



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Irwin v. The Owners, Strata Plan VIS 6278*, 2021 BCCRT 658

B E T W E E N :

ASHLEY IRWIN also known as ASHLEY HANCOCK

APPLICANT

A N D :

The Owners, Strata Plan VIS 6278

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute about repairs to common property (CP).

2. The applicant, Ashley Irwin, also known as Ashley Hancock, is a former owner of a strata lot (#411) in the respondent strata corporation, The Owners, Strata Plan VIS 6278 (strata).
3. Ms. Irwin submits that the strata failed to reimburse her the cost of remediating mould from the CP attic directly above #411 before she sold it, as allegedly promised by the strata council president. She also says the strata is responsible for the cost of replacing 4 roof vents that she alleges were not up to Building Code requirements and required replacement so that mould “recontamination” of the attic space would not reoccur. In submissions, she says the strata would be unjustly enriched if it did not reimburse her the cost of the mould remediation and vent installation (CP repairs). Ms. Irwin seeks orders for \$2,756.25, her cost for the CP repairs, and \$1,000.00 for punitive damages .
4. The strata denies that anyone told Ms. Irwin that it would complete the CP repairs before she sold #411, or that she could have the CP repaired and be reimbursed. It says Ms. Irwin cannot demand payment for unapproved and unauthorized changes to CP. The strata also denies that it has been unjustly enriched, and that Ms. Irwin is entitled to punitive damages. I infer the strata asks that Ms. Irwin’s claims be dismissed.
5. Ms. Irwin is self-represented, and the strata is represented by the strata council president.
6. For the reasons that follow, I dismiss Ms. Irwin’s claims and this dispute.

JURISDICTION AND PROCEDURE

7. These are the formal written reasons of the 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.

8. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. To some extent, the parties on each side of this dispute question the truthfulness of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
9. 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.
10. The applicable CRT rules are those that were in place at the time this dispute was commenced.
11. 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.

Preliminary Issue – Standing

12. The evidence shows that Ms. Irwin sold her strata lot on June 26, 2020 and that she applied for dispute resolution services with the CRT on December 4, 2020.
13. In *Downing v. Strata Plan VR2356*, 2019 BCSC 1745, the B.C. Supreme Court found that if Ms. Downing at some point ceased to be a current strata lot owner and became a former owner, that fact would “not in itself render her no longer an “owner” under the SPA, sections 1 and 189.1, or oust the CRT's jurisdiction to decide the dispute.” In reaching this conclusion, the court cited *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32, paragraphs 230 through 233. The court's decisions in *Downing* and *Sze Hang* are binding on the CRT. Therefore, even though Ms. Irwin sold her strata lot in June 2020, I find she can still bring this dispute under the SPA and CRTA.

ISSUES

14. The issues in the dispute are:
 - a. What is the most likely version of events?
 - b. Is Ms. Irwin entitled to reimbursement of \$2,756.75 for CP repairs, or some other amount?
 - c. Is Ms. Irwin entitled to \$1,000.00 in punitive damages?

BACKGROUND, EVIDENCE AND ANALYSIS

15. In a civil proceeding such as this, the applicant, Ms. Irwin, must prove her claims on a balance of probabilities. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
16. The strata is a residential strata corporation created in May 2007 under the *Strata Property Act* (SPA). It contains 16 strata lots in 4 buildings of 2 and 3 storeys. Each of the 4 buildings contains 4 strata lots. #411 is a 2-level strata lot located in a 2-storey building. It is an end unit located beside 1 strata lot with no other strata lots above or below it. The strata plan clearly shows the attic space above #411 is CP.
17. I find the Schedule of Standard Bylaws under the SPA apply. Land Title Office (LTO) documents show bylaw amendments were filed with the LTO in June 2010 and July 2015, but I find those amendments are not relevant to this dispute. I address the applicable bylaws below, as necessary.
18. As mentioned, the strata plan shows the attic space above #411 is CP. I also find the roof is CP based on the definition of CP in SPA section 1(1) and the strata lot boundaries described in SPA section 68(1). SPA section 72 and bylaw 8(b) require the strata to repair and maintain CP. None of this is disputed.
19. The strata does not dispute mould was discovered in attic space above #411. There is no question Ms. Irwin completed the CP repairs as she claims and paid \$2,756.75 for the work. As I discuss below, a receipt for this amount is provided in evidence. Further, the strata does not dispute the work was completed or that Ms. Irwin paid for CP repairs.

20. Mr. Irwin correctly cites relevant case law that establishes the strata's mandatory duty to repair CP. I see no need to summarize the law here, given the strata agrees it is responsible for maintenance and repairs to CP.

What is the most likely version of events?

21. In order for Ms. Irwin to be successful in her claim for reimbursement of CP expenses, I find she must prove it is more likely than not the strata council president agreed the strata would reimburse her for the CP repairs before the completion date of the #411 sale. My analysis of Ms. Irwin's claim will focus on the credibility of the parties or their representatives as I find that is necessary in order to determine the facts.

22. I will summarize the facts based on Ms. Irwin's March 14, 2021 affidavit, and written statements provided by the strata council president, and others. I have not discussed a written statement from Ms. Irwin's fiancée, as I place no weight on this statement because I find it is not truly independent or impartial, given his relationship to Ms. Irwin. Except where noted, the strata, which is represented by the same strata council president who was involved in discussions with Ms. Irwin, does not object to these facts.

23. In January 2020, Ms. Irwin sold #411 with a completion date of June 26, 2020 (completion date). Among other things, the sale was subject to the purchasers obtaining and approving a building inspection report. A January 30, 2020 building inspection report identified possible mould in the attic space above #411. Ms. Irwin provided a copy of the report to the strata through its property manager on January 31, 2020. Portions of the report were provided in evidence that recommended "a qualified remediation company" be retained to further evaluate and estimate repairs. The report also suggested this was a strata responsibility. Based on the emails provided, I find Ms. Irwin expected the strata to address the mould issue.

24. On February 1, 2020, Ms. Irwin met with the strata council president. Based on this meeting, she sent an email to her realtor on February 2, 2020 setting out her understanding. Her email states the president told her the strata would assess all the buildings' attics for mould and the mould in the attic above #411 would be remediated by the strata before the purchasers moved in. In his written statement, the strata council

president denies telling Ms. Irwin that the mould above #411 would be remediated before the buyers moved in, but does not deny a conversation took place.

25. On February 5, 2020, Ms. Irwin telephoned the strata's property manager to determine if the strata would obtain quotations for the requested work. According to Ms. Irwin, the property manager was uncertain about whether the repairs were the strata's responsibility, stated the strata did not have the funds for the work, and was reluctant to get involved. Therefore, Ms. Irwin decided to pay for the work herself and emailed the property manager the same day stating "No need to follow up with those buyers anymore. We are just going to pay for the remediation." I note there is no written statement or correspondence from the property manager in evidence.
26. Further discussion between Ms. Irwin and the strata council president took place on February 7, 2020. Ms Irwin recalls the president representing:
 - a. The mould issue was a strata responsibility and it would be fixed by the strata as an expense of the strata,
 - b. He would speak with the purchasers to make them feel "more comfortable about the purchase", and
 - c. He was aware she was obtaining quotations and supported her doing so.
27. The strata council president says he would not have agreed to Ms. Irwin getting quotations and would have "at least implied" the strata would obtain quotations. He has no other objections to Ms. Irwin's statement, most notably he did not object to her allegation that he said the repairs were the strata's responsibility.
28. On February 8, 2020, Ms. Irwin emailed her realtor relaying her interpretation of her discussion with the president saying "... the strata would be moving forward with the remediation, just probably not until May...." She stated the president "... was quite adamant that [she] should not have to pay for this and that it would be done in May before the new owners move in." Ms. Irwin also stated she had 2 quotations for \$1,400 but was unsure how she should proceed.

29. Ms Irwin says the strata council president telephoned the #411 purchasers on February 9, 2020 and confirmed with the purchasers that the strata would remediate the mould in May 2020, before they moved into #411. The strata agrees a telephone call took place, but denies the president said the mould would be remediated before the new purchasers moved in. On my review of the new purchasers' written statement and December 9, 2020 email to Ms. Irwin, I agree the council president did not confirm the remediation would be completed before the completion date. However, I find the evidence confirms the president's statements that the strata was responsible for the repairs and would address it, although no timeline was given.
30. On February 13, 2020, Ms. Irwin and her fiancée had dinner with her neighbours, and the strata council president and his spouse. Ms. Irwin says she discussed the mould issue with the council president, and he was aware of the 2 quotations she had obtained. Ms. Irwin states the 2 quotations were for \$1,450 and \$1,480. She also says the president reassured her the strata would pay for the mould remediation. In a written statement, the president denies he was aware Ms. Irwin obtained 2 quotations and says that if he did tell her the strata would pay for the remediation, he "did not intend to imply" she could have the work done and seek reimbursement from the strata. In a written statement provided by Ms. Irwin's neighbour who was present at the dinner, the neighbour confirms a mould conversation took place at the dinner and recalls the president saying the mould issue would be "dealt with by the strata and [Ms. Irwin] was not to worry". The neighbour did not make any statement about when the strata would do the work and said the any requirement for the strata's permission was not discussed.
31. On February 18, 2020, Ms Irwin and the #411 purchasers agreed that Ms. Irwin would have the mould professionally remediated, and roof vent improvements completed before the completion date, if the strata did not complete the work within 1 week of the completion date. An addendum to the contract of sale setting out this agreement was provided in evidence. I note the copy provided was signed by the #411 purchasers but not by Ms. Irwin, but based on the overall evidence and the fact the work was completed May 25, 2020, I accept the addendum was signed by Ms. Irwin.

32. On February 20, 2020, Ms. Irwin says she spoke with the strata council president in the strata's parking lot. Ms. Irwin says she informed the president that the purchasers had contractually required the mould be remediated before the completion date. I infer she is referring to the February 18, 2020 addendum to her contract of sale. The president denies the conversation took place as described by Ms Irwin and says he never authorized her to proceed with the CP repairs.
33. Ms. Irwin says she did not hear anything further from the strata by mid-May 2020, so she retained Home SOULutions Remediation (HSR) to remediate the mould and install the roof vents at a cost of \$2,756.76, which is the amount she claims here. She says her decision was based on her conversations with the president, and because the strata did not take any action to address the mould issue. Ms. Irwin did not say she obtained an updated quotation to include the roof vent installation before she authorized that work. She also did not address the bylaw requirements. As earlier noted, there is an invoice and receipt to Ms. Irwin for this amount from HSR for both the mould remediation and vent installation, so I accept she paid for the invoiced work. Ms. Irwin also says she was not expressly told she could not complete the repairs, with which the strata agrees.
34. There is no other evidence of conversations or emails between Ms. Irwin and strata council president until early June 2020, when the council president attended Ms. Irwin's strata lot. This meeting evidently occurred after Ms. Irwin's neighbour, who had previously attended dinner with Ms. Irwin and the strata council president in February, contacted the president to request the strata reimburse Ms. Irwin for the repair amount. In the neighbour's written statement, he says he handed a copy of the HSR invoice to the president and the president told him he "would make sure the strata cut Ashley a cheque to reimburse her for the money". The president says he never received a copy of the invoice from the neighbour, but that he received a copy from Ms. Irwin. The president also denies telling the neighbour the strata would reimburse Ms. Irwin for the amount she spent.
35. The neighbour says the president subsequently told him the strata was not going to reimburse Ms. Irwin because she had previously told the property manager she would pay for the repairs. The president denies the conversation with the neighbour took place

as described. Rather, the president says the strata decided Ms. Irwin did not have authority to complete the CP repairs and it never took action against her because she had sold #411.

36. In a separate written undated statement, the strata council president says the only strata council meeting held in 2020 was on December 9, 2020 due to COVID-19, that approved the previous strata council meeting held in December 2019. However, he also says Zoom meetings were held on June 17, 2020 to prepare the 2020 – 2021 budget, and on July 22, 2020 (the AGM). There are no 2020 meeting minutes before me. In the same written statement, the president says at the June 17, 2020 meeting, “the mould remediation issue in #411 was brought up, discussed, and deemed resolved by [Ms. Irwin’s] email of February 5, 2020 [to the property manager]”. Based on the meeting date, I find it is likely the president had already met with Ms. Irwin and obtained a copy of the invoice before the June 2020 meeting occurred. The “decision” made at the June 2020 meeting appears not to have been conveyed to Ms. Irwin, at least not in writing.
37. The difficulty here is that, in addition to the lack of 2020 meeting minutes, there is no written communication between the parties that confirms what agreement or understanding, if any, was reached about the repairs. Therefore, given the conflicting submissions, I must determine what is the most likely version of events, based on the information before me.
38. As I have noted, in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the court recognized the CRT’s process and that oral hearings are not necessarily required where credibility is in issue.
39. Credibility assessment boils down to the harmony of the witness’s evidence with the “preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances”: *Gichuru v. Smith*, 2013 BCSC 895 at para. 130, affirmed 2014 BCCA 414. I have applied this assessment here.
40. Based on the overall evidence and submissions, I find a practical and informed person would reasonably conclude the following:

- a. The strata was aware of the mould issue in the CP attic above #411 by January 31, 2020, the date it received the inspection report.
- b. Ms. Irwin did not request the strata's permission to complete the CP repairs. She says the strata never expressly told her she could not complete the repairs, with which the strata agrees.
- c. The strata, through its president, informed Ms. Irwin it was responsible for the mould remediation. While this appears to be contested by the strata council president, the evidence shows he did not object to Ms. Irwin's assertions that the strata took responsibility for the mould remediation. He only objected to making statements the work would be done by the completion date.
- d. The strata did not confirm when the work would be completed. Specifically, the strata did not confirm the work would be completed before the completion date. I do not accept Ms. Irwin's email to her realtor on February 2, 2020 is confirmation that the strata agreed to investigate and repair the mould issue before she sold #411. Rather, I find the email is confirmation of Ms. Irwin's belief about what she expected should happen.
- e. The strata did not take responsibility for the roof vent installation. There is no evidence to support the strata was even aware the roof vents were installed until it received a copy of the paid invoice from HSR, which was after the work was complete. There is also no evidence Ms. Irwin obtained a quotation for the roof vents or that they needed to be installed. I find it is more likely the contractor advised Ms. Irwin of the additional roof vents were needed on May 26, 2020 when it was on site remediating the mould, and that she authorized the vent installation at that time.

Is Ms. Irwin entitled to reimbursement of \$2,756.75 for CP repairs, or some other amount?

41. Based on my discussion above about the facts in this dispute, I find Ms. Irwin is not entitled to reimbursement for the CP repairs. My reasons follow.

42. As discussed, I find the strata council president informed Ms. Irwin the mould remediation was the strata's responsibility and that it would do the necessary CP repairs. This is supported by the neighbour's statement, and the statement and email provided by the new #411 purchasers. However, the strata never determined when it would complete the CP repairs. Most importantly, Ms. Irwin did not obtain prior written permission from the strata to have the CP repairs completed and the strata never authorized Ms. Irwin to have complete the work and seek reimbursement. Under bylaw 6, Ms. Irwin was required to obtain the prior written approval of the strata before altering CP. I find the installation of the roof vents was an alteration of CP.
43. While the strata council president may not have been entirely clear in his communications with Ms. Irwin, based on the evidence before me, I do not find the strata or president authorized Ms. Irwin proceed with the CP repairs, either expressly or by implication. Further, there is no evidence the strata or president waived the bylaw 6 requirement to obtain written permission to alter CP. When she was an owner, Ms. Irwin had an obligation to follow the bylaws and did not do so.
44. I find it is more likely than not Ms. Irwin proceeded with the CP repairs because she contracted with the #411 purchasers to do this work, not knowing whether the strata would reimburse her. I find it significant that Ms. Irwin did not take any action to follow up with the strata about reimbursement or completion of the work between February 20, 2020, when she spoke to the president in the parking lot, and mid-May 2020, when she had the work completed. Had Ms. Irwin believed she was to be reimbursed, I find it would have been reasonable for her to confirm this with the strata before completing the work and moving out of #411.
45. Ms. Irwin relies on 3 CRT decisions where the CRT member found the strata was responsible to reimburse the applicant owner for repair costs. I find all 3 CRT decisions are distinguishable from the facts in this dispute and summarize them as follows.
46. First, in *Collier v. The Owners, Strata Plan VIS 4903*, 2020 BCCRT 536, the CRT member found the strata corporation was responsible for reimbursing the applicant owner for the costs of replacing a garage door. In that case, the strata misunderstood the door to be part of the owner's strata lot and told the owner they were responsible to

replace the door for that reason. The CRT found the garage door was CP and ordered the strata reimburse the owner the associated costs. These are completely different facts than the issue here, and I find they do not apply to this dispute.

47. Second, in *Kuzminski v. The Owners, Strata Plan LMS 2055*, 2019 BCCRT 618, an owner sought to recover the cost of bathroom repairs they alleged were damaged by the strata corporation's plumber. Part of the owner's claim was for repairs completed to a bathtub drainpipe that the CRT member found was CP. Based on the strata corporation's property manager's statement that it was "common practice and a good idea" to replace CP pipes when they were exposed, the CRT member found the owner was entitled to reimbursement of the cost they incurred to replace the CP drainpipe. Here, I have found the strata did not confirm it would complete the CP repairs in a specified time frame, or that Ms. Irwin had its permission to complete the CP repairs.
48. Third, in *Dale v. The Owners, Strata Plan 1852*, 2020 BCCRT 629, an owner alleged the strata corporation committed to paying for certain repairs, which the strata corporation denied. The CRT member found the strata corporation did commit to paying for the repairs and ordered the owner's costs reimbursed. Here, I did not find the strata agreed to pay the CP repair costs.
49. Finally, Ms. Irwin says the strata's refusal to reimburse the CP repair costs is an unjust enrichment. The legal test for unjust enrichment is that Ms. Irwin must show that that the strata was enriched, that the applicant suffered a corresponding deprivation or loss, and there is no valid basis for the enrichment (see *Kosaka v. Chan*, 2009 BCCA 467).
50. I am not satisfied that the strata was unjustly enriched. I have found that Ms. Irwin did not have authority to complete the CP repairs and Ms. Irwin did not provide any evidence the repairs were urgent. The court has found that although a strata corporation could perhaps have hastened its investigations of a problem, absent evidence of deliberate delay, which is not present here, a strata council is not required to be perfect but rather must act reasonably with fair regard for the interests of all concerned: *Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74 at paragraph 61.

51. That Ms. Irwin contracted with the new purchasers of #411 to have the work completed without the strata's approval is not sufficient reason to establish the repairs had to be completed immediately.
52. I also find it significant that Ms. Irwin did not have approval to complete the CP repairs. Therefore, I find that Ms. Irwin has failed to prove unjust enrichment.
53. For these reasons, I find Ms. Irwin is not entitled to be reimbursed for any amount of the CP repairs.

Is Ms. Irwin entitled to \$1,000.00 in punitive damages?

54. The CRTA is silent about punitive damages. However, as noted earlier, the CRTA permits the CRT to order a party to pay money which I find includes punitive damages. Therefore, I find the ability of the CRT to order payment of punitive damages is within its jurisdiction.
55. However, punitive damages would require a finding of malicious, oppressive and high-handed conduct of the strata or its president of which there is no evidence here. I do not agree that the strata's actions or those of the strata council president were intended to deceive Ms. Irwin. Rather, I find the issues arising in this dispute essentially result from poor communication on the part of both parties and Ms. Irwin's belief the strata should be responsible for the CP repairs.
56. Therefore, I dismiss Ms. Irwin's claim for punitive damages.

CRT FEES AND EXPENSES

57. As noted, 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 to deviate from this general rule. The strata was the successful party in this dispute but did not pay CRT fees, so I make no order for reimbursement of fees.
58. No party claimed dispute-related fees, so I order none.

ORDER

59. I order Ms. Irwin's claims and this dispute dismissed.

J. Garth Cambrey, Vice Chair