

The Case of the Unauthorized Significant Change

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Written by: Adrienne Murray / Hamilton & Company

When is repainting and re-carpeting common property hallways a significant change in the appearance of common property rather than routine repair and maintenance. This was the issue that the Civil Resolution Tribunal (CRT) was recently required to determine.¹

Facts

In 2014 the strata manager sent an email to all owners advising that carpeting on various floors of the building required replacement due to staining and wear. The manager advised the owners that the proper approach was to replace the carpet with carpet tiles. The manager stated that although carpet tile was more expensive than carpeting, it was more resilient and could be repaired if damaged. A sample carpet tile was placed in the common room for viewing.

At the AGM in May 2016 the owners approved a resolution to use up to \$25,000 from the contingency reserve fund (CRF) to replace carpets on various floors of the building. The owners also considered an amendment to delay the carpet replacement until a professional designer could provide a recommended palette of colours to complement the replacement carpet, but that amendment did not pass. The resolution to approve the CRF withdrawal was approved with 96% of the owners who were present in favour of the resolution.

At the AGM in May 2017 the owners approved a resolution to withdraw up to \$20,000 from the CRF to repaint the interior hallways and doors. In June the manager emailed the owners with an attachment

showing three colour palettes. Owners were asked to indicate a preference and were advised that the most popular choice would be used. Some owners objected to all three colours because they did not fit with the other colours of the common areas. The strata council responded advising that they would proceed with the palette chosen by the majority of owners who responded to the poll. The painting was completed in July 2017.

Issue

A number of owners applied to the CRT on the basis that the strata corporation had changed the paint colour and carpeting in the common area hallways without authority. The owners sought remedies in relation to repainting and carpet replacement. The owners relied on section 71 of the *Strata Property Act* (the Act) which provides

Subject to the regulations, the strata corporation must not make a significant change in the use or appearance of common property or land that is a common asset unless

(a) the change is approved by a resolution passed by a 3/4 vote at an annual or special general meeting, or

(b) there are reasonable grounds to believe that immediate change is necessary to ensure safety or prevent significant loss or damage.

The owners argued that the changes to both the carpet and paint were significant. They argued that the new

¹ *Porcheron et al v. The Owners Strata Plan KAS 2716*, 208 BCCRT 161

carpets do not fit esthetically with the other floorings used in adjacent parts of the building. They submitted that the original wall-to-wall carpeting was high quality and had sound deadening underlay whereas the new carpet tiles have no sound deadening properties and are inconsistent with the original design of the common areas. The new carpet tiles are dark brown with a grey and blue pattern throughout whereas the previous carpeting was a single oatmeal beige colour with a darker fleck throughout.

The owners also argued that the paint on the doors is significantly different. The doors, which were previously a terra cotta (red-brown) colour were repainted to a very dark blue grey.

Analysis

The CRT relied on the decision in *Foley v. The Owners Strata Plan VR 387*² to identify the criteria for determining whether a change is significant which are as follows:

- a. A change would be more significant based on its visibility or non-visibility to residents and its visibility or non-visibility towards the general public;
- b. Whether the change to common property affects the use or enjoyment of the unit or number of units or an existing benefit of a unit or units;
- c. Is there a direct interference or disruption as a result of the change to use?
- d. Does the change impact on the marketability or value of the unit?
- e. The number of units in the building may be significant along with the general use, such as whether it is commercial, residential or mixed-use;
- f. Consideration should be given as to how the strata corporation has governed itself in the past and what it has allowed. For example, has it permitted similar changes in the past? Has it operated on a consensus basis or has it followed the rules regarding meetings, minutes and notices as provided in the [SPA](#).

The CRT also considered the decision in *Reid v. Strata Plan LMS 2503*³, in which the Court of Appeal found

that the placement of potted plants, bushes, and other shrubs in a common property entrance area were decorative and did not constitute a significant change to the use or appearance of the common property under section 71 of the Act.

The CRT noted that unlike *Reid*, in which the potted shrubs were moveable, the carpeting and paint are permanent and cannot be easily changed. The CRT concluded that the carpet tiles look significantly different and that they are a different product as they are carpet tiles rather than broadloom carpeting with underlay. The CRT also noted that the different paint colour on the doors significantly changes the look of the hallways and is visible to everyone who enters any strata lot in the building.

The CRT found that the developer had originally implemented an earth-toned colour scheme and that in departing from that colour scheme, the strata corporation significantly changed the appearance of the common property hallways without obtaining a 3/4 vote of the owners.

The CRT also noted that, although the strata council had given the owners a choice between three sets of paint colours, none of the options were similar to the original red-brown door colour.

Remedy

The CRT held that the strata corporation did not have proper authorization to install the new carpet tiles, however, the CRT was required to consider whether it was in the best interest of the strata corporation to order their removal. The CRT noted that even though there was no 3/4 vote as required by section 71 of the Act, 96% of the owners had voted in favour of the resolution to withdraw the funds from the CRF to replace the carpet. The CRT concluded that it should be up to the owners to attempt to resolve their differences by following the provisions of the Act. The CRT ordered that within 6 months of the decision the strata corporation must put forward two 3/4 vote resolutions on whether to replace the carpet tiles with broadloom carpeting similar to the original carpet and whether to change the paint colour of the doors. Although the CRT would not set a process that the strata corporation must follow when contemplating repainting or re-

² 2014 BCSC 1333

³ 2003 BCCA 126

carpeting, the CRT ordered that no further alterations be performed until the 3/4 vote resolutions were voted on.

The owners also requested that the strata manager be removed from any future design process. The CRT declined to make such an order noting that the manager acts under the authority and direction of the elected strata council and any problems or deficiencies are therefore the responsibility of the strata council.

Conclusion

The decision highlights an important issue for strata councils. Simply because the owners have approved the withdrawal of funds from the CRF, does not mean that the owners have also automatically approved a change in use or appearance of common property. Additionally, the decision clarifies that it is not just structural changes that are significant. A change in the colour of paint or a change in the colour and quality of carpet may be significant and require approval of a 3/4 vote resolution. The failure of the strata council to obtain the necessary vote pursuant to section 71 of the Act has the potential to have financial consequences for all owners and not just the strata council, since, if the owners vote to replace the carpet tiles or repaint the doors, all owners will contribute to the cost, either through the withdrawal of additional funds from the CRF or by raising funds through a special levy.

The decision also emphasizes that, at the end of the day, the strata council is responsible for all decisions that are made even if they may have been made by the strata manager.

Strata councils should err on the side of caution and obtain a 3/4 vote pursuant to section 71 of the Act when proposing changes that impact the appearance of either interior or exterior common property.