



# Civil Resolution Tribunal

Date Issued: December 17, 2021

File: ST-2021-004575

Type: Strata

Civil Resolution Tribunal

Indexed as: *Graham v. The Owners, Strata Plan LMS 516*, 2021 BCCRT 1322

**B E T W E E N :**

ROSS GRAHAM, Executor of the Estate of GLENN WILLIAM  
GRAHAM, deceased

**APPLICANT**

**A N D :**

The Owners, Strata Plan LMS 516

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell, Vice Chair

## INTRODUCTION

1. This strata property dispute is about removal of items and cleaning of a strata lot after the occupant's death.

2. The applicant, Ross Graham, is the executor of his brother Glenn William Graham's estate. Glenn William Graham owned strata lot 57 (SL57) in the respondent strata corporation, The Owners, Strata Plan LMS 516 (strata). Land title documents in evidence show that at the time this dispute was filed, SL57 was registered in the name of Ross Graham and another person, as administrators of the estate.
3. For clarity, in this decision I refer to Ross Graham as Mr. Graham, and Glenn William Graham as GWG.
4. Mr. Graham says GWG died in SL57 sometime before August 9, 2020, when he was found during an RCMP safety check performed at a neighbour's request. Mr. Graham says the strata then hired a contractor, Genesis Restorations Ltd. (Genesis), to clean out the strata lot. Mr. Graham says that Genesis removed and disposed of valuable belongings, including an outboard boat motor, a wine collection, and an iPhone. Mr. Graham says the strata was not entitled to have its contractor remove personal property from SL57 or dispose of it, and instead should have secured the strata lot and its contents.
5. Mr. Graham says the lost belongings have an estimated value of \$40,000. He requests an order that the strata pay \$40,000 for "devaluation of the estate".
6. The strata says Mr. Graham's claim should be dismissed. The strata says other owners complained about contamination and odours coming from SL57, so it had to take steps to enforce its bylaws against nuisance and hazard. The strata says that due the level of contamination in SL57, it hired Genesis to purify the air with machines, clean carpets and surfaces, and remove and dispose of flooring and contaminated contents. The strata says Genesis sorted through the items in SL57 to determine which were "non-restorable", and the strata is not liable for those actions. The strata also says Mr. Graham has not proved that GWG's estate or belongings were damaged or devalued by \$40,000, or by any other amount.
7. Mr. Graham is self-represented in this dispute. The strata is represented by a strata council member.

8. For the reasons set out below, I find in favour of the strata, and dismiss this dispute. Specifically, I find that the strata's actions were reasonable in the circumstances, and that the value of the personal property in SL57 at the time it was cleared is unproven.

## **JURISDICTION AND PROCEDURE**

9. 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.
10. 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.
11. 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.
12. 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.

### ***Claim for SL57 Cleanup Costs***

13. In his submissions, Mr. Graham said the CRT should order the strata to reimburse GWG's estate for the amount paid to the strata to cover Genesis's remediation

expenses. He says that he, or the estate, paid around \$42,000 to the strata under protest, so they could sell SL57.

14. I find it would be unfair to decide this claim about cleanup costs as part of this dispute. It was not included in the Dispute Notice, and was not formally raised as part of this dispute until Mr. Graham provided his submission.
15. I note that in March 2021, the strata filed a separate dispute against GWG's estate, ST-2021-00251, seeking payment of \$40,0024.52 for SL57 cleanup costs, presumably after the expenses were paid on behalf of the estate prior to SL57's sale.
16. The CRTA and CRT rules permit an applicant to request to amend the Dispute Notice to add new claims or remedies. Although this process was available to Mr. Graham, the Dispute Notice was not amended. I find the purpose of a Dispute Notice is to define the issues and provide notice to the respondent of the claims against it and the remedies sought. CRT rule 1.19 says that the Dispute Notice will not be amended after the dispute has entered the CRT decision process except where exceptional circumstances apply. I find no exceptional circumstances here that would allow adding new claims at this late stage in the CRT proceeding. In particular, I find it would undermine the purpose of the CRT's mandatory facilitation process to add new claims, without notice, after facilitation has ended.
17. For these reasons, I make no findings in this decision about whether the strata should reimburse Mr. Graham or GWG's estate for SL57 cleanup costs.

## **ISSUE**

18. Must the strata pay damages for destroyed or lost belongings from SL57?

## **BACKGROUND**

19. At the outset of this decision, I wish to acknowledge that the circumstances of GWG's death are sensitive and unfortunate. My decision focuses solely on the relevant legal

analysis, but the facts underlying this dispute are likely distressing to GWG's family and friends.

20. The strata plan shows that the strata consists of 114 townhouse-style strata lots, plus common property. SL57 is a 2-storey strata lot, and is an end unit in a building containing 4 strata lots. SL57 shares a wall with strata lot 58 (SL58).
21. The evidence shows that around August 9, 2020, an occupant of SL58 contacted the strata asking that someone check on GWG. The email correspondence indicates that she had noticed no activity and unclaimed mail, and had called the strata about an odour from SL57. The parties agree that the strata contacted the RCMP, who unfortunately found GWG's body in the primary bedroom. The coroner removed the body on August 9, 2020.
22. On August 10, 2020, the neighbour again emailed the strata, and complained that the odour from SL57 was entering her strata lot through the adjoining wall. She wrote that the odour was "very bad this morning, and as you can imagine, it's quite bothersome as we now know what the smell is."
23. Later on August 10, 2020, the strata contacted Genesis and signed a contract for emergency cleanup. As discussed further below, the cleanup included cleaning surfaces, removing some flooring, using air purifying equipment, and removing most of SL57's contents.

## **REASONS AND ANALYSIS**

24. In a civil claim like this one, Mr. Graham, as applicant, must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision.
25. The strata submits that because of SL57's condition in early August 2020, and the complaint about odour from SL58's occupants, it reasonably hired Genesis to perform cleaning and decontamination work in SL57, which included removing "non-

restorable” items. For the following reasons, I agree. In making this decision, I place significant weight on the evidence of Genesis’ project manager, Graham Dick.

26. In his signed statement dated September 8, 2021, Mr. Dick outlines his qualifications. He says he is Genesis’ owner and founder, and has operated it since 1990. He says Genesis is a restoration company with expertise in trauma and crime scene cleaning and decontamination. Mr. Dick says that he and his operations manager are among the best subject matter experts in Canada, he presented at a forensic conference in 2018, he is listed in the Institute of Inspection Cleaning and Restoration Certification (IICRC) standards, and that Genesis has worked on hundreds of projects similar to that in SL57.
27. Based on these listed qualifications, which are not contradicted by other evidence, I accept that Mr. Dick is an expert witness, as contemplated in CRT Rule 8.3. I note Mr. Graham’s submission that the IICRC trauma and crime scene cleanup standards Mr. Dick cites have only existed since 2017. However, I find this does not disprove Mr. Dick’s expertise in this field. I also note that there is no contrary expert evidence before me, or other forensic evidence such as an RCMP or coroner’s report.
28. Mr. Dick emailed an initial site inspection report to the strata on August 13, 2020, after inspecting SL57. He wrote that GWG’s body had likely been present 2 to 3 weeks before discovery, significant decomposition had occurred, and all surfaces in the primary bedroom were coated and non-restorable. The report also says that the door had been open, so there was severe odour saturation into all contents, furniture, paint, and floors, there were flies and maggots throughout the main floor, and significant odour upstairs.
29. In the initial site inspection report, Mr. Dick wrote that Genesis’ work would include removing and disposing of all items that clearly had no value to estate, packing items that had value or would identify assets or help to wrap up estate, removing laminate flooring, and cleaning and decontaminating.
30. The strata authorized Genesis to proceed with the proposed work. On August 16, 2020, Mr. Dick emailed the strata, stating he wanted to clarify that the contamination

was not limited to the bedroom. He said that since the main floor bedroom door was open, maggots, flies, and odour saturation extended throughout SL57, including upstairs. He wrote:

The contents are not restorable. While they would have a replacement value if it was a fire claim, the value of everything if sold by an executor of the estate at auction would be zero. You can't sell contents that stink like decomposing bodies. The cost to remove the odour, list, inventory is much too high and then try to get some salvage value would be to spend a dollar to pick up a dime. This is why the items saved are strictly for the purpose of providing evidence to the estate of where the deceased's bank accounts and other assets were. ID, computer, flash drives, credit cards, passports, and bank statements and the like. We found keys for bank security box but no idea which bank; he has a boat in a marina (according to the neighbor) but we couldn't find anything. All items that can help the estate are now stored in the garage.

31. In a scope of repair document dated August 27, 2020, Mr. Dick summarized the work completed. He also provided a specific set of notes about the value of SL57's contents, and why they were disposed of, as he acknowledged that this was "often called into question". He wrote:

- a. Time was of the essence because the neighbor had odour penetration into their unit.
- b. The Strata and Property Mgt understood from police that there was no next of kin.
- c. There was no evidence in paper documents within the home that identified possible kin; no family pictures, letters, or identification for emergency contacts in passport, etc.

- d. The bedroom door was found open when we initially gained access and the HVAC contractor confirmed that the furnace had been operating and circulating the air throughout the home.
- e. The rationale used was that if a Public Trustee was assigned to dispose of the estate (turn everything to cash), an estate auction would be likely.
- f. All materials absorb odour at various rates. Everything had been 'soaking' in the increasing odour of decomposition for 3-4 weeks. As a body decomposes, the fluids evaporate and then redistribute onto all surfaces (like smoke), coating the surfaces of everything and as the temperature rises (no AC, sunny July/Aug) molecular absorption...takes place. Plastics and electronics are especially susceptible to this and will continue to off gas odours at warmer temperatures for months or years.
- g. The cost of creating an inventory of all contents, cleaning, decontaminating, deodorizing, evaluating, packing, moving, storage, and then listing, selling, and all administration usually greatly exceeds the value of any item.
- h. Sentimental items – Despite the odour, I set aside old family photos, just in case the police did find family. We also found some items that had been pre-packed in Rubbermaid totes. We placed those in the garage even though the totes themselves had absorbed odour. Any totes found open were disposed of.
- i. All other items were disposed of.

32. Finally, Mr. Dick's September 8, 2021 statement contains the following information:

- a. The remediation work in SL57 needed to be completed without further delay as the odour was getting stronger and more unbearable day by day, causing the putrefaction gas to be transmitted into the neighbouring unit.
- b. The work in SL57 was considered a "decomposition clean-up", which Genesis estimates developed over 2 to 3 weeks in the heat of summer, thus putrefaction



gases and compounds evaporating from the body had settled on and penetrated into all materials and items. These gases “effectively saturated paint, plastics, unfinished wood, just to name a few.” There were thousands of flies excreting on everything and maggots in the source room. The work was done in accordance with IICRC S540, Section 11 Structural Remediation, 11.2 Decomposition Remediation.

- c. Based on his initial walk through, Mr. Dick determined that all of the contents in SL57 were heavily contaminated by the odour, and should therefore be disposed of.
- d. The best way of preventing the odour within SL57 from penetrating into the neighbouring unit was to remove the contents of SL57 and to decontaminate its structure. This plan was communicated to the strata council and the property manager, and it was decided by all parties that the scope of work would be limited to only that which would decontaminate and eliminate the odour. This would arrest and mitigate any continuing damage to SL57 and decrease the eventual cost of renovation to pre-loss condition.
- e. In Mr. Dick’s professional opinion, both hard and soft assets absorb odours, which would lead to their disposal. The items that Genesis deemed contaminated included at least 2 relatively new TVs, a laptop, printer, and glass bottles. If the TVs and printer were to be sold (liquidated), they would emit the contaminated odour once they were turned on, as it would cause them to heat up internally. The cost of remedying such an issue would greatly surpass the actual cash value of the electronics.
- f. Mr. Dick told the strata that all of SL57’s contents had to be removed before the remediation work could begin. He also told the strata that the actual cash value of SL57’s contents was negative because the cost of having Genesis inventory, pack and move the items in SL57, including decontaminating the moving truck, and storing the items until the court appointed an executor would exceed the actual cash value or replacement value of the items found in SL57.

- g. Creating a comprehensive inventory of all contents would have taken an estimated 200-250 “man hours”, completed in full PPE at bio-hazard labour rates, ranging from \$20,000-\$25,000. This does not include the cost of removing the contents and decontaminating SL57.
  - h. SL57’s contents could not be transported to a storage facility as there is no facility that accepts items that smell strongly of human decomposition.
  - i. Mr. Dick does not recall witnessing unopened cases of wine or liquor inside SL57. In his professional opinion, even if glass bottles were found, the glass would also be susceptible to absorbing contaminated odour, especially if exposed at increased temperatures. GWG’s body was decomposing in the heat of summer, while the furnace was turned on and there was no air-conditioning. Therefore, even if there were unopened wine and/or liquor bottles inside SL57, they would have been deemed contaminated and needed to be disposed of.
  - j. Mr. Dick is not aware of any Genesis employee taking an item that was found inside SL57 for their own personal use. Operation manager Roy Peers or Mr. Dick were present at all times that any Genesis employee attended SL57.
  - k. Genesis did not liquidate any of the contents it found in SL57 for profit or for any other reason. All contents were considered to be of no monetary value due to their contamination, and were considered a liability for the estate, rather than an asset.
33. As noted above, I place significant weight on Mr. Dick’s statements, as I find he is an expert in post-death cleaning and decontamination. Also, I find there is no contrary evidence expert before me, and no evidence from anyone who observed the state of SL57 before the cleaning began. I find that Mr. Dick’s written statements from the time of his initial inspection onward are consistent, and are corroborated to some extent by the strata’s confirmation about odour complaints from the SL58 occupant.
34. Also, there is no evidence such as a death certificate or coroner’s report indicating that GWG died at a different time than Mr. Dick estimates.

35. Based on Mr. Dick's evidence, I find it was reasonable for the strata to follow his advice, and authorize Genesis to clear SL57's contents. The potential health hazard and nuisance to neighbouring owners could not continue, particularly in the summer weather. The evidence shows that GWG did not provide the strata with emergency contact information, such as his siblings' names or phone numbers.
36. I find that the evidence also shows the strata made reasonable attempts to find a contact person for GWG, including through the RCMP and GWG's bank. Mr. Graham submits the strata should have done more, such as contacting GWG's employer, but I find this was outside the reasonable scope of the strata's responsibilities, particularly since the RCMP were involved.
37. Mr. Graham says GWG's items should have been stored. However, I find that in the circumstances, it was reasonable for the strata to act on Mr. Dick's advice to dispose of SL57's contents. I note that in his September 8, 2021 statement, Mr. Dick specifically addresses this issue. As summarized above, Mr. Dick says no storage facility would have taken the items, and the associated costs were higher than the items' value. Since Mr. Graham has not provided a contrary expert opinion, I am persuaded by Mr. Dick's opinion that storage was not a viable option.
38. I acknowledge that the *Strata Property Act* (SPA) does not specifically authorize a strata corporation to remove personal property from a strata lot. SPA section 133 permits a strata to do what is reasonably necessary to remedy a bylaw or rule contravention, including doing work on a strata lot, or removing objects from common property. Section 133 does not permit removal of items from a strata lot. However, Mr. Graham agrees that GWG's family was not aware of his death until August 14, 2020. Given the circumstances described above, I find the strata reasonably had to act quickly, as the situation was both urgent and worsening.
39. For these reasons, I find the strata acted reasonably in the circumstances by obtaining and following Genesis' advice. Also, even if Genesis' advice was incorrect, I find the strata cannot be liable on that basis. In making this finding, I rely on the BC Supreme Court's decision in *Wright v. The Owners, Strata Plan #205*, 1996 CanLII

2460 (S.C.), affirmed (1998), 43 B.C.L.R. (3d) 1, 1998 CanLII 5823 (C.A.). In *Wright*, the court said a strata corporation is not responsible for errors made by those it hires to carry out work, as long as it acted reasonably in the circumstances.

40. Even if I found the strata was negligent in permitting Genesis to clear SL57's contents, I find that Mr. Graham has not proven the nature or value of those contents.
41. First, Mr. Graham has not provided expert evidence to contradict Mr. Dick's assertion that even the solid-surfaced items in SL57 had no monetary value due to contamination.
42. Second, the evidence indicates that neither Mr. Graham or his sister were in SL57 in the weeks or months before GWG's death. Therefore, I find their evidence about what was likely in SL57 in August 2020 is speculative and unproven. They provided copies of owners' manuals for various items, but having manuals does not prove that GWG had the items in question, that they were in working or sellable condition, or what their value was. There is evidence about inventory lists and purchases of wine and liquor, but I find these purchases were not conclusively proven, and even if they were, I find Mr. Graham has not proven that the items were in SL57 in August 2020, or what their value was. For example, the fact that GWG bought a particular type of wine before his death does not prove he stored the wine in SL57, that all the wine he bought was purchased for a similar price, or that it had any resale value.
43. Mr. Graham relies on the August 17, 2021 statement of AC, who was GWG's friend. AC said she was last in SL57 on December 29, 2019. AC gave evidence about items in SL57 at that time, including cases of wine, 15-20 expensive bottles of liquor, a boat motor in the garage, and a watch. I find AC's evidence does not prove what items were in SL57 in August 2020, as she had not been there for over 7 months. Also, I find her opinion about the value of the items she observed is speculative.
44. In her August 20, 2021 statement, GWG's sister SLM says it would have been out of character for GWG to leave his safe and filing cabinet empty. While I accept SLM's opinion about GWG's usual habits, I find her statement evidence does not prove what was in SL57 in August 2020, or the value of those contents.

45. SLM also says phone records show that GWG's phone was used after his death. However, since no phone records were provided in evidence, I find this assertion is unproven.
46. Mr. Graham argues that Genesis liquidated items from SL57 for its own benefit. He also more specifically asserts that Mr. Dick, or someone associated with Genesis, stole items from SL57. Mr. Dick denies these allegations in his written statement.
47. Mr. Graham provided a copy of an entry from Mr. Dick's Facebook page, and says the pictured wine and glasses were similar to those owned by GWG, and may have come from SL57. I find this argument is speculative and unproven. There is no evidence that the pictured items were particularly unique, or could not have been purchased by anyone but GWG. I find Mr. Graham is asserting fraud by Genesis or Mr. Dick. In cases such as *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7 (CanLII), the BC Supreme Court has said that because fraud is a very serious allegation, which carries a stigma, it requires clear and convincing proof. I find there is no such proof in this case, and Mr. Graham's assertion of fraud is speculative.
48. For all of these reasons, I find Mr. Graham has not proven his claim for \$40,000 in damages. I find he has not proven it was unreasonable or negligent for the strata to permit Genesis to dispose of SL57's contents. I also find Mr. Graham has not proved what items were in SL57, or their monetary value. I therefore dismiss the damages claim, and this dispute.

## **CRT FEES AND EXPENSES**

49. Under CRTA section 49 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.
50. The strata is the successful party. It paid no CRT fees and claims no dispute-related expenses. I therefore do not award them to any party.

## **ORDER**

51. I dismiss Mr. Graham's claims and this dispute.

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Kate Campbell, Vice Chair