



# Civil Resolution Tribunal

Date Issued: June 4, 2021

File: ST-2020-005721

Type: Strata

Civil Resolution Tribunal

Indexed as: *Chan v. The Owners, Strata Plan VR. 53*, 2021 BCCRT 615

**BETWEEN:**

SARAH CHAN

**APPLICANT**

**AND:**

The Owners, Strata Plan VR. 53

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about repairs and maintenance. The applicant, Sarah Chan, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan VR. 53 (strata). Miss Chan says the strata acted negligently and failed to meet its repair and maintenance responsibilities under the *Strata Property Act* (SPA) and the strata's bylaws. She says this led to water damage and the loss of use of her basement. She

also says the strata acted in a significantly unfair manner by not prioritizing repairs on her strata lot. She seeks an order for the strata to repair the interior of her strata lot and foundation cracks she says are the cause of the water ingress. She also seeks \$10,000 as compensation for the loss of use of her basement at various times, from 2014 onwards.

2. The strata disagrees. It says it reasonably relied on the opinions of professionals to maintain and repair common property. It says there is no evidence that investigating or repairing any foundation cracks would have prevented any water ingress in Miss Chan's strata lot. The strata also says Miss Chan's claims would interfere with the strata's entitlement to reasonably prioritize repairs. The strata claims \$3,635.01 as reimbursement for legal fees. Miss Chan opposes reimbursement.
3. Miss Chan represents herself. A strata council member represents the strata.
4. For the reasons that follow, I dismiss Miss Chan's claims. I also dismiss the strata's claim for reimbursement of legal fees.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.
6. The CRT 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 CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The

CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.

8. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

### ***The Limitation Act***

9. As noted above, Miss Chan claims for loss of use of her basement from 2014 onwards. The strata says that at least some of her claims are out of time under the *Limitation Act*. Ultimately, I find I do not need to consider this issue because I have dismissed Miss Chan's claims on the merits.

## **ISSUES**

10. The issues in this dispute are as follows:
  - a. Did the strata breach any of its repair and maintenance obligations or act negligently?
  - b. Did the strata act in a significantly unfair manner by not prioritizing repairs to Miss Chan's strata lot more highly?
  - c. Are any remedies appropriate?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, Miss Chan as the applicant must prove her claims on a balance of probabilities. I have reviewed the parties' submissions and evidence, but only comment on them as necessary to explain my decision.

### ***The Strata Plan and Miss Chan's Strata Lot***

12. The strata has existed since 1972. It consists of 150 residential strata lots that provide townhouse-style housing. Miss Chan owns and lives at strata lot 141.

13. Strata lot 141 is in building Q of the strata plan. Building Q has a row of 4 connected strata lots on each of its west and east sides. Strata lot 141 is on the west side. Strata lots 140 and 142 are its southern and northern neighbors, respectively. Each of the strata lots in building Q, and nearly all of the strata lots in the strata, have a basement, main floor, and second floor.
14. The various contractor's reports show the following. Building Q's drainpipes run underneath the strata lots. They carry rainwater. Some run directly beneath strata lot 141's basement walls. The pipes are connected to a perimeter drainpipe that runs along the perimeter of the building. The perimeter drainpipe is connected to 2 sumps located on the west side of building Q. Some contractors refer to this system as the perimeter drainage. As discussed below, the evidence shows there are breaks in the drainpipes below building Q's basement. There are also issues affecting the perimeter drainage.
15. Much of the evidence refers to the "3473 building" and unit numbers. As noted in the strata plan, the strata lot numbers match the unit numbers in each strata lots' civic address. It is undisputed that building Q is the "3473 building".
16. The strata's bylaws are registered in the Land Title Office. On November 30, 2001, the strata repealed and replaced its existing bylaws. I will discuss the bylaws in greater detail below.

### ***The 4 Water Ingress Incidents***

17. Miss Chan says she first experienced water ingress on January 11, 2014 from heavy rain. The ingress affected the basement walls between her strata lot and strata lots 140 and 142. The evidence indicates some water entered by rising up from pipes below these walls. The January 13, 2014 strata council meeting minutes show several strata lots at building Q were affected by rainwater ingress at the time.
18. The strata paid A-1 Drainage Plumbing & Heating Ltd. (A-1) to investigate and conduct repairs. In its February 20, 2014 report, A-1 noted that it removed roots and dirt that were partially blocking floor drains in strata lots 135, 139, and 141. It also

cleaned a sump serving building Q. It “discovered” another sump buried on the east side of building Q. It wrote that this sump “most definitely needs to be exposed and reactivated to complete the systems function”. The strata paid another contractor to complete emergency remediation work in the strata lots, including strata lot 141.

19. On April 17, 2014, rainwater entered Miss Chan’s strata lot through the basement walls next to strata lots 140 and 142. A-1 investigated and recommended directing roof water into a drainage field. At the May 26, 2014 strata council meeting, the strata decided to hire Diamond Building Maintenance (Diamond) to do this work.
20. Miss Chan questions whether this work was completed. I find it likely was. The strata advised her in an August 13, 2014 letter that Diamond completed the work for strata lot 141 and noted the work had already been done for strata lot 142 by a previous contractor. Further, more than 4 and a half years passed before a third water leak affected strata lot 141.
21. In a May 22, 2014 letter, Miss Chan advised the strata of a long exterior crack in the foundation between strata lots 141 and 142. She wrote that she did not know if the crack would lead to flooding or not, but she wanted the strata council to discuss it. In a May 30, 2014 email, she also asked a strata council member to have an engineer investigate the crack. Miss Chan specifically alleges that the strata negligently failed to investigate the crack. As discussed below, I find there is no evidence before me that it caused or contributed to any water ingress.
22. On December 11, 2018 rainwater began coming up through the wall between strata lots 140 and 141. There were also reports of sewer or drain backups at several strata lots around the complex. The strata hired Blue Planet Plumbing & Heating Ltd. (Blue Planet) to investigate on December 11, 2018. Blue Planet wrote in its invoice that the main issue was the perimeter drainage. In January 2019, the strata also hired a contractor to perform emergency water extraction services at multiple strata lots, including strata lot 141.
23. At the January 22, 2019 strata council meeting, the strata council decided to file an insurance claim. It also reviewed Blue Planet’s proposal to install a storm drain and

sump pump. The minutes show the council decided to defer action until a camera inspection report was completed. That report is not before me. In April 2019, the strata accepted Blue Planet's proposal to install the storm drain, sump pump, and piping that would direct water away from the west side of building Q. It estimated \$18,375 for the work. Blue Planet completed the work in June 2020.

24. On February 1, 2020, 11 strata lots experienced rainwater ingress. This included Miss Chan's strata lot. I find this was the fourth and final incident of water ingress at issue in this dispute. The ingress affected the wall between strata lots 141 and 142. In her February 2, 2020 letter, Miss Chan blamed the exterior foundation crack for the ingress. The strata did not hire a contractor to remove moisture from her strata lot. The parties disagree on whether the strata should have done so.
25. The strata filed an insurance claim which the insurer rejected. At the March 12, 2020 annual general meeting, the owners in the strata approved a 3/4 vote resolution for a \$95,000 special levy for "addressing the drainage, plumbing, and related foundation issues". At the next strata council meeting on April 27, 2020, the strata council also decided to investigate the exterior foundation crack.
26. Starting in May 2020 the parties exchanged correspondence about whose repairs should be prioritized. In a June 4, 2020 letter, the strata said it would eventually address repairs in strata lot 141, but those repairs were "not urgent". It said it had first scheduled drainage repairs on the east side of building Q. The strata said this might alleviate water ingress for Miss Chan as well.
27. Miss Chan disagreed and requested a hearing, which was held at the July 13, 2020 strata council meeting. In its July 20, 2020 letter to Miss Chan, the strata wrote the following. A "significant percentage" of owners had not paid the special levy. The strata would need additional funds to complete remediation for water ingress issues, which were more than initially estimated. It planned to raise funds through another special levy. The strata could not promise that work on strata lot 141 could be completed by August 31, 2020.

28. Miss Chan says the strata breached bylaw 16(3). That bylaw says that the strata council must give an applicant owner a written decision within 1 week of the hearing. Given the above-noted dates, I do not find the strata breached bylaw 16(3). She also says the strata did not adequately answer questions in her July 24, 2020 reply and other letters to the strata. I find nothing turns on these allegations as Miss Chan did not request a specific remedy for them.

### ***The BMAC Reports***

29. The strata hired BMAC Technologies and Consulting Inc. (BMAC) to inspect strata lot 141 and provided a report. Its September 8, 2020 report BMAC says the following. Its engineer examined the walls separating strata lot 141 from strata lots 140 and 142. BMAC found moisture at the base of both walls but no visible stains or water marks. BMAC opened up the drywall and found stains and mould on the drywall back of both walls. BMAC recommended replacing the bottom plate of the wood framing in the wall next to strata lot 142 and replacing drywall for both walls. BMAC estimated \$4,000 for this work. BMAC also recommended doing these repairs after the source of the water ingress was addressed.

30. By this time there was also a bubble forming on the basement wall below strata lot 141's entrance. Miss Chan refers to the bubble in her October 4, 2020 letter to the strata.

31. In December 2020 BMAC investigated the source of the leaks using cameras inserted into the drain pipes. In its report BMAC said the basement floor drainage had the following issues. There was significant sand and mud in the drainpipe under the wall between strata lots 140 and 141. There was a "ball" impeding the drainage below the wall between strata lots 141 and 142. There appeared to be a pipe breakage or separation beside strata lot 135, located on the east side of building Q. Further, the perimeter drainpipe leading away from the building appeared clogged.

32. BMAC recommended repairs totaling \$80,000 plus GST. Specifically, it recommended cutting the foundation slab open and cleaning the pipes at an estimated cost of \$20,000 plus GST. It also recommended exposing the buried

building sump identified by A-1 in 2014 at a cost of \$25,000 plus GST. Finally, it recommended rerouting east elevation roof rainwater towards the sump, at a cost of \$35,000 plus GST. BMAC also investigated leaks another building in the strata in October 2020. It recommended further repairs for that building totaling \$15,000 plus GST. The strata says it intends to complete the recommended repairs after obtaining more funding.

33. BMAC did not discuss the foundation crack identified by Miss Chan. Blue Planet specifically mentioned in its December 2018 receipt that it considered whether building Q's foundation was a source of leaks. However, it placed blame on the "failed perimeter drain". Miss Chan did not provide any expert or other evidence to show the foundation crack caused or contributed to water ingress. As such, I find that the crack played no role in the water ingress affecting Miss Chan's strata lot.

***Issue #1. Did the strata breach any of its repair and maintenance obligations or act negligently?***

34. Miss Chan requests an order for the strata to repair exterior foundation cracks. It is undisputed that the foundation is common property. Miss Chan also requests an order for the strata to provide "inside restoration", which I find means repairs to the interior of her strata lot, such as drywall.
35. The SPA and the strata's bylaws set out the repair and maintenance obligations of the strata and its owners. SPA sections 3 and 72 require the strata to repair and maintain common property and common assets. Bylaw 9 also requires the strata to repair and maintain such property. SPA section 72(3) permits the strata to take responsibility for repair and maintenance of specified parts of a strata lot, but I find there are no relevant bylaws to that effect.
36. In discharging its repair and maintenance obligations, the strata must act reasonably. The starting point for the analysis should be deference to the decisions made by the strata council as approved by the owners: *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784 at paragraphs 23 to 32. Owners generally do not have a right to demand certain maintenance as a priority or impose deadlines for their requests to be fulfilled.



The strata is entitled to consider an owner's maintenance and repair requests with a view to the financial circumstances of the community and the strata corporation's capacity to manage its overall maintenance needs. See for example, the non-binding but persuasive decision of *Warren v. The Owners, Strata Plan VIS 6261*, 2017 BCCRT 139 at paragraphs 46 to 47.

37. Under bylaw 2(1), an owner must repair and maintain their strata lot, except for repair and maintenance that is the strata's responsibility under the bylaws. There are no bylaws that say the strata must repair the interior of strata lots. However, if the strata is negligent, it may then be liable for resulting damage to owners' strata lots: *Kayne v. LMS 2374*, 2013 BCSC 51 and *Basic v. Strata Plan LMS 0304*, 2011 BCCA 231.
38. The test for negligence is set out by the Supreme Court of Canada in *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3. In order to succeed in a negligence claim, Miss Chan must prove 1) the strata owed Miss Chan a duty of care, 2) the strata breached the standard of care, which is reasonableness in this case, 3) Miss Chan sustained a loss, and 4) the loss was caused by the strata's negligence.
39. Overall, I find the strata acted reasonably and did not breach the standard of care. The evidence supports the conclusion that over the years, the strata investigated water ingress complaints and took actions to address them in multiple strata lots. The strata hired contractors in February and April 2014 to respond to Miss Chan's and others' complaints about water ingress.
40. I acknowledge that in May 2014 Miss Chan notified the strata about the exterior foundation crack. However, I have found that the crack was not for the cause of any of the water ingress incidents in Miss Chan's strata lot. I am therefore not satisfied that any failure by the strata to investigate or fix it caused any loss.
41. I note that the strata did not act on A-1's recommendation to reactive the buried sump in 2014. However, I do not find this means the strata breached the standard of care. This is because I find the strata did not receive consistent advice about the buried sump. After the second leak of April 2014, A-1 recommended redirecting roof water instead of reactivating the sump. When the next leak occurred in 2018, Blue Planet

did not recommend reactivating the sump and instead recommended creating a storm drain. Finally, Miss Chan did not allege that the strata should have reactivated the sump earlier or that this led to her loss. She did not seek an order about it.

42. After 2014, several years passed without issue. There is no indication the strata received any advice to do further work during this time period. So, I find the strata reasonably did not hire any professionals to examine drainage during this time.
43. Likewise, I find the strata reasonably responded to the December 2018 water ingress. It hired a contractor to perform emergency interior remediation in January 2019. It also retained Blue Planet to install the storm drain.
44. I also find the strata acted reasonably after the fourth leak of February 2020. It retained BMAC and through it, obtained comprehensive reports on what work must be done.
45. As noted earlier, the strata did not provide interior restoration work in Miss Chan's strata lot. However, the strata is not normally liable for damage to a strata lot unless it is negligent. I have not found it to be negligent here.
46. I note that BMAC pointed out in its September 2020 report that a bottom plate required replacement. This may be a structural component of the building, which the strata must repair and maintain under bylaw 9. Miss Chan did not mention it or make any claims about it. It was identified after Miss Chan filed her application for dispute resolution. I find this to be a separate issue from the "inside restoration" sought by Miss Chan and not properly before me.
47. As I have found the strata was not negligent and did not breach its repair and maintenance obligations, I do not find it necessary to order the strata to repair the foundation cracks or complete interior restoration on strata lot 141. For the same reasons, I do not award any damages to Miss Chan for loss of use of her basement.
48. I would also decline to award any compensation for negligence because I do not find Miss Chan's loss proven. BMAC identified mould in the drywall in its September 2020 report but did not comment on its impact. There is no evidence that says it is unsafe

for Miss Chan to use her basement. Contrary to this, BMAC recommended delaying repairs until the underlying drainage issues were addressed. There is no indication Miss Chan asked the strata to investigate whether the mould levels in the air were unsafe. Instead, Miss Chan pressed for repairs.

49. I dismiss this claim.

***Issue #2. Did the strata act in a significantly unfair manner by not prioritizing repairs to Miss Chan's strata lot more highly?***

50. Miss Chan alleges the strata has acted in a significantly unfair manner. SPA section 164 sets out the BC Supreme Court's authority to remedy significantly unfair actions. The CRT has jurisdiction over significantly unfair actions under CRTA section 123(2), which has the same legal test as cases under SPA section 164. See *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164. Significantly unfair conduct is conduct that is 1) oppressive in that it is burdensome, harsh, wrongful, lacking in probity or fair dealing, or done in bad faith, or 2) conduct that is unfairly prejudicial in that it is unjust or inequitable: *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173 at paragraph 88.

51. In *Kunzler*, the Court of Appeal confirmed that an owner's expectations should be considered as a relevant factor. I therefore use the test from *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, to consider the following factors:

- a. What is or was the expectation of the affected owner?
- b. Was that expectation on the part of the owner objectively reasonable?
- c. If so, was the expectation violated by an action that was significantly unfair?

52. In submissions Miss Chan says the strata's decision to prioritize other repairs was significantly unfair. I find her expectation is that the strata should have conducted repairs on her strata lot earlier, with the money raised by the March 2020 special levy.

53. For much the same reasons stated earlier, I do not find Miss Chan's expectation reasonable in the circumstances. The strata is not obligated to repair the interior of

her strata lot unless the strata is negligent. I have found that the strata was not negligent, as stated above. As such, I do not find the strata acted in a significantly unfair manner.

54. Miss Chan also said the strata acted in a significantly unfair manner by not repairing the foundation crack. I do not find this was a reasonable expectation, as I have already found the foundation crack played no role in the water ingress.
55. I would also decline to award monetary compensation for significant unfairness because I find her loss of use of the basement unproven, as discussed earlier.
56. For those reasons, I dismiss this claim as well.

## **CRT FEES AND EXPENSES**

57. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule.
58. The strata is the successful party. It paid no CRT fees. However, it claims \$3,635.01 in legal fees. Under rule 9.5(3), the CRT will not order compensation for such fees unless there are extraordinary circumstances. Overall, I do not find this dispute to be extraordinary. I find it was more complicated and involved more evidence than the average dispute, but not to an extraordinary degree. The strata also did not provide any evidence, such as a statement of account, to support its claim for legal fees. For those reasons, I dismiss this claim as well.
59. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Miss Chan.

## **ORDERS**

60. I dismiss Miss Chan's claims and this dispute.

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David Jiang, Tribunal Member