



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Mellor v. The Owners, Strata Plan VIS 2316*, 2017 BCCRT 92

B E T W E E N :

David Mellor

APPLICANT

A N D :

The Owners, Strata Plan VIS 2316

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant David Mellor (owner) owns strata lot 10, also known as unit 302, in the respondent strata corporation The Owners, Strata Plan VIS 2316 (strata). This

dispute is about whether the 26-unit largely single-story strata is responsible for window cleaning as part of its responsibility to repair and maintain common property.

JURISDICTION AND PROCEDURE

2. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 3.6 of the *Civil Resolution Tribunal Act (Act)*. The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness. The tribunal also recognizes any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
3. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I heard this dispute through written submissions because I find there are no significant credibility issues or other reasons that might require an oral hearing.
5. Under section 48.1 of the Act, in resolving this dispute the tribunal may make one or more of the following orders:
 - a) order a party to do something;
 - b) order a party to refrain from doing something;
 - c) order a party to pay money.

ISSUES

6. These are the issues in this dispute:
 - a. Is exterior window cleaning within the strata's obligation to repair and maintain common property?
 - b. Has the strata failed to meet its obligations under the *Strata Property Act* (SPA) with respect to window cleaning, and if so, what is the appropriate remedy? In particular:
 - i. Should a fine of \$5,000 be imposed against the strata, as requested by the owner?
 - ii. Should the strata be ordered to implement an annual window washing schedule in May of each year, as requested by the owner?
 - c. Should the owner be reimbursed \$225 he paid in tribunal fees and \$45 in dispute-related expenses?

POSITION OF THE PARTIES

7. The owner says that for 15 years he has asked the strata to clean his upstairs windows to give reasons why, under the SPA, they believe the strata is not responsible. To date, the strata has refused to do the cleaning but its reasons are not supported under the SPA, namely that the strata cannot afford it, that historically owners have arranged for their own window cleaning, and because cleaning is unrelated to performance it does not fall within "repair and maintenance".
8. The strata says that window cleaning is neither a "repair" nor a "maintenance" job and so it is not within the strata's responsibility to repair and maintain common property.

EVIDENCE & FINDINGS

9. While I have read all of the material provided, I have only commented below on the evidence and submissions necessary for this decision.
10. The strata is comprised of 26 units in 9 buildings. It is undisputed that 22 of those units being a single story where windows can be reached with a stool or stepladder by the owner. The owner's unit 302 is 1 of 4 two-storey strata lots. The strata has no limited common property.
11. The strata has adopted the Standard Bylaws under the SPA, together with certain additional bylaws that are not relevant to this dispute. The relevant Standard Bylaws may be summarized as follows:
 - a. **Bylaw 2:** The owner must "repair and maintain" the owner's strata lot, except for repair and maintenance that is the strata's responsibility under the bylaws.
 - b. **Bylaw 8:** The strata must "repair and maintain" common property not designated as limited property, and, a strata lot's windows and skylights "on the exterior of a building or that front common property".
12. Clearly, bylaw 8 requires the strata to repair and maintain the exterior windows in the strata. It is undisputed that window cleaning is not a "repair". This dispute turns on whether exterior window cleaning falls within the strata's obligation to "maintain" exterior windows, under bylaw 8.
13. Section 72 of the SPA simply states that the strata must repair and maintain common property, and, that the strata may, by bylaw, take responsibility for the repair and maintenance of specified portions of a strata lot. This is apparently what bylaw 8 does. There is no definition in the SPA of "maintain".
14. The owner made numerous requests over the years asking the strata to wash the exterior windows of his strata lot, and provide reasons under the SPA when the strata continued to take the position that it would not do so. The strata's reasons variously included: it could not afford the \$25 to wash the windows, the owner

would benefit from window washing as a common expense when other strata lots did not similarly benefit, cleaning was not within the obligation to repair and maintain, other strata corporations do not clean exterior windows, and historically the strata lot owners were responsible for washing their own exterior windows. The owner sent the strata articles from CHOA¹ and VISOA² in support of his position, along with evidence that other strata corporations did wash the exterior strata lot windows, but the strata maintained its position.

SUBMISSIONS & ANALYSIS

15. At the outset, I note that the exterior windows of the owner's unit 302 face common property. Arguably, at a minimum the exterior side of the windows (along with exterior sill and frame) are common property, as per section 68 of the SPA, if not the entire window assembly. As such, the strata would be obliged to repair and maintain them even if bylaw 8 did not exist.
16. I will next address whether the exterior window cleaning falls within the strata's obligation to "repair and maintain" them under bylaw 8. The answer is yes, for reasons that follow.
17. First, that the SPA does not expressly include cleaning within "repair and maintain" is not determinative. The SPA does not purport to limit what is included in that obligation. I do not accept the strata's argument that because different strata corporations adopt different bylaws a vote by the strata's owners is required to change the strata's historical practice of requiring owners to clean their own exterior windows. The strata has already voted in favour of having the strata responsible for the repair and maintenance of windows on the exterior of a strata lot, by adopting bylaw 8. The fact that the strata has in the past not performed the window cleaning is also not determinative of what their obligations in fact are under the SPA and bylaw 8.

¹ Condominium Homeowners Association

² Vancouver Island Strata Owners Association

18. Instead, I am guided by the relevant case law discussed below in my conclusion that the cleaning is included within the meaning of repair and maintenance.
19. In *Mackin v. The Owners, Strata Plan 1374*, 1998 CanLII 3985 (BCSC), both parties took the position they “do not do windows”. In that case, the Standard Bylaw 8 was not in effect that expressly gave the strata the responsibility to repair and maintain exterior windows. In *Mackin*, the court found “the question is not who has responsibility for cleaning and repairing windows, but who has responsibility to install windows when the old ones are worn out or turn out to be defective in manufacture after their warranty has expired”. In that case, the court found the strata bore the responsibility for repairing or replacing the entire window assembly.
20. As for cleaning, the court in *Mackin* noted that the former SPA “was intended to put a duty on the unit owners to keep their outside windows clean and glazed”, which the court found included an obligation to keep their windows sealed and caulked. I pause to note that in *Mackin* the court did not explain how an owner was to practically do that in a high-rise building, or how to be mindful of potential water ingress issues that could affect the building’s structure, while cleaning exterior windows. I do not need to address that issue in this decision.
21. What is relevant is that the court in *Mackin* found that the legislature intended “repair and maintain” to include cleaning. Here, unlike in *Mackin*, bylaw 8 clearly lays the obligation to repair and maintain exterior windows on the strata. I find that under bylaw 8 the strata must clean the exterior windows as part of its obligation to repair and maintain. This conclusion is consistent with the tribunal’s decision in *Oakley v. The Owners, Strata Plan VIS 5481*, 2017 BCCRT 17, in which the tribunal concluded that window cleaning was a repair and maintenance item. Although I am not bound by the decision in *Oakley*, I accept the decision reached that exterior walls of a strata building are common property also applies here. Further, other cases in passing have indicated that strata corporations have treated window cleaning as a repair and maintenance item (see *Chow v. The*

Owners, Strata Plan LMS 1277, 2006 BCSC 335; *Shaw v. The Owners Strata LMS 3972 et al.*, 2008 BCSC 453).

22. While less persuasive than a court or tribunal decision, the CHOA and VISOA opinions cited by the owner also support the conclusion that cleaning falls within the obligation to “repair and maintain”. At one point the strata’s own property manager also appeared to support the owner’s position. The BC Housing documentation provided by the owner, and relied upon by the strata, in fact establishes that there is value in glass cleaning and that exterior window cleaning falls within “glass care and maintenance”. In any event, the exterior frames and sills require cleaning for functionality and performance reasons as set out in that BC Housing documentation, and yet the strata appears to require the owner to clean those also.
23. Strictly speaking, cleaning may not appear to fall within the common definition of maintain, which is to keep something in good working order but also includes “keep in proper condition”. It may be that window cleaning does not affect its function or performance, although as noted above the BC Housing documentation submitted appears to suggest that it could. In any event, there are a variety of things a strata does in maintaining common property that would appear to be primarily for aesthetic reasons, such as regular lawn mowing or weeding of garden beds or cleaning up transient litter from common areas. Overall, given the case law and the evidence submitted, I find that cleaning falls within the common sense meaning of “repair and maintenance”. Given bylaw 8, I find the strata is responsible for the exterior window cleaning in the strata.
24. Next, I will address what remedy should be ordered, given my conclusion that the strata is responsible for the exterior window cleaning under bylaw 8.
25. The owner asks for an order that the strata’s windows be washed annually, in May of each year. I am not prepared to go that far, because the frequency and timing of the window washing is reasonably something left to the strata council and owners to determine. Until now, the strata has been of the view that it is not required to

wash the exterior windows of strata lots and now they know from this decision that they are in fact required to do so. I trust that the strata will act reasonably in setting a window washing schedule, and certainly annually appears reasonable but that does not mean another schedule may also be reasonable. To that end, I note the strata's submission that it would take a decision in the owner's favour to the owners to discuss next steps. That is a reasonable approach as the cost of the window cleaning will need to be included in an approved operating budget. Nothing in this decision prevents the owner from filing a fresh dispute with the tribunal if the strata fails to implement a reasonable window washing schedule.

26. The owner also asks the tribunal to determine whether the strata has failed to meet the requirements of section 31 of the SPA, and, whether I should "impose a fine or other remedy (\$5,000)".
27. Section 31 of the SPA states that each council member must act honestly and in good faith with a view to the best interests of the strata, and to exercise the care, diligence, and skill of a reasonably prudent person in comparable circumstances.
28. That the strata formed a view contrary to the owner's is not evidence that it has failed to comply with section 31 of the SPA. In particular, while I have not accepted the strata's arguments about cleaning falling outside its maintenance obligations, I cannot conclude on the evidence before me that the strata's position was "bogus" as alleged by the owner or that the strata acted in any way dishonestly or incompetently. I find the strata has not failed to comply with section 31 of the SPA.
29. While the owner asserts the strata has taken advantage of the owner's inability to pursue this issue previously in a court, I find that submission to be speculative and unsubstantiated. Strata councils are typically comprised of lay people, even if assisted by a professional property management company, and a certain amount of latitude is permitted for them to "get it wrong" when assessing whether their conduct met the requirements of section 31. I decline the owner's request that I "fine" the strata \$5,000 or make any other related to the alleged section 31 breach.

30. Success was evenly divided in this dispute. Under section 49 of the Act, and the tribunal's rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable expenses related to the dispute resolution process. I find the owner is entitled to reimbursement of half of the \$225 he paid in tribunal fees, namely \$112.50.
31. As for the \$45 the owner claimed as expense, this was in fact an August 20, 2016 payment for window washing and is not a dispute-related expense. Nonetheless, I find it is reasonably part of the owner's claim and given my conclusion above that the strata is responsible for the window cleaning, I consider this nominal amount to be reasonable for the strata to reimburse the owner for the expense he had to incur for the washing of his exterior windows. I order the strata to reimburse the owner the \$45.00.

DECISION & ORDER

32. I order that the strata's obligation to repair and maintain exterior windows under bylaw 8 includes cleaning.
33. I order the strata to implement a reasonable exterior window washing schedule within 30 days of its next annual general meeting, which may involve asking the owners for a vote at a general meeting.
34. I dismiss the owner's claims for an order that the strata failed to comply with section 31 of the SPA and for an order of \$5,000 against the strata.
35. Within 30 days, I order the strata to:
 - a. Pay the owner \$112.50 as reimbursement of the tribunal fees paid, and
 - b. Pay the owner \$45.00 as reimbursement for his August 2016 window cleaning.
36. Under section 167 of the SPA, an owner who brings a tribunal claim against the strata corporation is not required to contribute to the expenses of bringing that

claim. I order the strata to ensure that no part of the strata's expenses with respect to defending this claim are allocated to the owner.

37. The owner is entitled to interest under the *Court Order Interest Act* (COIA) on the \$45 expense, in the amount of \$0.36. The owner is also entitled to post-judgment interest on that \$45 under the COIA.
38. Under section 57 of the Act, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia, a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.
39. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia. However, the principal amount or the value of the personal property must be within the Provincial Court of British Columbia's monetary limit for claims under the Small Claims Act (currently \$35,000). Under section 58 of the Act, the Applicant can enforce this final decision by filing in the Provincial Court of British Columbia a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Tribunal Vice Chair