



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Buzunis v. The Owners, Strata Plan LMS1336*, 2021 BCCRT 745

B E T W E E N :

CONSTANCE BUZUNIS and CONSTANTINE BUZUNIS

APPLICANTS

A N D :

The Owners, Strata Plan LMS 1336

RESPONDENT

A N D :

CONSTANCE BUZUNIS and CONSTANTINE BUZUNIS

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about responsibility for repairs to a limited common property (LCP) balcony and related bylaw fines.
2. The applicants (and respondents by counterclaim), Constance Buzunis and Constantine Buzunis, jointly own a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 1336 (strata). The strata is the applicant in the counterclaim.
3. The strata plan shows an LCP balcony designated for the applicants' exclusive use. It is undisputed that the balcony needs repair as there is water leaking through the balcony's membrane, damaging the strata's common property (CP) lobby. The applicants say that under the *Strata Property Act* (SPA) standard bylaws, the strata is responsible for repairing and maintaining the balcony. The applicants seek orders that the strata repair the balcony and the CP lobby, at the strata's expense. They also seek an order that the strata reverse bylaw fines it imposed for the applicants' failure to repair the balcony.
4. The strata says the bylaws hold owners responsible for repairing vinyl decking on LCP balconies designated for their exclusive use. The strata counterclaims for reimbursement of the costs to repair the applicants' balcony and CP damaged because of the applicants' leaky balcony. As there is no evidence that the repairs have been completed, I infer that the strata seeks an order that the applicants are responsible for any necessary repairs. The strata also seeks an order that the applicants pay \$1,800 in fines for their failure to repair the balcony.
5. The applicants also allege that the strata council has breached the SPA on several occasions, and they seek an order that the strata council comply with the SPA. The strata denies that it has breached the SPA.
6. Ms. Buzunis represents both applicants. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

7. 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.
8. 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.
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. 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.

Council hearing

11. Under SPA section 189.1, an owner is not entitled to request dispute resolution services under the CRTA unless they first request a council hearing under SPA section 34.1, or the CRT waives the hearing requirement after a request. Here, it is undisputed that the applicants did not request a council hearing about the matters at issue in this dispute. However, both parties request that I make a direction that the hearing requirement does not apply to this dispute.
12. In the non-binding decision of *Ducharme v. The Owners, Strata Plan BCS 753*, 2019 BCCRT 219, a Vice Chair found that the purpose of SPA section 189.1 is to attempt to have the parties resolve their dispute at a council hearing before a formal

application is made to the CRT. I agree with that analysis. However, having reviewed the evidence in this dispute, I find it is unlikely that a formal hearing before the strata council would resolve the issues.

13. Bearing in mind the CRT's mandate to provide speedy, economical, and flexible dispute resolution, and given that all parties agree, I waive the hearing requirement in SPA section 189.1(2)(a) for this dispute.

Compliance with the SPA

14. The applicants say the strata council has a "pattern" of not complying with the SPA. They provided approximately 17 examples of the strata's alleged SPA breaches in the Dispute Notice. The examples included allegations that the council approved material changes or expenses without the required $\frac{3}{4}$ vote of the owners, several allegations of financial mismanagement, failure to update the bylaws as promised and to file approved bylaw amendments, failure to properly document decisions or provide proper disclosure to purchasers, among other complaints.
15. The strata denies that it has breached the SPA and argues that many of the applicants' allegations do not engage or are exempted from the SPA.
16. I acknowledge that the applicants have concerns about how the strata council is budgeting, allocating its spending, and making its decisions. However, the applicants have not specified what SPA provisions the strata council has breached, nor have they provided submissions about some of the alleged breaches. The only requested remedy the applicants seek for these claims is that the strata council comply with the SPA, particularly regarding financial, maintenance, record-keeping, reporting, and bylaw enforcement provisions. I find that this order would serve no meaningful purpose, as the strata is already required to follow the SPA, both now and in the future.
17. CRTA section 11(1)(b) says, in part, that the CRT may refuse to resolve a claim within its jurisdiction if the request for resolution does not disclose a reasonable claim. I find that the applicants' request for orders that the strata do things it is already legally

obligated to do is not a reasonable claim. Such an order is not enforceable, and it would have no meaningful effect.

18. I infer from the applicants' submissions that what they seek, in part, are declarations that the strata has breached the SPA. However, the CRT generally has no jurisdiction to make declaratory orders: see *Fisher v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379.
19. The remedies the applicants request in relation to their claims about SPA breaches would either have no meaningful, enforceable effect, or are outside the CRT's jurisdiction to grant. So, I refuse to resolve these claims under CRTA section 11(1)(b).

ISSUES

20. The remaining issues in this dispute are:
 - a. Who is responsible for repair and maintenance of the applicants' LCP balcony?
 - b. Who is responsible for the CP lobby repairs?
 - c. Did the strata follow the SPA and its bylaws when it fined the applicants, and if not, what is the appropriate remedy?

BACKGROUND

21. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. The strata must also prove its counterclaims on the balance of probabilities. I have read all the parties' materials but refer only to the evidence and submissions that I find relevant to provide context for my decision.
22. The strata was created in 1994 under the *Condominium Act*, and it continues to exist under the SPA. It consists of 24 residential strata lots in a single three-story building, plus a basement level.
23. The applicants moved into strata lot 3 (SL3) in February 2018. SL3 is on the building's first floor. As noted, the strata plan shows there is an LCP patio that is designated for

the exclusive use of SL3. While the strata plan refers to it as a patio, the parties and evidence in this dispute refer to it as a balcony. So, for consistency, I will refer to SL3's LCP area as a balcony.

24. The strata plan shows that the balcony is directly above the CP lobby and the building's front entrance, which is on the floor designated as the basement level.
25. The SPA has a set of standard bylaws included as a schedule. The applicants argue that the standard bylaws apply to this dispute. However, section 120 of the SPA says the standard bylaws apply only to the extent that a strata corporation has not filed different bylaws in the LTO.
26. Here, the strata filed a complete set of consolidated bylaws at the Land Title Office (LTO) on January 29, 2014. Therefore, I find the January 29, 2014 bylaws govern this dispute.

EVIDENCE AND ANALYSIS

27. The strata says that in September 2020, an owner reported water leaking from a light fixture in the CP lobby ceiling, so the strata called a plumber to investigate the leak. It is undisputed that the leak in the lobby originated from cracks in the balcony's vinyl decking, and the water then seeped through a hairline crack in the balcony's concrete slab.
28. The applicants say they are not responsible for the repair and maintenance of the vinyl decking on the balcony. The strata disagrees.
29. The strata hired legal council, who sent the applicants an October 1, 2020 letter setting out the strata's legal basis for holding owners responsible for repairing vinyl decking on the LCP balconies under the bylaws. The strata demanded that the applicants replace the vinyl decking by October 30, 2020 to prevent further CP damage. The applicants declined to do so and ultimately started this dispute.

Who is responsible for repair and maintenance of the applicants' balcony?

30. Section 72 of the SPA provides that a strata must repair and maintain CP. It also provides that the strata can make an owner responsible to repair and maintain LCP that the owner has a right to use, by bylaw.
31. I find the following bylaws are relevant to the issue of who is responsible for repair and maintenance of the applicants' balcony:
- a. Bylaw 2.2(a) says an owner who has the use of LCP must repair and maintain it, except for repair and maintenance that is the responsibility of the strata under the bylaws.
 - b. Bylaw 2.2(b) says despite bylaw 8(c), an owner is responsible for the day-to-day maintenance of LCP designated for the owner's exclusive use (including balconies and patios), which includes a duty to repair torn or burnt vinyl decking immediately, and to ensure that seams in vinyl decking are sealed.
 - c. Bylaw 8.1(c)(i) provides that the strata is responsible for LCP repair and maintenance that ordinarily occurs less often than once a year. Bylaw 8.1(c)(ii) makes the strata responsible for all LCP repair and maintenance that involves the building's structure, exterior, and balconies or other things attached to the exterior of the building.
32. While bylaw 2.2(b) refers to bylaw 8(c), I find it intended to refer to 8.1(c), as there is no bylaw 8(c), and that is the only reasonable interpretation.
33. I find that bylaw 8.1(c) makes the strata generally responsible for repairing and maintaining the LCP balcony. However, I find bylaw 2.2(b) modifies the strata's responsibility when it comes to "day-to-day maintenance", including specific duties to repair torn or burnt vinyl decking and to ensure the vinyl decking seams are sealed, which have been delegated to owners.
34. Notably, bylaw 2.2(b) does not say owners are responsible for all repairs to vinyl decking on LCP balconies. While it is somewhat unclear when the strata would be

responsible for vinyl decking repairs on LCP balconies under bylaw 8.1(c), I find for the purpose of this dispute it is unnecessary for me to determine that question. I say this because, under the wording of bylaw 2.2(b), I find repairing tears and unsealed seams in vinyl decking is considered “day-to-day maintenance” for which owners are responsible. The photographs of the balcony in evidence show that the vinyl decking is split and cracked in several areas, and it has bubbled and pulled away from the building’s exterior in the corners. I find that the splits and cracks represent “torn” decking and that the decking’s seams have come unsealed where it has pulled away in the corners.

35. The applicants argue that the strata paid to repair other owners’ balconies. However, I find from the strata council’s AGM minutes filed in evidence that the strata paid to repair a balcony with identified structural deficiencies, unrelated to its vinyl decking. I find such repairs are properly the strata’s responsibility under bylaw 8.1(c).
36. While the applicants say an independent inspection of the balcony designated for their use found that it also had structural issues, they did not provide a copy of this alleged inspection in evidence. I find that whether the applicants’ balcony has a structural deficiency is a matter outside ordinary knowledge and experience, which requires expert evidence: see *Bergen v. Guliker*, 2015 BCCA 283. In the absence of any expert evidence, I find the applicants have not proven the balcony has any structural issues that would be the strata’s responsibility to repair.
37. The applicants also argue that they are not responsible for the vinyl cracks on the balcony because they say the cracks were the result of physical damage caused by third party window installation contractors in January 2020. Specifically, the applicants say that the contractors dropped construction debris onto their balcony while installing windows.
38. There is evidence that the applicants complained to the strata about noise from falling debris during the installation process. The applicants also submitted photographs showing debris of various materials on the balcony. However, I do not place much weight on the photographs because I cannot tell whether the debris was dropped

from above, or whether it was from the installation of windows in the applicants' own strata lot. I also note there appears to be a tarp under the debris, which I infer was intended to protect the balcony from damage.

39. Further, there is no evidence before me that the applicants reported any damage from falling debris to the strata or the contractors at the time. The strata says it sent a feedback form to owners to identify any issues after the window installation, but the applicants did not complete the form, which they do not deny. I find that if the balcony had sustained any damage from falling debris during the window installation, as the applicants allege, they likely would have filled out the form or otherwise notified the strata.
40. I also note it is undisputed that Ms. Buzunis was a strata council member in May 2018, when she participated in an informal inspection of the building's balconies. During this inspection, she created a spreadsheet and noted the balcony designated for her use had "cracks on balcony membrane" at that time. Ms. Buzunis denies that the balcony had any cracks, and that she only made that notation to ensure the balcony was included in any future formal balcony inspections. I do not find Ms. Buzunis' explanation of her notation to be persuasive. On balance, I find the balcony vinyl had some cracks in it as early as May 2018.
41. In addition to the above, I place particular weight on the evidence of Darren Manley of T.W. Manley & Sons Restoration Specialists (Manley). Each party hired Manley independently to inspect the balcony and lobby damage. In a January 22, 2021 email to Ms. Buzunis, Mr. Manley stated that while some cracks in the balcony's vinyl decking may have occurred due to impact from falling debris, overall the decking's membrane failed due to environmental stress from years of exposure to sun and heat. Mr. Manley's estimate to the strata for the lobby repairs also stated that SL3's deck membrane was "degraded due to age and weathering (particularly sun damage)".
42. While Mr. Manley's qualifications are not before me, as required for expert evidence under CRT rule 8.3, the strata described Mr. Manley as a "very reputable water restoration contractor", which the applicants do not dispute. Given that both parties

rely on Mr. Manley's opinions and I find they are consistent with the other evidence before me, I am prepared to accept Mr. Manley's evidence as expert opinion evidence about the cause of the balcony's vinyl decking damage.

43. On balance, I find the applicants have failed to prove that the window installation contractors were responsible for their damaged vinyl decking. Rather, I find the vinyl decking became torn and unsealed due to age and weather.
44. In any event, I find that under bylaw 2.2(b), owners are responsible for repairing torn and unsealed vinyl decking as day-to-day maintenance, regardless of how the damage is caused. This is the case whether the damage is caused by age, regular "wear and tear", or physical damage. In some cases, vinyl tears or unsealing may require only minor repairs to the affected area. However, I find the photos in evidence show the balcony's vinyl tearing in this case is extensive. I accept Mr. Manley's opinion that the balcony's decking requires complete replacement, which I note the parties do not dispute.
45. Under bylaw 2.2(b), I find the applicants are responsible for replacing the balcony's vinyl decking immediately, and I order them to do so within 45 days.

Who is responsible for the CP lobby repairs?

46. The strata says that the applicants are responsible for the CP lobby damage because the damage was caused by their failure to repair the balcony's vinyl decking.
47. I find the following bylaws are relevant to the issue of CP repairs:
 - a. Bylaw 3.2 says an owner must not cause damage, other than reasonable wear and tear, to CP.
 - b. Bylaw 8.1(b) says the strata must repair and maintain all CP that has not been designated as LCP.
 - c. Bylaw 36.6 says if an owner causes damage to CP and the damage gives rise to a valid insurance policy claim, the owner must pay the strata's insurance deductible.

- d. Bylaw 36.7 says that if an owner causes damage to CP and the damage is not covered by insurance, the owner shall be responsible for the loss and reimburse the strata for the full cost of repair or replacement.
48. The applicants do not dispute that the leak in the CP lobby was caused by water leaking through the vinyl decking and the concrete balcony slab, to the lobby underneath. Further, I have found that the vinyl decking was damaged and likely in need of repair since as far back as May 2018. I find the applicants' failure to repair the vinyl decking caused water damage in the CP lobby, in breach of bylaw 3.2.
49. Nevertheless, I find it would be premature to make an order that the applicants reimburse the strata for the CP repair costs. The evidence shows the repairs have not yet been done and there will likely be further investigations to determine the extent of the damage. I accept that the strata has not completed its damage investigation or undertaken the CP repairs because the balcony must be repaired first, to stop the water ingress. However, I find that until the investigation and repairs are complete, I have insufficient evidence to determine the scope of the damage caused by the leaky balcony, for which the applicants are responsible. Further, there is no evidence before me about the strata's insurance policy, whether the loss will qualify for an insurance claim, or the applicable deductible amount.
50. Bylaw 8.1 makes the strata responsible for CP repairs, and bylaws 36.6 and 36.7 allow the strata to recoup its deductible or repair costs from a responsible owner, after the repairs have been completed. So, once the extent of the CP damage has been determined and repaired, the strata may choose to proceed against the applicants for its costs at that time, if necessary.
51. For the above reasons, I dismiss the strata's claim for reimbursement of CP repair costs.

Bylaw Fines

52. The applicants concede in their submissions that if the CRT finds they are responsible for the balcony repairs, the strata may assess bylaw fines against them for failing to

do the necessary repairs. However, the applicants request an order that any applicable fines be waived until at least 8 weeks after the CRT decision is issued to allow them time to complete the necessary repairs.

53. Bylaw 23.1 says the strata may fine an owner a maximum of \$200 for each bylaw contravention. Bylaw 24.1 says if an activity or lack of activity that constitutes a bylaw contravention continues uninterrupted for longer than 7 days, a fine may be imposed every 7 days.
54. As I have found the applicants were in breach of bylaw 2.2(b) for failing to repair the balcony's vinyl decking, I find the strata was entitled to fine the applicants under the bylaws.
55. The strata delivered a November 24, 2020 letter to Ms. Buzunis that stated due to her non-compliance with bylaw 2.2(b) for failing to repair the LCP balcony vinyl decking, it would commence enforcement proceedings, including fines in accordance with the bylaws. The letter also stated Ms. Buzunis had until December 4, 2020 to provide a written response or request a hearing before the strata council.
56. The applicants responded by letter dated November 30, 2020, in which they confirmed their position that the balcony repairs were necessary due to normal wear and tear, and "aggravated" by the window installation contractor dropping debris on her balcony. The applicants did not request a hearing and stated they started a CRT dispute to determine the issue.
57. The strata responded by letter dated December 1, 2020 that stated despite the CRT dispute, it would continue to take the necessary steps to enforce the bylaws. On December 5, 2020, the strata notified Ms. Buzunis by letter that due to her contravention of bylaw 2.2, it was imposing a \$200 fine, and that an additional \$200 would be added every 7 days until the contravention ceased.
58. There are no allegations and I find there is no evidence before me that the strata failed to follow the procedural requirements in the SPA for imposing the bylaw fines. Therefore, I find the imposed fines were valid. Further, the strata is obligated to

enforce its bylaws under section 26 of the SPA. I find there is no basis to waive fines until after this decision is released and I decline to do so.

59. As for the amount of fines, neither party provided a copy of SL3's strata lot account or other evidence confirming the total fines imposed. The strata filed an amended counterclaim on February 3, 2021, which says the applicants' outstanding fines as of January 30, 2021 totaled \$1,800. The applicants do not dispute the amount claimed and confirm in the amended Dispute Notice dated February 3, 2021 and in their submissions that the fines continue to accrue. I find that the claimed \$1,800 in outstanding fines equals weekly \$200 fines between December 5, 2020 and January 30, 2021.
60. Given that the applicants do not dispute the amount claimed, I order the applicants to pay the strata \$1,800 in bylaw fines for failing to repair the balcony's vinyl decking in contravention of bylaw 2.2(b).

CRT FEES, EXPENSES AND INTEREST

61. 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. I find the applicants were unsuccessful in their claims, so I dismiss their claim for reimbursement of CRT fees and dispute-related expenses.
62. The strata was mostly successful in its counterclaim. So, I order the applicants to reimburse the strata \$125 for CRT fees.
63. The strata also claims reimbursement of \$1,468.66 in legal fees as a dispute-related expense. The invoices in evidence are for legal services rendered between October 15 and December 9, 2020, about a "bylaw issue". As noted above, the strata initially sought legal representation to draft a demand letter to the applicants about enforcing its bylaws. The applicants filed the original Dispute Notice on October 20, 2020. I find any legal services rendered before October 20, 2020 were expenses incurred to enforce the bylaws and are not properly claimed as dispute-related expenses.

64. I also find the invoices provide insufficient descriptions of the work performed to determine whether the services rendered after October 20, 2020 were related to this dispute. However, even if I found the legal services were related to this dispute, CRT rule 9.4(3) says the CRT may order one party to pay another party's legal fees in a strata property dispute, only in extraordinary circumstances. I find there are no extraordinary circumstances here. I find this was a relatively typical strata property dispute about repairs and bylaw enforcement and the issues were not particularly complex. Accordingly, I dismiss the strata's claim for reimbursement of legal fees.
65. The *Court Order Interest Act* (COIA) applies to the CRT. The strata is entitled to pre-judgement interest on the \$1,800 from January 30, 2021, the date of the last fine, to the date of this decision. This equals \$3.54.
66. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicants.

ORDERS

67. I order that within 45 days of this decision, the applicants must replace the vinyl decking on the balcony designated for the exclusive use of SL3, at the applicants' expense.
68. I order that within 30 days of this decision, the applicants must pay the strata a total of \$1,928.54, broken down as:
- a. \$1,800 for bylaw fines,
 - b. \$3.54 in pre-judgement interest under the COIA,
 - c. \$125 in CRT fees.
69. I refuse to resolve the applicants' claims that the strata has failed to follow the SPA.
70. I dismiss the applicants' remaining claims and the remainder of the strata's counterclaim.

71. The strata is also entitled to post-judgement interest under the COIA.

72. Under sections 57 and 58 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia. The order can also be enforced by the Provincial Court of British Columbia if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

Kristin Gardner, Tribunal Member