



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Finnamore v. The Owners, Strata Plan NW3153*, 2022 BCCRT 288

B E T W E E N :

HUGH FINNAMORE

APPLICANT

A N D :

The Owners, Strata Plan NW3153

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute involves allegations of strata mismanagement. The applicant, Hugh Finnamore co-owns a strata lot in the respondent strata corporation, The Owners, Strata Plan NW3153 (strata). Mr. Finnamore claims the strata has breached the *Strata Property Act* (SPA) by failing to use proper accounting systems, making

unapproved expenditures, preventing access to strata records, failing to complete a depreciation report and failing to make common property repairs.

2. The strata denies Mr. Finnamore's claims and says that it has complied with the SPA.
3. Mr. Finnamore is self-represented. The strata is represented by the strata council president.

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 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

8. The issues in this dispute are:
 - a. Should the strata council be declared dysfunctional?
 - b. Do the strata's accounting records comply with the SPA?
 - c. Has the strata improperly made unapproved expenditures?
 - d. Has the strata prevented Mr. Finnamore from accessing strata records?
 - e. Must the strata obtain a depreciation report?
 - f. Should the strata be ordered to adopt a written guide on strata council responsibilities?
 - g. Does the strata's record storage system comply with the SPA?
 - h. Must the strata hire a strata property manager?
 - i. Should the strata be ordered to hire an engineer to perform a building envelope assessment and repair plan?
 - j. Must the strata repair chimney chases and the parking membrane?
 - k. Must the strata council attend remedial strata governance training?

EVIDENCE AND ANALYSIS

9. In a civil proceeding such as this, the applicant Mr. Finnamore must prove his claims on a balance of probabilities. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
10. The strata was created in 1990. The strata filed a bylaw amendment package with the Land Title Office on May 6, 2019, which repealed and replaced all previous bylaws. I find that these are the relevant bylaws in this dispute.

Request for a declaration that the strata council is dysfunctional

11. Mr. Finnamore says that the strata council is dysfunctional. He says the strata council has improperly spent strata funds without proper approval, does not comply with accounting requirements, blocked his access to strata records and prevented him from participating in strata council decisions when he was a strata council member. The strata denies these allegations and says it has acted properly.
12. Mr. Finnamore asks for a declaration that the Strata council is so dysfunctional that it is unable to properly manage the strata's affairs. The strata says that the CRT does not have jurisdiction to order declaratory relief.
13. A CRT Vice Chair in *Fisher v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379, considered the CRTA's jurisdiction to grant declaratory orders. After canvassing court decisions on declaratory relief, she held that the CRT may be able to make a declaratory order if such an order is incidental to a claim of relief in which the CRT has jurisdiction. Though not binding on me, I agree with the Vice Chair's conclusion. I find the CRT likely has no authority to provide declaratory relief, save in the narrow circumstances where it is incidental to another claim for relief.
14. Here, I find that Mr. Finnamore's claim for a declaratory order is the requested claim for relief itself and is not incidental to a claim within the CRT's jurisdiction. So, I refuse to resolve Mr. Finnamore's requests for a declaration under CRTA section 10(1) as I find it is outside the CRT's jurisdiction.

Do the strata's accounting records comply with the SPA?

15. Mr. Finnamore claims the strata's accounting system does not comply with SPA section 92. This provision requires strata corporations to establish an operating fund and a contingency reserve fund (CRF). An operating fund is for common expenses that occur either once a year or more often than once a year or are necessary to obtain a depreciation report under section 94. A CRF is for common expenses that usually occur less often than once a year or do not usually occur.

16. Mr. Finnamore says that a fund accounting system is required by the SPA, which the strata denies. Mr. Finnamore sent the strata council a November 26, 2020 email estimating the costs of converting to a fund accounting system. The strata says that it did not approve Mr. Finnamore's proposed accounting system and says that its existing accounting system complies with the SPA.
17. Section 95(1) of the SPA requires strata corporations to account for money in the CRF separately from other money of the strata corporation. However, I find that the SPA does not require a specific accounting method to do so. Further, Mr. Finnamore has not provided any evidence or submissions showing that the strata's accounting records do not properly account for the CRF as required by SPA section 95(1).
18. The strata provided its February 28, 2021 balance sheet and income statement which show that the strata maintained its operating fund and a CRF in the same bank account. However, while section 95 of the SPA requires the strata to account for the CRF separately from the operating fund, it does not require it to be in a separate bank account (see the non-binding decision in *Garry v. The Owners, Strata Plan EPS2501*, 2021 BCCRT 409 at paragraph 123).
19. Based on the absence of evidence showing that strata violated SPA section 92, and the strata's accounting records, I find that Mr. Finnamore has failed to prove that the strata has violated SPA section 92 or that strata's accounting system does not comply with the SPA. So, I dismiss this claim.

Has the strata improperly made unapproved expenditures?

20. Mr. Finnamore claims that the strata council spent strata money in violation of the SPA. Specifically, he claims that unknown individuals have spent thousands of dollars on membrane patch work without owner approval. Mr. Finnamore says that the strata designated these as emergency expenses. However, he says these expenditures exceeded the amount of the emergency repairs allowable under the SPA. Mr. Finnamore requests an audit to review these expenditures.

21. SPA section 98(3) says that unapproved expenditures can be made out of the operating fund or CRF if there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage. SPA section 98(5) says such emergency expenditures are limited to the minimum amount needed to ensure safety or prevent significant loss or damage.
22. Since the strata does not dispute Mr. Finnamore's claim that the strata made unapproved expenditures on membrane repair work, I accept that it did so. Based on this, I find that an audit of the strata's expenditures would be helpful in understanding the status of the strata's finances. However, I find it would be onerous, and costly to owners, to order auditing. Instead, I find it is appropriate for the strata ownership to vote on whether to hold an audit at its next annual general meeting (AGM). I therefore order that to occur, as set out below.

Has the strata prevented Mr. Finnamore from accessing strata records?

23. Mr. Finnamore says the strata has improperly failed to provide requested strata documents. On December 6, 2020, Mr. Finnamore requested written contracts, correspondence sent and received by the strata and strata council, bank records and repair and maintenance reports.
24. Mr. Finnamore says that he requested these documents in both his capacity as the strata council's treasurer and as an owner. He says that the strata council president prevented him, and the strata council secretary, from accessing strata's record that he needed to perform his duties as the strata council's treasurer. However, there is no distinction in the SPA between the records that council members and owners are entitled to.
25. SPA section 35(2) requires the strata to retain records. These records include written contracts under SPA section 35(2)(g), correspondence sent or received by the strata corporation and council under SPA section 35(2)(k), bank records under SPA section 35(2)(l), and repair and maintenance reports under SPA section 35(2)(n.2). SPA section 36 says the strata must make requested section 35 records available to a strata lot owner on request. An owner may inspect the documents or receive copies.

26. In relation to Mr. Finnamore's request for "correspondence sent or received by the strata corporation and council," I find that communications, including emails, sent between strata council members are not records within the meaning of SPA section 35 (see the non-binding but persuasive decision in *Pritchard v. The Owners, Strata Plan VIS3743*, 2017 BCCRT 69). I find that the strata is required to retain the remaining documents requested by Mr. Finnamore under SPA section 35(2).
27. The strata says that Mr. Finnamore does not need these documents. However, I do find that Mr. Finnamore's motives for requesting these documents is not relevant to the strata's obligation to retain and provide documents to owners under SPA sections 35 and 36.
28. I find Mr. Finnamore is entitled to strata records kept during the applicable SPA section 35(3) retention periods, from the time of his initial document request on December 6, 2020. So, to the extent any of the following documents are in the strata's possession or control, I order the strata to provide unredacted copies of the documents Mr. Finnamore requested on December 6, 2020, other than communications, including emails, sent between strata council members.

Must the strata council obtain a depreciation report?

29. Mr. Finnamore says that the strata has not prepared a current depreciation report in violation of the SPA. Under section 94 of the SPA and *Strata Property Regulation* section 6.2, the strata is obligated to obtain a depreciation report. In essence, a depreciation report is a replacement cost estimate of common expenses that usually occur less often than once per year or do not usually occur. The report is based on a physical inspection of common property building components and common assets for which the strata is responsible.
30. The SPA requires the strata to complete a depreciation report every 3 years, unless it opts out by passing a 3/4 vote at a general meeting. It is undisputed, as of the date this dispute was filed, that the strata's last depreciation report was published in 2015. Since neither party provided general meeting minutes showing that the owners have

approved of opting out of the depreciation report, I find that the strata is required to provide a depreciation report under SPA section 94 of the SPA and regulation 6.2.

31. A draft depreciation report was prepared for the strata by a consulting business on October 21, 2020. The strata says that the depreciation report was delayed because the report's author needed information and site access. The strata says that the report has been updated and has been reviewed by the strata council.
32. The strata says that the draft depreciation report has been finalized but not yet approved. Given the long delay since the depreciation report was originally due in 2018, I order that within 60 days of this decision, the strata must take whatever steps are necessary to finalize the depreciation report and distribute it to the owners, if this has not already been done so.
33. Mr. Finnamore also says that the draft depreciation report was improperly prepared. He says that the report improperly includes a "reserve fund plan" prepared by strata council representatives, rather than the expert consultant. However, I find that this issue is premature since the strata had not yet approved the draft depreciation report when this dispute started. So, I do not make any findings about the content of the depreciation report's draft version.

Should the strata be ordered to adopt a written guide on strata council responsibilities?

34. Mr. Finnamore asks for an order requiring the strata council to adopt a written guide for strata council's conduct. Mr. Finnamore says that he prepared a proposed guide on August 7, 2020. Mr. Finnamore argues that this would be a useful tool to guide strata council's conduct. The strata says this unnecessary because its conduct is bound by the SPA.
35. I find it unnecessary to determine whether Mr. Finnamore's proposed guidelines are helpful because I find that there is no SPA provision or bylaw requiring the strata to adopt guidelines. So, I dismiss this claim.

Does the strata's record storage system comply with the SPA?

36. Mr. Finnamore claims the strata does not have a filing or retention system for its records. As noted above, SPA section 35 requires strata corporations to retain and store certain documents.
37. The strata argues that Mr. Finnamore is out of time to make this claim under the *Limitation Act* (LA). However, the LA only applies to claims to remedy an injury, loss or damage. I find that Mr. Finnamore's request for an order requiring the strata to create a record-keeping system is not a claim for an "injury, loss or damage" so the LA does not apply.
38. Mr. Finnamore says the strata has not kept all of the documents required by SPA section 35. He says that some documents are missing and those that do exist are kept in a "jumble" in a cardboard box. Further, Mr. Finnamore says the electronic records are not kept safely or in a central repository. Since the strata does not dispute these submissions, I accept them as accurate.
39. Based on Mr. Finnamore's undisputed submissions that required documents are missing, I find that the strata has not retained and stored its records as required by SPA section 35. Based on this, I order the strata to develop and set up a record-keeping system within 60 days to retain and store the documents in compliance with SPA section 35 and present the new system to the owners at the next AGM.

Must the strata hire a strata property manager?

40. Mr. Finnamore argues that hiring a strata property manager would help the strata council understand responsibilities, functions and SPA duties. He claims that the strata council has failed to make common property repairs, improperly hired a strata council member's company to perform work and excluded Mr. Finnamore, and other council members, from strata council decision-making.
41. The strata says that the strata council has acted properly. Further, the strata argues that hiring a strata manager is expensive and that such a decision should be determined by the owners. The minutes from the June 27, 2021 AGM show that the

owners recently considered this issue. The minutes say that all 12 owners attended the AGM, in person or by proxy, and 11 owners voted to delay making a decision about whether to hire a property manager until a further special general meeting. As there is no requirement in the SPA or the bylaws to hire a property manager, I find it is appropriate to let the owners decide whether to incur this expense. Since the owners have recently considered this issue, I find it unnecessary to order the strata to hire a property manager. So, I dismiss this claim.

Should the strata be ordered to hire an engineer to perform a building envelope assessment and repair plan?

42. Mr. Finnamore says that a building envelope assessment and repair plan is needed. He says that the strata has prepared 2 engineering reports, and one of the reports was an unfinalized draft. I infer that Mr. Finnamore is referring to a November 18, 2019 localized envelope assessment report by IRC Building Sciences Group (IRC) and IRC's June 2020 draft work proposal. The strata argues that it already has a 2015 depreciation report and a draft 2020 depreciation report which indicates areas needing repairs.
43. SPA section 72 and strata bylaw 9 requires the strata to repair and maintain the common property, which I find includes the building envelope. The standard a strata corporation must meet in performing its duty to repair and maintain CP under SPA section 72 is reasonableness (*Wright v. The Owners, Strata Plan #205*, 1996 CanLII 2460 (BC SC) and *Weir v. Strata Plan NW 17*, 2010 BCSC 784). A strata corporation is not held to a standard of perfection in its maintenance and repair obligations. The strata has a duty to make only those repairs that are reasonable in the circumstances (*Wright*).
44. IRC's November 18, 2019 report says the primary focus of that investigation was the 2 chimney chases on strata lots 1 and 4 and the slab and wall interface at strata lot 3. However, despite this focus, the report also noted that the strata's waterproof membrane has exceeded its useful life and that the membrane was likely de-bonding from the parkade's roof below the pavers and sand. The report recommended the consideration of a complete rehabilitation of the parkade's rooftop membrane.

45. The strata argues that an engineering assessment is unnecessary since the strata has recently obtained a depreciation report. The draft depreciation report says that, based on a partial visual inspection and the date of replacement, the parkade membrane appears to be in average to good condition. However, the draft depreciation report says that there is water penetration in the parkade ceiling and the membrane should be replaced within a few years. The strata argues that the draft depreciation report shows multiple areas that need repairs and the owners should have the opportunity to vote on repair options after the depreciation report is approved and distributed to them.
46. In *Weir*, the court said the strata council is entitled to deference, as approved by the owners, in fulfilling its maintenance and repair obligations because the strata council must act in the best interest of all owners, which requires it to balance competing interests and work within a budget that the owners can afford. With that in mind, the court found that it is not necessarily unreasonable for a strata corporation to decide not to choose the best repair option. This means that the strata may prioritize between different maintenance projects and may choose a lower standard of maintenance for financial or practical reasons, as long as the decision is reasonable. The fact that an individual owner may be unhappy with the strata's choices does not mean that the strata breached its duty under section 72 of the SPA.
47. Though IRC's report raises important concerns about the parkade's membrane's condition, I find that IRC's report is somewhat speculative as to whether parkade membrane repairs are necessary. In these circumstances, I find that the strata's plan to present repair options to the owners for their approval after distributing the depreciation report is not unreasonable. For the above reasons, I find that Mr. Finnamore has not proved that the standard of reasonableness requires an engineering assessment of the membrane at this time. So, I dismiss this claim.

Must the strata repair chimney chases and the parking membrane?

48. Mr. Finnamore asks for an order requiring the strata to repair the chimney chases and the parking structure's membrane. Based on the strata plan, I find that both the chimney chases and the parking structure's membrane are common property.

49. As discussed above, IRC prepared a November 18, 2019 localized envelope assessment and a June 2020 work proposal. Since these documents were prepared by an engineer and registered roof observer, I find they have sufficient qualifications to provide an expert report under CRT rule 8.3.
50. IRC's November 18, 2019 report identified multiple deficiencies, including rot and decay. IRC reported water ingress at chimney chases at strata lots 1 and 4. The report says that there was no interface membrane saddle installed at the balcony and chimney interface. Further, it says that there was an incomplete installation of building paper. Also, IRC reported water ingress into the cladding system and the building's OSB wood sheathing. IRC recommended a complete rehabilitation of both chimneys, including interface tie-ins at the walls, balconies, the roof and the stone masonry.
51. The strata does not deny these deficiencies. However, it argues that a repair order is unnecessary because it says that it will make repairs as needed. As discussed above, the strata is entitled to deference in fulfilling its maintenance and repair obligations (*Weir*).
52. Here though, I find that IRC's undisputed report shows significant water ingress damage to the chimney chases at strata lots 1 and 4 since 2019. I find that the standard of reasonableness requires the strata to perform the chimney chase repairs recommended in IRC's report. So, under section 72 of the SPA, I order the strata to repair the chimney chases at strata lots 1 and 4 as recommended in IRC's November 18, 2019 report within 1 year.
53. IRC's November 18, 2019 localized envelope report is discussed above. Though the report says that the parkade's rooftop membrane is likely defective, I find the report is somewhat speculative about whether membrane repairs are necessary. As such, I find that Mr. Finnamore has not proved that the standard of reasonableness requires the strata to remediate the parkade's membrane at this time. So, I dismiss Mr. Finnamore's claim for parkade membrane repairs.

Must the strata council attend remedial strata training?

54. Mr. Finnamore asks for an order requiring strata governance training for the strata council members. As discussed above, I have found that the strata has committed multiple breaches of the SPA including making unapproved expenditures, failing to provide documents, not completing a timely depreciation report, not properly retaining strata records and failing to make necessary repairs to the common property chimney chases.
55. The strata says that many strata council members have attended strata property seminars. Further, the strata says the council obtains information as needed from a strata property association and they will continue to do so as needed. The strata also argues that strata council positions are unpaid and that requiring council members to spend their own time taking training courses will discourage potential new members from joining the strata council.
56. In *Craig v. The Owners, Strata Plan 1526*, 2018 BCCRT 310 a Vice Chair found that a strata corporation had committed multiple, significant violations of the SPA which indicated that the strata council did not have a good understanding of its duties and obligations and that it would be beneficial for its strata council members to improve their knowledge about strata governance.
57. Though the decision in *Craig* is non-binding, I find the reasoning persuasive and apply it here. I find that the strata council here has also committed significant violations of the SPA. Further, I find that the strata council would benefit from strata council training. So, I order the strata to take steps to ensure its acting strata council members attend training about strata governance and their roles and responsibilities.

CRT FEES AND EXPENSES

58. 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. Finnamore was partially successful, I find that he is entitled to

reimbursement of one-half of his CRT fees. This totals \$112.50. Neither party requested reimbursement of dispute-related expenses.

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

ORDERS

60. I order that:

- a. The strata present at its next AGM a resolution on whether the owners approve holding an audit of the membrane repair expenditures.
- b. The strata provide Hugh Finnamore with unredacted copies of the documents he requested on December 6, 2020, other than communications, including emails, sent between strata council members.
- c. Within 60 days of this decision, the strata take whatever steps are necessary to finalize the depreciation report and distribute it to the owners, if it has not already been done so.
- d. Within 60 days of this decision, the strata develop and set up a record-keeping system to retain and store the documents in compliance with SPA section 35 and present the new system to the owners at the next AGM.
- e. Within 1 year of this decision, the strata repair the chimney chases as recommended in IRC's November 18, 2019 report.
- f. Within 6 months of this decision, the strata take steps to ensure its acting strata council members attend training about strata governance and their roles and responsibilities.

61. I refuse to resolve Mr. Finnamore's request for a declaration that the strata council is dysfunctional.

62. I dismiss all other claims.

63. Mr. Finnamore is entitled to post-judgment interest under the *Court Order Interest Act* as applicable.

64. 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