Civil Resolution Tribunal

Date Issued: November 19, 2019

File: ST-2018-008253

Type: Strata

Civil Resolution Tribunal

Indexed as: *Song et al v. The Owners, Strata Plan VR 1484*, 2019 BCCRT 1305

B E T W E E N :

Wen Tao Song, Wing Shu Song and Wayne Cattoni

APPLICANTS

A N D :

The Owners, Strata Plan LMS 1484

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kate Campbell, Vice Chair

INTRODUCTION

1. This decision addresses the first of 2 related disputes with the same parties. Both disputes are about water damage.

2. The applicants, Wen Tao Song, Wing Shu Song and Wayne Cattoni (owners), own strata lot 2 (SL2) in the respondent strata corporation, The Owners, Strata Plan LMS 1484 (strata).

3. The owners say that around April 2017, there was water ingress and flooding into SL2, which caused damage. They also submit the following:

    a. The water damage was caused by building envelope problems.

    b. Although the strata hired a contractor (WCSE) to perform repairs, the work was partly defective, and led to further leaks that are ongoing.

    c. The strata has refused the owners' demands for further repairs, and is in breach of its bylaws and section 72 of the *Strata Property Act* (SPA) by failing to maintain and repair common property.

4. The owners seek an order that the strata investigate and repair the ongoing leak, and an order that that strata repair the interior of SL2 at its own cost.

5. The strata denies the owners' claims. It says it has met its duty to maintain and repair common property. The strata says the owners delayed reporting the ongoing leaks until June 2018, and then repeatedly refused access to SL2.

6. The strata also says the owners' second dispute, ST-2019-000709, is an abuse of process because it is a second action arising from the same facts as this dispute. I address that argument in my decision on ST-2019-000709, which is separate from this decision.

7. The owners are self-represented in this dispute. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

8. 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.

9. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Some of the evidence in this dispute amounts to a "he said, he said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

10. 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.

11. 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.

12. I have written 2 separate decisions for the 2 disputes between the parties because the process for appealing or reviewing tribunal decisions changed effective January 1, 2019. CRTA section 123.1 says that repealed section 56.5 allowing appeals to the BC Supreme Court continues to apply to the tribunal's strata property decisions where the Dispute Notice was issued before January 1, 2019. The Dispute Notice

for this dispute was issued on November 6, 2018, which means that repealed section 56.5 applies. It does not apply to the second dispute, ST-2019-000709, as the Dispute Notice for that dispute was issued on February 1, 2019.

Declarations

13. The owners ask the tribunal to make declarations that the strata breached its duty to maintain and repair common property, and that the strata must pay for repairs to common property and SL2. The strata submits the tribunal does not have authority to make declaratory orders.

14. The tribunal can make findings of fact about all matters falling within CRTA section 121(1), including the interpretation or application of the SPA or a regulation, bylaw or rule under the SPA, the strata's common property, the use and enjoyment of a strata lot, and actions or decisions of the strata. Based on CRTA sections 121 and 123, I find the tribunal has jurisdiction to make findings of fact about whether the strata has breached the SPA or its bylaws, and jurisdiction to order the strata to perform repairs. I have framed the issues in this dispute accordingly.

ISSUES

15. The issues in this dispute are:

    a. Did the strata breach its duty to maintain and repair common property?

    b. Should I order the strata to repair the leaks?

    c. Must the strata repair the interior of SL2?

    d. Are the owners entitled to reimbursement for expert reports?

    e. Are any parties entitled to reimbursement for legal fees?

EVIDENCE AND ANALYSIS

16. 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 like this one, the applicant owners must prove their claims on a balance of probabilities.

17. The strata was created in 1985, and consists of 6 residential strata lots. SL2 is located on the first floor of the strata building, above the common property parking garage. The strata is self-managed.

18. Wen Tao Song and Wing Shu Song purchased SL2 in 2016. Wayne Cattoni was added to the title as an owner in 2018. The owners never moved in to SL2, and never rented it out. The correspondence in evidence indicates that the owners planned to renovate SL2 in 2016, but delayed their renovations because the strata ownership was considering winding up the strata and selling the property to a developer.

19. In a March 8, 2017 email to Ms. Song, TG, the strata council president, wrote that the owners did not need to wait to do renovations, as the sale of the property was "up in the air", and there was no official offer. TG said the council was" looking at options around the sale if something is to come up", but the process would likely take more than 6 to 8 months.

20. The owners say that in April 2017 they removed the flooring in SL2 and discovered water in the bedroom and also in the living room. This water infiltration is confirmed in an April 4, 2017 email from TG, who visited SL2 to view the problem and took photos.

Did the strata breach its duty to maintain and repair common property?

21. The strata's duty to maintain and repair common property is set out in SPA section 72 and the strata's bylaws.

22. There is no dispute in this case that the leaks were caused by water infiltration from the building's exterior, which is common property. The strata does not dispute that it

was obligated to repair and maintain this common property, including repairing the leaks causing water ingress in SL2. However, the strata says it met its repair and maintenance obligations by responding to and acting to repair the reported leaks with reasonable diligence.

23. The owners say the strata breached its repair duties, and was not reasonably diligent in responding to the leaks. The owners say the strata's contractor, WCSE, was unqualified and did faulty repairs, and the strata failed to take reasonable steps to confirm that the repairs were completed. The owners also say that when further leaks were identified after the first set of repairs, the strata failed to investigate or fix these leaks.

24. The parties provided extensive evidence about events starting from the time leaks into SL2 were discovered in April 2017. Based on the evidence, and the applicable law, I find that the strata did met its statutory duty to maintain and repair the common property, and was not negligent.

25. In making this finding, I rely on the BC Supreme Court's decision in *Wright v. The Owners, Strata Plan #205,* 996 CanLII 2460 (S.C.), affirmed (1998), 43 B.C.L.R. (3d) 1, 1998 CanLII 5823 (C.A.). In *Wright,* the court said a strata corporation will not be found negligent or in breach of its statutory duty to repair where it has acted reasonably in the circumstances, even if its contractors fail to carry out work effectively.

26. As the evidence is extensive, I have divided my analysis in this section of the decision into 4 time periods: April to December 2017, January to May 2018, June to August 2018, and September to December 2018.

April to December 2017

27. The parties agree that the leaks were first identified in early April 2017, when the owners removed the flooring in SL2. After visiting the strata lot to confirm the leaks, the strata asked DL, an engineer and owner of another strata lot in the strata, to investigate the leak on a volunteer basis.

28. In early May 2017, the strata requested and obtained a report on the condition of the entire building envelope from building envelope consultants Bemco. I find this was a reasonable step to take in the circumstances, since the council knew the building needed general exterior repairs. The Bemco report identified numerous areas that required remedial repairs, including roof and deck membranes, cracked stucco and masonry walls, windows, doors, flashings, sealants, extensive deteriorated wood, courtyard drainage, ground floor patios, and gutters. The report concluded that many of the exterior components of the building had reached the end of their service life. Bemco recommended that the strata investigate a broad envelope remediation plan.

29. I find the Bemco report does not, in itself, establish that that the strata failed in its duty to maintain and repair common property. The correspondence in evidence shows that the strata had previously deferred exterior maintenance while investigating the option of winding up. In the context of a 31-year-old stucco-clad, wood frame building, the Bemco report identifies many areas requiring remediation, but no specifically urgent repairs.

30. DL contacted a contractor, WCSE, in early July 2017, and found out it was very busy and could not start right away. DL contacted WCSE again in August 2017, and was given a potential start date of September 2017 for the repairs. WCSE provided a price estimate for the first portion of repairs on September 7, 2015, and worked on SL2 later in September 2017. On October 3, 2017 DL emailed the owners, stating that the work to waterproof SL2 was “pretty much completed”, and they were waiting for a heavy rainfall to test the repairs to see if additional work was required. DL said the owners could continue their renovations, keeping in mind that the waterproofing at the front of SL2 was not yet done.

31. In October and November 2017 heavy rainfall revealed some further leaking, and additional repairs were proposed and performed, including having a roofing contractor seal the wall joint. On December 19, 2017, DL confirmed that the leak repairs were complete, and that SL2 was dry after a heavy rainfall.

32. The owners say that the strata delayed too long between April and September 2017 before starting repairs, and should have contacted more than 1 contractor. I agree that the correspondence in evidence establishes that the strata did not act with urgency after receiving the Bemco report in May 2017. However, I rely on the reasoning in paragraph 61 of *Leclerc v. The Owners, Strata Plan LMS 614,* 2012 BCSC 74. In *Leclerc,* the BC Supreme Court considered a case of water ingress into a strata lot. The court said that although the strata could perhaps have hastened its investigations of the problem, which took over a year, there was no evidence of deliberate foot-dragging. The Court said that a strata council is not required to be perfect, only to act reasonably with fair regard for the interests of all concerned (paragraph 61).

33. As in *Leclerc,* I find that although the strata council was slow to begin repairs, they acted reasonably in the circumstances. In making that finding, I place significant weight on an email exchanged between Ms. Song and TG in late July 2017. On July 28, 2017, TG requested payment of strata fees, and Ms. Song said she would withhold strata fees until a repair plan was in place. She said she had been waiting all summer to discuss the options. TG replied the next day, and apologized for not holding a meeting sooner. He said Bemco was working on a quote for the repairs, as well as WCSE and another building envelope contractor. TG asked Ms. Song for her suggestions, acknowledging her expertise as an apartment complex manager.

34. Ms. Song replied on July 29, 2017. She thanked TG for the work he was doing to manage the strata in his spare time. She wrote that it was important to deal with the repairs because the damp and mould might affect other people and the building structure, although “It will not affect us if we do not live in there”. Ms. Song’s email also contains the following statements (reproduced as written):

    a. “Hopefully, we could start earlier next year.”

    b. “If we do not have plan early enough, it unlikely will be start next summer. Please do not worry about our rano, it will happen after no possible mildew.”

c. “I think management should be functional and efficiency with important issues. And finish a portion each summer is acceptable if money is tight.”

35. The owners submit the statement “please do not worry about our rano” was a response to the strata’s suggestion that they could perform interior renovations before the exterior repairs occurred. I do not accept that submission, as the evidence before me indicates that the strata did not make that suggestion until October 3, 2017, which was 2 months after this email was sent. Also, even if I accept the owners’ submission on this point, I find the strata reasonably relied on Ms. Song’s statements that it should not worry about their renovation, that it was acceptable for the strata to defer repairs until 2018, and it was acceptable for the strata to put off some portion of the repairs until summer 2018 if money was a concern.

36. I place significant weight on this email because Ms. Song wrote it at the time of the events in question. I find that the email justifies any slowness in the strata’s response to the initial repairs. Although it took several months to find and repair all leak sources, this was justified because it was difficult to tell where leaks would occur until some periods of rainfall had occurred.

37. I also find that the strata acted reasonably in hiring WCSE to perform the repairs. The owners say that DL was not arm’s length, and that WCSE was not qualified to perform the repairs. DL was acting as a volunteer, and although he is a strata lot owner, there is no requirement that he be at “arm’s length”. The work was performed by WCSE, who was chosen by the strata. There was no evidence at the time the strata hired WCSE to indicate it was not capable of performing the work. As stated in *Wright,* the strata is not responsible for errors made by those it hires to carry out work, as long as it acted reasonably in the circumstances.

38. Based on the evidence, I find that after DL reported that the repairs were complete on December 19, 2017, there were no further reports of problems or leaks for several months. While the owners say the strata ought to have confirmed WCSE’s work, I find there is no evidence to support that assertion. DL visited SL2 several

times in November and December 2017 to confirm there were no leaks, and there was no suggestion at that time there was a problem with the work, or with recurring leaks. Thus, as reasoned in *Wright,* I find the strata reasonably relied on its contractor.

January to May 2018

39. I find that the first time the owners notified the strata that they had a problem with WCSE's work was on May 8, 2018. The owners' lawyer, NA, wrote to the strata at that time, and said the repairs were inadequate and unreasonable because they were performed from inside SL2 rather than outside, and because the method of repair meant the floors in SL2 would have to be raised 1.5 inches. The lawyer requested that the strata remediate the repairs. The letter does not mention any recurrence of the leak.

40. There are 2 similar letters from NA in evidence. One is dated May 2, 2018, and the other is dated May 8, 2018. The strata denies receiving the May 2, 2018 letter. I find that the strata did not receive it, since the owners provided no proof of delivery, TG's email address on the letter is missing one character, and the mailing address does not identify any unit number, so it is unclear who in the strata might have received it.

41. The strata did receive the May 8, 2018 letter, and their lawyer, AM, responded on May 22, 2018. AM said the strata authorized repairs based on the advice of its contractor, and the fact that the owners did not like the aesthetics of the repairs did not mean the strata had failed in its duty to repair the leaks. AM wrote that if the owners' position was that the repairs were deficient, the strata required further information or documentation in order to respond, since the strata was aware of no further water ingress into SL2.

42. Again, I find that this response from the strata was reasonable in the circumstances, since the owners had not reported any functional problem with the repairs. The owners say Ms. Song verbally told TG around February 2018 the repairs were not conducted properly. However, there are no particulars of such a conversation

before me, such as date, content, or names of any witnesses. The owners say Ms. Song's February 1, 2018 email to TG confirms the conversation, but I do not agree. I find the content of that email is about whether or not the strata should file an insurance claim to pay for remediation work inside SL2. There is no specific reference to any need to re-do the leak repairs, or to ongoing leaks. Therefore, I find it does not confirm that she had reported problems with the repairs to TG.

43. Ms. Song and Mr. Cattoni sent many emails to the strata from January to March 2018. I find that these emails were exclusively focused on the insurance claim issue, and did not raise any concerns about the quality of the work that had already been performed, or any problem with ongoing leaking.

44. I place some weight on an April 19, 2018 email from TG to Ms. Song. TG gave an update about the insurance issue, stating that the adjuster told him the claim would likely fall below the $5,000 deductible, and was not recommended. TG said he was not sure what else Ms. Song wanted the strata to do, since there were currently no leaks occurring in SL2, the repairs had held up since early January, and the strata felt she was able to start her renovations. This email was provided in evidence by Ms. Song, and there is no indication that she replied to it. I therefore find it was reasonable for the strata to take no action during this period.

45. The first time the documents before me refer to any recurrence of the leaks is in a June 28, 2018 email from AM to NA. AM said that during a recent meeting between the strata council and the owners at SL2, council members observed a new area of water ingress. AM mentioned that the owners had mentioned the leaking in an email from earlier in June 2018. The strata did not refute this, so I accept it is correct. However, based on the correspondence in evidence, I find that the strata acted reasonably in the circumstances.

June to August 2018

46. In her June 29, 2018 email, AM wrote that the strata had hired a waterproofing contractor to inspect the previous repairs, and provide a recommendation and estimate for repairing the current leak. She said the strata would require access to

the strata lot, with notice. There is no evidence that the owners or their lawyer responded. On July 10, 2018, AM emailed NA again, stating that the strata would like to move forward with repairs to SL2 if the owners agreed to provide access to the contractor. The following is a summary of the subsequent email correspondence between the 2 lawyers about the proposed repairs:

a. July 17 – NA said the owners demanded that the strata repair the leak on the outside SL2 as soon as possible. She said the owners did not need to be present but wanted to inspect the work before it was closed up and completed to ensure adequacy.

b. July 18 – AM said the contractor intended to work outside, but might also need access inside SL2 to check the work or do some repairs from inside.

c. July 19 – NA said the strata did not have authority to make repairs inside SL2 without permission, so the contractor should make repairs outside. Also, the strata should remove the faulty patch work inside SL2.

d. July 20 – AM said the strata had arranged for a contractor to inspect the work in SL2, since the owners said was faulty. The owners were obligated to allow access to SL2 upon notice to the strata's contractor, if he required access to inspect or repair the current leak. The strata would rely on the contractor's opinion about whether access was necessary. AM's email concludes as follows:

> The strata would very much like to complete the repairs and resolve this dispute as soon as possible. If you client is taking the position that she will not allow access to her unit, but demanding that the strata make repairs, this puts the strata in an impossible position.

47. The evidence before me indicates there was no response to the July 20 email until August 14. The correspondence indicates that the owners had a new lawyer, LL, after July 20. In an August 14 letter, LL said the previous repairs were not performed in a good and workmanlike manner, and the strata was in breach of its

duty to repair common property. The letter demanded that the strata fix the building exterior by August 24. It also requested a council hearing.

48. AM replied on August 17, stating that for the past several weeks the strata had a new contractor (not WCSE) lined up to investigate and repair the current leak in SL2, and evaluate the previous repairs. She wrote that they had requested access to SL2 for the purpose of conducting repairs, but had been told Ms. Song did not want to provide unnecessary access. AM repeated her request for access, and said the owners were required to grant it.

49. LL asked for particulars for what the contractor needed to examine in SL2, and AM replied that the strata did not know where the leak was coming from, as it was not obvious from the exterior, so the contractor likely needed access to investigate where the leak was and how to seal it. LL replied with some specific times for access.

50. Based on all of this correspondence, I find the strata acted reasonably during this period. The strata promptly offered a reasonable repair strategy upon learning of the leak recurrence, which was to have a new contractor come in and assess the leaks. I find that this reasonably required at least some access to the strata lot, to determine the location and extent of the leaks, and to then recommend a repair strategy. I find that AM's correspondence clearly communicated this plan, and the owners initially refused and then delayed providing the required access until at least August 23.

September to December 2018

51. The emails in evidence show that the strata took steps to obtain quotes from 2 contractors in September 2018. I find this was reasonable in the circumstances.

52. On October 24, 2018, TG emailed the owners and said he was waiting to receive a quote from contractor BM. TG said he thought they should get 2 more contractors to quotes, since he did not think BM would be able to do it, and the strata felt 1 quote

was not sufficient to make a decision. He asked the owners to provide access to SL2 again for another round of inspections.

53. Mr. Cattoni replied on October 25, stating that they were busy for the next 1.5 weeks, and then would be out of the country until November 28. Mr. Cattoni asked for BM's contact information, as he wanted to ask him some questions and he "might have better luck talking to him." On October 29, Mr. Cattoni emailed TG, stating that he had met with BM, who had been very busy but would provide a quote within "a couple of weeks".

54. The owners filed this dispute with the tribunal on November 6, 2018.

55. The next correspondence in evidence is a December 3, 2018 email from TG to Mr. Cattoni. TG asked if Mr. Cattoni had heard anything from BM, since the last time they spoke Mr. Cattoni asked the strata to wait a few weeks so BM could finish up his other job. TG said if Mr. Cattoni had not heard from BM, they should contact another round of contractors to provide quotes.

56. Mr. Cattoni replied on December 6. He said BM had been very busy, but would prepare a quote that night and send it to TG. The evidence shows that BM's associate emailed the quote to TG on December 14. The quote was for $28,880.00 plus GST.

57. I find that the strata acted reasonably during this period by attempting to obtain quotes for the repairs. I place particular weight on the fact that once it was clear BM's quote would be delayed, TG emailed the owners on October 24 and asked for access to SL2 to get 2 more quotes. I find that this was a reasonable suggestion in the circumstances, but the owners did not agree to it. They did not consent to further access to SL2, but instead Mr. Cattoni asked to deal directly with BM. When no quote was provided, TG followed up with Mr. Cattoni on December 3, and again suggested contacting different contractors, but Mr. Cattoni did not agree.

58. For these reasons, I find the strata was not responsible for the repair delays during this period. Mr. Cattoni's emails indicate that he did not think the 1 quote the strata

had received included a sufficient scope of work, but he did not agree to provide access so other contractors could provide quotes. Mr. Cattoni's emails indicate that he wanted to wait for BM's quote, which did not arrive until December 14. Thus, I find the strata acted reasonably in the circumstances, was not negligent, and did not breach its duty to repair the leaks. Rather, I find the correspondence shows that the strata was attempting to proceed cooperatively with the owners to move forward with the repairs.

Negligence

59. The owners say the work performed by WCSE in fall 2017 were insufficient, as they were not designed or constructed to make the building exterior good or sound, and they did not stop water from leaking into SL2. They say the strata was therefore negligent in its duty to repair the common property.

60. I do not agree. As previously stated, the BC Supreme Court held in *Wright* that even where a contractor hired by a strata fails to carry out work effectively, the strata is not responsible and cannot be found negligent as long as it acted reasonably in the circumstances. For the reasons set out above, I find the strata did act reasonably, particularly since DL checked for leaks after heavy rainfall in December 2017. DL's written statement says all of SL2 was dry after several days of continuous rainfall, and the owners were advice to report any leak immediately. The owners do not dispute this, and the evidence shows no reports of recurrent leaking or other structural problems for about 6 months after the work was complete. A December 24, 2017 email from Ms. Song says that Mr. Cattoni was also going to check the work at that time, and there is no record that further problems were reported for several months after that.

61. I accept that the 2018 leaks, and the expert reports provided by the owners, confirm that WCSE's work was not sufficient, and was not up to the standard of an experienced building professional. In a January 3, 2019 report requested by the owners, BM wrote that he had visited the site in August 2018, and observed that a cement slope had been installed in some planters and on SL2's concrete deck, to

try to redirect rain away from the building exterior. BM said this just buried the cold joint in cement, but the membrane had failed, and was old membrane that was not waterproof. BM said that he observed water ingress from the cold joint in the "concrete upturn to floor".

62. The owners also requested a report from an engineer, Mr. McArthur. He reviewed relevant documents and visited the site 3 times in January and February 2019. He described the work performed in Fall 2017, and provided photos. Mr. McArthur confirmed that the grout topping installed by WCSE had failed, with a series of cracks through it that would allow water to enter. He confirmed active leaks in SL2, and leakage into the parking garage beneath SL2. Mr. McArthur recommended some specific further investigations to identify water penetration paths. He said the work performed in Fall 2017 may have partially solved the problem, it was not sufficient and did not address other sources of water ingress.

63. I find that the reports of BM and Mr. McArthur are expert reports, for the purpose of tribunal rule 8.3. I accept that those reports establish that the repairs in Fall 2017 were not fully successful. However, as explained above, I find that the strata reasonably relied on the contractor who performed those repairs, and took steps in December 2017 to make sure the leaks had stopped. For these reasons, and following the court's reasoning in *Wright,* I find the strata was not negligent.

64. Mr. McArthur says the strata did not have a sufficient maintenance program, which contributed to the building envelope problems affecting SL2. Similarly, the owners argue the strata should have followed the recommendations in the Bemco report. While it is correct that the strata has a duty to maintain and repair the building envelope, again, I find that by hiring WCSE and repairing the leaks into SL2, the strata acted reasonably and was not negligent. In assessing the extent of the strata's duty to repair under the SPA, the standard is not perfection. The strata is entitled to prioritize its repairs: *Warren v. The Owners, Strata Plan VIS 6261,* 2017 BCCRT 139.

65. For all of these reasons, I conclude that the strata was not negligent, and met its duty to maintain and repair common property. I dismiss this claim.

Should I order the strata to repair the leaks?

66. At a special general meeting (SGM) held March 25, 2019, the strata ownership voted on a ¾ vote resolution for a $37,240.00 special levy to pay for the SL2 leak repairs. The minutes show the resolution passed unanimously.

67. Despite the approval of this special levy, the owners submit that at the time of their final submission, the repairs had not yet occurred. The reason for this is unclear, although it is likely related to the ongoing tribunal disputes. The strata did not provide an explanation, although it says the issue is moot since the strata had investigated the leak and obtained scopes of work, and acknowledges that it is responsible for the repairs.

68. I find this issue is not moot, since the evidence before me indicates that the leaks are ongoing and that the repairs have not occurred. The repairs are therefore a live issue in dispute between the parties. I therefore order that if the strata has not already done so, it must complete the repair work to SL2 within 90 days of this decision.

Must the strata repair the interior of SL2?

69. The owners say the strata must repair the interior of SL2.

70. In general, strata lot owners are responsible for maintaining and repairing their own strata lots, and strata corporations are responsible to maintain and repair common property and common assets. However, section 72(3) of the SPA states that the strata corporation may, by bylaw, take responsibility for the repair and maintenance of specified portions of a strata lot.

71. The strata repealed and replaced its bylaws by filing consolidated bylaws in the Land Title Office in June 2018. Before that, the Standard Bylaws in the SPA

applied, along with some amendments filed in 2004 and 2005 that are not relevant to this dispute.

72. The parties did not make submissions whether the June 2018 bylaws apply to this dispute, or the previous bylaws. However, I find it does not matter, because under either version of the bylaws, the strata was not required to repair or maintain a strata lot, except for the structure or exterior of the building, balconies, and some other areas that do not apply here. Flooring, drywall, and similar repairs are the individual owners' responsibility.

73. The strata admits it is responsible to repair the building exterior, including stopping the leaks.

74. In *Kantypowicz v. The Owners, Strata Plan VIS 6261*, 2017 BCCRT 29, the strata's contractor power washed the building exterior, causing water to leak into an owner's strata lot and damage the drywall ceiling. A tribunal vice chair reasoned in paragraph 29 that a strata was not responsible for damage to the interior of a strata lot unless it was negligent:

> The strata is not an insurer. As noted in my earlier decision in *Rawle v. The Owners, Strata Plan NWS 3423*, 2017 BCCRT 15, courts have held that a strata is not held to a standard of perfection. Rather, it is required to act reasonably in its maintenance and repair obligations, which in this case arise under bylaw 12. If the strata's contractors fail to carry out work effectively, the strata should not be found negligent if it acted reasonably in the circumstances. The strata has no liability to reimburse an owner for expenses that the owner incurs in carrying out repairs to their strata lot that are the owner's responsibility under the bylaws, unless the strata has been negligent in repairing and maintaining common property. In other words, I find the strata is correct in their submission that it is not responsible for the damage or repairs to SL169, unless it is established that the strata acted negligently (see *Kayne v. LMS 2374*, 2013 BCSC 51, and *John Campbell Law Corp v. Strata Plan 1350*, 2001 BCSC 1342,

and *Wright v. Strata Plan No. 205,* 1996 CanLII 2460, aff'd 1998 CanLII 5823 (BCCA)).

75. While *Kantypowicz* is not a binding precedent, I find its reasoning persuasive and rely on it. I also find that this reasoning applies equally to the facts of this case. I find the strata acted reasonably with regard to the repairs in SL2. In particular, I note there was no evidences of leaks in SL2 before the flooring was removed in April 2017.

76. This principle that the strata is not an insurer, and short of negligence, the strata is not responsible for repairs to the interior of a strata lot has been repeated in other tribunal decisions, including *Vasilica v. The Owners, Strata Plan NW 17*, 2018 BCCRT 216, and in *Di Lollo v. The Owners, Strata Plan BCS 1470*, 2018 BCCRT 24.

77. Following the reasoning in these cases, and since I have found the strata was not negligent, I find it is not responsible to repair the interior of SL2, beyond what is required to stop the leaks. I also note that the owners removed the flooring as part of their renovation, and planned other renovations to SL2, before the leaks were discovered. The owners have not provided evidence about exactly what parts of the SL2 require repairs due to the leaks. I therefore would not order specific repairs in any event.

78. For these reasons, I dismiss the owners' claim for the strata to repair SL2.

Are the owners entitled to reimbursement for expert reports?

79. The owners provided an invoice from BM for $735.00, and an invoice from Mr. McArthur for $5,489.03.

80. I find the owners are not entitled to reimbursement for these reports. The owners obtained these reports in January and February 2019. At that time, the correspondence from the strata and its lawyer had already clearly stated that the strata took responsibility for the leaks and was willing to repair them. The December 2018 quote prepared by BM contained a scope of work. The owners have not

established that the strata was negligent in its duty to repair the common property. For these reasons, I conclude that these expert reports were not a reasonable dispute-related expense.

81. I dismiss the owners' claim for reimbursement for expert report costs.

Are any parties entitled to reimbursement for legal fees?

82. Both parties request reimbursement of legal fees.

83. Tribunal rule 9.4(3) says that except in extraordinary circumstances, the tribunal will not order one party to pay another party's legal fees in a strata property dispute. I find the circumstances of this dispute are not extraordinary. I therefore do not order reimbursement of legal fees.

84. The strata argues that it is entitled to an order analogous to special costs, as in *Parfitt et al v. The Owners, Strata Plan VR 416 et al,* 2019 BCCRT 330. They say this is because the owners' second dispute is an abuse of process. I address the abuse of process argument in my decision on dispute ST-2019-000709. In that decision, I made a finding that the second dispute is not an abuse of process. I therefore find the strata is not entitled to any reimbursement of legal fees on that basis.

85. I dismiss both parties' claims for legal fees.

TRIBUNAL FEES AND EXPENSES

86. The owners seek reimbursement of $225 in tribunal fees, plus 81.02 for a land title search and $30.65 in courier fees.

87. The owners were not substantially successful in this dispute. However, since they were successful in one claim, and in accordance with the CRTA and the tribunal's rules I find the owners are entitled to reimbursement of half of these claimed expenses, which equals $168.44.

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

ORDERS

89. I order the following:

    a. Within 90 days of this decision, the strata must repair the leaks into SL2 if it has not already done so.

    b. Within 30 days of this decision, the strata must reimburse the owners $168.44 for tribunal fees and dispute-related expenses.

90. I dismiss the owners' remaining claims.

91. I dismiss both parties' claims for legal fees.

92. The owners are entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.

93. 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 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.

94. Orders for financial compensation or the return of personal property can also be enforced through the 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, the owners 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, Vice Chair