



Civil Resolution Tribunal

Date Issued: June 24, 2025

File: ST-2023-006611

Type: Strata

Civil Resolution Tribunal

Indexed as: *Makhnach v. The Owners, Strata Plan VR510*, 2025 BCCRT 854

B E T W E E N :

MARINA MAKHNACH

APPLICANT

A N D :

The Owners, Strata Plan VR510

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Peter Mennie

INTRODUCTION

1. The applicant, Marina Makhnach, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan VR510 (strata). The strata fined Mrs. Makhnach for altering her strata lot's floor and balcony in breach of the bylaws. Mrs. Makhnach says the fines are not valid and the strata acted significantly unfairly. She

asks for orders that the strata's fines be reversed and that she be allowed to keep her floor and balcony alterations. Mrs. Makhnach represents herself.

2. The strata says Mrs. Makhnach's alterations violate its bylaws. It says it followed the *Strata Property Act* (SPA) and did not act significantly unfairly. A council member represents the strata.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under the *Civil Resolution Tribunal Act* (CRTA) section 121. 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.
4. CRTA section 39 says the CRT has discretion to decide the format of the hearing. Neither party requested an oral hearing. While there are some credibility issues, the background facts are largely undisputed. The parties also provided evidence, including photos of Mrs. Makhnach's floor and balcony, and I find that I can make the required findings of fact based on this evidence. Bearing the CRT's mandate that includes the informal and speedy resolution of disputes, I find that an oral hearing is not necessary.
5. 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.
6. 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.

Evidence Issues

7. Mrs. Makhnach's submissions provided website links about the definition of "siding" and "substrate floors". She did not provide the actual website pages. CRT staff instruct parties not to provide website links as evidence because website content may change over time. There is no way for a CRT member to know whether they are viewing the same content that the parties viewed. I did not view or rely on these website links in coming to my decision.
8. Mrs. Makhnach also provided letters dated March 20 and 31, 2023 between her lawyer and the strata's lawyer. These letters discuss a proposal to settle this dispute, meaning these letters would ordinarily be protected by settlement privilege. However, neither party claimed privilege or objected to this evidence and both parties refer to this correspondence in their submissions. I find that the parties have implicitly waived any claim to privilege over these letters, so I have considered this evidence in my decision.

Additional Issues Raised in Submissions

9. Mrs. Makhnach's submissions refer to other issues she has had with the strata, including a boiler replacement, noise from the strata lot above her, and inconsistent application of a bylaw prohibiting cutting wood in the parking garage. None of these issues were raised in the Dispute Notice and they are not relevant to this dispute. So, I find these issues are not properly before me and I have not considered these issues in my decision.

ISSUES

10. The issues in this dispute are:
 - a. Did Mrs. Makhnach breach the strata's bylaws by altering her floor?
 - b. Did Mrs. Makhnach breach the strata's bylaws by altering her balcony?
 - c. Did the strata properly follow the SPA when it imposed bylaw fines?

- d. Did the strata treat Mrs. Makhnach significantly unfairly and, if so, what is the appropriate remedy?
- e. Is either party entitled to reimbursement of their legal fees?

EVIDENCE AND ANALYSIS

- 11. In a civil proceeding like this one, the applicant Mrs. Makhnach must prove her 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.
- 12. The strata has 113 strata lots. Mrs. Makhnach purchased her strata lot in May 2018 and initially rented it out. She and her family moved into the strata lot in September 2022. Mrs. Makhnach is listed on title as the sole owner, however, her submissions say that she co-owns her strata lot with her spouse, Remco Coesel.
- 13. On September 19, 2022, the strata's caretaker emailed Mrs. Makhnach and said the strata had received a complaint about unauthorized flooring being installed in her strata lot. She requested a hearing with the strata council.
- 14. On September 29, 2022, Mr. Coesel attended a hearing with the strata council. The strata council decided to ask Mrs. Makhnach to provide an alteration approval request for her floor. The strata council also decided to have its caretaker inspect her strata lot and report other potential bylaw violations to the strata council.
- 15. On October 7, 2022, the strata's caretaker inspected the strata lot. They wrote in their report that hardwood flooring was installed over the living area of the strata lot below which was contrary to the strata's bylaws.
- 16. The caretaker also noted that there was a wood structure on Mrs. Makhnach's balcony. Photos and a video in evidence show that Mr. Coesel used cedar planks to build a wood screen next to his balcony's sides and railings. The wood screen also had lights and seven large planters attached to it across the balcony. The balcony is

the strata's limited common property. The caretaker noted that the wood screen was another possible bylaw violation.

17. On November 14, 2022, the strata sent Mrs. Makhnach two warning letters about the alterations to her floor and balcony. The letters relied on:
 - a. Bylaw 9.1, which says that an owner must obtain written approval before altering their floors,
 - b. Bylaw 9.2, which says that hardwood floors cannot be installed over living room or bedroom areas of a strata lot below,
 - c. Bylaw 10.1, which says that an owner must obtain written approval before altering limited common property, and
 - d. Bylaw 6.11, which says that planters on balconies must conform to loading patterns set out in the strata's CSA Building Sciences Report.
18. The strata says it sent these letters to Mrs. Makhnach's strata lot. Mrs. Makhnach denies receiving these letters. While nothing turns on this, I prefer Mrs. Makhnach's evidence because she provided photos showing that the strata sent letters to Mrs. Makhnach's old address in November and December 2022. While the address on the November 14, 2022 letters was correct, I find it likely that the address on the envelope was not updated and the letters were misplaced by the resident at Mrs. Makhnach's old address.
19. The strata sent two letters on December 28, 2022, saying it was fining Mrs. Makhnach \$200 per week for each of the floor and balcony bylaw violations. The strata council confirmed its decision to fine Mrs. Makhnach after a hearing on January 24, 2023.
20. Mrs. Makhnach retained a lawyer who wrote to the strata on March 20, 2023 and demanded that the fines be removed and the alterations allowed. In a letter dated March 31, 2023, the strata's lawyer agreed that the strata would not pursue

allegations about the planters, but still demanded that the wood floor and wood screen be removed.

21. On May 11, 2023, Mrs. Makhnach requested another meeting with the strata council to resolve these issues. In advance of the meeting, she requested blueprints for her strata lot to ensure that she removed the wood flooring in the proper place. She met with the strata council on May 24, 2023.
22. On June 1, 2023, Mrs. Makhnach informed the strata that the wood screen on the balcony had been reduced in height and its lights had been removed. On June 4, 2023, Mrs. Makhnach emailed the caretaker an application to remove the wood floor in her strata lot as required by the bylaws.
23. The strata council's June 2023 minutes say they reviewed Mrs. Makhnach's correspondence and concluded that the balcony siding remained non-compliant with the bylaws. The minutes also say vaguely that Mrs. Makhnach's proposal to remove the wood floor "does not align" with the bylaws, but do not explain why.
24. On June 13, 2023, the strata's caretaker emailed Mrs. Makhnach and said her application to remove the wood floor did not comply with the strata's bylaws. The caretaker did not provide any details about what was wrong with Mrs. Makhnach's application.

Did Mrs. Makhnach breach the strata's bylaws by altering her floor?

25. As noted above, bylaw 9.1 says an owner must obtain written approval before altering their strata lot's floors. Bylaw 9.2 says an owner cannot install hardwood floors over living room or bedroom areas of a strata lot below.
26. Mrs. Makhnach acknowledges that she did not seek prior approval before renovating her floors. She says this was due to a miscommunication with the strata's former president. However, that does not excuse a breach of the bylaws. I find that Mrs. Makhnach breached bylaw 9.1 by failing to obtain written approval before altering her floors.

27. Mrs. Makhnach says that she did not breach bylaw 9.2. She says the bylaw is ambiguous because it does not explicitly say it must have carpet in certain areas, does not give the measurements of the areas that need carpet, and does not say what materials can be used for the “subfloor”. Mrs. Makhnach’s floor is made of finished hardwood and has a moveable carpet on top. Her argument is essentially that the wood is a “subfloor” under the carpet and the bylaw is ambiguous about whether this is permitted, so she did not breach bylaw 9.2.
28. I do not accept Mrs. Makhnach’s argument. Bylaws are interpreted in their plain and ordinary meaning and considering their purpose.¹ Here, there is no ambiguity. The plain and ordinary meaning of bylaw 9.2 is that a strata lot cannot have hardwood floors over another strata lot’s living room or bedroom. I find that the floor’s top surface is finished hardwood, so it is not a subfloor. This fact is not changed by adding an unaffixed carpet overtop. It is undisputed that the wood floor is above another strata’s living room or bedroom. So, I find that Mrs. Makhnach breached bylaw 9.2.

Did Mrs. Makhnach breach the strata’s bylaws by altering her balcony?

29. The strata’s November 14, 2022 letter and its submission refer to bylaw 10.1 which says that an owner must obtain the strata’s permission before altering limited common property. It says that the addition of the wood screen was an “alteration” which was done without the strata’s permission.
30. However, I find that the wood screen is not an “alteration” so bylaw 10.1 does not apply. The BC Supreme Court has said that the term “alteration” means a change to the structure of common property.² Here, there was no change to the building’s structure, plumbing, or electrical systems. Based on the photos and video, the wood screen appears to be freestanding and is not attached to the building.
31. I find support in this conclusion from the BC Supreme Court’s decision in *The Owners, Strata Plan LMS 4255 v. Newell*³ which held that a hot tub and air conditioning unit installed on the 37th floor using a crane were not alterations because they were not permanent. Here, the wood screen would take some time

and power tools to remove, however, it would not require a crane or anything nearly as onerous. Applying the reasoning in *Newell*, I find that the wood screen is not a permanent alteration to the strata's limited common property so bylaw 10.1 does not apply.

32. The strata refers to three past CRT decisions, *Giddings et al v. The Owners, Strata Plan BCS 3620*⁴, *Johnston v. The Owners, Strata Plan EPS3652*⁵, and *Carpenter v. The Owners, Strata Plan VR 614*⁶, to argue that large structures which require some time to remove are "alterations". Past CRT decisions are not binding on me and none of these cases considered the court's *Newell* decision which is binding and directly applicable to this dispute. Other CRT decisions, such as *Merk v. The Owners, Strata Plan NW 1263*⁷, *McBean v. The Owners, Strata Plan EPS1766*⁸, and *Cupples v. The Owners, Strata Plan LMS 2074*⁹, which rely on *Newell* have held that large freestanding objects on common property are not alterations.
33. Bylaws 6.1 to 6.15 deal specifically with an owner's use of their balcony, so I find that these bylaws apply to Mrs. Makhnach's wood screen. Bylaw 6.1 says owners must not erect fixtures, including storage sheds or other structures, except if the structures are freestanding, not attached to the cladding of the building, and positioned under the overhang so as not to be visible from the outside of the building.
34. The wood screen is freestanding and is not attached to the building's cladding. While the wood screen was initially larger, Mr. Coesel reduced its height so that it would only be visible from the outside of the building at certain angles. The wood screen, as it currently stands, would not be obviously visible from a ground floor view of the strata. So, I find that the wood screen does not breach bylaw 6.1.
35. I acknowledge Mrs. Makhnach's argument that the wood screen is a trellis and falls into a limited exception under bylaw 6.2. However, a trellis typically has a lattice structure with gaps in the wood which allow plants to climb. The wood screen is a solid wall with no gaps, so I find it is not a trellis.

36. As noted above, the strata's lawyer confirmed in their March 31, 2023 letter that they are not pursuing any bylaw violations about the planters contravening the CSA Building Sciences Report.

Did the strata properly follow the SPA when it imposed bylaw fines?

37. SPA section 135 says that a strata corporation cannot require an owner to pay a bylaw fine unless the strata receives a complaint about the contravention, gives the owner the details of the complaint in writing, and provides the owner with a reasonable opportunity to respond to the complaint. If the strata corporation fails to comply with SPA section 135, then bylaw fines can be invalid.¹⁰
38. Mrs. Makhnach says that the strata's conduct at the January 24, 2023 hearing was biased and unprofessional to the point where she was not given a reasonable opportunity to answer the complaint. She says that Mr. Coesel and the strata council president's spouse had a physical altercation in September 2022 and the strata council president should not have been involved in this hearing.
39. I agree with Mrs. Makhnach's submission. The strata's lawyer noted in their March 31, 2023 letter that the strata council recorded this hearing. I would have expected the strata to provide this recording as evidence to disprove Mrs. Makhnach's allegations. The strata did not provide this recording, so I find that an adverse inference is appropriate. This means I will assume that the strata did not provide this recording because it would show that the hearing was not conducted properly and Mrs. Makhnach was not given a reasonable opportunity to answer the strata's allegations.
40. The strata also does not deny that there was a personal conflict between the strata council president's spouse and Mr. Coesel. While the parties differ on what took place, the allegations from both sides are serious. The strata's lawyer suggested in their letter that the police were involved. Given this level of acrimony, the strata council president should have recused themselves from the January 24, 2023 hearing, as required by SPA section 32. Instead, the strata president took part in this hearing and voted to enforce the bylaw fines against Mrs. Makhnach and Mr. Coesel. Again,

this indicates that Mrs. Makhnach was not given a reasonable opportunity to answer the strata's allegations. So, I find that the strata did not comply with SPA section 135 and the bylaw fines must be reversed.

Did the strata treat Mrs. Makhnach significantly unfairly and, if so, what is the appropriate remedy?

41. The CRT has authority to make orders remedying a strata corporation's significantly unfair act or decision under 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. 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's objectively reasonable expectations are a relevant factor, but are not determinative.¹¹
42. I find that the strata's actions surrounding the two alleged bylaw infractions were significantly unfair. I say this for two reasons.
43. First, I agree with past CRT decisions which have found that uneven application and inconsistent enforcement of bylaws can be a basis for a finding of significant unfairness.¹² Here, Mrs. Makhnach provided evidence from public real estate listings which show that other owners in the strata have installed hardwood floors. She also provided photos showing that other owners in the strata have outdoor furniture and fixtures installed on their balconies similar to her wood screen. She says the strata has not fined these other owners.
44. The strata provided a statement from its caretaker which says that bylaw enforcement is response-based and the strata does not act unless it receives a complaint. The difficulty for the strata is that there is no evidence that anyone made a complaint about Mrs. Makhnach's floor or balcony. Mrs. Makhnach provided an email from the strata lot owners below who said they made no complaint and have not experienced any noise disturbances from Mrs. Makhnach or her family. The alleged bylaw infractions about the wood screen came from the caretaker's

inspection of Mrs. Makhnach's strata lot. This undermines the strata's claim that it does not enforce the bylaws unless someone makes a complaint.

45. The strata council was entitled to make complaints about the floor and balcony and pursue fines under SPA section 135 on its own initiative.¹³ However, the strata took no similar action when it became aware of comparable violations by other owners, it only says it is prepared to investigate if Mrs. Makhnach makes a complaint. I find that the strata council's inconsistent actions in enforcing the bylaws shows a lack of fair dealing which rises to the level of significant unfairness.
46. Second, I find that the strata's failure to consider and properly respond to Mrs. Makhnach's June 4, 2023 application to renovate her strata lot was significantly unfair. The letters exchanged between the parties' lawyers in March show a high level of conflict. Mrs. Makhnach did the responsible thing and extended an olive branch to end this dispute. She reduced the wood screen's height and applied to bring her floor into compliance with the bylaws by removing wood in prohibited areas. She even sent a handwritten note to a strata council member expressing that she wished to end this conflict.
47. I find that Mrs. Makhnach had a reasonable expectation that the strata would review her application in good faith and would respond with particulars if the application needed revisions or additional information. The strata failed entirely to do this and rejected her application without any basis. In its submissions, the strata says the application did not have proof of liability insurance contrary to bylaw 9.4. If that was the only issue, the strata could easily have asked Mrs. Makhnach to provide proof of or obtain liability insurance. Instead, the strata left Mrs. Makhnach in an impossible position of either breaching bylaw 9.1 by fixing her floors without approval or continuing to breach bylaw 9.2 with her wood floor. I find that the strata's failure to engage with Mrs. Makhnach and its dismissal of her application without providing her with reasons shows a lack of probity and fair dealing which was significantly unfair.
48. So, what is the appropriate remedy?

49. I reversed the strata's bylaw fines because I found above that the strata did not follow SPA section 135. If I am wrong on that point, I would also reverse those fines on the basis that the strata acted in a significantly unfair manner towards Mrs. Makhnach.
50. I found above that the wood screen is not a bylaw violation, so I do not need to make an order about that.
51. That leaves the wood floor. Mrs. Makhnach asks for an order that she be allowed to keep the wood floor. However, her floor violates bylaw 9.2. I will not make this order because it would be unfair to the other owners who have followed the strata's bylaws.
52. The strata did not file a counterclaim asking for an order that Mrs. Makhnach remove her wood floor, so I cannot order this. This means that I must leave it to the parties to resolve this issue. It would appear that the obvious solution is for the strata to approve Mrs. Makhnach's application to alter her floor and reinstall carpet over the strata lot below. For the parties' benefit, I will note the BC Supreme Court's comment that those who choose communal living in a strata are bound by the reality of all being in it together, for better or for worse.¹⁴ With this in mind, I urge the parties to work together and find an amicable resolution without resorting to further litigation.

Is either party entitled to reimbursement of their legal fees?

53. CRT Rule 9.5(3) says that the CRT will not order one party to pay another party's legal fees in a dispute unless there are extraordinary circumstances which make it appropriate. Rule 9.5(4) goes on to say that in determining whether a party must pay the fees that a lawyer charged to another party, the CRT may consider:
- a. the complexity of the dispute,
 - b. the degree of involvement by the representative,

- c. whether a party or representative's conduct has caused unnecessary delay or expense, and
 - d. any other factors the CRT considers appropriate.
54. The strata paid \$17,083.15 in legal fees and \$221.95 in disbursements to its lawyers. I do not make any award here because the strata was unsuccessful on most issues in this dispute. I also find that \$17,083.15 in legal fees is excessive given the relatively small amount of evidence and the lack of complexity in this dispute.
55. Mrs. Makhnach claims \$1,663.20 for her legal fees. While a finding of significant unfairness could justify an award for legal fees, Mrs. Makhnach did admittedly breach bylaws 9.1 and 9.2 which started this dispute. Again, this dispute was not overly complex. So, I find there are no extraordinary circumstances in this case and do not order any reimbursement of Mrs. Makhnach's legal expenses.

CRT FEES AND EXPENSES

56. 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. Mrs. Makhnach was largely successful, so I order the strata to reimburse her \$225 for her paid CRT fees. I dealt with the parties' claims for dispute-related expenses above.
57. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Mrs. Makhnach.

ORDERS

58. I order the strata to immediately reverse all bylaw fines imposed against Mrs. Makhnach related to her wood floor and wood screen.
59. Within 30 days of the date of this decision, I order the strata to pay Mrs. Makhnach \$225 for her CRT fees.

60. Mrs. Makhnach is also entitled to post-judgment interest under the *Court Order Interest Act*.

61. I dismiss Mrs. Makhnach's remaining claims.

62. This is a validated decision and order. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under CRTA section 58, 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.

Peter Mennie, Tribunal Member

¹ *The Owners, Strata Plan BCS 3407 v. Emmerton*, 2024 BCCA 354, at paragraph 17.

² *The Owners of Strata Plan NWS 254 v. Hall*, 2016 BCSC 2363, at paragraphs 40 to 41.

³ 2012 BCSC 1542.

⁴ 2018 BCCRT 61.

⁵ 2020 BCCRT 1015.

⁶ 2022 BCCRT 264.

⁷ 2019 BCCRT 500.

⁸ 2021 BCCRT 1288.

⁹ 2024 BCCRT 395.

¹⁰ *The Owners, Strata Plan NW 307 v. Desaulniers*, 2019 BCCA 343.

¹¹ *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173.

¹² *Wong v. The Owners, Strata Plan EPS4444*, 2022 BCCRT 737, at paragraph 18.

¹³ *The Owners, Strata Plan VR19 v. Collins et al*, 2004 BCSC 1743, at paragraph 16.

¹⁴ *Oakley et al v. Strata Plan VIS 1098*, 2003 BCSC 1700, at paragraph 16.