



Civil Resolution Tribunal

Date Issued: December 5, 2018

File: ST-2017-007267

Type: Strata

Civil Resolution Tribunal

Indexed as: *Tasse v. The Owners, Strata Plan 568*, 2018 BCCRT 811

B E T W E E N :

Pierre Tasse

APPLICANT

A N D :

The Owners, Strata Plan 568

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about the repair of balconies on a number of strata lots. The applicant, Pierre Tasse (owner) says that the respondent, The Owners, Strata Plan 568 (strata), has not treated all owners equally in assessing the costs associated with the repairs. The strata disagrees with the owner's position.

2. The applicant is self-represented. The respondent is represented by a member of the strata council.

JURISDICTION AND PROCEDURE

3. 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, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
5. 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.
6. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute the tribunal may make order a party to do or stop doing something, order a party to pay money, order any other terms or conditions the tribunal considers appropriate.
7. Under section 61 of the Act, the tribunal may make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the tribunal in accordance with its mandate. In particular, the tribunal may make such an order on its own initiative, on request by a party, or on recommendation by a case manager (also known as a tribunal facilitator).

8. Tribunal documents incorrectly show the name of the respondent as The Owners, Strata Plan, VIS 568. Based on section 2 of the *Strata Property Act* (SPA), the correct legal name of the strata is The Owners, Strata Plan 568. Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, I have exercised my discretion under section 61 to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the style of cause above.

ISSUE

9. The issue in this dispute is whether the strata applied a bylaw about the cost of repairs to balcony enclosures equally amongst owners.

BACKGROUND AND EVIDENCE

10. The owner purchased a strata lot (unit 301) in 2010 as a joint tenant with another individual who is not a party to this dispute. A previous owner of unit 301 modified the balcony to create an enclosed area. It would appear that the modifications in unit 301 were made without specific approval from the strata. Several other units in the building made similar modifications, some with and some without strata approval.
11. The strata plan shows that balconies are part of the adjacent strata lots.
12. The strata undertook a project to address some structural issues, replace the exterior of the balconies and to repair any rot. A special levy was assessed to pay for the project. During the course of the project, damage was discovered in several of the balcony enclosures, and repairs were carried out. The strata billed the cost of these repairs back to the owners of the units.
13. The owner argues that the strata has not treated all strata lot owners equally. He says that the strata covered the cost of work to 4 units (203, 205, 403 and 405), but voted to charge units 301 and 206 for similar work. The owner provided a statement

from the owner of unit 203 to the effect that he did not have to “pay extra for esthetics or structure” on his balcony.

14. The owner also raised concern that the council member who is the owner of unit 403 is in a conflict of interest as the costs of repairs for their unit was covered by the strata. The owner also says that the strata has not returned the remaining funds from the special levy as required by the SPA. However, he did not make specific claims about this issue.
15. The applicant requests that I order that he not have to pay for the work in question, which he says amounts to \$1,500.
16. The strata’s position is that the work covered by the strata in other strata lots was not similar to the work performed on the owner’s enclosure. According to the strata, an engineer-designed support system was installed on the ground floor to ensure that three suites above did not “slide off the surface of the building”. The strata says that additional work was required to address water ingress, which it said resulted from ill-fitting windows installed on the enclosures. The strata says that the work done to the enclosures was not contemplated in the scope of the balcony repair project, and was not covered by the special levy.
17. The strata says that unit 203 did not have to pay for repairs as these were recommended by an engineer and were aimed at correcting a building defect. The strata also notes that units 205, 305 and 405 paid the repair costs for their enclosures. The strata requests that I order the owner to pay the costs associated with the repairs to his balcony enclosure. However, the strata did not bring a counterclaim in this regard.

ANALYSIS

18. Section 72 of the SPA provides that the strata must repair and maintain common property (CP) and common assets.

19. The strata amended its bylaws in 2003, and this version of the bylaws applies to this dispute. The strata's responsibilities regarding repair and maintenance are set out at bylaw 12. The strata must maintain CP, limited common property, and portions of strata lots, including chimneys, stairs and balconies. However, the strata's obligation does not extend to balcony and patio surfaces that are the responsibility of owners.
20. The extent of the responsibilities for repair and maintenance for the owners of strata lots is set out in bylaw 4. Bylaw 4(1) states that an owner must repair and maintain the strata lot, including any changes from its original condition, except for repair and maintenance that is the responsibility of the strata. The bylaw explains that the obligation to repair extends to the surface of any patio or balcony, which is part of the strata lot including balcony enclosures. Further, bylaw 4(3) provides that an owner must maintain, repair and replace any additions or alterations made to the strata lot.
21. The strata's submissions contain several references to the owner's balcony enclosure being "illegal". I do not find this to be determinative of the matter. Whether or not the strata gave authorization for the enclosure of the balcony by a previous strata lot owner, the owner is responsible for its repair and maintenance of this alteration under the bylaws.
22. The owner does not dispute his responsibility to repair and maintain his balcony enclosure. His position is that the work performed on his balcony enclosure was part of the work contemplated by the special levy and he should not have to pay for it. The strata's position is that this work was outside the scope of this project and not the strata's responsibility. Although the parties referred to the special levy and contracts and invoices related to the project, the associated documentation was not provided. However, both parties discuss the nature of the work in their submissions.
23. The strata's evidence is that it paid for the installation of trim and hardi-board on the exterior of the owner's balcony enclosure. It says that the contractor also repaired rot damage, replaced insulation, and installed "proper supports" in the enclosure,

which it costed at \$1,500. According to the strata, other units with enclosures paid similar costs, and some paid even higher amounts to replace windows. The strata suggests that some of the work in unit 301 was required to address water leaking from the owner's enclosure to the unit below. The owner denies that his windows were leaking or that work was performed on his windows. He did not otherwise dispute the scope of work described by the strata.

24. The owner says that unit 203 received similar repairs to his balcony enclosure at no additional cost. However, the strata says that work to that unit was structural in nature and involved the installation of cement support posts as recommended by an engineer. The owner did not provide contrary evidence or submissions. Although the owner of unit 203 confirmed that he did not pay amounts other than the special levy, I do not find that the scope of work performed in the two strata lots was the same.
25. The owner's position is that his situation is similar to that of other strata lots, and it would be fair to treat everyone the same way. However, I am not satisfied that the evidence establishes that the scope of work performed on his balcony enclosure was the same as was required for others. Further, the strata's evidence, to which the owner has not provided a response, is that other strata lot owners whose balconies had been enclosed did pay additional amounts on top of the special levy.
26. Based on the evidence before me, I find that the owner has not proven his claim that the work performed on his balcony enclosure was within the scope of the project associated with the special levy. Further, he has not proven that he has been charged back the costs of the work in a manner which is unfair or inappropriate.
27. For these reasons, I decline to find that the owner is not responsible for the \$1,500 repair cost charged back to him by the strata.

TRIBUNAL FEES AND EXPENSES

28. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. While I see no reason in this case to deviate from the general rule, it does not appear that the parties incurred tribunal fees or claim dispute-related expenses. As a result, I make no order in this regard.
29. The strata corporation must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owner, unless the tribunal orders otherwise.

ORDER

30. I order that the owner's claim, and this dispute, are dismissed.

Lynn Scrivener, Tribunal Member