



# Civil Resolution Tribunal

Date Issued: April 22, 2024

File: ST-2023-001099  
and ST-CC-2023-009784

Type: Strata

Civil Resolution Tribunal

Indexed as: *Latuszek v. The Owners, Strata Plan VR1428*, 2024 BCCRT 381

B E T W E E N :

DANIEL LATUSZEK

**APPLICANT**

A N D :

The Owners, Strata Plan VR1428

**RESPONDENT**

A N D :

DANIEL LATUSZEK

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Christopher C. Rivers

## **INTRODUCTION**

1. This dispute is about a shed on limited common property.
2. Daniel Latuszek owns a strata lot in strata corporation The Owners, Strata Plan VR1428 (strata). In June 2022, he installed a custom-built wooden shed on a limited common property (LCP) patio adjacent to his strata lot. Shortly after, the strata received complaints from other strata lot owners about Mr. Latuszek's shed. On multiple occasions the strata both warned Mr. Latuszek that the shed breached various strata bylaws and fined him for his failure to comply.
3. Mr. Latuszek asks for an order reversing the fines. He also asks for an order that the strata enforce its bylaws about sheds consistently against all strata lot owners, an order that the strata "educate" other owners about its bylaws, and an order for document disclosure.
4. In a counterclaim, the strata corporation asks for an order that Mr. Latuszek remove the shed from his patio.
5. Mr. Latuszek is self-represented. The strata is represented by a member of the strata council.
6. For the following reasons, I mostly allow Mr. Latuszek's claim and fully allow the strata's counterclaim.

## **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. 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.
9. 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.
10. 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.

## **ISSUES**

11. The issues in this dispute are:
  - a. Should I reverse the fines the strata charged to Mr. Latuszek for breaching its bylaws?
  - b. Should I order Mr. Latuszek to remove the wooden shed?
  - c. Should I order the strata to enforce its bylaws against other strata lot owners? In the alternative, should I order the strata to educate other strata lot owners about its bylaws?
  - d. Did the strata comply with its *Strata Property Act* (SPA) obligations for document disclosure?

## **EVIDENCE AND ANALYSIS**

12. In a civil proceeding like this one, each party as applicant must prove their respective claims on a balance of probabilities (meaning more likely than not). I have read all

the parties' submissions and evidence but refer only to the evidence and argument that I find necessary to explain my decision.

13. The strata consists of 57 residential strata lots in a 3-story building. Mr. Latuszek owns strata lot 10, located on the ground floor.
14. In June 2022, Mr. Latuszek removed a pre-existing wooden storage shed from the LCP patio adjacent to his strata lot and installed a custom-built wooden shed. At the same time, he removed a large wooden planter box from the patio. The planter contained bamboo that had grown to around 3 floors in height.
15. The original shed was the same height as the new shed, but only about 1/3<sup>rd</sup> as wide. The original shed was placed directly against the wall of the strata building. The new shed replaced the bamboo planter box along a fence separating Mr. Latuszek's LCP patio from a neighbouring strata lot's LCP patio. The new shed is same width and depth as the removed planter box.
16. While the original shed and the new shed are the same height, and the planter box and new shed are the same width and depth, the new shed is much larger than either of the other items. Unlike the planter with bamboo, which allowed light through, the new shed completely blocks the fence. The roof of the new shed is so tall that it rises above the balcony floor on the neighbouring strata lot on the next floor up.
17. While the new shed is the same height as the original, the original shed was not against the neighbouring balcony. The new shed sits directly against it.
18. On June 17, 2022, the strata manager wrote to Mr. Latuszek that the strata had received a complaint about the new shed. The letter said Mr. Latuszek had breached strata bylaws 3(1)(a), (c), and (e), 5(1)(a) through (e), and 32(4) and (5) by engaging in unauthorized renovations without strata council approval. The strata manager also noted Mr. Latuszek had "oversized furniture," apparently in reference to the new shed. The strata manager sent a second letter, with the same information, on June 24, 2022.

19. On July 14, 2022, the strata issued Mr. Latuszek two \$200 fines for breaching strata bylaws, one fine for each of the two letters. These two fines are the subject of Mr. Latuszek's dispute. There is no evidence that Mr. Latuszek has paid the fines or that the strata has issued more fines since. Furthermore, during the CRT's facilitation process, the strata agreed not to issue further fines pending the outcome of this dispute.

***Was the strata entitled to fine Mr. Latuszek for breaching its bylaws?***

20. SPA section 135 sets out the procedural requirements a strata corporation must meet before imposing a fine against a person. Section 135(1) says a strata corporation may not impose a bylaw fine unless it has received a complaint and given the owner details of the complaint in writing and a reasonable opportunity to answer the complaint, including a hearing if requested. SPA section 135(2) says the strata must also give notice to the owner in writing of its decision to impose the fine "as soon as feasible". SPA section 135(3) says that once the strata has complied with these procedural steps, it may impose a fine for a continuing contravention of that bylaw without further compliance with section 135. A strata corporation must strictly comply with SPA section 135 before it can impose bylaw fines, and if the strata corporation does not follow the section's requirements, the fines are invalid.<sup>1</sup>

21. Here, the strata mentions parts of bylaws 3, 5, and 32 in its letter. Under the heading "Details of Infraction, the strata writes "Resident of the above-noted unit was reported to have made unauthorized renovations without approval. It was also noted that the Resident had oversized furniture in the patio."

22. The cited subsections of bylaw 3 are about, in part, how an owner may not use LCP. Bylaw 3(1)(a) prohibits such use where it causes a nuisance or hazard to another person. Bylaw 3(1)(c) in part, prevents an owner from unreasonably interfering with the rights of other persons to use and enjoy LCP. Finally, bylaw 3(1)(e) prohibits such use where it is contrary to a purpose shown expressly or by necessary implication on or by the strata plan. While, arguably, bylaw 3(1)(a) or (c) may apply, the strata does

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<sup>1</sup> See: *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449.

not provide any explanation in its letter about how. The strata limited the details it provided to “unauthorized renovations without approval” and “oversized furniture.” I find neither of those details of the infraction apply to the cited subsections of bylaw 3.

23. Bylaw 5(1) is about altering a strata lot. Here, the new shed is undisputedly on LCP, not on a strata lot. I find it does not apply.
24. Finally, the cited sections of bylaw 32 are about objects with may overload or damage a patio, balcony, or deck membrane. Again, there is nothing about renovations, and no details about how the shed would “overload” the patio.
25. While the strata raised other bylaws in subsequent warning letters, those did not lead to fines. Further, while the strata made arguments about other bylaws in its submissions, that does not relieve it of its obligation to make an owner aware of the correct bylaws in advance of issuing fines. Specifically, section 135(1)(e) of the SPA requires the strata to give “particulars” of the complaint. The SPA does not define what “particulars” are. However, in *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449 the Court of Appeal said that notice must identify the applicable bylaw or rule and include enough detail so that the tenant or owner can meaningfully respond.
26. I find for Mr. Latuszek owner to have a reasonable opportunity to respond to the complaint, the strata must first have cited the correct bylaw. Since none of the strata’s warning letters cited the correct bylaw, I find the strata has not complied with SPA section 135. For that reason, I find the strata did not have the authority to issue the fines and I order it to cancel them.

***Should I order Mr. Latuszek to remove the shed?***

27. On July 28, 2022, the strata wrote Mr. Latuszek a more detailed letter about its concerns around the new shed. While the strata mentioned bylaws 3(1)(a) through (g) and 32(11), I have only considered bylaw 32(11), since it conclusively addresses the issue.
28. Under bylaw 32(11), which was filed in 2004, a strata lot owner may only keep specified items on a patio. Mr. Latuszek argues the new shed should be considered

outdoor furniture, under subsection (d) or a freestanding self-contained planter box or container, under subsection (e). Mr. Latuszek also points out that the strata itself referred to the shed as “oversized furniture” in its letters.

29. While it is possible for a small enough storage unit to be considered furniture, that is not the case here. The shed is 7 feet high, 10 feet wide, 3.5 feet deep. It is a small building. Similarly, while a small building may be technically considered a ‘container’, I find that is not in keeping with the ordinary meaning of container. Further, even if container is somewhat ambiguous, I must read it in the context of the bylaw as a whole, which seeks to restrict things on patios to unintrusive items. So, I find the shed is not outdoor furniture or a container under bylaw 32(11).
30. So, further to bylaw 32(11), I find Mr. Latuszek is not allowed to have the new shed on the patio and under CRTA section 123(1), I order Mr. Latuszek to remove the new shed.
31. Mr. Latuszek also argues that the strata has inconsistently applied bylaw 32(11) with respect to the sheds. He notes there are small storage units/sheds on other LCP patios.
32. While he does not specifically say so, I find he is arguing that by seeking the removal of only his new shed, and not others’ sheds, the strata is acting significant unfairly, which is prohibited by CRTA section 123(2). That provision contains similar language to SPA section 164, which allows the BC Supreme Court to make orders remedying significantly unfair acts or decisions. The legal test for significant unfairness is the same for CRT disputes and court actions.<sup>2</sup>
33. Significantly unfair actions are those that are burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust, or inequitable. In applying this test, the owner or tenant’s reasonable expectations are a relevant factor but are not determinative. The use of the word “significant” means that the impugned conduct must go beyond mere prejudice or trifling unfairness.<sup>3</sup>

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<sup>2</sup> See: *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113.

<sup>3</sup> See: *Barrett v. The Owners, Strata Plan LMS 3265*, 2016 BCSC 1477.

34. There is no evidence the strata ever received any complaints about other sheds. For the strata to treat other owners differently, it would have had to have received complaints and then undertaken a significantly unfair process as a result. Without evidence of such complaints, there is no basis for a claim of significant unfairness.
35. Further, if the strata had received other complaints, it might still determine the size, location, and nature of the new shed are significantly different from the other, pre-existing sheds, including Mr. Latuszek's original shed.
36. Further still, I note that the strata offered Mr. Latuszek an opportunity to move his shed, pending a potential amendment to the bylaws to allow certain sheds. The owners rejected the bylaw amendment at a general meeting.
37. For those reasons, I find Mr. Latuszek has not proved the council acted significantly unfairly.
38. Finally, I note the question of whether other sheds breach bylaw 32(11) is not before me. As noted above, there is no evidence that Mr. Latuszek, or anyone else, made any written complaint to the strata about them, meaning the strata has not been required to investigate the issue. This is because bylaw enforcement is complaint-driven, and the strata has no authority to enforce its bylaws under SPA section 135 unless it has received a complaint. Nothing in this decision prevents Mr. Latuszek from making his own complaints about other owners' alleged bylaw breaches.

***Should I order the strata to educate the owners about its bylaws?***

39. Mr. Latuszek asks for an order that the strata be required to educate other owners about the strata bylaws. However, I find the order that Mr. Latuszek seeks is vague to the point of being unenforceable. He provides no specific detail about how I should order the strata to educate other owners. I also note that, generally, it is up to the strata council to determine whether, and how, to inform owners about strata bylaws. So, I dismiss this element of Mr. Latuszek's claim.



## ***Documents***

40. Lastly, Mr. Latuszek asked for an order providing access to all records related to the new shed and the strata's decision-making process about the new shed. Mr. Latuszek specifically says the strata has not provided correspondence between members of the strata council, members of the council and the strata manager, and correspondence with the strata's lawyer.
41. The strata says it has provided all correspondence required under SPA section 36, which governs access to strata records. It specifically argues that its correspondence with the strata's lawyer is protected by solicitor-client privilege.
42. While Mr. Latuszek says some sections of the documents were redacted, he was later provided copies of correspondence marked "unredacted". The strata did so pursuant to a consent resolution order the parties agreed to during facilitation, so to the extent he sought unredacted documents, this part of his request was resolved.
43. Section 35 of the SPA sets out a lengthy list of records that the strata must create or retain. Section 36 of the SPA says that the strata must provide access to or copies of any section 35 record within 2 weeks of a request (except for bylaws and rules, where the deadline is 1 week). Section 4.1 of the SPA sets out how long the strata must retain different types of records. The strata has no obligation under the SPA to create, retain, or disclose records that are not listed in section 35. Along similar lines, the CRT has no authority to order the strata to create or disclose records that are not listed in section 35.<sup>4</sup>
44. The BC Supreme Court has previously found that SPA section 35 does not include correspondence between individual members of the strata council.<sup>5</sup> So, I find Mr. Latuszek is not entitled to that correspondence.
45. The strata argues that correspondence with its lawyer is protected by solicitor-client privilege. The BC Court of Appeal recently addressed whether or not the SPA

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<sup>4</sup> See: *The Owners, Strata Plan NWS 1018 v. Hamilton*, 2019 BCSC 863.

<sup>5</sup> See: *Kayne v. The Owners, Strata Plan LMS 2374*, 2008 BCSC 1610

contains language specifically clear, explicit, and unequivocal enough to override that privilege.<sup>6</sup> While SPA section 35 includes the phrase “legal opinions,” it does not adequately identify the broader substantive interests protected by solicitor-client privilege. So, the language used in the SPA is not sufficiently “clear, explicit and unequivocal” to show the legislature intended to set aside solicitor-client privilege. As a result, I find the strata’s correspondence is protected by that privilege, and I dismiss that part of Mr. Latuszek’s claim.

46. Finally, while Mr. Latuszek says the strata has not provided complete copies of correspondence, presumably including with the strata manager, he has not provided evidence to support that position. In his own submissions, Mr. Latuszek says it is “unknown” if there is correspondence that the strata has deliberately withheld. While I acknowledge it can be difficult for an owner to prove there are unproduced section 35 documents, the burden is on the owner to prove their likely existence. I find Mr. Latuszek has not provided evidence to do so in this dispute, so I dismiss this portion of his claim.

## **CRT FEES, EXPENSES AND INTEREST**

47. 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. In this case, each party was successful on the major element of their claim. So, I find this is an appropriate case in which to order each party is responsible for its own CRT fees. Neither party claimed any dispute-related expenses.

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

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<sup>6</sup> See: *Mitchinson v. The Owners, Strata Plan VR 1120*, 2024 BCCA 89, especially paras. 39 thru 45.

## ORDERS

49. I order that:

- a. the strata immediately cancel both \$200 fines issued on July 14, 2022, and
- b. within 30 days of the date of this order, Mr. Latuszek remove the new shed from the LCP patio adjacent to strata lot 10.

50. I dismiss the parties' remaining claims.

51. 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. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

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Christopher C. Rivers, Tribunal Member