



Civil Resolution Tribunal

Date Issued: November 12, 2021

File: ST-2021-001277

Type: Strata

Civil Resolution Tribunal

Indexed as: *Shoebridge v. The Owners, Strata Plan N.W. 593*, 2021 BCCRT 1199

B E T W E E N :

ERICA SHOEBRIDGE

APPLICANT

A N D :

The Owners, Strata Plan N.W. 593

RESPONDENT

A N D :

ERICA SHOEBRIDGE

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about responsibility for repairs to a townhouse strata lot bedroom that used to be a balcony, and the roof over it.
2. Erica Shoebridge owns strata lot 21 (SL21) in the strata corporation, The Owners, Strata Plan N.W. 593 (strata). In January 2019, a water leak from the roof or siding damaged SL21's converted bedroom. The strata paid the emergency response costs. Ms. Shoebridge wants the strata to pay to repair the converted bedroom's floor and drywall, as well as any structural damage. Ms. Shoebridge also wants the converted bedroom "brought up to code" and properly fitted with heat and electricity, at the strata's expense. She seeks \$15,000 for this. In addition, Ms. Shoebridge seeks an order that the exterior of her townhouse is the strata's responsibility to repair and maintain, which she values at \$5,000 for reasons that are not explained. Ms. Shoebridge is self-represented.
3. The strata says Ms. Shoebridge is responsible for repairs in the converted bedroom's interior. In the counterclaim, the strata says its bylaws make Ms. Shoebridge responsible for previous strata lot alterations, including the roof over the converted bedroom. For that reason, the strata seeks an order that Ms. Shoebridge pay the \$3,675 charge it imposed on her strata lot account for roof repair and skylight removal, unrelated to the leak. The strata is represented by a strata council member.

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). CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.

5. 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.
6. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.
7. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Under CRTA section 123, 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

9. The issues in this dispute are:
 - a. Who is responsible for SL21's skylight removal and re-roofing costs?
 - b. Who is responsible for repairs and upgrades inside SL21?
 - c. What remedies, if any, are appropriate?

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Ms. Shoebridge must prove her claim on a balance of probabilities, meaning more likely than not. The strata must prove its

counterclaim to the same standard. While I have read all the evidence and submissions, I only refer to what is necessary to explain my decision.

11. The strata plan was filed with the Land Title Office (LTO) in 1976. It includes multiple buildings of row townhouses. SL21 is has a balcony on its upper level. The strata plan says the balcony is part of SL21. SL21's unit entitlement is 1073, which does not include the 120-square foot balcony.
12. Ms. Shoebridge has owned SL21 since September 2017. I accept the strata's unchallenged evidence about SL21's history. At some point between 1976 and 1986, a previous owner enclosed SL21's balcony as a solarium. In or around 2016, KW, the owner before Ms. Shoebridge, renovated the solarium into a bedroom. An email from August 2016 shows KW asked for permission to replace carpets with laminate flooring, paint, and do some "minor framing and drywall." The correspondence before me does not show whether the strata approved the request or made further inquiries about the "minor framing." There is no alteration agreement in the evidence.
13. Photos show that the roof over the converted bedroom matches the shape and style of the existing roof over the rest of SL21 and the other strata lots. It includes a flat section and at least 1 sloped section.
14. The strata says the roof over the converted bedroom is part of the building envelope, and says the strata has a responsibility to ensure the integrity of the building envelope. I agree. This is consistent with bylaw 8, which says the strata must repair and maintain common property and a strata lot, but the duty to repair and maintain a strata lot is restricted to, among other things, the exterior of a building, including skylights.
15. As noted, in January 2019, either the roof or siding near the converted bedroom leaked. According to the emergency contractor's report, the area around the skylight was dry and the leak was likely from worn out siding on an exterior wall. This is consistent with a roofing inspection report, discussed below.

16. The strata made temporary repairs because of an upcoming decision on major repairs. At the strata's April 2019 annual general meeting, the owners approved a \$2.5 million special levy for a "building envelope/siding retro-fit", apportioned by unit entitlement. The project began in November 2019 and finished in May 2021. It involved replacing plywood sheathing on exterior walls and flat roofs where required, waterproofing, and installing new siding. The strata says new flat roofs were installed on all strata lots.
17. In the envelope repair project's preliminary stages, Ms. Shoebridge asked the strata if the roofing contractor could remove the converted bedroom's skylight. Ms. Shoebridge had experienced temperature control issues in the room and wanted the skylight removed. The strata manager advised that the cost to remove and roof over the skylight would be \$500, provided the original skylight installation was done correctly. It is undisputed that the contractor removed the skylight and reroofed above the converted bedroom.
18. In a January 18, 2021 letter, the strata advised Ms. Shoebridge that it had charged her strata lot account \$3,657. Ms. Shoebridge says she did not receive the letter until May 3, 2021. The letter did not explain the charge, but the strata now says it was for the skylight removal and roof replacement above the converted bedroom.

Who is responsible for the skylight removal and re-roofing costs?

19. The strata says it charged Ms. Shoebridge for skylight removal and re-roofing costs under bylaw 5(4). I reproduce that bylaw in full below. For context, bylaw 5(1) requires owners to obtain the strata council's approval before altering a strata lot that involves the exterior or structure of a building, among other things. Bylaws 5(2) and 5(3) set out various requirements for the applying owner to follow.
20. Bylaw 5(4) says:

An owner who carries out, or causes to be carried out, any alteration described in section 5(1) does so at his or her sole risk, cost and expense. Further, the owner, and any owner subsequently on title receiving the benefit

of such alteration, shall indemnify and save harmless the strata corporation from and against any and all:

(a) costs and expenses incurred, or which may be incurred, by the strata corporation or the council;

(b) claims, including claims for personal injury or property damage;

in any way arising from any act or omission of the owner (or any occupant, tenant, contractor, agent, guest or invitee of the owner or his strata lot) and relating to such alteration and from and against all costs, legal fees, expense and liabilities in or about any such costs, expense, claims or any action or proceeding brought, but only to the extent that the same is not recovered from the proceeds of insurance carried by the strata corporation.

21. The strata does not explain why it believes bylaw 5(4) gives it the authority to charge Ms. Shoebridge for roof repairs and skylight removal. I find bylaw 5(4) does not give the strata this authority.
22. While bylaws 5(4)'s wording is somewhat confusing, I find it is clear that the (a) costs and expenses, and (b) claims, that owners must indemnify the strata from, must meet 2 preconditions. They must arise from an act or omission of the owner (or the owner's contractor, etcetera) and they must relate to the alteration.
23. Here, there is no alleged act or omission of Ms. Shoebridge or anyone else that led to the strata's incurring expenses. Rather, the ownership voted to replace some of the roofs and siding as they were at the end of their lifespan. The strata decided to replace all flat roofs, including the one over the converted bedroom, even though there was no evidence of water ingress from that roof. I find bylaw 5(4) does not apply to this situation.
24. Even if bylaw 5(4) operated as the strata implies, I would still find the strata failed to prove its claim for the \$3,657 chargeback. The strata does not say how it calculated this figure. It offers no evidence in support, such as an invoice from the roofing

contractor. Nothing in the evidence suggests that replacing the roof over the converted bedroom was not already factored into the \$2.5 million special levy.

25. Without authority in a bylaw authorizing it to charge repair costs to an owner, a strata must have the owner's agreement. See, for example, the non-binding but persuasive *Huang v. The Owners, Strata Plan EPS1910*, 2019 BCCRT 1072. Ms. Shoebridge did not agree to pay roofing costs in addition to her contribution to the special levy. She only agreed to pay \$500 for the skylight removal. That work was done at Ms. Shoebridge's request and for her benefit. I find she must pay the strata \$500.
26. Ms. Shoebridge did not explicitly ask for an order that the strata reverse the \$3,657 charge on her strata lot account. This is likely because she says, and I accept, that she was not aware of the charge until May 2021, well after she filed her CRT dispute application. In order to provide clarity and finality for the parties, I order the strata to reverse the \$3,657 charge.
27. As for Ms. Shoebridge's claim for an order that SL21's exterior is the strata's responsibility to repair and maintain, I find this would be a declaratory order, which the CRT generally does not have jurisdiction to make. In any event, the strata does not dispute its responsibility under the bylaws to repair and maintain SL21's exterior, and there is no evidence it is not meeting this responsibility. For these reasons, I dismiss this claim.

Who is responsible for repairs inside SL21?

28. Ms. Shoebridge says when purchasing SL21 she did not know the converted bedroom used to be a balcony. She says she later discovered there was no electricity (other than a light) or heat, and various other issues in the converted bedroom. She says her lawyer, realtor and inspector all failed to bring these issues to her attention. I find these allegations are unrelated to Ms. Shoebridge's claim against the strata.
29. Ms. Shoebridge says the strata should pay to bring the converted room "up to code", including heat, electricity, a vapour barrier, and insulation. She argues that the strata is responsible for these upgrades because the strata told her that her strata lot did

not have any additions. This is based on information the strata supplied in the “Form B” information certificate.

30. The “Form B” information certificate is issued under SPA section 59. Information disclosed in a Form B is binding on the strata but under SPA section 59(6), only the BC Supreme Court may hear claims about allegedly inaccurate information in a Form B. For that reason, I refuse to resolve this aspect of Ms. Shoebridge’s claim under CRTA section 10.
31. Ms. Shoebridge asks for an order that the strata replace her floor and drywall, which she says suffered water damage in the 2019 leak, and address any structural damage that may have occurred. I find there is no evidence to suggest the leak caused any structural damage.
32. Bylaw 2(1) says an owner must repair and maintain their strata lot, except for repair and maintenance that is the responsibility of the strata. The bylaws do not make the strata responsible to repair or maintain the interior of Ms. Shoebridge’s strata lot.
33. A strata corporation may be liable to an owner for strata lot damage if the strata corporation was negligent in carrying out its repair and maintenance duties. The standard a strata corporation must meet in performing its repair and maintenance duties is reasonableness, not perfection: see *Hirji v. The Owners Strata Corporation Plan VR 44*, 2015 BCSC 204.
34. Ms. Shoebridge says the leak occurred because the strata did not keep the siding in good repair. She relies in part on a January 4, 2019 roof inspection report from McMahon and Sons Roofing Company prepared for the strata. The report points out a number of flaws in the cedar siding, including holes and cracks that had been caulked “several times over, indicating previous issues with leaks.” The report recommended addressing the siding, particularly on the upper levels, as soon as possible.
35. I find the roof inspection report falls short of establishing that the strata’s approach to managing the building envelope and siding was unreasonable. I say this in part

because despite what the roof inspection report infers from the presence of multiple layers of caulking, there is no evidence of previous leaks. A history of leaks is a common thread in decisions where strata corporations have been found negligent: see, e.g., *Simmons et al v. The Owners, Strata Plan LMS 49*, 2019 BCCRT 753. There is also no evidence, for example, that the strata failed to perform minimum maintenance as recommended by a qualified professional. Finally, there is no expert opinion evidence that the strata should have replaced the siding sooner or that caulking cracks and holes was not a reasonable approach.

36. Ms. Shoebridge says her insurer denied coverage because the strata did not keep the siding in good repair. A January 15, 2019 letter from her insurer denying coverage sets out several policy exclusions but does not identify which exclusion or exclusions applied, or set out any of the insurer's conclusions about the source of the damage. In any event, the insurer's decision to deny coverage is not determinative of whether the strata was negligent.
37. For these reasons I find Ms. Shoebridge has not met the burden of proving the strata was negligent and I dismiss this claim.

Other requested remedies

38. The strata says it is unfair that Ms. Shoebridge enjoys the strata fees, special levies and property taxes of a 2-bedroom unit while having a 3-bedroom unit. In submissions it seeks orders that Ms. Shoebridge make the converted room "legal" and add it to her unit entitlement. The strata did not amend its Dispute Notice to add this claim, so arguably Ms. Shoebridge did not have adequate notice of the issue. In any event, SPA section 246(7) and (8) say that the strata may apply to the BC Supreme Court for an order amending the Schedule of Unit Entitlement to accurately reflect the habitable area of a strata lot. Section 122 of the CRTA says the CRT does not have jurisdiction in relation to a claim under SPA section 246. For that reason, I refuse to resolve the strata's claim under CRTA section 10.

CRT FEES, EXPENSES AND INTEREST

39. 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. Ms. Shoebridge was unsuccessful in her claim, and the strata was largely unsuccessful in its counterclaim. I consider it appropriate that each party should pay their own CRT fees, so I make no order. Neither party claimed dispute-related expenses.
40. The *Court Order Interest Act* (COIA) applies to the CRT. The strata is entitled to prejudgment interest on the \$500 skylight removal cost. It is not clear from the evidence when this expense was incurred, but I find the best evidence of the approximate date is the January 18, 2021 letter from the strata that purported to charge Ms. Shoebridge \$3,675. I find interest from January 18, 2021 to the date of this decision equals \$1.84.
41. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Shoebridge.

ORDERS

42. I order the strata to immediately remove the \$3,675 chargeback for roof repair costs from Ms. Shoebridge's strata lot account.
43. I order Ms. Shoebridge, within 30 days of the date of this decision, to pay the strata a total of \$501.84, broken down as \$500 for the skylight removal and \$1.84 in COIA interest.
44. The strata is also entitled to post-judgment interest under the COIA, as applicable.
45. I refuse to resolve the strata's claim to amend the Schedule of Unit Entitlement.
46. I refuse to resolve Ms. Shoebridge's claim relating to information in the Form B information certificate.
47. I dismiss the strata's remaining claims.

48. I dismiss Ms. Shoebridge's remaining claims.

49. 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.

Micah Carmody, Tribunal Member