



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Geismayr v. The Owners, Strata Plan KAS 1970*, 2025 BCCRT 217

B E T W E E N :

ROBERT GEISMAYR and MICHELLE GEISMAYR

APPLICANTS

A N D :

The Owners, Strata Plan KAS 1970

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Peter Mennie

INTRODUCTION

1. The applicants, Robert and Michelle Geismayr, purchased a strata lot in the respondent strata corporation, The Owners, Strata Plan KAS 1970 (strata). The previous owner altered the strata lot without the strata's approval. The strata denied the Geismays' application to retroactively approve the strata lot's alterations. The

Geismayrs say that the strata treated them significantly unfairly and ask for an order that the strata approve the alterations.

2. The strata says the Geismayrs purchased the strata lot knowing that the strata previously refused to approve these alterations. It says that retroactively approving these alterations would set a precedent which would interfere with the strata's ability to operate as a hotel condominium.
3. A strata council member represents the strata. The Geismayrs are self-represented.
4. For the reasons below, I dismiss the Geismayrs' claims.

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. 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.
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.
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.

ISSUE

9. The issue in this dispute is whether the strata's refusal to retroactively approve the alterations to the Geismayrs' strata lot was significantly unfair, and, if so, what remedy is appropriate.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the Geismayrs, as the applicants, 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.
11. The strata has 103 strata lots and is located near a ski resort. The strata says it is a hotel condominium. Its bylaws 3(3), 3(4), and 3(5) say that the strata is subject to a rental covenant and owners must comply with a rental pool management agreement. Neither party provided a copy of the covenant or agreement. From the parties' submissions and the bylaws, I infer that the covenant and agreement require owners to rent out their strata lots through a local rental management organization.
12. The previous owner of the Geismayrs' strata lot altered it by adding fire sprinkler heads, moving a fire alarm, and adding a loft. The loft is a wooden platform reached by a ladder which provides a small living area just below the strata lot's ceiling. Photos in evidence show a bed and lamp in the loft. The previous owner received a stop work order from the local regional district on February 19, 2019, because the alterations were done without a permit.
13. The strata council's April 2019 minutes say it instructed the strata manager to follow up with the previous owner about obtaining a permit for the alterations. Strata council minutes from October 2019 say the previous owner dealt with concerns about the firm sprinkler heads and alarm, however the addition of the loft remains open.

14. The previous owner obtained a structural assessment of the loft from an engineering firm. The report, dated November 26, 2019, says that the loft is structurally sound and meets the requirements of the British Columbia Building Code. The Geismayrs say that the district would have provided a permit for the strata lot's alterations if the strata had provided its approval of the alterations.
15. The strata's January 2020 minutes show that the previous owner applied to the strata to retroactively approve the strata lot's alterations. The strata denied this request. The strata council's minutes say the strata considered its duty reflected in the bylaws to ensure it could operate as a hotel condominium. The strata noted correspondence from the rental management organization which said the strata lot's alterations meant it was not rentable.
16. The Geismayrs purchased their strata lot in October 2020. Before completing the purchase, they viewed the January 2020 strata council minutes where the strata refused to approve the previous owner's alterations. They also received a Form B Information Certificate which included a letter to the previous owner from the strata property manager dated January 23, 2020. The letter said that the strata declined to retroactively approve the strata lot's alterations because it would affect the strata's ability to act as a hotel condominium, the loft made the strata lot unrentable, and permitting these alterations would create a precedent where other owners would demand similar approvals.
17. The Geismayrs believed that if the strata lot could be rented then the strata would approve the alterations. After taking possession, the Geismayrs contacted the rental management organization and received a list of recommendations to make their strata lot rentable. This included sealing off the loft so that guests could not access it. The Geismayrs followed these recommendations and were added to the rental pool for the next three ski seasons.
18. The Geismayrs applied to have the strata lot's alterations approved on the basis that it was rentable. On February 9, 2023, the strata denied approval and demanded that the Geismayrs remove the loft. The Geismayrs requested a meeting

with the strata council to reconsider their decision. The strata upheld their decision on April 26, 2023, and said again that it did not want to set a precedent.

19. The Geismayrs argue that the strata treated them significantly unfairly by refusing to approve the alterations. The CRT has authority to make orders remedying a strata corporation's significantly unfair act or decision under CRTA section 123(2). The court has the same authority under section 164 of the *Strata Property Act* (SPA), and the same legal test applies. 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 or fair dealing, done in bad faith, unjust, or inequitable. In applying this test, the owner's objectively reasonable expectations are a relevant factor but are not determinative.
20. I start by considering whether the prior owner was required to obtain the strata's approval before adding the loft. Bylaw 8 sets out the circumstances where an owner must obtain the strata's approval before making alterations to their strata lot. However, none of the circumstances listed in bylaw 8 are applicable to the addition of a loft.
21. With that said, *Strata Property Act* (SPA) section 70(4) says that if an owner wishes to make a nonhabitable part of a strata lot habitable, they must seek an amendment to the Schedule of Unit Entitlement and obtain a unanimous vote from the owners. There is an exception under *Strata Property Regulation* (SPR) section 5.1(2) which says that an owner may increase the "habitable area" of a strata lot by less than 10% of the habitable part and less than 20 square metres, but only if the owner obtains the strata's prior written approval.
22. SPR section 14.2 defines "habitable area" as the area of a residential strata lot which can be lived in, but does not include patios, balconies, garages, parking stalls, or storage areas other than closet space. The British Columbia Court of Appeal in *Barrett v. The Owners, Strata Plan LMS3265*, 2017 BCCA 414, interpreted "habitable area" broadly and found it includes "all space located within a strata lot that is reasonably available for habitation." Here, the loft effectively creates

another habitable floor within the strata lot, so I find that adding the loft increased the “habitable area” of the strata lot.

23. Based on the measurements in the strata plan and structural assessment, I find that the loft increased the strata lot’s habitable area by less than 10% and less than 20 square metres. So, I find the previous owner was required to obtain the strata’s prior written approval before adding the loft under SPA section 70(4) and SPR 5.1(2). This obligation existed regardless of what the strata’s bylaws said about preapproval for alterations.
24. I turn to consider whether the strata acted significantly unfairly by refusing to provide retroactive approval for the loft. The strata says it did not approve the alterations because it did not want to set a precedent where other owners could alter their strata lots and later seek retroactive approval. It says it wants a cohesiveness in appearance of all strata lots and to ensure that all units are rentable. It refers to bylaw 5(17) which says that the owners agree that they will not do anything which may interfere with the strata’s operation as a hotel condominium. I accept that these are valid considerations and the strata was reasonably concerned that retroactively approving the alterations would set a precedent which would interfere with its operation as a hotel condominium.
25. The Geismayrs’ submissions reference ten decisions where they say courts ruled that a strata could not force the removal of strata lot alterations. These cases have the parties’ names and the years published, but no legal citation. Nine of these cases do not exist. The remaining case, “The Owners, Strata Plan LMS 2768 v. Jordison (2013)”, has three court decisions published in 2013, however, none of these are related to unauthorized alterations. The Geismayrs listed the source of these cases as a “Conversation with Copilot” which is an artificial intelligence chatbot. I find it likely that these cases are “hallucinations” where artificial intelligence generates false or misleading results.
26. The state of the law is very different than what Copilot reported. Multiple CRT decisions say that owners cannot reasonably expect retroactive approval for

alterations done without the strata's prior authorization. For recent examples, see *Champoux v. The Owners, Strata Plan EPS5773*, 2024 BCCRT 522, *Liang v. The Owners, Strata Plan LMS 2195*, 2024 BCCRT 1244, and *Duck v. The Owners, Strata Plan K196*, 2024 BCCRT 1300.

27. Previous CRT decisions are not binding on me, however, I agree with the reasoning in these cases. I find that the Geismayrs did not have a reasonable expectation that the strata would retroactively approve the strata lot's alterations. The Geismayrs purchased the strata lot knowing that the local district had issued a stop work order and the strata had refused to approve the alterations. The letter in the Form B Information Certificate made it clear that the strata was concerned that retroactive approval would set a precedent which would interfere with the strata's operation as a hotel condominium. In these circumstances, I find that the strata's refusal to retroactively approve the strata lot's alterations does not rise to the level of significant unfairness. So, I dismiss the Geismayrs' claims.

CRT FEES AND EXPENSES

28. 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. The Geismayrs were not successful, so I do not order any reimbursement of their CRT fees. Neither party claimed any dispute-related expenses.
29. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against the Geismayrs.

ORDER

30. I dismiss the Geismayrs' claims and this dispute.

Peter Mennie, Tribunal Member