



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Kornylo v. The Owners, Strata Plan VR 2628*, 2019 BCCRT 1215

B E T W E E N :

Frank Kornylo

APPLICANT

A N D :

The Owners, Strata Plan VR 2628

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicant, Frank Kornylo (owner) owns a strata lot in the respondent strata corporation, The Owners, Strata Plan VR 2628 (strata). The owner says the windows in his strata lot are damaged, and that the strata has failed to repair them since he his first requested repairs in 2014.

2. The owner requests the following orders:
 - a. Reimbursement for a doorknob.
 - b. The strata council members pay for his damaged windows, pay punitive damages for negligence and harassment, and reimburse the strata for legal fees related to window repairs.
 - c. The strata hire an engineer to determine if replacement of all strata windows is necessary.
 - d. The October 2018 special levy be declared invalid, and his \$14,635.14 special levy payment refunded.
 - e. If all strata windows are replaced, the strata council pay for his damaged windows, and also leave his glazed window as is and deduct that cost (\$1,000) from the total window replacement cost.
 - f. If strata council member Ms. C's balcony has been enclosed with windows, she must pay for them.
 - g. If there are single-pane windows in any strata lot, that strata lot owner pay to upgrade them.
3. The strata says the owner's claims should be dismissed. It says the owners' windows were not repaired sooner because he failed to provide quotes for repairs, as he agreed to do, and later refused to allow strata council members access to view the windows. The strata says that from an exterior view, the glass was not damaged, and the owner's windows were in the same condition as many others in the strata. The strata says in 2018 it decided to replace all windows in the strata, as they were 27 years old, and obtained the necessary vote approving a special levy to pay for this work.
4. The owner is self-represented in this dispute. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The tribunal must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the tribunal's process has ended.
6. The tribunal has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, 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.
7. The tribunal rules in force at the time the dispute was filed are applicable to this dispute.
8. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The tribunal may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
9. Under section 123 of the CRTA and the tribunal rules, in resolving this dispute the tribunal may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.
10. The parties both provided evidence and submissions about a variety of matters, including alleged bylaw breaches. I understand that some of that evidence relates to the owner's allegations of harassment and negligence by strata council members, which I address below. Since the Dispute Notice includes no specific claims about bylaw breaches or penalties, I make no findings about those matters.

ISSUES

11. The issues in this dispute are:

- a. Is the owner entitled to reimbursement for a doorknob from 2014?
- b. Must the strata council members pay for the owner's windows, pay punitive damages for negligence and harassment, and reimburse the strata for legal fees related to window repairs?
- c. Was the October 2018 special levy resolution invalid, and if so, is the owner entitled to a refund of his \$14,635.14 special levy payment?
- d. Must the strata hire an engineer to determine if replacement of all strata windows is necessary?
- e. Must the strata pay to replace the owner's damaged windows, and also leave his glazed window as is and deduct that cost (\$1,000) from the total window replacement cost?
- f. Should the tribunal order Ms. C to pay for any windows enclosing her balcony?
- g. Must any strata lot owner pay to upgrade single-pane windows in their strata lot?

EVIDENCE AND ANALYSIS

12. I have read all of the evidence provided but refer only to evidence I find relevant to provide context for my decision. In a civil proceeding such as this, the applicant must prove their claims on a balance of probabilities.

13. The strata was created in 1990, and consists of 4 residential strata lots. The strata's bylaws are the Standard Bylaws under the SPA, except for 1 set of amendments registered at the Land Title Office in October 2016. These amendments are not relevant to this dispute.

14. Under Standard Bylaw 8, the strata is responsible to repair and maintain all exterior windows. The parties do not dispute this, but disagree about the timing, cost, and approach to exterior window repairs.

Reimbursement for Doorknob

15. In the Dispute Notice, the owner requested an order that strata pay for a “doorknob from 2014”. He provided a receipt showing that on March 19, 2014, he paid \$141.44 to replace a “rusted passage set” (door locking mechanism) on a balcony door.
16. The strata says this claim was dismissed in a previous tribunal claim because it was beyond the limitation period. I find that is not correct. In a previous tribunal decision, *Kornylo v. The Owners, Strata Plan VR 2628*, 2018 BCCRT 599, a tribunal member ordered the strata to reimburse the owner \$155.75 for replacement of a door knob (see paragraph 64). I find that is not the same claim as the door knob in this dispute, since the amounts are different, and the tribunal member found in paragraph 23 that the door knob that was the subject of his decision fell off around late January 2016. Therefore, I find that a different knob was replaced in March 2014 (although it is unclear whether it was on the same door).
17. For these reasons, I find the claim for the March 2014 doorknob was not already decided (*res judicata*).
18. I find that under the *Limitation Act*, the limitation period for this claim is 2 years before the owner filed his dispute on December 2, 2018. The owner says the limitation period for this claim has not expired, because a strata financial statement for January 1, 2016 to December 31, 2016 shows a debt of \$141.44 for “Balcony Door Lock Unit 167” under “Accounts Payable”.
19. I accept that this financial statement was an acknowledgement of the debt as of December 31, 2016. Under the *Limitation Act*, an acknowledgement of a debt occurs when a person either recognizes a debt in writing or makes a payment towards a debt. The effect of an acknowledgement is that the limitation period is reset.

20. Based on the strata's financial statement for the period ending December 31, 2016, I find the owner filed his claim within the 2-year limitation period. The strata does not dispute the accuracy of the financial statement, or say it paid the \$141.44 to the owner. I therefore find the strata must pay the owner \$141.44 for March 19, 2014 door repair receipt.

Orders Against Strata Council Members

21. The owner seeks orders that the individual members of the strata council members pay for his windows, pay punitive damages for negligence and harassment, and reimburse the strata for legal fees related to window repairs.

22. I decline to issue this order. First, none of the strata council members were named as parties to this dispute, and I cannot make orders against non-parties. Second, even if the strata council members were named as parties, I would not make this order, for the reasons explained below.

23. In his submissions to the tribunal, the owner says the council members have repeatedly violated section 31 of the *Strata Property Act* (SPA). I agree that the owner's claims against the strata council members arise under SPA section 31.

24. SPA section 31 sets out the standard of care for strata council members. It says that in exercising the powers and performing the duties of the strata corporation, each council member must act honestly and in good faith with a view to the best interests of the strata corporation, and must exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.

25. In *Wong v. AA Property Management Ltd*, 2013 BCSC 1551, the BC Supreme Court considered a claim brought by an owner that the strata council members had acted improperly in the management of the strata's affairs. The court considered this claim, and concluded that the only time a strata lot owner can sue an individual strata council member is for a breach of the conflict of interest disclosure requirement under SPA section 32 (see *Wong*, at paragraph 36). Remedies for

breaches of SPA section 32 are specifically excluded from the tribunal's jurisdiction, as set out in CRTA section 122(1)(a).

26. Similar to *Wong*, in *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32, the BC Supreme Court said that the duties of strata council members under SPA section 31 are owed to the strata corporation, and not to individual strata lot owners (see paragraph 267). This means that a strata lot owner cannot sue a strata council member for a breach of section 31.
27. These court decisions are binding precedents, and the tribunal must apply them. Following *Wong* and *Sze Hang*, I therefore dismiss the owner's claims against the strata council members.

Engineering Assessment and Validity of Special Levy

28. The evidence shows that the strata held a special general meeting (SGM) on October 9, 2018. At the meeting, the owners voted on a $\frac{3}{4}$ vote resolution to replace all windows in the strata, and approve a \$57,000 special levy to pay for the work. The meeting minutes show that 3 of the 4 strata lot owners voted in favour of the resolution, so it passed.
29. The owner does not dispute the outcome of the vote, or say that the voting requirements in the SPA were violated. Rather, he says the resolution was invalid because the strata council's conduct was unreasonable. He says the strata "failed in its objective standard of care by not conducting any due diligence" before holding the vote.
30. The owner therefore seeks orders that the strata refund his special levy payment, and hire an engineer to determine if replacement of all windows is necessary.
31. For the follow reasons, I dismiss these claims.
32. There is no requirement in the SPA or bylaws that a project be "necessary" from a structural or engineering standpoint. This is true regardless of the size or expense of the project. It was open to the strata ownership to vote in favour of the window

replacement project, and as long as the required votes in favour were obtained, the strata is authorized to proceed with the work.

33. Even if the ownership voted in favour of the window replacement for appearance or aesthetic reasons alone, that is sufficient. The strata operates as a democracy, under the rules set out in the SPA and its bylaws. If the democratic process is followed, and the required majority of owners vote in favour of a structural or decorative project, then the strata is authorized to proceed with that work.
34. The evidence shows that the owner tried to persuade the strata council to obtain an expert report on the condition of the windows before the October SGM. However, the council declined to do so. I find that decision was within the discretion of the strata council. Again, the SPA and bylaws do not impose a “due diligence” requirement. I also note that the evidence shows the strata obtained multiple quotes for the work before holding the SGM vote. The fact that the owner disagreed with the strata council’s decision to hold the special levy vote, and with the outcome of that vote, is not determinative. In *Oldaker v. The Owners, Strata Plan VR 1008*, 2010 BCSC 776, the BC Supreme Court said that the case law establishes the following:

...for better or worse the majority of owners make the rules. For better or worse the minority of owners are to abide by those rules. ...

Not remarkably the views of disparate groups within a strata corporation are often strongly held. The force of these convictions can lead to internal friction, to competing camps within the strata corporation and to paralysis of the corporation. The ongoing efficacy of the strata corporation requires that the views of the majority be respected.

35. Thus, the fact that a minority of owners are unhappy about being outvoted (as in this case) does not justify tribunal or court intervention in democratic strata governance.

36. Also, previous tribunal decisions have found that an owner cannot direct a strata how to conduct its repairs (*Swan v. The Owners, Strata Plan LMS 410*, 2018 BCCRT 241) and a strata is entitled to prioritize its repairs (*Warren v. The Owners, Strata Plan VIS 6261*, 2017 BCCRT 139). While prior tribunal decisions are not binding precedents, I find the reasoning in these decisions persuasive and rely on it.
37. Based on the uncontested SGM minutes, I find that the required $\frac{3}{4}$ vote in favour of the window replacement project and special levy was passed in accordance with the SPA. Because of this, and because there is no requirement of necessity for a renovation or repair project, I find the October 2018 SGM window replacement and special resolution was valid. For the same reasons, I dismiss the owner's claims for a special levy reimbursement and an engineering assessment.

Payment for Owner's Windows

38. The owner seeks an order that the strata council pay to replace his damaged windows. By this, I infer that he means that the strata should pay, at no cost to him. I note that the strata council is not a separate legal entity from the strata for the purposes of litigation, and I have already found that the individual strata council members are not liable to the owner.
39. The strata says the windows in the strata were about 27 years old, and that while many of them had problems, including rotted casings, the owner's windows were not in worse condition than others in the strata. I find the owner has not proven otherwise. He provided photos of his windows as attachments to a November 25, 2018 email. These show significant condensation, but they appear to have been taken on a single day. While the owner says he provided the strata with earlier photos, these are not in evidence. The strata says the condensation was not always present. Based on the evidence before me, I find the owner has not established that his windows were damaged, or more damaged than others in the strata.
40. The owner says the strata should pay for his windows to be replaced because it did not fix his windows when he requested it in 2014, or in the intervening period before the October 2018 SGM.

41. I disagree, and dismiss this claim. While I accept that the owner was frustrated at having to wait for the repairs, as stated above the tribunal has established that the strata is entitled to prioritize its repairs. There is no evidence that the requested window repairs were an emergency, such as a safety hazard.
42. The strata has now taken action to replace all the strata's windows, including those in the owner's strata lot. I find that this provides a sufficient remedy to the owner's claim about damaged windows.
43. I find it would be unreasonable in the circumstances to find that the owner does not have to pay his proportionate share of the window replacement cost. This would effectively be an order of punitive damages against the strata. Generally, punitive damages are only ordered where there has been malicious and high-handed conduct, and I find the evidence before me does not rise to that level. In making this finding, I particularly note that the strata council requested access to the owner's strata lot in June 2017 to view the windows, and in a June 22, 2017 email the owner refused this request. He said the strata council did not have the expertise to determine if more work was needed to repair his window. I find that since the owner denied access at that time, and did not instead provide the strata with an expert report providing the need for window repairs (although it was open to him to do so), he bears at least some responsibility for the repair delays.
44. For these reasons, I dismiss the owner's claim that the strata pay to replace the windows in his strata lot.

Glazed Window

45. The owner also seeks an order that the strata leave his glazed window as is, and deduct \$1,000 from the total window replacement expense to account for this cost savings. The photo in evidence shows that the window has an etched design on the glass. The owner says it is unique, and the window contractor cannot replace it with an equivalent window.

46. The strata does not object to leaving the “glazed” window in place, and emailed its contractor on January 9, 2019 instructing him to omit this window from the replacement project. I therefore find that this issue is settled, and make no order about it.
47. Regarding the \$1,000, the strata says that any cost savings from not replacing this window would be deducted from the contractor’s invoice. They say under the terms of the SGM resolution, if the total surplus special levy funds at the end of the window replacement project total \$1,000 per strata lot, this amount will be refunded to all owners on the basis of unit entitlement.
48. I find that this outcome is fair in the circumstances, and is consistent with section 108(5) of the SPA as well as the special levy resolution. I therefore make no further order about this issue, and dismiss the owner’s claim for deduction of \$1,000 from the window replacement cost.

Ms. C’s Balcony Windows

49. The owner asks the tribunal to determine if strata council member Ms. C has windows enclosing her balcony. He says if she has such windows, she should be ordered to pay for them.
50. As noted above, the owner bears the burden of proving his claims. I find that since he has provided no evidence proving that Ms. C has the disputed balcony windows, and no evidence about who paid for them, he has not proven this claim. Also, Ms. C has not been named as a party to this dispute, so I have no authority to make orders against her.
51. For these reasons, I dismiss this claim.

Replacement of Single-Pane Windows

52. The owners asks the tribunal to determine if any strata lots have any single pane windows, and if so order those owners to pay for the upgrade to new windows.

53. I dismiss this claim for the same reasons I dismissed the claim against Ms. C. No other strata lot owners are named as parties to this dispute, so I cannot make orders against. Also, the owner bears the burden of proving his claim about single-pane windows, and I find he has not done so.

54. I therefore dismiss this claim.

TRIBUNAL FEES, EXPENSES, AND INTEREST

55. I have dismissed all of the owner's claims, except for \$141.44 for doorknob repairs. Since the owner was largely unsuccessful in this dispute, in accordance with the CRTA and the tribunal's rules I find he is entitled half his tribunal fees, which equals \$112.50. Neither party claimed dispute-related expenses, so none are ordered.

56. I find the owner is entitled to pre-judgement interest on the \$141.44, under the *Court Order Interest Act* (COIA), from March 19, 2014

57. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to the owner.

ORDERS

58. I order that within 14 days of this decision, the strata pay the owner \$262.46, broken down as follows:

- a. \$141.44 for doorknob repairs,
- b. \$8.52 in prejudgment interest under the COIA, and
- c. \$112.50 for tribunal fees.

59. The owner is entitled to post-judgement interest under the COIA, as applicable.

60. I dismiss the owner's remaining claims.

61. Under section 57 of the CRTA, a party can enforce this final tribunal decision by filing a validated copy of the attached order in the Supreme Court of British Columbia (BCSC). The order can only be filed if, among other things, the time for an appeal under section 123.1 of the CRTA 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 a BCSC order.
62. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia (BCPC). However, the principal amount or the value of the personal property must be within the BCPC's monetary limit for claims under the *Small Claims Act* (currently \$35,000). Under section 58 of the CRTA, a party can enforce this final decision by filing a validated copy of the attached order in the BCPC. The order can only be filed if, among other things, the time for an appeal under section 123.1 of the CRTA 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 a BCPC order.

Kate Campbell, Tribunal Member