



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Hougaard v. The Owners, Strata Plan NW 3023*, 2025 BCCRT 1546

B E T W E E N :

MARIANNE HOUGAARD and BOB HOUGAARD

APPLICANTS

A N D :

The Owners, Strata Plan NW 3023

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Mark Henderson

INTRODUCTION

1. The applicants, Marianne and Bob Hougaard, jointly own strata lot 3 (SL3) in the respondent strata, The Owners, Strata Plan NW 3023. This dispute is about the applicants' gazebo installation in their limited common property patio. The applicants say they received verbal permission from a council member for their gazebo installation. They say they also received verbal permission from the same council

member to install cedar squares over a lattice fence to block the glare from headlights and enhance their privacy on their patio. The applicants want to keep their gazebo. They also seek compensation of \$2,586.93 for the cedar squares, and \$1,942.50 for the cost to remove rotting planter boxes from their patio. They also want their bylaw fines cancelled.

2. The strata denies that a council member gave verbal approval for the gazebo installation or for the cedar squares. The strata says the applicants violated the strata bylaws and so the bylaw fines are valid.
3. Marianne Hougaard represents the applicants. The strata council president represents the strata.

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 *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.
5. CRTA section 39 says the CRT has discretion to decide the hearing's format, including by writing, telephone, videoconferencing, email, or a combination of these. The CRT conducts most hearings by written submissions, but has discretion to decide the hearing's format, including by telephone or videoconference. The parties in this dispute call into question the other's credibility about what alterations a council member allegedly verbally approved. While credibility issues can in some cases be resolved through an oral hearing, the advantages of an oral hearing must be balanced against the CRT's mandate. Here, I find that the credibility issues can be reasonably resolved on 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 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.
7. In their submissions, the applicants say they would also accept if the strata replaced their lattice fence with a solid fence at the strata's expense to alleviate the issues with their cedar squares. Since the applicants did not describe this relief in their Dispute Notice, I find that this is an implied request to amend the Dispute Notice. CRT rule 1.19(3) says the CRT will only issue an amended Dispute Notice after the dispute has entered the tribunal decision process in extraordinary circumstances. Here, I find there are no extraordinary circumstances that warrant amending the Dispute Notice. So, I have not considered this additional relief in my decision.

ISSUES

8. The issues in this dispute are:
 - a. Did the strata approve the applicants' gazebo installation or cedar squares?
 - b. Is the gazebo a significant change under SPA section 71?
 - c. Does the gazebo contravene bylaw 47.13 or are the applicants entitled to have their bylaw fines cancelled?
 - d. Are the applicants entitled to reimbursement for removing the planter boxes?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, 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.

10. The strata was created on August 2, 1989. The strata consists of 18 units in a 3-story building. SL3 is a ground floor unit with a concrete outdoor patio. A cedar lattice fence surrounds the patio.
11. The strata filed its most recent bylaw amendments at the Land Title Office on December 19, 2001. Bylaw 8.1 says an owner must get the strata's written approval before altering their strata lot, including before altering a fence that encloses a patio. Bylaw 9.1 also requires an owner to get written approval before altering common property, including limited common property. The strata plan shows the SL3 patio is limited common property.
12. Bylaw 47.13 prohibits a resident from erecting fixtures, poles, racks, storage sheds and similar structures permanently or temporarily on limited common property. Bylaw 47.13 allows free-standing self-contained planter boxes or containers and summer furniture and accessories on patios.
13. On September 21, 2023, the applicants installed the gazebo. On September 27, 2023, the strata notified the applicants that the gazebo contravened bylaw 47.13 and that the strata had received complaints from other residents about the gazebo.

Did the strata approve the gazebo?

14. The applicants undisputedly did not get written approval from the strata for the gazebo. The applicants say they got verbal approval from LM, a strata council member. The applicants say that LM reviewed the strata bylaws and told the applicants that they did not see anything in the bylaws that would prohibit the applicants from putting a gazebo on their patio. The applicants also say that their prior alterations in SL3 and in other strata lots in the strata had always proceeded by verbal approval.
15. The strata says the applicants needed written approval for the gazebo. The strata denies that a council member gave verbal approval for a gazebo and included a statement from LM, denying that they gave verbal approval for a gazebo. LM says that they had a brief conversation with Mrs. Hougaard after the applicants took

possession of SL3. LM says that Mrs. Hougaard told LM that she was thinking of putting up a gazebo or umbrella on the patio but did not provide any photos or other details of her proposed structure. LM described this conversation as Mrs. Hougaard's preliminary ideas. On September 29, 2023, the strata wrote a letter to the applicants, saying among other things, that LM recalled "okaying a temporary small tent-like structure" to cover the applicants' outdoor furniture.

16. The applicants say they talked to LM about a 12-foot x 12-foot hard topped gazebo around July 1, 2023. But the applicants did not say whether they showed LM any photos of the proposed structure that they had in mind during this alleged conversation.
17. Bylaw 9.2 says an owner seeking to alter common property must provide detailed plans and descriptions of the intended alteration. I find that the purpose of this bylaw is to ensure that the strata clearly understands what alteration it is approving.
18. The strata gives contradictory evidence about whether it verbally approved the gazebo, or a tent-like structure or approved nothing. At best, the evidence shows there was a misunderstanding between LM and Mrs. Hougaard about what the applicants requested. Despite the contradictory evidence, I find the applicants still have the burden to prove that they got verbal approval for the specific alteration that they sought. Without evidence that the applicants showed the specific gazebo to LM in advance, I find that the applicants have not proved they got approval for the specific gazebo that they obtained.
19. The parties also dispute the strata's past approval of other renovation projects. The strata says that the applicants gave written notice of other alterations that they were planning for SL3, but never mentioned the gazebo. On May 31, 2023, the strata emailed the applicants about the requirement to advise the strata in writing of planned renovations. From May 31, 2023, to June 4, 2023, the applicants and the strata exchanged emails about the applicants' SL3 renovation plans. I find that these emails do not mention the applicants' gazebo plans.

20. The applicants say that the strata council president gave verbal permission on June 4, 2023, for the SL3 renovations after receiving an engineering report from the applicants. The applicants also refer to the strata's letter of October 25, 2023, where the strata acknowledged that it should be "more astute in requesting written requests". The applicants say this admission proves that the strata gave verbal approvals in the past.
21. The strata acknowledged in the October 25 letter that it did not require written approval for the applicants' prior renovations. The strata said that the gazebo was different from the applicants' prior renovations because earlier renovations were within their strata lot and did not affect other strata owners.
22. I find that a significant change to the patio is more likely to affect other owners and so requires adherence to the bylaw requirements, including obtaining written approval.
23. The bylaws required the applicants to get written approval from the strata before altering the patio. I find the applicants have not proved that they got written approval from the strata for the gazebo.

Did the strata approve the cedar squares?

24. The applicants say that LM gave verbal approval for the cedar squares at the same time as the gazebo. For the same reasons described above, I find that the strata did not have a history of approving changes to common property by verbal approval.
25. On October 21, 2023, the strata advised the applicants that the cedar squares were not permitted under bylaw 47.13 and that the strata was not approving the cedar squares. So, I find that the strata did not approve the cedar squares.
26. The applicants bought cedar squares to attach to the lattice fence but have not yet installed them. The applicants proposed to use zip ties to secure the cedar squares to the lattice fence. The applicants provided photos of 2 cedar squares as examples hung on the fence. I find that the photos show sheets of greenery that cover the fence panel from top to bottom. Each sheet covers half the width of a fence panel. The

applicants say that glare from headlights across the street reduces their enjoyment of the patio and the cedar squares will be used to block the glare from passing headlights.

27. Based on bylaw 8.1, the applicants needed written approval from the strata before proceeding with alterations to their fence. Since the applicants did not seek written approval for the cedar squares before buying them, the applicants have not proved the strata is responsible for the cost of the cedar squares. So, I dismiss the applicants' claim for the cedar squares cost.

Is the gazebo a significant change under SPA section 71?

28. SPA section 71 says that a strata corporation must not make a significant change in the use or appearance of common property or land that is a common asset unless the change is approved by a resolution passed by a $\frac{3}{4}$ vote at an AGM or SGM, or there are reasonable grounds to believe that immediate change is necessary to ensure safety or prevent significant loss or damage. See *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333. Owners are also prohibited from making significant changes unless the changes are approved by a $\frac{3}{4}$ vote of owners.
29. The strata says the gazebo is a significant change that contravened SPA section 71. In *Foley*, the court summarized the criteria for a significant change at paragraph 19 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 unit, or an existing benefit of another unit?
 - c. Is there a direct interference or disruption because of the changed use?
 - d. Does the change affect the marketability or value of a strata lot?
 - e. How many units 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 CRT has previously found that gazebos, sunshades, and pergolas may be significant changes to either common property or LCP. See, the CRT's non-binding decisions in *Parsons v. The Owners, Strata Plan KAS1436*, 2022 BCCRT 721 and *Braun v. The Owners, Strata Plan 1295*, 2021 BCCRT 1221.
31. The gazebo is a 10-foot x 12-foot, 4-posted metal lean-to structure with a slanting polycarbonate roof, approximately 8 feet high. The applicants say the gazebo can be taken down in less than 20 minutes and that since it is not attached to the building it is not a significant change. The strata says the gazebo is visible from other strata lots, especially from strata lots on the upper floors.
32. Based on my review of the photos in evidence, I find that the gazebo's roof is visible above the fence line and from the strata's parking area. The photos show that the gazebo occupies a considerable part of the patio. I find that the change affects the applicants' enjoyment of their strata lot because it creates a larger area for shaded use. The strata provided a statement from a strata resident who said they could see the gazebo from their upper floor unit. The strata also said it received complaints about the gazebo from 4 other residents. So, I find the gazebo's size and location also affects other residents, some of whom find it unsightly.
33. I also find that the gazebo is a unique alteration since none of the other patios have a similar structure. The applicants provided photos that show patio sunscreens hanging in some upper floor patios to suggest that the strata has permitted other sunshades. However, the photos show that these sunscreens are not freestanding structures like the gazebo.
34. There is no evidence whether the change will impact SL3's marketability or value.
35. The applicants say that the gazebo was easily movable, and provided a photo that showed the gazebo in a different location on the patio. However, the applicants did not describe how they moved the gazebo, or how many people it took to move the gazebo. The strata said that it took a crew of workers to install the gazebo, but did not say how many people were in the work crew.

36. As discussed above, the applicants also say that the strata gave verbal approval for significant changes in the past and gave verbal approval here as well. As described above, the strata said in its September 29, 2023 letter that LM understood the applicants were contemplating a temporary, small, tent-like shelter. For the reasons described above, I find the applicants have not proved that the strata historically gave verbal approval for changes to patios or other common property. So, I do not accept that the strata historically granted verbal approval for common property changes.
37. Overall, I find the *Foley* factors and the structure's size, and particularly its footprint on the patio support the conclusion that the gazebo is a significant change. Photos show the gazebo is visible to the public and other residents from their strata lots. So, I find the gazebo is a significant change in the use and appearance of common property under SPA section 71. For that reason, the applicants required approval by a $\frac{3}{4}$ vote of the strata at an AGM or SGM. Since the owners have not voted to approve the gazebo, I find the gazebo breaches the SPA.

Does the gazebo contravene bylaw 47.13 or are the applicants entitled to have the bylaw fines rescinded?

38. The applicants say the gazebo conformed with bylaw 47.13 because it is summer furniture, which is permitted under the bylaw.
39. The strata says the gazebo contravenes bylaw 47.13 and so its bylaw violation fines are valid. Since the applicants did not obtain written approval for the gazebo, it also likely breaches bylaw 9. Since the strata did not fine the applicants under bylaw 9, I do not need to consider whether the applicants breached this bylaw as well. The strata says the applicants have incurred \$14,400 in bylaw fines.
40. SPA section 135(1) says a strata corporation must not impose a fine against a person for contravening a bylaw until it has received a complaint, given the owner written particulars of the complaint and a reasonable opportunity to answer the complaint, including a hearing if one is requested. In *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449, the BC Court of Appeal found that strict compliance with SPA section 135 is required before a strata corporation can impose fines.

41. On September 27, 2023, the strata sent a bylaw violation notice to the applicants informing them that the gazebo violated bylaw 47.13 and that the strata had received complaints from other owners. On October 17, 2023, the strata sent the applicants a bylaw violation notice that they were in continued contravention of bylaw 47.13 and that the strata would start levying fines in 10 days if the applicants did not remove the gazebo. The October 17 notice gave the strata the opportunity to appear before council to address the bylaw violation. On October 18, 2023, the applicants replied to the strata's letter arguing that the gazebo was summer furniture or accessories and therefore permitted under bylaw 47.13. On October 21, 2023, the applicants requested a hearing before council. On October 24, 2023, the applicants appeared before council to contest the bylaw notice. On October 27, 2023, the strata issued its first \$200 fine referencing the 10-day notice period to remove the gazebo in the October 17 notice.
42. The applicants started their CRT dispute application on November 1, 2023, and the CRT issued the Dispute Notice on November 9, 2023.
43. In *The Owners, Strata Plan VR 484 v. Lawetz*, 2017 BCCRT 59, the CRT found that a \$200 weekly fine was fair given that the owner had clear notice of the strata corporation's position before it began imposing fines. However, the CRT said once the CRT proceeding began, the issue of how to remedy the bylaw contravention was a matter for the CRT to decide, and the strata had to stop imposing fines. The CRT also followed this approach in *Shakibaei v. The Owners, Strata Plan LMS 298*, 2024 BCCRT 563. While previous CRT decisions are not binding on me, I accept the reasoning in these decisions and apply it here. As a result, I find that the strata was entitled to fine the applicants until they started this CRT dispute on November 1, 2023. Those fines total \$200. I therefore order the strata to reduce the total bylaw contravention fines related to the gazebo to \$200.

Is the gazebo summer furniture?

44. As stated above Bylaw 47.13 prohibits fixtures, poles, clotheslines, racks, storage sheds and similar structures permanently or temporarily, but permits summer

furniture and accessories. Bylaw 47.13 does not define summer furniture or accessories. So, I must decide whether the gazebo is more like summer furniture or more like the items prohibited in the bylaw.

45. The basic rules of statutory interpretation apply to bylaws and so bylaws should be given their plain and ordinary meaning. The context of the words at issue must be considered and I should not take an overly narrow approach that leads away from a bylaw's plain and ordinary meaning. See *The Owners, Strata Plan BCS 3407 v. Emmerton*, 2024 BCCA 354 at para. 17-19. Rather, I must interpret the strata bylaws purposively to accomplish the community's goals. See *Strata Plan VIS4663 v. Little*, 2001 BCCA 337 at para. 21.
46. Previous CRT decisions have determined that summer furniture items are readily movable pieces that are for occupying and enjoying outdoor space during the summer months and that accessories are items that add to or complement the summer furniture. See *The Owners, Strata Plan EPS7397 v. Teschner*, 2023 BCCRT 545 at para. 24 and *Carpenter v. The Owners, Strata Plan V.R. 614*, 2022 BCCRT 264 at para. 21.
47. In *Trent v. The Owners, Strata Plan EPS3454*, 2020 BCCRT 358, the tribunal considered whether a freestanding pergola was summer furniture or accessories under a similarly worded bylaw. In *Trent*, the tribunal considered that the wooden pergola in that case was not summer furniture because it was not readily movable even though it was not fixed to the balcony and could not be folded like a tent or umbrella.
48. In *Hannaford v. The Owners, Strata Plan LMS 4091*, 2020 BCCRT 186, the tribunal considered whether a freestanding pergola on a patio violated strata bylaws. The pergola had a fabric covering on its top. The owner argued that the pergola should be considered "summer furniture and accessories" or "summer furnishings", which were allowed under the strata's bylaws. The tribunal agreed as it found the pergola was like a patio umbrella and allowed it.

49. However, these decisions occurred before the Court of Appeal's reasoning in *Emmerton* which cautions against considering one factor, such as moveability to the exclusion of the bylaw's overall context.
50. The applicants say that the gazebo meets the ordinary meaning of patio furniture because the store where they purchased the gazebo described the gazebo as patio furniture in its advertising materials. First, I find that "patio furniture" is not automatically interchangeable with "summer furniture". However, I note that poles, sheds and similar structures are prohibited. Reading the entire context of bylaw 47.13, I find that bylaw 47.13 prohibits large structures that would change the LCP's uniform appearance such as sheds or similar structures. For that reason, I find that due to its size and overall presence on the patio, the gazebo is more like a structure than it is like summer furniture. So, I find the gazebo more appropriately fits with the poles, sheds and similar structures, that bylaw 47.13 prohibits.
51. Here, the strata objected to the gazebo in part because it had never approved gazebos in any patio. So, I find that this also indicates that the community did not intend to include gazebos as summer furniture.
52. For these reasons, I find the applicants have not proved the gazebo is summer furniture. I find that the gazebo contravenes bylaw 47.13, so I dismiss the applicant's claim for cancellation of their bylaw fines.

Are the applicants entitled to reimbursement for the cost to remove the planter boxes?

53. Under bylaw 3, an owner is responsible to repair and maintain limited common property, except for repair and maintenance that is the strata's responsibility. Bylaw 12 holds the strata responsible to repair and maintain limited common property where that repair and maintenance occurs less than once per year.
54. The applicants say that the planter boxes were strata property and so the strata is responsible for the planter box removal costs. The applicants provided photos of the planter boxes. I find the photos show at least one large wood framed planter box with the wood rotting at corners and on exposed edges. The photos show the planter box

consists of large railroad tie sized wood beams stacked 3 high. One photo shows an additional piece of wood attached diagonally across the stacked beams, as a brace. The applicants also included a photo of a second planter box that was much smaller and appeared to be made of plastic.

55. While I find that the photos of the large planter box show visible signs of rot, it is not clear from the photos if the wood was rotten throughout the planter box or only on the top layer. So, I find that it is unclear if the large planter box required removal or could be repaired. I find there is no clear damage visible in the photo of the smaller planter box, so it is not clear why this planter box also required removal.
56. The applicants say they notified the strata that they intended to remove the planter boxes and got verbal approval from LM to do so. LM says that they first learned of the planter box removal when a contractor was wheelbarrowing soil out through the lobby.
57. I find the applicants have not proved that the strata granted this verbal approval. The applicants say the planter boxes belonged to the strata but did not explain any other legal basis for demanding payment for their removal. Even if I accepted the applicants' evidence that the strata approved the planter box removals, the applicants have not proved that there was an agreement for payment or a bylaw to reimburse the applicants for removing the planter boxes.
58. Since the applicants have not proved a legal basis for compensation for the planter box removal, I dismiss the applicants' claim for these removal costs.

CRT FEES AND EXPENSES

59. 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 applicants were mostly unsuccessful, so I dismiss their claim for CRT fees and dispute-related expenses, including their claim for extraordinary expenses associated with responding to the CRT dispute while travelling.

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

ORDERS

61. I order the strata to reduce the total bylaw contravention fines related to the gazebo to \$200.

62. I dismiss the applicants' other claims.

63. 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.

Mark Henderson, Tribunal Member