Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

LUKE DAVID HEWITT and MARELLA DAWN FALAT

APPLICANTS

A N D :

The Owners, Strata Plan Vr 1360

RESPONDENT

REASONS FOR DECISION

Tribunal Member: J. Garth Cambrey

INTRODUCTION

1. This strata property dispute is about an owner's heat pump installation request.

2. The applicants, Luke Hewitt and Marella Falat, jointly own strata lot 2 or SL2 in the respondent strata corporation, The Owners, Strata Plan Vr 1360. I will refer to the respondent as the strata. Mr. Hewitt represents the applicants. A strata council member represents the strata.

3. The applicants say the strata acted in a significantly unfair manner by denying their request to install a heat pump. They also say the strata's actions caused unsafe living conditions for them and their young child. They seek an order that the strata authorize their request for a heat pump.

4. The strata denies it has acted improperly. It says the *Strata Property Act* or SPA and its bylaws require the strata owners to approve the heat pump installation by passing a ¾ vote at a general meeting, which was not done. The strata asks that the applicants' claims be dismissed.

5. As explained below, I find the strata must approve the applicants' heat pump request.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal or CRT. The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* or 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 find I am properly able to assess and weigh the documentary evidence and submissions before me. I am satisfied an oral hearing is not necessary in the interests of justice and decided to hear this dispute through written submissions.

8. 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.

ISSUES

9. The issues in this dispute are:

    a. Does the applicants' heat pump installation involve a significant change to the use or appearance of common property?

    b. Did the strata treat the applicants significantly unfairly?

    c. What is an appropriate remedy, if any?

BACKGROUND, EVIDENCE AND ANALYSIS

10. As applicants in a civil proceeding such as this, Luke Hewitt and Marella Falat must prove their 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.

11. The strata was created in March 1984 under the *Condominium Act* and now operates under the SPA. It consists of 13 residential strata lots essentially located in a single 4-storey building with an interior courtyard. SL2 is a 2-level strata lot located at the northwest corner of the building on the first and second levels. The strata plan shows SL2 has one balcony on the first level that has been designated as limited common property or LCP for the applicants' exclusive use. Videos provided in evidence confirm SL2 is located immediately next to a main roadway with 2 lanes in each direction.

12. Land Title Office documents show the strata filed a complete new set of bylaws on July 31, 2002, which I infer replaced the Standard Bylaws, plus further bylaw amendments in 2003, 2022, and 2024. The 2024 bylaw amendments do not apply because they were filed after the applicants started this dispute. I find the following bylaws are relevant:

    Bylaw 5, which says an owner must obtain the strata's prior written approval before making an alteration to a strata lot that involves, among other things, the exterior of the building. It also says the strata cannot unreasonably

withhold its approval but may require the owner to take responsibility for the alterations.

Bylaw 6, which says an owner must obtain the strata's prior written approval before making an alteration to a common property or LCP. It also says the strata may require the owner to take responsibility for the alterations.

13. I provide a summary of the background facts for context.

14. The applicants originally requested approval to install a heat pump for SL2 in November 2019. In their email, the applicants stated the heat pump would replace their electric baseboard heaters and involve the installation of a compressor on their LCP balcony and 3 wall-mounted units in different rooms within SL2. The email also confirmed that the applicants would need to make a 2-inch hole through the exterior wall to allow for pipes and wires to connect the compressor to the wall-mounted units. It is clear this was the first heat pump request received by the strata.

15. The strata responded within a few days asking for the following information:

    a. Engineered drawings and specifications,

    b. The impact on the building's electrical service,

    c. Details on the compressor mounting and exterior wall penetration,

    d. Expected sound levels, and

    e. The qualifications of the contractor proposed to complete the installation.

16. The applicants did not respond, and in submissions simply stated they decided not to proceed at that time.

17. They wrote to the strata again in January 2022 in response to the strata's November 2019 request for additional information. They advised of the plumbing and heating company they proposed do the work with proper permits and inspections. Their email explained the hole through the exterior wall could be made near the first level soffit above the compressor to avoid the risk of water ingress.

They provided details on how the compressor would sit on anti-vibration pads on the concrete portion of the LCP balcony and that the building's electrical service would not be affected because the heat pump would replace their electric baseboard heaters and wired only to SL2's electrical system. They also advised the proposed compressor had peak noise levels of 56 decibels for heating and 52 decibels for cooling.

18. On March 25, 2022, the strata manager advised the applicants that the strata had declined their request due to the potential impact on other residents and the building envelope. The applicants then requested a council hearing, which the strata scheduled for April 25, 2022.

19. The applicants prepared a written submission for the hearing that included drawings and details of their proposed heat pump installation, including addressing sound concerns by installing insulation, and other information provided by their contractor. Although not all of the drawings were provided into evidence, the written submission was. The submission explains in detail that the applicants renewed interest to install a heat pump was as a result of the birth of their child in 2021 and the difficulty in cooling SL2 in the summer of 2021 and heating it the following winter.

20. The applicants stated temperatures inside SL2 reached 29.5 degrees Celsius in the summer requiring them to open their windows. However, because SL2 is located immediately next to a main roadway, they say opening windows to keep temperatures down also exposed them and their child to dangerous air and noise pollution from the traveling vehicles. The applicants also stated they had difficulty heating SL2 in the winter months, only reaching 17.5 degrees Celsius in December 2021 and January 2022. According to the applicants, they had unsuccessfully used space heaters and determined the portable air conditioners would not resolve their issue because the air conditioners would need to be vented through open windows. They stated their research determined a heat pump was the best solution for temperature control and for air filtration of pollutants.

21. The applicants made their presentation at the council hearing on April 25, 2022. On April 28, 2022, the strata manager emailed the applicants to thank them for their

information and presentation and to advise the strata had denied their request. The strata's stated reason for denying the request was that an alteration of common property required a ¾ vote of the owners to pass, so the strata council stated it did not have the authority to approve their request. The strata asked the applicants to pay for professional expenses for reports and recommendations on how various things would be affected by the installation, such the building envelope, electrical system, noise and vibrations. It said once the reports and recommendations were received, it would hold a general meeting to consider the required ¾ vote approval. The strata said the applicants' request would be approved it the ¾ vote passed.

22. The applicants replied on May 12, 2022. In their reply, the applicants expressed concern over the strata's requirement for a ¾ vote for their request when other owners' requests to alter common property were approved by the council without passing a ¾ vote. The applicants also expressed concern about the expense of obtaining the professional reports when it appeared the strata was not supportive of their request. They stated their contractor could likely provide any additional information the strata needed, including engineering reports and recommendations. They suggested the strata approve their request subject to holding a town hall meeting with their contractor and the owners approving their request by ¾ vote at the upcoming annual general meeting.

23. On May 19, 2022, the strata manager advised that the strata had made its decision after the hearing and that if the applicants did not want to proceed on the basis set out by the strata, perhaps some of their concerns could be alleviated by using fans and portable air conditioners. It did not expressly address the applicants' alternative suggestion of approving their request subject to the owners passing a ¾ vote after a townhall meeting. The strata also suggested that upcoming building window replacement might also assist the applicants but did not explain how. The applicants responded on June 12, 2022, setting out various common property alterations the strata had approved without a ¾ vote and argued they were being treated differently than other owners. I discuss these things below.

Does the applicants' heat pump request involve a significant change to the use or appearance of common property?

24. I find it necessary to address whether the applicants' heat pump request involves a significant change in the use or appearance of common property. I say this because the strata expressly states that SPA section 71 and the bylaws, require changes to common property to be approved by a ¾ vote of its owners at a general meeting. However, SPA section 71 clearly states that only ***significant*** changes to the use or appearance of common property require owners' approval by ¾ vote, with some exceptions that do not apply here. In other words, if the change is not significant, the strata council has the authority to approve it without a ¾ vote.

25. I also note that the applicants suggest section 71 only applies to changes initiated by the strata. However, the CRT has consistently applied section 71 to common property requests made by owners because generally the strata must still approve them under the bylaws, which is the case here.

26. Further, the strata submits that bylaws 5 and 6 noted above also require a ¾ vote, but that interpretation is not correct. Bylaws 5 and 6 clearly state that only the written permission of the strata is required for the things set out in the bylaws, which includes altering the exterior of the building, common property, and limited common property.

27. For clarity, common property is defined under SPA section 1(1) to include that part of the land or buildings shown on a strata plan that are not part of a strata lot. Section 68 confirms the boundary of a strata lot as the midpoint of the structural portion of the wall that divides a strata lot from another strata lot or common property, unless a different boundary is established on the strata plan. Here, the strata plan does not establish a different boundary, so the boundary is as set out in section 68. That means the building exterior is common property.

28. I have also considered the nature of SL2's LCP balcony. SPA section 1(1) defines LCP as common property designated to one or more owner's exclusive use, which I find means LCP is a form of common property and thus captured by SPA section 71.

29. Whether an alteration to common property is significant depends on several factors that may result in different outcomes for different alterations. The SPA does not

define significant change, but is it well established that the factors to consider are those set out in *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333. In *Foley*, the court set out a non-exhaustive list of factors to consider when deciding whether a change to common property is significant, which I summarize as follows:

a. Is the change visible to other residents or the general public?

b. Does the change affect the use or enjoyment of a strata lot or existing benefit of another strata lot?

c. Is there a direct interference or disruption because of the changed use?

d. Does the change impact the marketability or value of a strata lot?

e. How many strata lots are in the strata and what is the strata's general use?

f. How has the strata governed itself in the past and what has it allowed?

30. The strata did not address these factors, and the applicants did not address all of them. Based on the applicant's submissions and drawings, I find the proposed installation of the heat pump on the SL2 balcony would be below the railing height and likely not visible to the general public. I also find it would likely not be visible to any other strata residents because of the roof overhang above the compressor's location and the location of the SL2 balcony, which faces away from the building and not toward any other strata lots. I also find that any connecting pipes or wires from the compressor to the interior of SL2 could be concealed with covers and painted to match the building exterior.

31. The applicants provided noise level recordings taken in December 2024 from various rooms within SL2 with exterior facing windows open. The recordings in evidence show that noise levels reached 77 decibels and 72 decibels respectively in the living room and secondary bedroom. According to the City of Vancouver Noise Control Manual provided by the applicants in evidence, this level of noise is roughly equivalent to riding in a car at highway speeds. I note the manual provided is the current manual located on the City of Vancouver's website. The specifications for the proposed heat pump show the noise level generated by the compressor to be

40 decibels indoors and 48 decibels outdoors. Given the location of SL2 and other neighbouring strata lots above and beside it are next to a busy street, I find it likely that the heat pump installation would not affect the use and enjoyment of or cause a direct interference with neighbouring strata lots. There are 2 strata lots immediately next to SL2. One is at the opposite end of SL2's balcony. The other is located one level above the balcony, which has a roof overhang, as I have mentioned.

32. As for affects on the strata's electrical system, the applicants say only SL2 would be affected because the heat pump would be wired to the SL2 panel and the electric baseboard heaters would be disconnected. The strata did not disagree, and I note its request for electrical reports was made before the applicants explained the proposed wiring. I further note the strata council had previously approved the use of its electrical system for an owner to charge their electric vehicle, which I discuss below.

33. The parties did not provide evidence on the marketability or value impacts of any strata lot, but I find it reasonable to conclude only SL2 would be affected because it is likely desirable for a strata lot to have use of a heat pump. So, I find this factor leans toward a finding that the heat pump would be a significant change.

34. I do not consider the number of strata lots or that they are all residential lots to be a material factor in the circumstances of this dispute.

35. As for the historical conduct of the strata, the applicants provided several examples of how the strata's conduct was contrary to the SPA or bylaws. These included expenses made from the operating fund contrary to SPA section 97, such as in 2018 and 2019 to which the strata council president at the time admitted should have been made from the contingency reserve fund. These admissions were contained in the presidents' written reports to the owners in the AGM notices for those years. The applicants also allege that the strata council did not inform owners of minutes of its meetings until 2021, contrary to bylaw 19, which requires the strata council to do so within 2 weeks of the meeting. The strata did not say otherwise so I accept the applicants' argument.

36. More importantly, the applicants provided examples of common property alterations

approved by the strata council without passing a ¾ vote. These ranged from approving lattice as a privacy screen for a balcony or a mailbox on the building's exterior, to the extension of at least 3 LCP roof decks onto common property roofs. While not all of the alteration examples are significant, the strata argued that ***all*** common property alterations required ¾ vote approval.

37. As noted, the strata permitted an owner to use its electrical system to charge their vehicle. I find the strata's lack of concern for a professional report on use of its own electrical system for vehicle charging is inconsistent with its decision to require the applicants to obtain a professional report for the electricity used for a heat pump wired directly to SL2's electrical system.

38. Based on the overall evidence and submissions, I find the most significant and compelling example is that the LCP roof extensions created a private area for the exclusive use of the 3 strata lot owners. The January 26, 2021, council meeting minutes confirm these alterations were approved by the strata without a ¾ vote.

39. The court considered private occupation of common property in *Foley* at paragraph 28. The court stated that by not allowing other owners access to the common property would suggest the change is significant, even if the other factors were ignored. In other words, the court put much greater weight on limiting access to common property than it did for all other factors. Based on *Foley*, I find the LCP roof deck extensions were significant changes to common property that required ¾ vote approval of the owners. As a result, I find the strata did not historically follow SPA section 71 when it approved alterations to common property.

40. For these reasons, I find most of the factors set out in *Foley* suggest the proposed heat pump installation is not a significant change to the use or appearance of common property.

41. However, in addition to the above, several court and CRT decisions have also considered the level of attachment and permanence of an alteration. For example, in *The Owners, Strata Plan v. Newell*, 2012 BCSC 1542, the court concluded that a hot tub was not a significant change because it was not attached to the common property patio, even though the owner hoisted it onto the 37th floor with a crane. In

contrast, the court in *Allwest International Equipment Sales Co. Ltd. v. The Owners, Strata Plan LMS4591*, 2018 BCCA 187 concluded that cutting a hole in a common property wall and installing pipes for a heat pump was a significant change partly because of the degree of permanence of cutting the hole.

42. I find the facts here are similar to the facts in *Allwest* because the applicants' heat pump installation involves cutting a hole through the common property exterior wall of the building for the passage of pipes and wires. I also find the relevant bylaws in *Allwest* are similar to the bylaws here. I am bound by the court's decision in *Allwest*. So, irrespective of the listed factors in *Foley*, it follows that the installation of the applicants' heat pump would include a significant change to the use and appearance of the building's common property exterior wall because of the 2-inch hole required for the passage of wires and pipes.

43. I do not consider placement of the compressor on the LCP balcony mounts to significant alteration because the applicants' proposal does not include affixing it to the balcony. Rather, the proposal is to set it on anti-vibration pads which find means it can be easily removed.

44. I note the applicants' assertion in the Dispute Notice that they provided drawings to the strata that showed how the heat pump could be installed in a manner that avoided running lines through the exterior wall. But the applicants did not argue this option, nor were such drawings provided in evidence. Therefore, I am unable to fully consider this potential alternative. However, if this option is available, it is likely the heat pump installation would not be captured under SPA section 71 based on my foregoing analysis.

Did the strata treat the applicants significantly unfairly?

45. The CRT has authority to make orders remedying a significantly unfair act or decision by a strata corporation under CRTA section 123(2). The legal test for significant unfairness is the same for CRT disputes and court actions. See *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113.

46. As discussed in *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, in order for the

court or the CRT to intervene, a strata corporation must act in a significantly unfair manner, resulting in something more than mere prejudice or trifling unfairness.

47. The basis of a significant unfairness claim is that a strata corporation must have acted in a way that was burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable. See *Reid*, *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342, and *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173.

48. In *Dollan*, the BC Court of Appeal established the following reasonable expectations test:

    a. Examined objectively, does the evidence support the asserted reasonable expectations of the owner?

    b. Does the evidence establish that the reasonable expectation of the owner was violated by the action that was significantly unfair?

49. In *Kunzler*, the court said that consideration of an owner's expectations is not always necessary when determining significant unfairness, but I find it applies here.

50. Here, the applicants claim the strata treated them significantly unfairly by treating them differently than other owners. Specifically, by requiring the applicants to pay for professional reports and obtain ¾ vote approval for their heat pump installation, neither of which the strata required previously when it approved significant changes to common property such as the roof deck extensions.

51. I find the applicants had a reasonable expectation that the strata treat them the same as other owners and not request additional information at potentially significant expense. I find the applicants' expectation that the strata consider their valid concerns about noise and air pollution relating to open windows was violated when the strata failed to do so, resulting in an unfair assessment of their situation.

52. In addition to the noise control manual mentioned earlier, the applicants referenced a 2019 Metro Vancouver Near-Road Air Quality Monitoring Study and a 2019 Near-

Road Air Pollution Pilot Study completed by the Southern Ontario Centre for Atmospheric Aerosol Research. The written articles were the result of the same study and confirm that people living near main roadways are exposed to significant traffic-related air pollution such as nitrogen oxide, black carbon, and ultrafine particles causing health issues. In addition, the applicant also referenced 2 articles that linked air pollution in high traffic areas to asthma in children. The articles support the applicants' argument to keep their windows closed. Had the strata considered the applicants' perspective, it likely would have realized that requiring the SL2 windows to remain open was not a reasonable or fair assessment of their situation.

53. I also find the applicants' reasonable expectation was violated when the strata required professional reports and ¾ vote approval. I say this for 2 reasons. First, approval to extend the roof decks given in 2021 did not receive ¾ vote approval despite *Foley* being decided in 2014 before the strata's decision and despite potential structural concerns associated with extending the decks over portions of the roof that may not have been designed for roof decks. I note that heat pumps are commonly installed requiring connections through an exterior wall that do not affect the structure of the wall. Here, there were no arguments that the proposed installation was a structural change, so I find it was not. In other words, the change can be described as aesthetic and not structural. Comparing this to the LCP roof deck extensions which may be structural, I find the common property change for the heat pump is less significant than the roof deck extensions.

54. I find the strata's decision to deny the applicant's request was inconsistent with its decision about the roof deck extensions, and therefore inequitable.

55. Second, I also find it unreasonable and likely not possible to accurately determine how the noise level of the compressor might affect other strata lot owners until the installation is complete, and the compressor is operating. As noted, the applicants provided the compressor specifications that confirm the noise from the compressor is less than the street noise.

56. The parties referenced numerous CRT decisions, and some Human Rights Tribunal

decisions involving heat pump and air conditioner requests. I first acknowledge that the cited Human Rights Tribunal decisions considered compliance with the Human Rights Code, which is not relevant here because the applicants did not argue the strata discriminated against them.

57. I also acknowledge that the CRT decisions have not permitted the requested heat pump or air conditioner installation. I do not find the cited decisions assist either party here because of the unique layout of SL2, the proposed location of the compressor on the balcony, the strata's misunderstanding of the need for ¾ vote, and unique factors associated with air and noise pollution because of the near location of the main roadway, which the strata did not consider. In other words, the unusual facts in this dispute can be distinguished from the cited decisions. I will not review the caselaw here but note that some disputes involved different bylaws or express votes by owners not to permit heat pumps or air conditioners which are not case in this dispute. Further, other cited disputes contained written evidence that some owners did not approve the installation, which is also not the case here.

58. For all of these reasons, I find the strata has treated the applicants significantly unfairly.

Remedy

59. I acknowledge my finding that the applicants' heat pump request is a significant change to common property means that it is captured by SPA section 71. I also acknowledge that SPA section 71 is not discretionary. However, other CRT decisions have found that following the SPA can be significantly unfair and that the CRT has broad authority to make orders to correct significant unfairness. See for example, my decision in *Ahlfield v. The Owners, Strata Plan NW 3156*, 2025 BCCRT 459.

60. Given this broad authority, I find it is open to the CRT to order the strata to approve the applicants' heat pump installation without passing a ¾ vote as the strata did with the LCP roof deck extensions. I make such an order noting that the penetration of the common property exterior wall for connecting the compressor to the interior units should be made as high as possible on the wall near or through the soffit to

avoid concerns about leaks. The strata must provide the applicants with written approval of their heat pump installation request within 30 days of the date of this decision.

61. I make this order knowing that the strata may require, as a condition of its approval under bylaws 5 and 6, that the applicants take responsibility for the approved heat pump installation, which I find includes addressing future noise or electrical issues caused by the heat pump.

CRT FEES AND EXPENSES

62. 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. The applicants were successful and paid $225 in CRT fees, so I order the strata to pay them that amount.

63. Neither party claimed disputed-related expenses, so I order none.

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

DECISION AND ORDERS

65. Within 30 days of the date of this decision, I order that the strata:

    a. Provide the applicants with written approval of their heat pump installation, and

    b. Pay the applicants $225 for CRT fees.

66. The applicants are entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.

67. 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 in which it is filed.

J. Garth Cambrey, Tribunal Member