



Civil Resolution Tribunal

Date Issued: May 2, 2024

File: ST-2023-006015

Type: Strata

Civil Resolution Tribunal

Indexed as: *Slater v. The Owners, Strata Plan 864*, 2024 BCCRT 422

BETWEEN:

JOHN SLATER

APPLICANT

AND:

The Owners, Strata Plan 864

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This strata property dispute is about responsibility for exterior window repair and maintenance.
2. The applicant, John Slater, co-owns a strata lot in the respondent strata corporation, The Owners, Strata Plan 864 (strata). Dr. Slater represents himself. A strata council member represents the strata.

3. Dr. Slater says the strata is responsible for repair and maintenance of exterior windows. He seeks an order that the strata inform the owners and tenants that the exterior windows are common property. In submissions, he says strata bylaw 9(2) that states the strata is not responsible for strata lot windows should be declared invalid.
4. The strata disagrees. It says Dr. Slater's claim is out time under the provisions of the *Limitation Act*. The strata also says the exterior windows are limited common property (LCP) designated for the exclusive use of individual strata lot owners. It also relies on bylaw 9(2). The strata asks that Dr. Slater's claims be dismissed.
5. As explained below, I find the exterior building windows are common property and that the strata is responsible for them, but I do not make the orders requested by Dr. Slater.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.
8. 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.

ISSUES

9. The issues in this dispute are:
 - a. Is Dr. Slater's claim out of time under the *Limitation Act*?
 - b. Who is responsible for repair and maintenance of the building's exterior windows?
 - c. What remedies, if any, are appropriate?

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding such as this, Dr. Slater 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. I note Dr. Slater did not provide final reply submissions despite having the opportunity to do so.
11. The strata was created in November 1980 and exists under the *Strata Property Act* (SPA). It consists of 78 apartment-style strata lots in one 6-storey building.
12. The strata filed a complete new set of bylaws with the Land Title Office (LTO) on October 5, 2012. These are the bylaws applicable to this dispute. I discuss the relevant bylaws below as necessary and note that bylaw amendments the strata filed with the LTO on May 7, 2022, are not relevant.

The Limitation Act

13. The strata says Dr. Slater's claim is out of time under the *Limitation Act* because the Dispute Notice states he became aware of the window issue in 1995. Dr. Slater did not address the strata's argument because he did not provide final reply submissions.
14. I infer the strata's argument is based on section 6 of *Limitation Act*, which generally requires a party to bring a claim within 2 years of discovering it. At the end of the 2-year limitation period, the right to bring a claim disappears.

15. CRTA section 13 confirms that the *Limitation Act* applies to CRT claims.
16. Here, I find Dr. Slater's claim is not out of time because the strata's duty to repair and maintain common property, which is what I find the windows are, is ongoing, so no limitation period applies.

Who is responsible for repair and maintenance of the building's exterior windows?

17. Generally speaking, Dr. Slater says the exterior windows are common property. On the contrary, the strata says they are LCP for the exclusive use of the designated strata lot owner.
18. I will first consider the strata's argument that the exterior windows are LCP. SPA section 1(1) defines LCP as "common property designated for the exclusive use of the owners of one or more strata lots". SPA section 73 identifies the ways in which common property can be designated as LCP. They are:
- a. By the owner developer:
 - i. On the strata plan when it is deposited in the LTO, or
 - ii. An amendment to the strata plan under SPA section 258, which only involves parking stalls and does not apply here.
 - b. By an amendment under SPA section 257, which requires the strata to pass a unanimous resolution.
 - c. By a $\frac{3}{4}$ vote resolution passed by the strata at a general meeting under SPA section 74.
19. The strata plan does not show any designations of LCP. Designations of LCP made under SPA sections 74 or 257 must be registered with the LTO and LTO documents do not show any LCP designations were ever made. Further, the parties did not say LCP designations were ever approved by unanimous or $\frac{3}{4}$ vote resolutions. Based on this, I find the windows cannot be LCP.

20. Common property is defined under SPA section 1(1) to include that part of a building shown on strata plan that is not part of a strata lot. The strata plan identifies the strata lots but does not expressly indicate whether the strata lots exterior boundaries extend to the exterior of the building. However, under SPA section 68, the boundary between a strata lot and the common property building exterior “is midway between the surface of the structural portion of the wall... that faces the strata lot and the surface of the structural portion of the wall... that faces the... common property”.
21. Therefore, I find the exterior of the building is common property.
22. SPA section 72(1) says the strata must repair and maintain common property and common assets. Bylaws 9(1)(a) and (b) say the same thing. SPA section 72(2) says the strata may make an owner responsible for the repair and maintenance of common property other than LCP, but only if the common property is identified in the *Strata Property Regulation* (regulations). However, the regulations do not allow the strata to make owners responsible for common property that has not been designated as LCP. This means the strata cannot pass a bylaw making owners responsible for common property that is not LCP. Therefore, I find the strata is responsible to repair and maintain the building exterior.
23. What about the exterior windows?
24. Bylaw 9(1)(d) requires the strata to repair and maintain parts of a strata lot that relate to the exterior of a building. Photographs of the windows in question show the windows are flush to the exterior of the building, which I find them part of the building exterior. In addition, the windows are located external to the midpoint of the exterior walls and must therefore be common property under SPA section 68.
25. Bylaw 9(2), on which the strata relies, simply says the strata is not responsible for windows of a strata lot. I have already found the exterior windows are common property, so bylaw 9(2) is not relevant and applies only to windows located inside a strata lot.
26. For these reasons, I find the strata is responsible for repair and maintenance of the exterior common property windows.

What remedies, if any, are appropriate?

27. As earlier noted, Dr. Slater asks for an order that the strata notify its owners and tenants that the exterior windows are common property. I decline to make that order as I find the outcome of this dispute will be available to owners, which I find is sufficient notification.
28. As for Dr. Slater's request that bylaw 9(2) be declared invalid, I also decline to make that order. I do so because I find the bylaw is valid, it just does not apply to the exterior common property windows.

CRT FEES AND EXPENSES

29. 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. Dr. Slater was successful in his claim that the exterior windows are common property, but unsuccessful in obtaining his requested orders. Given his partial success, I order the strata to reimburse Dr. Slater ½ of the \$225.00 he paid for CRT fees, or \$112.50.
30. Neither party claimed dispute-related expenses, so I order none.
31. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Dr. Slater.

DECISION AND ORDER

32. I order the strata, within 15 days of this decision, to pay Dr. Slater \$112.50 for CRT fees.
33. I dismiss Dr. Slater's remaining claims.
34. Dr. Slater is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

35. 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