



# Civil Resolution Tribunal

Date Issued: December 17, 2021

File: ST-2021-001325

Type: Strata

Civil Resolution Tribunal

Indexed as: *Ragosin v. The Owners, Strata Plan VR 1632*, 2021 BCCRT 1324

B E T W E E N :

MICHAEL RAGOSIN

**APPLICANT**

A N D :

The Owners, Strata Plan VR 1632

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Richard McAndrew

## INTRODUCTION

1. This dispute is about flooring installation. The applicant, Michael Ragosin, owns a strata lot (SL88) in the respondent strata corporation, The Owners, Strata Plan VR 1632 (strata). Mr. Ragosin claims the strata published inaccurate strata council minutes on December 17, 2020 and December 21, 2020 stating that Mr. Ragosin installed flooring in violation of strata bylaw 5(1)(h). Mr. Ragosin says that the flooring

was installed in compliance with the bylaws. Mr. Ragosin asks for an order requiring the strata to publish new strata council minutes stating that Mr. Ragosin did not breach the bylaws and apologizing. Mr. Ragosin also requests an order requiring the strata to provide ongoing approval of SL88's flooring to future owners.

2. The strata denies Mr. Ragosin's claims. It says that Mr. Ragosin violated bylaw 5(1)(h) by failing to use the required double glue down flooring installation method.
3. Mr. Ragosin is self-represented. 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. 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.

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 strata publish new strata council meeting minutes stating that SL88's floor complies with the bylaws?
  - b. Must the strata apologize to Mr. Ragosin?
  - c. Should SL88's flooring be approved on an ongoing basis to prevent the strata from requiring future owners to remove the flooring?

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, Mr. Ragosin, as the applicant, must prove his claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
10. The strata was created in 1988 and operates under the *Strata Property Act* (SPA).
11. The strata filed consolidated bylaws at the Land Title Office (LTO) in May 2010, which repealed and replaced all previous bylaws. The strata filed various amendments at the LTO after 2015. Of these, I find only the strata's amendment to bylaw 5(1)(h) filed at the LTO on May 11, 2015 to be relevant to this dispute. The strata filed a further amendment to bylaw 5(1)(h) at the LTO on June 9, 2021. However, I find that this bylaw amendment is not relevant because it was not in effect when the acts relating to this dispute occurred in December 2020.
12. When Mr. Ragosin's flooring was installed in December 2020, bylaw 5(1)(h) required all wood, engineered wood and laminate flooring to have a glued down underlay with

flooring glued to the underlay (double glued) to specifications approved by the strata from time to time.

***Must the strata publish new strata council meeting minutes stating that SL88's floor complies with the bylaws?***

13. The strata council held meetings on December 17, 2020 and December 21, 2020 to discuss SL88's flooring.

**December 17, 2020 strata council minutes**

14. The December 17, 2020 strata council minutes provide a detailed description of Mr. Ragosin's flooring installation. The minutes say that SL88's flooring was installed with an "incorrect method" with a type of flooring unsuitable for glue down installation. The minutes also say that Mr. Ragosin intended to sell SL88 and, if the strata's flooring concerns were not addressed, that future owners would be responsible to remedy the flooring if future sound transfer occurred. The minutes did not recommend any action strata against Mr. Ragosin or SL88.

**December 21, 2020 strata council minutes**

15. The December 21, 2020 minutes say that SL88's flooring does not comply with the strata's double glue-down bylaw. The minutes say that SL88's floor moves when walked on, which the minutes says does not happen with a glue down application. The minutes specifically note that future owners of SL88 will be responsible for the prior alterations and improvements. The minutes say that the strata council had asked Mr. Ragosin in writing to remove the flooring and replace it with an appropriate double glue-down floor that complies with the strata's bylaws.
16. The strata sent Mr. Ragosin a December 23, 2020 letter asking him to remove and replace his new flooring. There is no evidence before me showing that the strata issued any bylaw fines against Mr. Ragosin or that it attempted to enforce its request to remove the new flooring.

17. Mr. Ragosin argues that the strata council minutes are inaccurate because his flooring was installed in compliance with the strata's bylaws. The strata disagrees and says that SL88's flooring was not installed with the double glue down method required by the strata bylaws.
18. SPA section 35(1)(a) requires the strata to keep minutes of strata council meetings, including the results of any votes. I find there are no SPA or bylaw provisions about retractions or corrections of minutes. However, in the non-binding decision of *Claridge v. The Owners, Strata Plan LMS 223*, 2020 BCCRT 161, a CRT member found that there is an implicit requirement that the minutes be reasonably accurate so that they do not mislead the owners. I agree with the CRT member's comments.
19. So, are the strata's council minutes reasonably accurate?
20. The strata's minutes generally say that SL88's flooring contravenes the strata's bylaws. So, to establish that the minutes are inaccurate, Mr. Ragosin must prove his flooring installation did not breach the bylaws.
21. Mr. Ragosin and the strata signed a construction agreement that said Mr. Ragosin would replace SL88's flooring with new wood flooring with 3 mm cork underlay, installed by "double glue down." There is no evidence before me that the strata provided Mr. Ragosin further specifications for the flooring installation.
22. Mr. Ragosin says that he complied with the double glue down flooring installation method required in bylaw 5(1)(h), which the strata denies. The strata says this installation method is required because it reduces floor movement and noise.
23. The parties agree that Mr. Ragosin glued the underlay to the floor. However, they disagree about whether the vinyl flooring was glued to the underlay.
24. Mr. Ragosin says that initially his contractors applied beads of adhesive from a caulking gun to the underside of the click on vinyl flooring to glue it to the underlay. Based on the photographs showing the flooring installation, I find that Mr. Ragosin's contractors did so.

25. BH, a strata council member, provided a June 21, 2021 statement saying that he visited SL88 to inspect the work on December 14, 2020. BH says the underlay was already installed and the flooring was approximately 30 percent installed. BH says that he told Mr. Ragosin that he was not using the required glue down installation method. The strata says that the flooring glue should have been trowelled on.
26. Based on BH's comments, Mr. Ragosin says he told his contractors to instal the rest of the flooring by trowelling glue onto the flooring rather than applying beads of glue with a caulking gun. However, Mr. Ragosin says his contractors were unable to complete the work using this method and they switched back to using beads of adhesive rather than troweling.
27. BH says he returned to SL88 on December 18, 2020 with strata council members, SC and DB. DB also provided a supporting June 24, 2021 statement. Both BH and DB say that there was some movement in the flooring which they say indicates that the flooring was not properly glued down.
28. Mr. Ragosin provided a statement from Reg Pineiro. Mr. Pineiro says he is a journeyman contractor and co-owner of a home construction and remodelling company operating since 1992. Mr. Pineiro was not involved in the installation of SL88's flooring. However, he reviewed photographs of the installation and Mr. Ragosin described the project to him. Based on Mr. Pineiro's undisputed experience as a contractor, I am satisfied that he has sufficient experience to provide an expert opinion about flooring installation under CRT rule 8.3.
29. Based on the installation photographs, Mr. Pineiro says that Mr. Ragosin's contractors applied sufficient adhesive to the flooring. Further, he says that Mr. Ragosin's contractors actually applied more glue to the flooring using this method than would have been applied with a trowel method. Further, Mr. Pineiro says that this ribbon method of installing glue with the caulking gun is the best way to perform a glue down installation with click-on flooring.
30. Mr. Ragosin also provided an opinion letter from another individual, ID, dated January 21, 2021. Although this statement was written on a flooring contractor's letterhead,

Mr. Ragosin did not provide ID's job title or describe their qualifications to provide an expert opinion. As such, I am not satisfied that ID has sufficient expertise to provide an expert opinion regarding the flooring installation as required by CRT rule 8.3. So, I do not give ID's opinions any weight.

31. DB, strata council member, also provided a June 22, 2021 statement about a conversation she had with an unidentified flooring salesperson. DB says that the salesperson orally provided opinions relating to flooring installation procedures but refused to provide a written statement. This is hearsay evidence because there is no statement from the salesperson. While hearsay evidence can be admissible in CRT proceedings, I find the issue of the validity of the flooring installation method is central to this dispute. So, I put no weight on DB's hearsay evidence about the flooring installation method.
32. Further, to provide an expert opinion, CRT rule 8.3 says an expert must state their qualifications in writing in order to provide expert evidence and I need to be satisfied that they have the sufficient education, training or experience to provide their expert opinion. However, there is no evidence the salesperson's credentials to provide an expert opinion. The strata did not provide the salesperson's name or any information about their flooring installation qualifications. As such, I am not satisfied that the salesperson has sufficient expertise to provide an expert opinion regarding the flooring installation, as required by CRT rule 8.3. For the above reasons, I do not give the salesperson's alleged opinions any weight.
33. The strata provided a June 14, 2021 email from Wesley Yam, territory manager for a flooring business. Mr. Yam said that the flooring installed by Mr. Ragosin is a floating floor and cannot be attached to the floor. Based on Mr. Yam's undisputed experience as a flooring business manager, I am satisfied that he has sufficient experience to provide an expert opinion about the installation of the flooring used by Mr. Ragosin under CRT rule 8.3. The strata also provided the flooring manufacturer's instructions which say that only a floating installation method can be used for Mr. Ragosin's floor and that no adhesive should be used. However, since beads of adhesive were used

for the flooring installation, I do not find Mr. Yam's statement or the manufacturer's instructions to be relevant.

34. On balance, I find that Mr. Ragosin has proved that he complied with bylaw 5(1)(h) by gluing the underlay to the floor and by gluing the vinyl flooring to the underlay. Further, Mr. Ragosin's method of adhering the glue with beads of adhesive from a caulking gun is supported by Mr. Pineiro. Although the strata argues that bylaw 5(1)(h) requires the application of glue by trowel, I find that the bylaw does not state this requirement and the strata has not provided any expert evidence showing that a trowel installation method was required.
35. For the above reasons, I find that Mr. Ragosin's flooring installation did not violate bylaw 5(1)(h). As such, I find that the strata's December 17, 2020 and December 21, 2020 council minutes are not reasonably accurate. So, I order the strata to amend its previous minutes to say that SL88's flooring installation did not violate the strata bylaws, under CRTA section 123(1).

***Must the strata apologize to Mr. Ragosin?***

36. I find it would be inappropriate and unnecessary to order the strata to apologize to Mr. Ragosin. The CRT generally does not order parties to apologize because forced apologies are not productive or helpful. Also, there is no evidence before me showing that the strata's council minutes were not written in good faith based on the strata's understanding of the matter at the time.
37. I dismiss Mr. Ragosin's claim for an apology.

***Should SL88's flooring be approved on an ongoing basis to prevent the strata from requiring future owners to remove the flooring?***

38. I find Mr. Ragosin's claim about the strata's conduct relating to future owners of SL88 to be speculative. There is no evidence provided showing that the strata has taken any action to enforce its request to remove and replace SL88's flooring against Mr. Ragosin so far, or that it will do so in the future against future owners. Further, I find that SL88's compliance with potential future bylaws is not yet at issue.

39. Further, I find that this order requested by Mr. Ragosin would be a declaratory order the CRT does not have jurisdiction to make (see *Fisher v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379 at paragraph 67).

40. For the above reasons, I dismiss this claim.

## **CRT FEES AND EXPENSES**

41. 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 Mr. Ragosin was partially successful, I order the strata to reimburse Mr. Ragosin one-half of his CRT fees. This is \$112.50. Neither party request reimbursement of dispute-related expenses.

42. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Ragosin.

## **ORDERS**

43. I order that the strata must:

- a. Within 30 days of this decision, reimburse Mr. Ragosin \$112.50 for CRT fees.
- b. Within 30 days of this decision, publish a statement in its strata council minutes amending its previous minutes to say that SL88's flooring installation did not violate the strata bylaws.

44. I dismiss Mr. Ragosin's remaining claims.

45. Mr. Ragosin is entitled to post judgement interest under the *Court Order Interest Act*, for CRT fees.

46. 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.

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Richard McAndrew, Tribunal Member