations. He asks for an order that the strata remove these fines from his strata lot account. He also says the strata has treated him significantly unfairly in various ways. He seeks \$5,000 in damages for loss of rent, mortgage payments, maintenance fees, and fines.
6. The strata denies breaching SPA section 135 and denies treating Mr. Francis significantly unfairly. It says it does not owe him anything.
7. Mr. Francis is self-represented, and the strata is represented by a council member.

JURISDICTION AND PROCEDURE

8. 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.

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. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
11. 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.
12. I was initially unable to open one piece of Mr. Francis' evidence. He resubmitted the evidence and the strata was given an opportunity to respond to it but chose not to do so. I have considered the re-submitted evidence in my decision.
13. Although Mr. Francis did not raise this, the strata submitted some communications between the parties during the facilitation stage of the CRT's dispute resolution process. These communications are confidential, and there is no indication Mr. Francis agreed to waive their confidentiality. So, I have not considered these communications in my decision.

ISSUES

14. The issues in this dispute are:
 - a. Must the strata reverse any fines issued against Mr. Francis' strata lot account?

- b. Did the strata treat Mr. Francis significantly unfairly, and if so, is he entitled to \$5,000 in damages?

EVIDENCE AND ANALYSIS

15. As the applicant in this civil proceeding, Mr. Francis 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.
16. The strata was created in 1977. It is a residential strata with 206 strata lots in a 19-storey building.
17. On November 21, 2018, the strata filed a new set of bylaws with the Land Title Office that repealed and replaced all previously filed bylaws. The strata has since made several amendments to its bylaws.
18. Bylaw 16 requires an owner to obtain the strata's written approval before making certain alterations to a strata lot and sets out the steps an owner must take to apply for the strata's approval. This bylaw requires an owner who alters a strata lot without adhering to the bylaws to restore the strata lot to the condition it was in before the alteration, at the owner's expense. Bylaw 17 contains similar provisions to bylaw 16 but for alterations an owner makes to common property.
19. Bylaw 18(1) defines "renovation work" to include alterations an owner makes to a strata lot or common property. Bylaw 18(2) requires an owner to give the strata at least 3 working days' advanced notice of the scheduled arrival of any trade persons or delivery of materials related to renovation work. Bylaw 18(3) requires an owner to ensure, among other things, that all trade persons carrying out work are licensed, bonded, and insured and covered by WorkSafe BC.
20. Bylaw 18(5) requires an owner renovating their strata lot to arrange and pay for an inspection once before, once during, and once after the renovation work is completed. The strata will provide an owner with a list of pre-approved professional building

inspectors to choose from. The inspector must report to the strata with their findings and give the strata a copy of a final inspection report.

21. In August 2022, Mr. Francis emailed the strata manager proposing to update his kitchen cabinetry, sink, lighting and appliances, bathroom cabinetry, sink, lighting, bathtub tiling, and toilet, add a new layer of drywall on the ceiling, and replace the flooring with either engineered hardwood or tiles and carpet.
22. On August 19, 2022, the strata manager asked Mr. Francis for the names of his contractors and their insurance and WCB details. On the same date Mr. Francis responded by email, "I can't hire a contractor if I can't be sure what work they are allowed to do. Can we approve the work in principal and I will provide the contractors details before the work commences?". The strata manager responded on the same date, "overall acceptable".
23. Mr. Francis says he took this email to mean the strata had authorized his proposed renovations, so he began renovating his strata lot. He says that during his renovations, the strata's building manager locked off the elevator for him on several occasions and inspected the flooring work several times. He says this further led him to believe that the strata had authorized his renovations. However, in his reply submissions, Mr. Francis acknowledges that he was mistaken in believing that the strata had approved his renovations in August 2022.

Must the strata remove any fines from Mr. Francis' strata lot account?

24. Between December 13, 2022, and July 18, 2023, the strata imposed 32 weekly \$200 fines against Mr. Francis' strata lot account for breaching bylaw 18. This totals \$6,400. These are the fines Mr. Francis wants removed from his strata lot account.
25. I note here that the strata initially imposed an additional 6 weekly \$200 fines against Mr. Francis' strata lot account between July 25 and August 29, 2023, totalling \$1,200. The strata has since reversed these fines, so I do not address them in my analysis below.

26. Section 135 of the SPA sets out the procedural requirements a strata must follow before enforcing its bylaws, such as imposing a fine. Section 135(1) says that a strata cannot fine an owner unless it has first received a complaint, given the owner written details of the complaint, and given the owner a reasonable opportunity to respond to the complaint, including by holding a hearing if necessary. Section 135(2) requires the strata to notify the owner in writing of its decision to impose a fine as soon as feasible. Section 135(3) says that once a strata has complied with section 135 in respect of a bylaw contravention, it may impose a fine for a continuing contravention of that bylaw without further compliance with this section.
27. These procedural requirements are strict, with no leeway. If the strata does not perfectly comply with section 135, any resulting fines are invalid. See *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449, and *The Owners, Strata Plan NW 307 v. Desaulniers*, 2019 BCCA 343.
28. Mr. Francis says the strata started levying weekly fines for the unauthorized renovations before giving him an opportunity to attend a council hearing that he requested, in breach of SPA section 135. He also says the strata failed to schedule a hearing within 4 weeks of his request and failed to give him a written hearing response within 1 week of his hearing, in breach of SPA sections 34.1(2) and (3). The strata denies breaching any of the SPA's procedural requirements and says it validly imposed the fines.
29. On November 17, 2022, the strata notified Mr. Francis by letter that it had received a report of unauthorized alterations to his strata lot in contravention of bylaw 18. The strata told Mr. Francis to stop any ongoing renovations and return his strata lot to its previous condition. The strata said it was considering imposing a \$200 fine every 7 days until his strata lot was restored to its previous condition. The strata gave Mr. Francis 21 days to respond in writing, failing which the strata would decide whether to impose a fine or other penalty.
30. On December 7, 2022, Mr. Francis notified the strata manager by email of his intention to meet with the strata council in person to discuss his ongoing issues with

the strata, including the alleged bylaw contravention in the strata's November 17, 2022 letter. On December 8, 2022, the strata manager told Mr. Francis by email that he could "join council for a hearing in January at their council meeting". On December 9, 2022, Mr. Francis confirmed that he would attend the meeting in January. The strata manager confirmed with Mr. Francis by email that the council meeting was scheduled for January 17, 2023, at 6:30 p.m. and said they would send Mr. Francis a Zoom link closer to that date. In a December 13, 2022 email to Mr. Francis, the strata manager again referred to the "hearing" in January.

31. On December 13, 2022, the strata notified Mr. Francis by letter that, further to its November 17, 2022 letter, it had imposed a \$200 fine against his strata lot for a bylaw 18 infraction. It said it would impose a \$200 fine every 7 days until his strata lot was returned to its previous condition.
32. Mr. Francis says the strata failed to provide him with a Zoom invitation to his hearing on January 17, 2023, so the council meeting proceeded without him.
33. The strata denies that Mr. Francis requested a hearing on December 7, 2022, and says only that there was a "miscommunication" about him attending the January 17, 2023 meeting. I disagree. I find the evidence shows Mr. Francis requested a hearing on December 7, 2022, and based on his emails with the strata manager he reasonably believed that he would receive a Zoom link to attend the hearing on January 17, 2023. I find that neither the strata manager nor the strata council sent Mr. Francis the Zoom link, so he was unable to attend the hearing. Even if Mr. Francis did have his hearing on January 17, 2022, I find it would have been in breach of SPA section 34.1(2), since it was more than 4 weeks after Mr. Francis' request.
34. After much back and forth, Mr. Francis had his hearing before the strata council on February 17, 2023. On March 21, 2023, the strata sent him its response letter refusing to remove the fines from his account, because it found his renovations were unauthorized. The strata said it would consider granting Mr. Francis retroactive approval for his renovations if he met certain conditions specified in the letter. It said

it would continue to issue weekly fines until Mr. Francis met these conditions, or until he restored the strata lot to its previous condition.

35. Based on the evidence before me, I find the strata breached SPA section 135 by imposing fines for the unauthorized renovations before giving Mr. Francis a reasonable opportunity to respond to the bylaw contravention complaint. I also find the strata breached SPA sections 34.1(2) and (3) by failing to schedule the hearing within 4 weeks of Mr. Francis' request and failing to give him a written hearing response within 1 week of the hearing date. So, I find the \$6,400 in fines the strata imposed between December 13, 2022, and July 18, 2023, are invalid and must be removed from Mr. Francis' strata lot account.

Did the strata treat Mr. Francis significantly unfairly, and if so, is he entitled to \$5,000 in damages?

36. 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.
37. Mr. Francis says the strata has treated him significantly unfairly by improperly imposing fines, refusing to communicate with him and threatening legal action against him, preventing him from making necessary repairs to his strata lot, and delaying its responses to him in breach of the SPA. The strata denies treating Mr. Francis significantly unfairly. I address each of Mr. Francis' specific allegations below.

Fines

38. With respect to fines, I have already addressed the fines the strata imposed on Mr. Francis' strata lot account for the unauthorized renovations. To the extent that the

strata treated Mr. Francis significantly unfairly by imposing those fines, I find that unfairness is remedied by ordering the strata to remove the fines, as explained above.

39. There is one other fine Mr. Francis says the strata imposed in a significantly unfair manner. On September 28, 2022, the strata notified Mr. Francis that it had received a complaint that his contractor left a mess on the 18th floor common property carpet in contravention of bylaw 18. The strata said it was considering issuing a \$200 fine and gave Mr. Francis 21 days to respond in writing. On October 3, 2022, Mr. Francis responded by email. He apologized for the mess, said he had cleaned it up, and said he would ensure it did not happen again. On November 1, 2022, the strata notified Mr. Francis that it was issuing a \$200 fine for the bylaw infraction.
40. The strata denies that it treated Mr. Francis significantly unfairly by imposing the fine. It says it is legally obligated to enforce its bylaws, and it has not treated Mr. Francis differently than it would treat any other owner in similar circumstances. I agree with the strata. I find the strata followed the procedural requirements of SPA section 135 when it issued the fine, and Mr. Francis admitted to the bylaw infraction. So, I find Mr. Francis has failed to establish that the strata treated him significantly unfairly by issuing the fine.

Refusal to Communicate and Threatening Legal Action

41. Mr. Francis says the strata treated him significantly unfairly by refusing to communicate with him and threatening legal action against him. As noted above, on January 17, 2023, the strata council meeting went ahead without his participation, despite the strata manager telling Mr. Francis that they would send him the Zoom link before the meeting.
42. On January 18, 2023, Mr. Francis emailed the strata manager copying several other people at the strata management company asking what had happened the evening before. On January 19, 2023, he emailed the strata manager and again copied several other people at the strata management company. He made various demands about ongoing requests and issues with the strata, said the strata manager was acting negligently, and threatened to start a CRT dispute. On the same date, the strata

manager responded that the strata's lawyer would be dealing with his concerns going forward. They said that if Mr. Francis continued to copy all the other people at the strata management company on the correspondence, they would have to consider whether his behaviour amounted to bullying and harassment.

43. On the same day, Mr. Francis responded, copying the same people at the strata management company on the email, and said "I will continue to email everyone I need to in order to have the matters resolved". Another person at the strata management company responded asking Mr. Francis to stop copying the entire strata management office saying it was "inappropriate".
44. On January 26, 2023, the strata's lawyer sent Mr. Francis a letter demanding that he cease and desist from any further emails or phone calls to the strata manager or anyone else at the strata management company, any council member, or the strata's building manager, without their express consent. They said that if he had any legitimate concerns, he could submit them in writing by regular mail to the strata's mailing address. They said the strata is not obligated to respond to every correspondence or question he has, and that if he continued to send emails or make calls to the strata manager or anyone else at the strata management company, they would take steps to enforce bylaw 54. It says, among other things, that every employee, contractor, or agent working for the strata is entitled to use and enjoy the strata property free of harassment or abuse of any kind, in any form, whether in person, over the phone, or in writing.
45. The strata says its lawyer sent Mr. Francis this letter because it has a duty to provide a harassment-free workplace for its strata manager under bylaw 54. I agree. I find it was not reasonable for Mr. Francis to expect the strata to continue allowing him to communicate with the strata manager in the manner he did in January 2023. Mr. Francis has also failed to show that the strata treated him differently than any other owner in similar circumstances. I also note that on July 25, 2023, the strata notified Mr. Francis that it would allow him to communicate directly with the strata manager and strata management company again. For all of these reasons, I find the strata did

not treat Mr. Francis significantly unfairly by prohibiting him from communicating with the strata manager or strata council directly between January and July 2023.

Delayed Response Times

46. Mr. Francis says the strata treated him significantly unfairly by failing to schedule his hearing within 4 weeks of his request in breach of SPA section 34.1(2) and failing to give him a written hearing response within 1 week of the hearing in breach of SPA section 34.1(3). I have already addressed these breaches above. I find that any unfairness resulting from the strata's breach of these SPA provisions is remedied by reversing the fines, as explained above.
47. Mr. Francis also says the strata treated him significantly unfairly by failing to provide him with records within 2 weeks of his requests, in breach of SPA section 36. On December 19, 2022, Mr. Francis asked the strata for records of approved renovations and indemnity agreements for all other strata lots for the previous 2 years. The strata manager told him that because of the holidays, his request may take up to 4 weeks to complete. On December 22, 2022, Mr. Francis reduced the time frame for the requested records to those from the previous year. The strata sent him the documents on January 12, 2023.
48. Mr. Francis says these records show the strata's average response time to renovation requests was 20 days, and sometimes the strata responded within 1 day. He says the scope of his renovations was no greater than other requests in the building, and this shows the strata treated him significantly unfairly by delaying its response to his renovation request. I disagree. I find the circumstances are different in Mr. Francis' case because he undisputedly started his renovations before obtaining the strata's approval, complicating the approval process. He provided no evidence of how the strata treated other owners in similar circumstances.
49. I find the strata breached SPA section 36 by failing to send Mr. Francis the records within 2 weeks of his request, and the breach was significantly unfair. However, the strata ultimately produced the documents, and there is no evidence Mr. Francis was prejudiced by the delay, so I find there is no longer anything to remedy.

50. On January 3, 2023, Mr. Francis requested all emails between the strata manager and the building manager related to his strata lot. On January 11, 2023, the strata said it was reviewing his request, and on February 10, 2023, the strata's lawyer said it was reviewing the requested records for privilege. On Feb 14, 2023, the strata's lawyer told Mr. Francis to submit his records request as a new request to the strata manager. Mr. Francis raised this outstanding records request at his February 17, 2023 hearing. In its March 21, 2023 hearing response letter, the strata said it was working on his request. Mr. Francis had not yet received the requested records at the time of his submissions.
51. The strata says Mr. Francis' records request is "vexatious" and a fishing expedition for evidence to support his significant unfairness claim. I disagree. I find the strata had to provide Mr. Francis these records within 2 weeks of his request under SPA section 36. So, I find it was reasonable for Mr. Francis to expect the strata to fulfill its SPA section 36 obligations. I find the strata's failure to do so is significantly unfair. The remedy for this significantly unfair treatment is for the strata to provide Mr. Francis with these records. However, Mr. Francis does not seek this remedy. Instead, he seeks \$5,000 in damages for lost rent, mortgage payments, maintenance fees, and fines. However, I find there is no connection between the requested records and these alleged damages, so I award none.

Preventing Strata Lot Repairs

52. On December 15, 2022, Mr. Francis asked the strata manager to arrange to shut off the building's water supply so he could complete a repair in his strata lot. He described the problem as a slow leak under the sink. On December 19, 2022, the building manager inspected the water leak and Mr. Francis filled out a form requesting that the strata shut off the building's water supply.
53. On February 1, 2023, the strata's lawyer told Mr. Francis that the strata only facilitates water shutoffs for authorized renovations or for plumbing repairs requiring them. They said that when the building manager inspected the leak in his strata lot in December 2022, they determined it was a minor drip that could be repaired without a full water shutoff. They said Mr. Francis could contact the strata's plumber, and if they or

another licensed plumber determined that a full water shutoff was necessary to repair the leak, Mr. Francis should send the strata documentation of that.

54. Mr. Francis submitted evidence that he started renting out his strata lot on January 4, 2023, and that on February 4, 2023, he had to reduce monthly rent by \$200 because of the ongoing water issue and the strata's refusal to shut off the building's water. He submitted a June 4, 2023 letter from his tenant stating that the water issue had become unbearable, so the tenant had no choice but to move out. Mr. Francis says he could not rent his strata lot out until the water leak was resolved in September 2023, so it was vacant from June 4, 2023, until November 1, 2023. He claims \$5,000 in damages for lost rent during this period.
55. The problem for Mr. Francis is that none of his evidence describes the nature of the leak or proves that a building water shut off was necessary to repair it. There is no indication that he contacted the strata's plumber about the leak, as the strata instructed him to do, and there is no plumber's report in evidence. Mr. Francis does not say that the water leak was unrelated to his then-unauthorized renovations. There is nothing in the strata's bylaws about requesting water shutoffs to the building. The strata says it refused to shut off the building's main water supply because Mr. Francis did not provide any legitimate reason for doing so. I agree. I find there is insufficient evidence to establish that a building water shutoff was required to repair the leak.
56. On January 19, 2023, Mr. Francis requested from the strata records of all requests it received for building water shut offs in the previous 6 months, and a copy of the water shutoff request form he submitted to the strata on December 19, 2023. The strata failed to provide these records to Mr. Francis by the time he made submissions. I find this is a clear breach of the strata's SPA section 36 obligations and is significantly unfair. However, as with the other requested records the strata failed to provide, I find the appropriate remedy is for the strata to provide the requested records. Again, Mr. Francis does not seek this remedy. Instead, he seeks \$5,000 in damages.
57. The problem for Mr. Francis is that, even if the strata had provided the requested records, I would not be able to determine whether the strata treated him differently

than any other owner in similar circumstances, because there is insufficient evidence about Mr. Francis' water leak. Mr. Francis has submitted evidence that he lost rent because of the water leak, but without evidence of the nature of the leak, I find he has not proved a link between the strata's failure to shut off the water and his claimed damages.

58. In summary, I find the strata treated Mr. Francis significantly unfairly by failing to provide him with strata records within 2 weeks of his requests, in breach of SPA section 36. However, I find Mr. Francis has failed to establish that he is entitled to damages in the circumstances. I dismiss this claim.

CRT FEES, EXPENSES AND INTEREST

59. 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. However, neither of the parties paid any CRT fees or claimed any dispute-related expenses, so I make no order about them.

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

ORDERS

61. Within 14 days of the date of this decision, I order the strata to remove \$6,400 in fines it imposed on Mr. Francis' strata lot account between December 13, 2022, and July 18, 2023.

62. I dismiss Mr. Francis' remaining claims.

63. 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.

Sarah Orr, Tribunal Member