



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 1083 v. Mann*, 2020 BCCRT 301

B E T W E E N :

The Owners, Strata Plan LMS 1083

APPLICANT

A N D :

BALJIT MANN and NAMDHARI SANGAT CANADA SOCIETY (B.C.)

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about repairs for unauthorized alterations to strata lots. The applicant, The Owners, Strata Plan LMS 1083 (strata), says that the respondents, Baljit Mann and Namdhari Sangat Society (B.C.) (Society), performed unauthorized alterations to strata lots that they own. The strata says the respondents failed to pay

for the associated repair costs, which have been charged back against their strata lots. The strata asks for orders that Mr. Mann pay it \$72,118.39 in repair costs for strata lots 10, 11 and 12, and that the Society pay it \$25,259.10 for the costs of repairs to strata lot 18.

2. Mr. Mann did not file a Dispute Response, which I will address below. The Society does not dispute that it made unauthorized alterations or that it is responsible for the repairs. However, the Society says the strata did not follow an agreement about how to proceed with the repairs, and disputes the amount the strata claims from it.
3. The strata is represented by a member of the strata council. The Society is represented by a director.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.

7. 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.

ISSUES

8. The issues in this dispute are:
 - a. what effect, if any, does Mr. Mann's failure to participate in this dispute have on this decision,
 - b. whether Mr. Mann is responsible for \$72,118.39 in repair costs for strata lots 10, 11 and 12, and
 - c. whether the Society is responsible for \$25,259.10 in repair costs for strata lot 18.

BACKGROUND, EVIDENCE AND ANALYSIS

9. The strata is a commercial building with 26 strata lots. Mr. Mann owns strata lots 10, 11 and 12 and operates a truck repair business, B&B Trucking, in them. The Society owns strata lot 18.
10. The strata repealed its previous bylaws and filed new bylaws at the Land Title Office in 2001. Bylaw 5 states that an owner, tenant or occupant must obtain the written approval of the strata before making an alteration to a strata lot that involves the structure or exterior of a building, doors or common property (CP) located within the boundaries of a strata lot. Bylaw 6 states that an owner, tenant or occupant must obtain the approval before altering CP.
11. In December of 2016, the strata amended bylaw 5 to, among other things, permit it to "return to its previous condition any alteration which has been made and has not been approved" at an owner's expense.
12. At some point prior to 2015, the respondents altered several strata lots by cutting into concrete walls and installing doors. While it is not clear when, how or why these

alterations took place, the respondents have acknowledged that they did not have approval from the strata.

13. The strata says it discovered the unauthorized alterations during an inspection. The strata was concerned that the alterations might impact the strata's ability to obtain insurance coverage and arranged for a consultation with a structural engineer.
14. According to a December 18, 2015 email message from Lang Structural Engineering Inc. (Lang), the alterations created concerns about "wind load on the walls and vertical roof load". Lang's opinion was that the new openings "reduced the ability of the structures to resist seismic loads".
15. Based on Lang's recommendations, the strata arranged for some emergency repairs and obtained quotes for the remainder of the required repairs. The strata's lawyer wrote to the respondents in December of 2016 about the additional repair work and the anticipated costs, which (based upon the quote from the contractor selected by the strata) would be a minimum of \$84,800 plus GST for repairs and \$5,000 plus GST in engineering costs. The letter also offered the respondents the choice of dealing with (and paying) the contractor and engineer directly, or paying the strata to complete the work. The strata's lawyer invited the respondents to request a hearing if they did not believe that they had breached the bylaws.
16. It does not appear that the respondents requested hearings in response to the lawyer's letters. The parties had discussions about how to proceed with the work, and the strata obtained building permits for Lang's recommended scope of work. The respondents paid portions of Lang's invoices and permit fees using a formula of 78% assigned to Mr. Mann and 22% assigned to the Society.
17. On an unspecified date in the summer of 2017, Mr. Mann (on behalf of B&B Trucking) and a representative of the Society signed an "Agreement for tilt building reinforcement & modifications" and acknowledged their responsibility for the repairs. This agreement stated that "each party will be responsible for their own costs however the work will be completed together under the City of Surrey permit,

already issued” and based on Lang’s drawings. The strata is not a party to this agreement, and it is not who drafted it.

18. At some point in September of 2017, Mr. Mann signed an agreement with the strata about the repairs. This agreement specifically acknowledged that the alterations were unauthorized and “not in compliance with the Building Code or engineering standards”. The agreement provided that the repairs to the strata lot would be completed by a contractor approved by the strata by October 23, 2017. The agreement also permitted the strata to step in and complete the repairs if they did not proceed in accordance with a construction schedule (which is not in the evidence before me). Although there were signature lines for both the Society and the strata, only Mr. Mann signed this agreement.
19. The respondents worked with ICE Developments Ltd. (ICE) as a potential contractor. A series of email messages among ICE, Lang, the Society and the strata’s property manager between August 31, 2017 and September 5, 2017 show that some issues arose with the scope of work. ICE discussed work that was not consistent with Lang’s drawings and there was a concern about whether the work proposed by ICE would reduce the size of the doors on Mr. Mann’s strata lots (something he apparently did not want). In addition, the strata council was concerned that the quote provided by ICE was incomplete, and did not include the specifications, scope of work, or terms of the agreement.
20. The parties did not reach a resolution about the construction issues. The strata arranged for its own contractor to complete the repairs at a cost of \$102,007.93 (inclusive of taxes). The contractor’s invoices did not break down the costs by strata lot.
21. On January 22, 2019, the strata’s property manager wrote to Mr. Mann to advise that the strata had charged back repair costs to his strata lot accounts as follows: \$22,344.59 for strata lot 10, \$22,344.59 for strata lot 11, \$22,344.60 for strata lot 12. On that same date, the property manager also wrote to the Society and advised that the strata had charged back \$25,259.10 in repair costs to its strata lot account.

22. The property manager's letters asked the respondents to make their payments within 21 days. According to the account ledgers for each strata lot, no payments have been received.
23. The strata asks for orders that the Society pay it \$25,259.10 and Mr. Mann pay it \$72,118.39 (for the amount of the 2019 chargebacks plus \$5,084.61 in chargebacks from the emergency repairs).

Mr. Mann's Failure to Participate

24. The tribunal served the strata's Dispute Notice on Mr. Mann by regular mail to strata lot 10, which is the address shown on the Dispute Notice. According to tribunal rule 2.2(2), the service was effective on May 5, 2019 and the deadline for filing a response was June 4, 2019. As noted above, Mr. Mann did not file a response.
25. Tribunal rule 4.1 says that a party named as a respondent who fails to respond to a served Dispute Notice is in default. According to rule 4.3, a party in default generally is presumed to be liable, and the tribunal may resolve the dispute without that respondent's participation.
26. Previous correspondence sent to Mr. Mann by the strata and its lawyer was addressed to the strata lots, and the September 2017 agreement signed by Mr. Mann listed a strata lot as his address. Tribunal rule 2.2(2) states that a Dispute Notice and instructions for response served by the tribunal by regular mail are considered received 10 days after the day they are mailed unless the tribunal receives satisfactory information that they were not received by the respondent. There is no indication that the package containing the Dispute Notice was returned to the tribunal as undeliverable. Based on the evidence before me and the tribunal's rules, I find that Mr. Mann received the strata's Dispute Notice and failed to respond to it.
27. Based on the evidence before me, Mr. Mann is well aware of the subject matter of the dispute and, by signing the September 2017 agreement, has acknowledged his

responsibility for repair costs. I therefore assume that Mr. Mann is liable for his share of the repair costs because he is in default.

28. I find that Mr. Mann must pay the strata the \$72,118.39 in repair costs it claims (which includes the \$67,033.78 in chargebacks noted in the January 22, 2019 letters plus \$5,084.61 in previous chargebacks from the emergency repairs).

Society's Liability for Repair Costs

29. The Society admits that it made some alterations without permission from the strata and that it is responsible for the repair costs. However, it disagrees with the way the strata proceeded with the repairs and with the costs allocated to it. While the Society does not dispute its portion of engineering and permit costs, it says that the amount of construction costs the strata has charged to it is unfair given the differences in construction labour and materials between its strata lot and Mr. Mann's strata lots. The Society also says that a member of the strata council told one of its representatives that the Society's portion of the work would cost only \$12,000.
30. The Society says the strata did not comply with the agreement to permit it to select its own contractor. This is of particular importance as the Society says it could have negotiated favourable pricing with some contractors due to its charitable status. The Society also says that it should have been able to get its own building permit separate from the work on Mr. Mann's strata lots. The Society takes issue with the fact that a member of the strata council obtained the building permit in his own name, and submits that there was some sort of inappropriate conduct or conflict of interest involved with this.
31. The strata says it moved ahead with the repairs when it determined that the respondents were unable or unwilling to perform them. The strata submits that it had the authority to make the repairs under section 133 of the *Strata Property Act* (SPA) and the bylaws.

32. The evidence before me does not support the position that the strata council member who obtained the permits (and who is not named as a party in this dispute) had any connection with the engineers or contractors involved in the repairs. Section 32 of the SPA addresses conflicts of interests for strata council members. The British Columbia Court of Appeal stated in *Downside Brewing Company Ltd. v. The Owners, Strata Plan LMS 38371*, 2007 BCCA 183, that remedies for breaches of section 32 of the SPA are set out in section 133. Section 122(1) of the CRTA specifically says that the tribunal has no jurisdiction in relation to a claim under section 33. The strata council member in question is not a party to this dispute, and I cannot make any orders about non-parties. Even if this individual was named as a party, I do not have the jurisdiction to address conflicts of interest.
33. I find that the strata did not have an agreement with the Society about how the repairs would proceed. As discussed above, the “Agreement for tilt building reinforcement & modifications” was signed by the respondents and the strata is not a party to it. Although there is some suggestion that the strata council agreed with the contents of the agreement, I find that it is not binding on the strata.
34. The evidence before me suggests that the Society did not intend to comply with the terms of this agreement, which required it to work together with Mr. Mann, proceed with the work that had been approved by Lang and the municipality on the already-issued building permits. As discussed above, there were changes to the proposed scope of work and the Society wished to obtain its own building permits and conduct the repairs separate from the work on Mr. Mann’s strata lot. In these circumstances, I find that it was reasonable for the strata to conclude that the repairs would not proceed in a timely manner. I find that timely repairs were particularly important as, according to Lang, the unauthorized alterations affected the building’s structural integrity.
35. Section 133(1) of the SPA allows a strata corporation to do what is reasonably necessary to remedy a contravention of its bylaws, including doing work on or to a strata lot, CP or common assets. Section 133(2) states that a strata corporation

may require that the reasonable costs of remedying the contravention be paid by the person who may be fined for the contravention.

36. However, section 135 of the SPA states that a strata corporation must not require a person to pay the costs of remedying the contravention unless it has given that person the particulars of the complaint in writing and given them a reasonable opportunity to answer it. As discussed above, the strata's lawyer communicated the details of the bylaw breach and invited the respondents to request hearings about the matter. Although this correspondence did not specifically reference section 135 of the SPA, I am satisfied that the requirements of this section were met. I find that the strata acted within its authority when completing the work to remedy the bylaw contraventions and charging the costs back to the respondents.
37. The next consideration is the amount of the repair costs that have been attributed to the Society. The strata charged back approximately 25% of the repair costs (inclusive of GST) to the Society.
38. The Society submits that the allocation of costs is unfair as special levies are to be allocated based on proportional unit entitlement. It says that its unit entitlement is 4%, and there has not been a unanimous vote to deviate from that formula. However, the repair costs are not costs associated with a special levy. Section 133 of the SPA does not require the strata to apportion repair costs by unit entitlement and permits the charge of "reasonable costs" of remedying contravention.
39. The Society did not provide evidence to support its position that its portion of the repair costs were expected to be around \$12,000. In its August 16, 2017 quote, the strata's contractor provided an approximate cost breakdown per strata lot, with \$25,358 plus GST for strata lot 18. I do not find that the evidence establishes the existence of any agreement between the Society and the strata that repair costs would be a particular amount.
40. The Society also says that, as the repairs to the Mann strata lots were more extensive and involved more materials than the repairs to its own strata lot, it should pay less. The Society provided a document created by a licenced builder that

considers the costs of the “tilt up panel repair work” recommended by Lang. The builder states that the “ratio of work” for the project was 15% for the Society and 85% for Mr. Mann’s strata lots. The builder also references a “weighted average” of 92% for Mr. Mann’s strata lots and 8% for the Society. This document appears to consider the amount of materials used. However, it did not address the total costs of the project’s equipment and labour.

41. The builder did not mention the actual scope of work performed by the strata’s contractor or comment on its estimate, as noted above, that the repairs to strata lot 18 would cost approximately \$25,000. It is not clear to me whether the builder considered the same scope of work as the contractor. In the circumstances, I find that the Society has not proven that its share of the repair costs should be approximately \$12,000.
42. As noted above, the contractor’s invoices did not provide a break-down of the actual costs of repairs for each strata lot. The strata charged back approximately 25% of the repair costs (inclusive of GST) to the Society. It says that it is reasonable to charge the Society 25% of the repair costs as there were 4 strata lots involved in the repairs. However, the strata previously used a cost splitting formula of 22% to the Society and 78% to Mr. Mann. The strata did not explain why it used a different cost sharing arrangement for the repair costs. I find that the strata has not proven that the Society’s proportionate share of repair costs is higher than its share of the previous engineering and permitting costs.
43. For these reasons, I find that the Society is responsible for 22% of the repair costs, or \$22,457.14.

TRIBUNAL FEES, EXPENSES AND INTEREST

44. Under section 49 of the CRTA, 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. I see no reason in this case not to follow that general rule. I therefore order the respondents to each reimburse the strata for

\$112.50 in tribunal fees (for a total of \$225.00). The strata stated that it wanted to claim for dispute-related expenses but it did not provide an amount of these expenses or any supporting evidence. As I find that the strata has not proven that it incurred any dispute-related expenses, I make no order about this.

45. The strata also claims for legal fees it says it paid in relation to this matter. The strata did not specify an amount of legal fees and did not provide any supporting documentation. Rule 9.4(3) states that, except in extraordinary cases, the tribunal will not order a party to pay to another party fees charged by a lawyer or other representative in a strata property dispute. I do not find that the circumstances of this case are extraordinary, and so would not have made an order for these expenses even if they had been substantiated.
46. The *Court Order Interest Act* (COIA) applies to the tribunal. I find that the strata is entitled to pre-judgement interest on the repair costs from February 13, 2019 (which was the due date for the payment according to the January 22, 2019 letters). For the Society, this equals \$473.91. For Mr. Mann, this equals \$1,521.90.

ORDERS

47. I order that:

- a. within 30 days of the date of this decision, Mr. Mann must pay the strata a total of \$73,752.79, broken down as follows:
 - i. \$72,118.39 in repair costs,
 - ii. \$1,521.90 in pre-judgment interest under the COIA, and
 - iii. \$112.50 as reimbursement of tribunal fees.
- b. within 30 days of the date of this decision, the Society must pay the strata a total of \$23,043.55, broken down as follows:
 - i. \$22,457.14 in repair costs,

- ii. \$473.91 in pre-judgment interest under the COIA, and
- iii. \$112.50 as reimbursement of tribunal fees.

48. The strata is also entitled to post-judgment interest under the COIA.

49. 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). Once filed, a tribunal order has the same force and effect as an order of the BCSC.

50. 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, the strata can enforce this final decision by filing a validated copy of the attached order in the BCPC. Once filed, a tribunal order has the same force and effect as an order of the BCPC.

Lynn Scrivener, Tribunal Member