



Civil Resolution Tribunal

Date Issued: October 17, 2024

File: ST-2023-002873

Type: Strata

Civil Resolution Tribunal

Indexed as: *Dolgin v. The Owners, Strata Plan NW 1899*, 2024 BCCRT 1033

BETWEEN:

JACOB DOLGIN

APPLICANT

AND:

THE OWNERS, STRATA PLAN NW 1899

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Jeffrey Drozdiak

INTRODUCTION

1. This strata property dispute is about repairing a balcony.
2. The applicant, Jacob Dolgin, co-owns strata lot 90 (SL90) in the respondent strata corporation, The Owners, Strata Plan NW 1899 (strata). Mr. Dolgin says the strata has refused to repair SL90's balcony. Mr. Dolgin seeks an order for the strata to

immediately hire a contractor to repair the balcony. He also claims \$5,000 in general damages for mental distress.

3. The strata says it repaired Mr. Dolgin's balcony in May 2019. The strata alleges the balcony repairs should have lasted 10 years, and Mr. Dolgin abused the balcony by placing large pieces of equipment on its surface. It claims the equipment's weight and vibration loosened the balcony's waterproof membrane. So, the strata argues Mr. Dolgin should be responsible for the repairs.
4. Mr. Dolgin represents himself. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

5. 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.
6. 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. I considered the potential benefits of an oral hearing. Here, there are no significant credibility issues, and I am properly able to assess and weigh the documentary evidence and submissions before me. So, the CRT's mandate to provide proportional and speedy dispute resolution outweighs any potential benefit of an oral hearing. Overall, I find that an oral hearing is not necessary in the interests of justice, and I decided to hear this dispute through written submissions.
7. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

8. In the Dispute Notice, Mr. Dolgin claims \$10,000 to repair SL90's balcony. However, Mr. Dolgin did not pursue this amount during the decision-making process. Instead, Mr. Dolgin only seeks an order for the strata to immediately hire a contractor to repair the balcony. Mr. Dolgin also did not provide any documentary evidence to support a \$10,000 claim. So, I infer this means Mr. Dolgin abandoned his claim for \$10,000 and I do not address it in my decision.

Preliminary Decision

9. SL90's balcony was the subject of an August 28, 2018 CRT default decision and order (2018 decision). In that decision, the CRT ordered the strata to repair Mr. Dolgin's balcony to a safe and usable condition. The parties agree the strata followed that order and repaired the balcony by May 2019. Mr. Dolgin says he noticed a new issue with the balcony in July 2022, and the strata refuses to fix it.
10. On April 24, 2024, a CRT vice chair made a preliminary decision about whether this dispute had already been decided under the 2018 decision. The vice chair concluded that Mr. Dolgin's claims in this dispute are different than those decided in the 2018 decision, and the dispute should proceed. The vice chair noted that their preliminary decision was not binding on a future tribunal member. Since neither party challenges the preliminary decision, I have not addressed that issue in my decision.

ISSUES

11. The issues in this dispute are:
 - a. Must the strata repair Mr. Dolgin's balcony?
 - b. Is Mr. Dolgin entitled to \$5,000 in damages for mental distress?

BACKGROUND

12. The strata was created in September 1982. The strata includes 138 residential strata lots. SL90 is on the first floor of building B.
13. The strata filed its original set of bylaws with the Land Title Office (LTO) on November 13, 1991. On October 28, 2002, the strata filed a bylaw amendment, which adopted the Standard Bylaws under the *Strata Property Act* (SPA). I find these are some of the relevant bylaws that apply to this dispute.
14. In the 2002 bylaw amendment, the strata also added its existing bylaws to the Standard Bylaws. Confusingly, these bylaws have the same numbering as the Standard Bylaws. The amendment is also missing several pages with the strata's added bylaws jumping from bylaw 1(4) to bylaw 11. SPA section 128(2) says no bylaw amendment takes effect until filed with the LTO. This means some of the strata's added bylaws may not be properly in effect. In any event, nothing turns on this, as the other relevant bylaws at issue in this dispute were passed later. I will discuss these relevant bylaws below.

EVIDENCE AND ANALYSIS

15. In a civil proceeding like this one, Mr. Dolgin, as the applicant, must prove his claims on a balance of probabilities (meaning "more likely than not"). While I have reviewed all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
16. Mr. Dolgin says in July 2022 he discovered two soft spots on his balcony that he believed were caused by the deck rotting beneath the waterproof membrane. Mr. Dolgin first emailed the strata manager about this problem on July 18, 2022.
17. On September 7, 2022, the strata had Sense Engineering (Sense) inspect the balcony. The strata had originally hired Sense to complete a multi-phase building envelope renewal project. So, Sense inspected SL90's balcony and three other

balconies on September 7th as part of a future phase. There is little evidence before me about the specifics of this renewal project.

18. On September 26, 2022, Sense's project manager emailed the strata manager, and summarized the following relevant findings:
 - a. SL90's balcony waterproofing and guardrails had been previously replaced. They did not see any obvious signs of punctures or tears on the balcony's waterproofing membrane.
 - b. They saw two soft spots, approximately five inches in diameter, which did not appear to be related to water leakage.
19. With frequent prompting from Mr. Dolgin, over the next six months, the strata manager emailed Mr. Dolgin with periodic updates on when the strata would repair the balcony. Eventually on March 14, 2023, the strata manager wrote that funding to repair the balcony, which was included in phase 3 of the envelope renewal project, had been defeated at a recent special general meeting. It is unclear from the evidence why Mr. Dolgin's balcony repairs became part of the envelope renewal project.
20. On March 15, 2023, Mr. Dolgin applied to the CRT for dispute resolution.

Must the Strata Repair Mr. Dolgin's Balcony?

21. Mr. Dolgin argues that the strata is responsible for repairing and maintaining his balcony. He claims the original repair work completed in 2019 was not done properly and over time water ingress has caused the balcony to deteriorate. Mr. Dolgin says this deterioration has caused significant soft spots on the deck, which are a major safety issue.
22. In support, Mr. Dolgin provided a May 9, 2024 inspection report prepared by Sherman Fung from Spectra Home Inspection Inc. (Spectra). In the report, Sherman Fung wrote:

- a. They inspected the balcony and found water damage to the floor membrane and subfloor. Scaffolding and plywood placed on the balcony's surface limited their inspection of the membrane cover.
 - b. Various portions of the deck flooring were visibly depressed, and showed significant deflection when weight was applied. A laser level visually confirmed that surfaces were depressed.
 - c. Two different moisture meters showed moderate to high moisture content, suggesting potential water damage to the floor surface and the structure below. Thermal imaging suggested water had intruded into the surface material.
 - d. They recommend that a licensed deck repair contractor use invasive testing to determine the source of the water, and then repair the damage. These tasks should be addressed immediately, and in the meantime, the deck should not be used.
23. I find that Sherman Fung's inspection report includes expert opinion evidence. So, the report should comply with the CRT's rules on expert evidence. Rule 8.3(2) requires an expert to state their qualifications in any written expert opinion. Sherman Fung did not do this. However, the strata does not dispute Sherman Fung's qualifications. The report was also prepared through a home inspection business. So, I am satisfied that Sherman Fung had sufficient expertise to provide an expert opinion on the balcony's condition.
24. Under the circumstances, I find it appropriate to exercise my discretion under CRT rule 1.2 and waive rule 8.3's expert evidence requirements. I accept Sherman Fung's inspection report as expert opinion evidence about the balcony's current condition. Based on this report, I find Mr. Dolgin's balcony needs to be immediately repaired.
25. The strata does not dispute the findings in Spectra's inspection report. In its submissions, the strata agrees that Mr. Dolgin's balcony needs to be repaired.

However, the strata argues Mr. Dolgin breached the strata's bylaws and caused the damage by using and storing items that are not allowed on the balcony.

The Strata's Bylaws

26. I will start by summarizing the relevant bylaws that apply to this dispute.
27. As noted, on October 28, 2002, the strata adopted the SPA Standard Bylaws, which includes bylaw 8. This bylaw lists all property that the strata must repair and maintain. The strata plan shows that SL90's balcony is part of SL90. Bylaw 8(d)(iii) says the strata must repair and maintain a strata lot's balcony. So, unless there is another bylaw providing an exception, the strata must repair and maintain Mr. Dolgin's balcony.
28. On December 4, 2006, the strata amended its bylaws to add bylaw 5(c). This bylaw says the only items allowed on a balcony are BBQs, patio furniture, flowerpots, and chimes. On January 13, 2014, the strata amended its bylaws again to add bylaws 5(d) to 5(k). These bylaws generally list actions to prevent water from pooling on a balcony. Notably, bylaw 5(i) says if an owner does not follow the balcony bylaws, and these actions damage the balcony membrane, the owner is responsible for the repair costs. Although not explicitly stated, I infer the strata relies on bylaws 5(c) and 5(i) to support its claim that Mr. Dolgin is responsible for repairing the balcony.
29. The strata says Mr. Dolgin, and SL90's other occupants, were storing and using heavy equipment on the balcony, including a table saw, tools, and other equipment. Mr. Dolgin does not dispute this. Since table saws are not listed as a permitted item under the bylaws, I find Mr. Dolgin breached bylaw 5(c).

Can the Strata Rely on Bylaw 5(i)?

30. Since I find Mr. Dolgin breached bylaw 5(c), I now turn to whether the strata can rely on bylaw 5(i) to have Mr. Dolgin pay for the repairs. To be successful, the strata must prove on a balance of probabilities that Mr. Dolgin's equipment damaged the balcony.

31. The strata says the equipment's weight and vibration damaged the balcony. In support, the strata provided a June 2, 2024 opinion letter from Sense. The letter's authors include:
 - a. Project associate, Cole Chen, Engineer-in-Training,
 - b. Project manager, Robert Ngai, Engineer-in-Training, and
 - c. Project principal, Brennan Vollering, Professional Engineer.
32. The authors wrote that the letter's purpose is to summarize their September 7, 2022 balcony inspection and provide an opinion on the acceptable use of balconies under the strata's bylaws.
33. Overall, I find Sense's opinion letter does not provide sufficient evidence to prove that Mr. Dolgin's equipment caused the balcony damage. The authors write, "the use of table saws and other equipment for woodworking purposes on balconies can increase the risk of damage to the membrane and decking structure. Potential risks include ... impact damage to the balcony structure (damage observed at suite 121 may be caused by impact damage)."
34. In the letter, the authors do not say that using the table saw likely caused the two soft spots. I find the use of the word "may" is not conclusive and does not prove that it was more likely than not that the table saw caused the damage. Notably, the authors also do not explain how they reached their conclusion, including how impact damage could have created the soft spots.
35. The authors noted there are no obvious signs of punctures and tears on the balcony waterproofing. Sherman Fung also could not find the source of the water that caused the soft spots. Given all this, I find there is no evidence before me explaining how the soft spots originated. Without this evidence, I find the strata has not proven that the table saw, or other equipment, caused the damage.
36. So, I find the strata cannot rely on bylaw 5(i) to make Mr. Dolgin responsible for the repair costs. The strata also provided evidence and submissions about the table

saw's noise breaching the strata's noise bylaws. However, I find these alleged bylaw breaches are not relevant to this dispute.

37. Overall, I find the strata is responsible under bylaw 8(d)(iii) to repair Mr. Dolgin's balcony. So, I order the strata to retain and pay for a qualified contractor to investigate and repair the damage observed by Sherman Fung. Mr. Dolgin requests that the strata complete this work immediately. I acknowledge it takes time to retain a contractor, and the strata cannot control a contractor's schedule. So, I find it appropriate to order that the strata retain a contractor within 60 days and complete the work within 120 days.

Is Mr. Dolgin Entitled to Damages for Mental Distress?

38. Mr. Dolgin claims \$5,000 in general damages for mental distress. He argues the strata engaged in deceptive communications, and it acted in a high-handed manner when dealing with the balcony repairs. Mr. Dolgin alleges the strata acted in bad faith and went back and forth on whether to complete the repairs. Mr. Dolgin claims this behaviour significantly and adversely impacted his mental health and well-being.
39. In support, Mr. Dolgin provided his emails with the strata manager. I accept that Mr. Dolgin needed to frequently follow up with the strata manager, and the strata manager's responses were inconsistent. However, I find Mr. Dolgin has not provided sufficient evidence to prove he suffered damages. A mental injury is not proven by simply being upset. Mr. Dolgin must show he suffered a serious and prolonged issue that rises above the ordinary annoyances, anxieties, and fears that come with living in civil society (see *Saadati v. Moorhead*, 2017 SCC 28 at paragraph 37).
40. In *Saadati*, the court found that to assess damages, it is important to consider how seriously the party's cognitive functions and participation in daily activities were impaired, the length of such impairment, and the nature and effect of any treatment. Other than bare assertions, Mr. Dolgin did not provide any evidence to support his claim. In *Lau v. Royal Bank of Canada*, 2017 BCCA 253, the court held there must be some evidentiary basis for awarding damages for mental distress.

41. Without supporting evidence, such as medical evidence, I find Mr. Dolgin has not proven he is entitled to damages for mental distress. So, I dismiss Mr. Dolgin's \$5,000 damages claim.
42. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Mr. Dolgin was successful, so I find he is entitled to reimbursement of \$225 in CRT fees. Mr. Dolgin claims \$262.50 for Spectra's home inspection report and provided an email confirming he paid this amount. I find this was a reasonable dispute-related expense, and I order the strata to pay Mr. Dolgin \$262.50.
43. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses to Mr. Dolgin.

ORDERS

44. I order:
 - a. Within 60 days of the date of this order, the strata to retain and pay for a qualified contractor to repair Mr. Dolgin's balcony to a safe and usable condition.
 - b. Within 120 days of the date of this order, the strata to have the balcony repairs completed.
 - c. Within 30 days of the date of this order, the strata to pay Mr. Dolgin \$225 in CRT Fees and \$262.50 in dispute-related expenses.
45. Mr. Dolgin is entitled to post-judgment interest, as applicable.
46. I dismiss Mr. Dolgin's damages claim for mental distress.
47. 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.

Jeffrey Drozdiak, Tribunal Member