



Civil Resolution Tribunal

Date Issued: October 3, 2024

File: ST-2022-009897

Type: Strata

Civil Resolution Tribunal

Indexed as: *Dmetrichuk v. The Owners, Strata Plan NW 64*, 2024 BCCRT 987

BETWEEN:

DARCY GRANT DMETRICHUK

APPLICANT

AND:

The Owners, Strata Plan NW 64

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Amanda Binnie

INTRODUCTION

1. This dispute is about a gazebo placed on common property. The applicant, Darcy Grant Dmetrichuk owns strata lot 10 within the respondent strata corporation, The Owners, Strata Plan NW 64 (strata). Mr. Dmetrichuk claims the strata placed a gazebo on common property in violation of the strata's bylaws. Mr. Dmetrichuk asks that the strata report this CRT action to all owners, provide meeting minutes showing who voted for the gazebo, and remove the gazebo and replace the grass.

2. The strata says this gazebo was a temporary structure placed during the pandemic, to hold outdoor council meetings. The strata says it was made from donated materials, and has been left in place for the enjoyment of all owners. The strata further says even if it was placed initially in breach of the strata's bylaws or the *Strata Property Act* (SPA), it was approved by a ¾ majority vote at the annual general meeting held in February 2024. Since this meeting was after this dispute was started, the strata argues Mr. Dmetrichuk's claim is now moot.
3. Mr. Dmetrichuk is self-represented. The strata is represented by the strata council president.

JURISDICTION AND PROCEDURE

4. 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.
5. 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. I also find there is no significant credibility issue between the parties, as they agree on the main facts of this dispute. 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.
6. 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.

Conflict of Interest

7. Mr. Dmetrichuk alleges in submissions that some of the council members have a conflict of interest with respect to the gazebo, as it is close to their strata lots. Though Mr. Dmetrichuk does not specify a remedy, the CRT does not have jurisdiction to order a remedy regarding conflict of interest claims about strata council members (see *Mykle-Hotzon v. The Owners, Strata Plan LMS 1372*, 2018 BCCRT 609 at paragraph 37). This is because SPA section 33 sets out all the available remedies if a council member has a conflict of interest. Under CRTA section 122, SPA section 33 is outside the CRT's jurisdiction and must be dealt with by the BC Supreme Court. So, I will not address Mr. Dmetrichuk's allegations about conflicts of interest.

ISSUES

8. The issues in this dispute are:
- a. Is Mr. Dmetrichuk's claim moot?
 - b. Should the strata remove the wooden structure?
 - c. Is Mr. Dmetrichuk entitled to any other remedies?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Mr. Dmetrichuk must prove their 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.
10. The strata was incorporated in 1971, and consists of 31 townhouse units. The strata updated its bylaws in 2018. Subsequent amendments are not relevant to this dispute.

11. The parties agree that in 2020, during the pandemic, the strata placed a tent and rubber mat on a portion of common property. The strata says it was initially used to safely meet outdoors during the pandemic. When it became damaged and unusable, strata replaced it with a wooden deck and metal gazebo, which remains in place. The strata also says the materials for this project were donated by council members and owners, at no cost to the strata.
12. Mr. Dmetrichuk argues that the strata has not proven that it did not pay for the deck or gazebo, and says they are suspicious of owners who would donate to the strata. They also argue that its size, 8 feet by 8 feet, was not big enough to support social distancing during the pandemic.
13. However, I find there is no evidence in the provided financial records that the strata paid for the tent or gazebo. I also find, particularly in the initial days of the pandemic, that many people were meeting outdoors, regardless of distance, as a safer alternative to meeting indoors. While Mr. Dmetrichuk suspects that only council members have used the gazebo, I find the strata has shown other owners have used the gazebo for other purposes, such as to distribute Halloween candy to children.
14. I also find much of Mr. Dmetrichuk's argument relies on bylaws 3 and 7, which restrict what *owners* can do to common property, and I find they do not apply to the strata's actions. Instead, SPA section 71 describes the process the strata must follow to significantly change common property.

Is Mr. Dmetrichuk's claim moot?

15. The strata argues Mr. Dmetrichuk's claim is moot because at the annual general meeting in February 2024, the owners voted in favour of the gazebo.
16. A claim is considered moot when something happens after a legal proceeding starts that removes any "present live controversy" between the parties. Generally, moot claims will be dismissed. However, the CRT has discretion to decide otherwise

moot claims if doing so would have a practical impact and potentially avoid future disputes (see *Binnersley v. BCSPCA*, 2016 BCCA 259).

17. SPA section 71(b)(ii) says that a strata generally cannot make significant changes to common property unless the owners approve it with a $\frac{3}{4}$ vote at a general meeting. When a strata breaches SPA section 71 by significantly changing common property without owner approval, the CRT typically orders the strata to hold a vote to retroactively approve the change.
18. Mr. Dmetrichuk does not dispute they attended the February 2024 annual general meeting, and a $\frac{3}{4}$ vote resolution retroactively approving the gazebo passed. The meeting minutes confirm this. So, assuming the gazebo was a significant change, I find the strata has now complied with the SPA, and I dismiss Mr. Dmetrichuk's claim for the removal of the gazebo.
19. As noted, the CRT does have discretion to decide moot claims. However, I find this would serve no practical purpose or help the parties avoid future disputes.

Is Mr. Dmetrichuk entitled to any other remedies?

20. I turn now to Mr. Dmetrichuk's other claimed remedies. Mr. Dmetrichuk asks that the strata report this dispute to all owners. The strata provided evidence it has done so, as SPA section 167(1) requires it to, and I dismiss this claim.
21. Mr. Dmetrichuk also asks for copies of the strata council meeting minutes where this gazebo was introduced and voted on. I agree with Mr. Dmetrichuk that the strata council can only make decisions by voting and recording the outcome in meeting minutes. However, even if the strata council failed to follow this process, I find this is also moot as the owners have since voted to approve the gazebo. Further, it is unclear what Mr. Dmetrichuk expects from such an order, given they acknowledge in their submissions reviewing council minutes and finding no mention of the gazebo's approval. So, I dismiss this claim.
22. To the extent that Mr. Dmetrichuk is asking for any other correspondence about the gazebo between council members, as their submissions suggest, I dismiss that

claim as well. The court has said that a strata is not required to produce email correspondence between individual council members under SPA section 35 (*Kayne v. The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610 at paragraph 22).

23. Finally, Mr. Dmetrichuk asks that the strata provide copies of this decision to all owners. While there is nothing preventing the strata from doing so, I find there is no legal basis to order the strata to do so. The CRT's reasons are available on the CRT's website and other online platforms. I find there is no basis for me to order circulation of this decision and I dismiss this claim.

CRT FEES AND EXPENSES

24. 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 party paid any fees or claimed any dispute-related expenses, and so I do not make an order for them.

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

ORDER

26. I dismiss Mr. Dmetrichuk's claims and this dispute.

Amanda Binnie, Tribunal Member