



Civil Resolution Tribunal

Date Issued: August 11, 2020

File: ST-2020-002194

Type: Strata

Civil Resolution Tribunal

Indexed as: *Shawara v. The Owners, Strata Plan KAS 2830*, 2020 BCCRT 890

B E T W E E N :

Darwyn Shawara

APPLICANT

A N D :

The Owners, Strata Plan KAS 2830

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about the enforcement of a restrictive covenant in a bare land strata corporation.

2. The applicant, Darwyn Shawara, co-owns strata lots 48 and 62 (SL48 and SL62) in the respondent strata corporation, The Owners, Strata Plan KAS 2830 (strata).
3. Mr. Shawara says the strata has failed to enforce its bylaws, by allowing the owners of strata lots 47 and 55 (SL47 and SL55) to place permanent park model trailers on their strata lots. He says this violates a registered covenant, which requires owners not occupying the lands in July and August of each year to make the lands available for the travelling public to place a recreational vehicle (RV). Mr. Shawara says that under the strata's bylaws, the strata must not permit owners to use their strata lots in a manner not permitted by the covenant.
4. Mr. Shawara requests an order that the strata enforce the bylaws against the owners of SL 47 and SL55, and an order that the strata "take all steps necessary to bring strata lots 47 and 55 into compliance." He also requests \$5,000 in damages for significant unfairness, plus reimbursement of legal fees.
5. The strata denies Mr. Shawara's claims. It says the covenant is only enforceable by the municipality against the owners to which it applies. The strata says it has no role in enforcing the covenant, and no obligation to do so.
6. Mr. Shawara is self-represented in this dispute. The strata is represented by a strata council member. The owners of SL47 and SL55 are not parties to this dispute.

JURISDICTION AND PROCEDURE

7. 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). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.
8. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconference, or a combination of these. I am satisfied an oral

hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.

9. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
10. Under section 123 of the CRTA and the CRT rules, 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.

ISSUES

11. The issues in this dispute are:

- a. Must the strata use its bylaws to enforce the covenant against the owners of SL47 and SL55?
- b. If so, what remedies are appropriate?
- c. Is Mr. Shawara entitled to \$5,000 in damages for significant unfairness by the strata?
- d. Is Mr. Shawara entitled to reimbursement of legal fees?

BACKGROUND FACTS

12. I have read all the evidence provided but refer only to evidence I find relevant to provide context for my decision. In a civil proceeding like this one, the applicant must prove his claims on a balance of probabilities.
13. The strata was created on June 9, 2005, when the strata plan was filed at the Land Title Office (LTO). The strata consists of over 100 bare land strata lots. It is located in the Town of Osoyoos (Town).

14. The strata filed consolidated bylaws with the LTO in August 2011. After that, the strata filed several bylaw amendments, but I find these amendments are not relevant to this dispute.
15. The strata is made up of about 110 strata lots, which are used as RV sites. The evidence shows that there is a restrictive covenant that applies to 70 of the strata lots. It is undisputed that the restrictive covenant does not apply to Mr. Shawara's strata lots, but does apply to SL47 and SL55.
16. The restrictive covenant is between Island View RV Resort Ltd. (Island View) and the Town of Osoyoos. It was registered at the LTO on June 9, 2005 under registration number KC073558 (covenant). According to the documents attached to the filed covenant, Island View was the registered owner of all the strata lots listed in the covenant, at the time it was registered.
17. The covenant says that Island View, and subsequent owners of the strata lots, can only occupy the strata lots for a maximum of 21 days between July 1 and August 31 of each year. Also, when the strata lot owners are not occupying the strata lots during that period, the lots must be made available for:

...use by the travelling public to place...a recreational vehicle, consisting of a factory made Class A or Class C motor home, a travel trailer pulled by a vehicle with a hitch, a fifth wheel travel trailer, a tent trailer, a truck camper, or a tent.
18. Paragraph 6 of the covenant says the Town is under no obligation to enforce any of the covenant's provisions.
19. The covenant was registered at the LTO as a covenant under section 219 of the *Land Title Act* (LTA). Section 219 allows the registration of a covenant in favour of the Crown or some other government organizations, including a municipality.
20. The evidence shows that the owners of SL47 and SL55, which are covered by the covenant, have placed park model trailers on their strata lots. In February 2019, the

Town issued building permits to the owners of SL47 and SL55, allowing the park model RVs to be installed.

POSITIONS OF THE PARTIES

21. Mr. Shawara says the installation of park model trailers on SL47 and SL55 is contrary to the covenant. He says the park models are not among the types of RVs permitted under the covenant. He also says that the park models are not easily removable, so the owners will not leave the strata lots unoccupied and available for the placement of another RV during the majority of July and August, as required under the covenant.
22. Mr. Shawara also relies on strata bylaw 40.5, which says that only 1 RV may be located on a site at one time. He says that since the park models will not be removed, SL47 and SL55 will not be available for use for the travelling public to park other RVs. He also says that regardless of the bylaw, there is no room on the strata lots for both a park model and another RV.
23. Finally, Mr. Shawara relies on strata bylaw 4.1(d), which says that an owner may not use a strata lot in a way that is illegal. He says placing the park models on SL47 and SL55 violates bylaw 4.1(d), because it is a breach of the covenant and therefore illegal.
24. Mr. Shawara says that by not enforcing bylaw 4.1(d) against the SL47 and SL55 owners, the strata has breached its duty to enforce strata bylaws, as set out in *Strata Property Act* (SPA) section 26. He also says this lack of enforcement is a significantly unfair action, as contemplated in *The Owners, Strata Plan BCS 1721 v. Watson*, 2017 BCSC 763. In particular, he says he paid a higher price for his strata lots since they were not subject to the covenant. He says it is unfair for the strata to allow other owners to pay less for strata lots covered by the covenant and get the same benefits as those not covered.
25. The strata relies on a legal opinion from its lawyer. It says the covenant is agreement between the strata lot owners and the Town, and the strata has no

obligation under either the bylaws or the covenant to enforce the covenant. It says that the Town either ignored or failed to enforce the covenant when it issued the permits allowing park models on SL47 and SL55.

REASONS AND ANALYSIS

26. In this dispute, Mr. Shawara argues that the strata has failed in its duty to enforce bylaw 4.1(d), by permitting an “illegal” use of SL47 and SL55. He says placing park model trailers on these strata lots is illegal, because it is contrary to the covenant.
27. It may be that placing the park models on the strata lots is a breach of the covenant. However, the Town specifically denies this, in a June 3, 2019 letter to Mr. Shawara’s lawyer. However, even accepting for the purpose of this decision that the park model trailers on SL47 and SL55 breach the covenant, I find this is not an illegal use, and is therefore not contrary to strata bylaw 4.1(d). In making this finding, I place significant weight on 2 facts. First, the covenant says in paragraph 6 that the Town is not obligated to enforce any of its provisions. Second, in February 2019, the Town issued 2 written building permits specifically allowing park models to be installed on SL47 and SL55. The permit for SL47 allows a “park model RV”. The permit for SL55 allows a “12x35 ft Park Model built by Moduline”.
28. I find that by issuing the 2 building permits allowing park models to be installed, the Town was relying on paragraph 6 of the covenant, which allows the Town not to enforce the covenant’s provisions. This is explicitly stated in May 2, 2019 emails from the Town’s Director of Planning and Development to Mr. Shawara. The first email states in part, “As stated in the covenant, the Town is not required to enforce any section of the covenant.” The second May 2, 2019 email says, “With respect to the covenant; the Town will not enforce the covenant.”
29. Since the Town was legally entitled to permit park models, and did so in writing by issuing building permits, I find that the placement of park models on SL 47 and SL55 was not illegal. Therefore, bylaw 4.1(d) was not breached.

30. In particular, I find that since the Town explicitly stated that it was not enforcing the covenant, and was permitting park models (in its emails and building permits), the strata was not required to enforce the covenant. Since the Town opted for non-enforcement and granted the building permits, as allowed in paragraph 6 of the covenant, the strata had no obligation or authority to enforce the covenant.
31. Mr. Shawara argues that by permitting park models, the Town is effectively allowing a zoning change without going through the proper process. I make no findings about that, since municipal zoning decisions and procedures do not fall within the CRT's strata property jurisdiction.
32. Mr. Shawara also says the strata should have put the question of whether to permit the park models in SL47 and SL55 to a vote of the ownership. I find there is no requirement in the bylaws or SPA for such a vote, given that the change was to the strata lots rather than to common property.
33. For these reasons, I dismiss Mr. Shawara's claim that the strata failed to enforce its bylaws. For the same reasons, I dismiss his claim that the strata acted significantly unfairly by not enforcing bylaw 4.1(d), or by permitting the park models in SL47 and SL55. I therefore find Mr. Shawara is not entitled to any order, and is not entitled to damages.
34. I also dismiss Mr. Shawara's claim for reimbursement of \$7,412.93 in legal expenses. First, he was unsuccessful in his claims. Second, CRT rule 9.4(3) says that except in extraordinary circumstances, the CRT will not order one party to pay another party's legal fees in a strata property dispute. I find the circumstances of this dispute are not extraordinary. There was not an unusually large amount of evidence or submissions, and the issues in the dispute were not unusually complex.
35. For these reasons, I dismiss Mr. Shawara's claim for reimbursement of legal fees.

CRT FEES AND EXPENSES

36. Mr. Shawara was unsuccessful in this dispute. In accordance with the CRTA and the CRT rules I find he is not entitled to reimbursement of tribunal fees or dispute-related expenses. The strata was the successful party, but did not pay tribunal fees or claim any expenses. I therefore order no reimbursement.
37. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to Mr. Shawara.

ORDER

38. I dismiss Mr. Shawara's claims and this dispute.

Kate Campbell, Vice Chair