



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan BCS 490 v. Feldstein*, 2021 BCCRT 874

B E T W E E N :

The Owners, Strata Plan BCS 490

APPLICANT

A N D

SIDNEY FELDSTEIN and BONNIE FELDSTEIN

RESPONDENT

The Owners, Strata Plan BCS 490

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about a failing retaining wall. The applicant, The Owners, Strata Plan BCS 490 (strata) is a bare land strata corporation. The respondents, and the

applicants by counterclaim, Sidney Feldstein and Bonnie Feldstein co-own strata lot 70 (SL70) in the strata. The Feldsteins have built a retaining wall on the strata lot that is failing. The strata seeks an order requiring the Feldsteins to repair the retaining wall consistent with engineering reports obtained by the parties.

2. The Feldsteins say their retaining wall is being damaged by stormwater discharged from the strata's rock pit drainage system (rock pit). The Feldsteins say that the strata is responsible for the retaining wall repairs and they claim \$223,124. The Feldsteins also request an order requiring the strata to divert the stormwater away from their strata lot.
3. The strata is represented by a strata council member. The Feldsteins are self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.

7. 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.

ISSUES

8. The issues in this dispute are:
 - a. Must the Feldsteins repair or replace the retaining wall?
 - b. If so, who is responsible for the repair costs?
 - c. Must the strata divert the rock pit's stormwater discharge away from SL70?
 - d. Must the strata pay the Feldsteins damages for discharging stormwater into SL70? If so, how much?

POSITIONS OF THE PARTIES

9. The strata claims that the Feldsteins' retaining wall is failing. The strata says the Feldsteins must immediately repair the retaining wall in accordance with the engineers' recommendations and in compliance with municipal engineering wall guidelines.
10. The Feldsteins acknowledge that their retaining wall needs to be replaced. However, they say that the retaining wall defects are caused by the strata's stormwater system and the retaining wall's builders' negligence. The Feldsteins tried to make a third party claim against the builders. However, in a preliminary decision, a Vice Chair refused to resolve the Feldsteins' claims against the builders because these claims were outside the CRT's jurisdiction. So, I make no findings relating to this.
11. The Feldsteins argue that the strata was negligent, created a nuisance and treated the Feldsteins significantly unfairly by discharging water from the rock pit to their strata lot. The Feldsteins argue that the strata is responsible for the retaining wall repairs. The Feldsteins say that the strata owes damages of \$223,124 for repair costs

for their property, loss of use and enjoyment of their property, mental distress and stigma damages. The Feldsteins also request an order requiring the strata to divert stormwater away from their property.

12. The strata says that it has not damaged the Feldsteins' retaining wall. Rather, the strata says that the retaining wall's defects were caused by improper construction. The strata also says that it does not need to divert the stormwater from SL70 because the rock pit is allegedly working properly as engineered and approved by the municipality.

BACKGROUND AND EVIDENCE

13. In a civil dispute such as this, the strata, as the applicant, must prove its claims. They bear the burden of proof on a balance of probabilities. The Feldsteins have the same burden of proving their counterclaims. Though I have read all of the evidence provided, I refer only to evidence I find relevant to provide context for my decision.
14. The strata plan shows that the strata was created in 2003, under the *Strata Property Act* (SPA).
15. The strata filed consolidated bylaws with the Land Title Office in December 2010 which I find govern this dispute.
16. Multiple engineers have reviewed the retaining wall and the rock pit and they have submitted the following engineer reports:
 - a. Patrick Sails, P. Engineer, of Ground Up Geotechnical Ltd., prepared a September 30, 2020 engineering report for the Feldsteins (Ground Up report).
 - b. Allan Dakin, FEC, P.Eng., of Elanco Enterprises Ltd., prepared a February 26, 2021 engineering report for the Feldsteins' lawyers (Elanco report).
 - c. Collin S. Johnson, P.Eng., of Out of the Box Engineering, prepared engineering reports on September 2, 2016, June 6, 2018, September 30, 2018, February

22, 2019, October 15, 2019, June 28, 2020 and July 13, 2020 for the Feldsteins (Out of the Box reports).

- d. Wyatt Johnson, B. Eng. EIT, of GeoPacific, prepared a February 18, 2020 engineering report. This report was submitted by the Feldsteins (GeoPacific report).
- e. Jim McDonald, P.Eng., P.Geo., of WSP Canada Inc. prepared a July 18, 2017 engineering report for the owner of the property where the rock pit is located (WSP report).

17. Since the above reports were all prepared by engineers, I am satisfied that they each meet the criteria for expert reports under CRT rule 8.3 and I have considered all of these reports in my decision.

18. The following facts are not disputed:

- a. The Feldsteins say they moved into their home in 2007.
- b. The northern and eastern boundaries of SL70 border land parcels outside the strata plan. The property north of SL70 is owned by a non-party that operates that parcel as a golf course (the golf course). The property east of SL70 is owned by a different non-party, AD.
- c. The northern portion of SL70 has a steep downward slope to the north.
- d. The strata has an easement over AD's property where it maintains the rock pit, consisting of a stormwater perforated infiltration catch basin. The rock pit is located approximately 10 feet from the Feldsteins' garage.
- e. The Feldsteins say they noticed that the sidewalk and stairs along the east side of their house and the sidewalk along the north side of their house were sinking before they built the retaining wall. The Feldsteins provided a 2011 estimate to lift the concrete slabs and repair the sidewalks.
- f. The strata approved the Feldsteins' request to build a retaining wall in 2016.

- g. The Feldsteins built a retaining wall on the northern portion of SL70 in 2016. This retaining wall partially failed and was rebuilt in 2016.
 - h. Mr. Johnson prepared a September 2, 2016 field report saying that there were drainage issues with the original retaining wall which caused soil saturation and horizontal pressure against the wall. Mr. Johnson said that broken rain water leaders caused the wall's failure and were replaced. Mr. Johnson certified to city that retaining wall was complete on September 2, 2016.
 - i. In July 2017, the golf course sent the Feldsteins a letter saying that the retaining wall was unsafe based on Mr. McDonald's July 18, 2017 report. The golf course asked the Feldsteins to immediately conduct a slope stability analysis.
 - j. The Feldsteins discovered a sinkhole near their garage on the eastern edge of their strata lot in December 2018.
 - k. The Feldsteins plugged a manhole on AD's property in January 2019 to divert water from the rock pit. In August 2019, AD demanded the removal of the plug because it said this caused surface erosion. AD removed the plug in October 2019 which restored the stormwater flow to the rock pit.
 - l. Storm sewers, catch basins and manholes were grouted in front of SL70 in 2019.
19. I find that the rock pit located on the easement is an interest in land owned by the strata outside the strata plan. So, I find that the strata's rock pit is a common asset under SPA section 1(1).

REASONING AND ANALYSIS

Must the retaining wall be repaired?

20. It is undisputed that the retaining wall is located on SL70. Bylaw 2(1) says that owners must repair and maintain their strata lots. So, the Feldsteins are responsible for maintaining their retaining wall.

21. The Feldsteins do not dispute that the retaining wall needs to be replaced. Further, multiple engineers agree that the retaining wall is failing and should be replaced. Specifically, WSP's report says the retaining wall is not stable and likely failing. GeoPacific's report says that the wall shows signs of movement, is undergoing deformation and is generally long-term unstable. GeoPacific's report says that trails on the golf course property north of SL70 could be endangered by a collapse and the report recommends rebuilding the wall. Further, Ground Up's report, retained by the Feldsteins, says that the wall has move 4 to 8 inches in the past 3 years which it considers to be a failing wall. Ground Up recommends dismantling the wall. There is no expert evidence before me disputing these opinions that the retaining wall is failing.
22. Based on the undisputed engineering opinions discussed above, I find that the wall must be repaired under bylaw 2(1). The strata asks that the repairs be performed consistent with guidelines established by 2 independent engineering firms, that the Feldsteins use WSP's engineering guidelines for the repairs, and that the Feldsteins proceed "as per the engineering reports emailed to their lawyer." The strata also requests an order requiring the repairs to be performed in accordance with the municipality's engineering retaining wall guidelines. The strata also request an order requiring the Feldsteins to have all structural engineering, geotechnical reports and permits in place before starting the repairs. However, I find that the strata has not provided sufficient evidence to prove that these repair conditions are warranted. Specifically, I find that the strata has not established why 2 engineering consultations should be obtained or why the Feldsteins should be required to use WSP's engineering guidelines rather than those another qualified engineer. Further, the request to proceeded "as per" the engineering reports is unclear as there are multiple engineering reports, with multiple recommendations, prepared relating to the retaining wall. For the above reasons, I find that the strata has not provided sufficient evidence to show why the Feldsteins should be required to follow the strata's specific repair conditions rather than rebuilding the retaining wall consistent with generally accepted engineering standards and municipal bylaws. So, I find it appropriate to

order the Feldsteins to repair or replace the retaining wall as set out in my order below.

23. The Feldsteins argue that the strata should be responsible for the repair costs because they claim that the retaining wall defects were caused by the strata's failure to properly use and maintain the rock pit. The Feldsteins argue that by discharging stormwater to their strata lot, the strata was negligent, created a nuisance and treated the Feldsteins significantly unfairly.
24. Under SPA section 3 and 72, the strata is responsible for maintaining common assets, including the rock pit. So, is the strata responsible for the retaining wall damage?

Negligence

25. A strata corporation is not an insurer, and is not responsible for damage within a strata lot unless it has been negligent or it breached its statutory duty to repair and maintain common property and common assets (*Basic v. Strata Plan LMS 0304*, 2011 BCCA 231.) SPA section 72 requires strata corporations to repair and maintain common property and common assets. In the strata's exercise of its duty under section 72, the applicable standard is reasonableness and not strict liability (*Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74). So, in order for the strata to be responsible for damage to the retaining wall resulting from water originating from the rock pit, the Feldsteins must establish that the strata was negligent in carrying out its statutory duty to repair and maintain the rock pit.
26. To prove negligence, the Feldsteins must show that the strata owed them a duty of care, the strata breached the standard of care, the Feldsteins sustained damage, and the damage was caused (*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
27. Neighbours owe each other a duty of care to take reasonable steps to avoid foreseeable risks, including with respect to the flow of water from one property to another (*Mineault v. Kamloops (City)*, 2017 BCSC 316). So, I find that the strata owed

a duty of care to the Feldsteins to properly use and maintain the rock pit to avoid damaging the Feldsteins' strata lot.

28. I find expert opinion evidence is necessary in this case to determine whether the strata breached the standard of care because this subject matter is technical and outside the knowledge and experience of the ordinary person (See *Bergen v. Guliker*, 2015 BCCA 283). So, I have considered the expert engineering reports listed above. For the reasons discussed below, I find that the strata breached the standard of care.
29. Ground Up's September 30, 2020 report says the rock pit is not geotechnically appropriate because it is too close to SL70, too close to the Feldstein's basement, and too close to the crest of a large, steep slope. Further, Elanco's report says the rock pit was constructed without an overflow pipe, which it says is a standard requirement.
30. GeoPacific's report generally says that discharge from the rock pit did not damage the retaining wall. The issue of causation is discussed further below. The strata argues that GeoPacific's report proves that the rock pit was well maintained. However, I find that GeoPacific's report does not expressly state that opinion. Rather, GeoPacific's report noted that the rock pit basin was dry when it was inspected but the manhole in the drain leading to the rock pit was full of water. GeoPacific says that it believes that the drain line may have been plugged when it examined the property on November 8, 2019. Based on the lack of water flowing from the manhole to the rock pit, I find that more likely than not, the drain leading to the rock pit was plugged when GeoPacific inspected the rock pit. Without examining the rock pit while operational, I am not satisfied that GeoPacific had an opportunity to fully assess the drainage system. So, I give GeoPacific's expert opinions about the rock pit little weight.
31. Upon consideration of all of the engineering reports, I find that the strata breached the standard of care by operating the rock pit at such close proximity to SL70 and the slope and by failing to install an overflow pipe on the rock pit.

32. So, did the rock pit's stormwater discharge damage the retaining wall? The Feldsteins say it did. In contrast, the strata says the stormwater discharge was unrelated to the retaining wall's failure. It says this damage was caused by faulty construction.
33. The normal test for causation is the 'but for' test. This means that the Feldsteins must prove that 'but for' the strata's negligence the damage would not have occurred (see *Clements v. Clements*, 2012 SCC 32). For the reasons that follow, I find that the Feldsteins have proved that the rock pit's discharge damaged their wall.
34. GeoPacific's report says it is unlikely that the rock pit's discharge damaged the retaining wall because it found no indication of soil migration towards the rock pit. GeoPacific said that this soil migration would be expected if the rock pit's drainage was causing subsidence. GeoPacific's report says that the subsidence was most likely caused by the settlement of fill soil and a broken rain leader near the Feldsteins' house. Out of the Box's July 13, 2020 report responded by saying that soil migration would not be expected because the system is designed to send water from the upper levels of the strata into the subsurface. In considering these conflicting opinions, I find that neither GeoPacific nor Out of the Box have provided an adequate explanation of the basis of their opinions about the significance of soil migration. So, I make no findings about soil migration.
35. Ground Up says the rock pit could have damaged the retaining wall. Specifically, Ground Up says that the rock pit's proximity could cause excessive groundwater intrusion which could cause or contribute to erosion and slope instability. Ground Up also says that some stormwater is escaping from the rock pit and intruding into SL70 and it is possible that this exacerbated the landscaping settlement and the sinkhole on SL70. Ground Up also says it is likely that this intrusive groundwater has been flowing through SL70 into the backfill zone and subgrade soils of the retaining wall which could have caused or exacerbated the soil-water processes that are likely moving the retaining wall. Overall, I find that Ground Up says that discharge from the rock pit could damage the retaining wall. However, I find that Ground Up's opinion is not sufficient to establish that it is more likely than not that the rock pit caused the retaining wall damage.

36. I have also considered the Out of the Box reports which tracked movement of the retaining wall's boulders over time. Out of the Box says that its October 15, 2019 report showed a levelling off of the wall's movement between that survey and previous surveys. Out of the Box says that this reduced movement was the result of water being redirected from the rock pit. Out of the Box says that surveys taken after removing the plug again shows wall movement. Out of the Box says that this suggests that the flow from the rock pit is correlated to the retaining wall movement.
37. I have also considered Elanco's report which says that, while most of the strata's stormwater drains to a creek, water from approximately 0.56 hectares of the strata's surface area drains to the rock pit. Elanco's report says that a daily average of 242 cubic metres of water would run off this surface area and drain into the rock pit. Elanco's report says the rock pit has a storage capacity of 30.2 cubic metres which means that 212 cubic metres of runoff water would need to seep out of the rock pit. Elanco says that most of the water seeping from the rock pit would likely flow across the north eastern portion of SL70. Elanco also says the water volume from the rock pit has progressively increased the effective permeability of the subsurface creating pathways through a process called piping. Elanco says this created voids causing ground surface movement. Elanco also says that discharge from the rock pit is over 100 times greater than the flow from other potential water sources such as discharge from broken roof leaders and seepage from ungrouted storm sewers. Elanco also says the formation of the sink hole is consistent with the rock pit causing subsurface voids, in turn causing ground surface subsidence. Elanco's report also relied on Out of the Box's slope monitoring analysis.
38. Based on my review of the engineering reports, I am satisfied that, more likely than not, the rock pit's discharge is causing subsidence which is damaging the retaining wall. I find Out Of The Box's slope monitoring reports to be particularly persuasive because I find that this shows the rock wall moving when water was being discharged from the rock pit and this movement slowing when the storm water was diverted away. I find this proves a direct causal relationship between the rock pit's discharge and the retaining wall movement and I find that this evidence, combined with Elanco's report,

is sufficient to prove, that more likely than not, that the rock pit's discharge damaged the retaining wall.

39. Based on the above, I find that the strata negligently damaged the retaining wall. However, section 1(1) of the *Negligence Act* says that if 2 or more persons are at fault for damage, the liability is apportioned to the degree to which each person was at fault. In this dispute, the strata argues that the Feldsteins are responsible for their own damage because the wall was constructed improperly. I will consider this issue below. The Feldsteins also argue that the contractors and engineers who built the retaining wall are responsible for any construction defects. However, as discussed above, these individuals and entities are not parties to this dispute. So, I make no findings about their liability, if any.
40. Ground Up says the retaining wall appears to have several design deficiencies and it may not have been designed or constructed in accordance with applicable engineering practice standards including the lack of filter fabric and insufficient geogrid reinforcement. GeoPacific says that a geogrid was not used throughout the retaining wall. GeoPacific's report says the wall was designed and built without measures to resist active soil pressures or to mitigate migration of soil through the wall boulders. Similarly, WSP's report says that the retaining wall only used geogrid in portions of the wall. WSP says that a retaining wall of this height should have had geogrid reinforcement at discrete intervals extending along the entire height of the wall.
41. So, based on the undisputed expert opinions, I find that the retaining wall was improperly constructed because it lacked filter fabric and sufficient geogrid reinforcement. So, I find that both the strata and the Feldsteins are at fault for the retaining walls' failure. Based on Out of the Box's slope monitoring study which showed that the retaining wall appeared stable when the rock pit was not discharging water, I find that the primary source of the retaining wall's failure was the operation of the rock pit. Based on this, I find that the strata is responsible for 75% of the retaining wall damage.

42. So, I find that the Feldsteins must repair or replace the retaining wall under Bylaw 2(1) and the strata is responsible for 75% of these repair costs under SPA section 72.

Must the strata divert the rock pit's stormwater?

43. The Feldsteins also argue that the strata created a nuisance by discharging water from the rock pit. I find that the Feldsteins' nuisance claim is not a claim under SPA within the CRT's jurisdiction under section 121 of the CRTA so I refuse to resolve it under CRTA section 10(1). However, I find that Feldsteins claims also raise the issue of whether the strata complied with its duties under SPA section 3 to manage and maintain the strata's common assets, including the rock pit, for the benefit of the owners.

44. In considering the strata's compliance with its duties under SPA section 3, I have considered case law about watercourse rights. Although these decisions are not directly binding, I find them persuasive in relation to the strata's duties under SPA section 3.

45. I have considered the legal rule in *Rylands v. Fletcher*, [1868] UKHL 1. Based on the decision in *Rylands v. Fletcher*, a person can be strictly liable for resulting damages when a substance escapes onto another's property. *Rylands v. Fletcher* requires a "non-natural" use of land where a substance migrates due to an unintended mishap (see *Windsor v. Canadian Pacific Railway*, 2014 ABCA 108 and *John Campbell Law Corp. v. Strata Plan 1350*, 2001 BCSC 1342). In *Tock v. St. John's Metropolitan Area Board*, 1989 CanLII 15 (SCC), the Supreme Court of Canada said that a water and sewer system was not a non-natural use of land within the meaning of the rule. Following the binding authority in *Tock*, I find that the strata's rock pit was part of its intended drainage system and this was not a "non-natural" use of land. So, I find that the rule in *Rylands v. Fletcher* does not apply here.

46. I also considered the Supreme Court of British Columbia's recent decision in *MacKay v. Brookside Campsite Inc.*, 2021 BCSC 1304, the Court discussed the common enemy doctrine. This says that a property owner is entitled to repel flood waters, even

if it harms their neighbour, so long as the property owner neither accumulates water nor discharges or directs the water onto the neighbour's land, nor interferes with the natural water channel, called the alveus.

47. In *MacKay*, the Court says that a person is liable for the resulting damages if they collect water and cause it to flow on to their neighbour's land. The Court also noted that an upslope owner is generally entitled to protect their property from water and they are generally not liable for water naturally flowing from their property. To be liable, generally, the upslope owner must take positive steps that cause a change in the direction, volume, or velocity of the natural flow of water that interferes with another party's property. The Court noted liability commonly arises where the upslope party has pooled or trapped the water, thus redirecting or unleashing the water and harming the downslope or downstream neighbour. Further, previous decisions have found that water escaping from an adjoining property and causing physical damage is unreasonable interference: *Royal Anne Hotel Co. Ltd. v. Village of Ashcroft* (1979), 1979 CanLII 2776 and *Medema v. McCreight*, 2016 BCPC 205 (CanLII) , 2016 B.C.P.C. 205.
48. Based on the evidence discussed above, I find that the strata has directed and focused water from an upper portion of the strata to the rock pit near SL70. Further, for the reasons discussed above, I find that that this discharge water has been entering SL70 and causing subsistence and damage. As such, I find that the strata's operation of the rock pit is an unreasonably interfered with SL70 in breach of the strata's duties under SPA section 3.
49. I find that the strata must divert the water from the rock pit away from SL70 to the extent possible. Elanco's report says that it may be possible to divert the stormwater to a nearby manhole that drains to the creek. However, in the absence of submissions from either party about the feasibility of diverting the water there, I do not make any order specifying where the stormwater should be diverted to. Rather, I find it appropriate to order the strata to take all necessary steps to divert the water from the rock pit away from SL70.

Feldsteins claim for damages of \$223,124

50. The Feldsteins claim damages of \$223,124 for property repair costs, special damages, mental distress and stigma damages. However, the Feldsteins have not provided any explanation or itemization of how they calculated the damages or provided any quotes or estimates supporting their claim for repair costs. I find that Feldsteins have not proved any damages in excess of the order discussed above requiring the strata to pay 75% of the retaining wall repair or replacement costs. So, I dismiss the Feldsteins' claim for repair damages.
51. Turning to the Feldsteins' claim for mental distress damages, the BC Court of Appeal has found that there must be some evidentiary basis for awarding damages for mental distress (see *Lau v. Royal Bank of Canada*, 2017 BCCA at paragraphs 48 to 49). As discussed in the non-binding but persuasive decision in *Eggberry v. Horn et al*, 2018 BCCRT 224, for a claim for stress or mental distress to be successful there must be some medical evidence supporting the stress or mental distress. I agree with the reasoning in *Eggberry* and apply it here. While I accept that the situation may have been stressful for the Feldsteins, that alone is insufficient to provide damage or loss for mental distress. As the Feldsteins did not submit any medical evidence, I find they are not entitled to damages for this claim, so I dismiss it.
52. Further, the Feldsteins have not provided sufficient evidence to prove a loss of SL70's value. So, I dismiss the Feldsteins claim for stigma damages.
53. For the above reasons, I dismiss the Feldsteins' claim for damages.
54. Based on my findings that the strata's discharge of water from the rock pit breached the strata's duties under SPA section 3, I find it unnecessary to also determine whether the strata's use of the rock pit was significantly unfair to the Feldsteins

CRT FEES AND EXPENSES

55. 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. Since both the strata and the Feldsteins were partially successful in their claims, I find that neither party is entitled to reimbursement of their CRT fees.

56. The strata did not request reimbursement of dispute-related expenses. The Feldsteins requested reimbursement of \$3,491.25 for expert fees for the Ground Up report and unspecified expenses for the Elanco report and legal fees in their submissions. The Feldsteins provided receipts showing the payment of \$3,491.25 for Ground Up's engineering report. I found Ground Up's report helpful in determining the condition of the retaining wall. So, I find that this expense is a reasonable dispute-related expense. Since both parties were partially successful, I find that the Feldsteins are entitled to reimbursement of one-half of this expense, being \$1,745.62. The Feldsteins did not provide any evidence supporting their claim for unspecified expenses for the Elanco report and legal fees. So, I dismiss these reimbursement claims.
57. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the Feldsteins.

ORDERS

58. I order that:

- a. Within 12 months, the Feldsteins repair or replace the retaining wall in compliance with generally accepted engineering standards and municipal bylaws. The strata is responsible for 75% of the reasonable repair or replacement costs.
- b. Within 12 months, the strata must take all necessary steps to divert the water from the rock pit away from SL70.
- c. Within 30 days, the strata pay the Feldsteins \$1,745.62 for dispute-related expenses.

59. I refuse to resolve the Feldsteins' nuisance claim.

60. All remaining claims and counterclaims are dismissed.
61. The Feldsteins are entitled to post-judgment interest, as applicable.
62. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court 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.

Richard McAndrew, Tribunal Member