



Civil Resolution Tribunal

Date Issued: March 18, 2022

File: ST-2021-001300

Type: Strata

Civil Resolution Tribunal

Indexed as: *Goch v. The Owners, Strata Plan NW 2153, 2022 BCCRT 299*

B E T W E E N :

DEBORAH GOCH

APPLICANT

A N D :

The Owners, Strata Plan NW 2153

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This dispute is about roof leaks and strata lot damage.
2. The applicant, Deborah Goch, owns strata lot 3 (SL3) in the respondent strata corporation, the Owners, Strata Plan NW2153 (strata). Ms. Goch says prior to her purchasing SL3 in February 2019, the strata's common property (CP) roof had leaked

and caused water damage inside SL3. She says the roof leaked again in 2020 and the strata failed to properly investigate and repair the roof. She alleges the strata was negligent in failing to repair and maintain the CP roof and seeks the following orders:

- a. The strata pay Ms. Goch,
 - i. \$19,876 to repair the pre-existing strata lot damage,
 - ii. \$5,800 to investigate and repair the “new damage” to SL3 or CP, and
 - iii. \$2,800 for “pre-CRT legal fees and the loss of use of the main bedroom area”, plus \$150 per day from June 8, 2021 until the water ingress issue is fully repaired.
- b. The strata hire qualified experts to,
 - i. inspect SL3, the roof and the deck areas above its main bedroom to determine the cause and recommend all repairs needed to resolve the water ingress issue, and
 - ii. undertake and complete all repairs or replacements required by the expert report and fix the roof issues identified in a February 18, 2019 email.
3. The strata denies it was negligent and liable for Ms. Goch’s claimed losses. It says Ms. Goch purchased SL3 with pre-existing damage and she is responsible for her own strata lot repairs under the bylaws. It says the strata has fully repaired the roof and Ms. Goch’s claims should be dismissed.
4. Ms. Goch is self-represented. The strata is represented by a council member.
5. For the reasons that follow, I dismiss Ms. Goch’s claims.

JURISDICTION AND PROCEDURE

6. 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.

7. 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.
8. 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.
9. 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.

Preliminary Issues

Late Evidence

10. Ms. Goch submitted late evidence and submissions after the CRT's deadlines. Ms. Goch's late evidence includes an MLS listing for SL3 from 2018, correspondence with the strata or strata property manager, council minutes, and a copy of the Dispute Notice. The strata says Ms. Goch is attempting to reargue her case and the late evidence is irrelevant and I should not permit it. The strata was given the opportunity to review the late evidence and provide submissions on it. Given the CRT's mandate that includes flexibility and given the lack of prejudice to the strata, I admit the late evidence and where relevant I have considered it in this decision.

Anonymization

11. Ms. Goch asks the CRT to anonymize the published dispute and seal the records.
12. Under the CRT's Access to Information and Privacy Policy, to the extent reasonably possible, the CRT will not disclose personal information except where authorized or necessary to support the dispute resolution process. However, the CRTA requires the CRT to post all final decisions and unless there are extraordinary circumstances the CRT will publicly identify the parties' names in a dispute. This is in keeping with the "open court principle" of transparency. I find Ms. Goch has not established any extraordinary circumstances exist to depart from the transparency principle, and so, I decline to anonymize Ms. Goch's name or make an order sealing the records.

Limitation Act

13. The strata argues that Ms. Goch's claim was brought out of time under the *Limitation Act* (LA), which Ms. Goch disputes. After reviewing all the parties' submissions, I find Ms. Goch has not substantiated her claims in any event. So, I find it is not necessary to address the somewhat complex limitation defence to resolve this particular dispute. In keeping with the CRT's informal mandate and considering the parties ongoing relationship, I decided to resolve this dispute on its merits.

ISSUES

14. The issues in this dispute are:
 - a. Is the strata responsible in negligence for Ms. Goch's claimed strata lot repairs?
 - b. Did the strata act significantly unfairly towards Ms. Goch?
 - c. What, if any, are the appropriate remedies?

EVIDENCE AND ANALYSIS

15. In a civil proceeding like this one, as the applicant Ms. Goch, must prove her claims on a balance of probabilities, meaning "more likely than not".

16. I have read and weighed the parties' evidence and submissions and all the cases the parties relies on, but I refer only to that which I find necessary to explain my decision.

Background

17. The strata was created in 1984 under the *Condominium Act* and continues to exist under the *Strata Property Act* (SPA). The strata has 250 strata lots. Ms. Goch's SL3 is a townhouse style unit that she purchased on February 15, 2019 from a third party seller.

18. The strata's filed bylaw 3 makes owners responsible for the repair and maintenance of their strata lots, except for repair and maintenance that are the responsibility of the strata corporation. Under bylaw 19 (formerly bylaw 13) the strata is responsible to repair and maintain the CP, common assets, limited common property and parts of a strata lot restricted to the building's structure, exterior, chimneys, stairs, balconies, doors, windows and skylights, and other parts not relevant here.

19. The CP roof above SL3 is the strata's responsibility to repair and maintain under bylaw 19. The strata has a parallel duty to repair and maintain the CP roof under SPA sections 3 and 72. This is not disputed.

20. According to a January 13, 2015 depreciation report prepared for the strata by JRS Engineering, Building Envelope Consultants (JRS), the CP roof consists of wood shingles or shakes and was installed in 2004 with a 30 year life span. JRS described the wood shingle roof in "serviceable condition" and noted the strata was maintaining it. JRS recommended a "planned renewal date" of 2034. As there is no contrary evidence, I find the roof was as described by JRS's report in 2015.

21. At some point in early 2018, the roof situated directly above SL3's washroom developed a leak. As indicated in a March 6, 2018 MacBeth Roofing & Waterproofing report (MacBeth), MacBeth attended and applied silicone caulking to temporarily repair the leak and it recommended replacing the "cedar ridge cap". It described the roof's general condition as "well maintained, all hardware performing correctly, cedar shakes free of moss". Because of the roof's steepness, MacBeth recommended that

the strata delay replacing the cedar ridge cap until the summer and do the work between May and September. I note Ms. Goch did not own SL3 at that time and there is no witness statement from the former owner or tenant or evidence describing the condition of SL3 before or after this leak.

22. As set out in the strata's council meeting minutes, MacBeth returned and carried out the recommended replacement in May 2018 and the strata monitored the roof weekly. The roof reportedly leaked again in October 2018 over SL3's washroom. The strata hired "Roy Dennis Roofing" (RDR) to attend to the leak, which remained unresolved after 2 service calls. After thermal imaging, RDR recommended repairing some shingles, which was done in November 2018.
23. The strata says the prior SL3 owner never carried out any repairs to SL3 and instead chose to list their strata lot for sale, which I accept as it is not disputed.
24. Prior to purchase, Ms. Goch had a home inspection done by CanaSpec Services Inc. (CanaSpec). In CanaSpec's January 11, 2019 report the inspector noted moisture damage that was "likely caused" by a prior roof leak. The inspector found no water present and detected no moisture at the time of the inspection. The inspector reported the following relevant pre-existing strata lot issue: wall and ceiling stains in 2 bathrooms and the living room, bathroom and living room moisture damage, possible leaking toilet seal, and deteriorating silicone around the bathtub shower that could mean "extensive moisture damage" to interior walls not visible on inspection. The inspector also inspected the CP roof and concluded it was in serviceable condition but recommended resealing around roof vents and clearing off debris.
25. Ms. Goch submitted a January 16, 2019 report from "RespirCare Inspections Canada" (RespirCare) that concluded mould growth was present in SL3 and recommended all water-damaged materials be replaced, and the mould properly cleaned to industry standards.
26. After receiving these reports, Ms. Goch purchased SL3 on February 15, 2019 and took possession the next day. It is undisputed that SL3 was not repaired and was still in the condition described in the inspection reports at the time of purchase. Ms. Goch

immediately submitted a request to the strata to alter SL3 to remediate the mould and other issues inside SL3.

27. On February 18, 2019, she asked the strata to address a recommendation in CanaSpec's pre-purchase inspection report to seal the roof vents and clean the roof debris.
28. After receiving a February 28, 2019 quote from Fleck Contracting Ltd. (Fleck), Ms. Goch asked the strata if she could start the "mould remediation work due to the previous water damage to this suite". The strata informed Ms. Goch she could proceed with the mould removal. Ms. Goch later added more extensive strata lot alternations to update SL3, which the strata approved. It is undisputed that the strata only consented to allow the alterations and did not agree to pay for them.
29. The submitted photographs show Fleck removed interior drywall, ceilings and insulation to remediate SL3. Ms. Goch says during these renovations she noted water pooling in the plastic covering of the main bathroom ceiling cavity on April 5, 2019. The parties' emails indicate that the strata responded immediately by hiring RDR to inspect the roof and tarping a section of the roof over the main bathroom. The ownership then voted to use \$30,000 from the strata's contingency reserve fund to replace all the cedar shingles on the roof section over SL3's main bathroom. The strata also hired BC Roof Inspection to oversee the project and Cambia Roofing & Drainage Contractors Ltd. (Cambia) to perform the work. Cambia completed the shingle replacement by October 18, 2019 as indicated by its invoice.
30. In December 2019, Ms. Goch requested the strata reimburse her \$13,860 for the mould remediation she performed in SL3 on the basis the damage was allegedly caused by a roof leak. The strata denied Ms. Goch's request because it said the mould was pre-existing, not found near the roof leak, and the interior strata lot repairs were Ms. Goch's responsibility under the bylaws.
31. After Ms. Goch commenced this dispute in February 2021, she obtained a new report from RespirCare in June 2021 that found mould levels in parts of SL3 were over 10x higher than similar groups present in a "outdoor/baseline sample". The report was

notably done after the strata repaired the roof and after Ms. Goch remediated her strata lot. As before, it recommended that any water intrusion be identified and corrected and the mould remediated. RespirCare did not investigate or determine the cause of the continuing mould issue and there is no evidence of any active leak.

32. Around the same time, the strata's contractor, Mack Kirk Roofing & Sheet Metal Ltd. (Mack) inspected the roof on June 13, 2021. As summarized in its invoice, Mack stated that it found "no missing or broken tiles around the skylight or roof area of unit 3" or any roof deficiencies. I accept Mack's unrefuted conclusions. Given the lack of evidence of any further roof problem or leak, I find the continuing presence of mould suggests the issue is unrelated to the roof. I come back to this below.

Is the strata responsible in negligence for Ms. Goch's claimed strata lot repairs?

33. I find the strata has no obligation under the SPA or the bylaws to repair the interior portions of SL3 or remediate interior mould or moisture damage even if it was caused by a leak in the CP roof. The strata would only be responsible to repair the interior SL3 if it has been negligent in carrying out its duties to repair and maintain the CP roof: *Basic v. Strata Plan LMS 0304*, 2011 BCCA 231, *John Campbell Law Corporation v. Owners, Strata Plan 1350*, 2001 BCSC 1342.
34. To fulfill its obligation to repair and maintain common property, the strata must only act reasonably and may rely on professional advice in carrying out its responsibilities: see summary of the relevant law in *Hirji v. The Owners Strata Corporation Plan VR 44*, 2015 BCSC 2043 at paragraph 146 (*Hirji*).
35. Ms. Goch says that the strata failed to adequately maintain its roof, such as having it inspected 2 times per year as suggested by BC Housing guidelines. She alleges SL3's interior damage originated from the strata's failure to adequately repair and maintain the roof and the fact that the SL3 damage is pre-existing has no "pertinence" to her negligence claim against the strata. I disagree with Ms. Goch's position.
36. I find the fact that the damage pre-existed the purchase is directly relevant to her claim. This is because to establish negligence, Ms. Goch would need to show that

the strata owed her a duty of care; that the strata breached the standard of care; that she sustained damage; and that the damage was caused by the strata's breach: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27. I find Ms. Goch has not established negligence.

37. While I find the strata owed Ms. Goch a duty of care after she purchased SL3, I find the strata owed no duty to Ms. Goch prior her purchasing SL3 and so, I find the strata is not liable for any pre-existing damage.
38. Without details of SL3's condition before the leaks and with no investigation report determining the source, I find Ms. Goch is only guessing that a roof leak caused the mould and moisture damage in SL3. I note CanaSpec reported deteriorated seals around the bath, shower and toilet, which suggests 2 potential alternate sources of water ingress. Given Ms. Goch purchased SL3 with known, pre-existing mould and damage for much less than the listed price, I find she has not proven that she suffered any loss in any event.
39. Further, I find Ms. Goch has not proven that the strata breached its standard of care in maintaining and repairing the CP roof even if it caused the alleged damage. I find the standard of care for roof repairs and maintenance is beyond the knowledge of an ordinary person and requires expert evidence to establish it was breached: *Bergen v. Guliker*, 2015 BCCA 283. There is no such expert evidence here.
40. I acknowledge Ms. Goch asserts that "numerous professional reports indicated what should be done and were brought to the strata's knowledge, yet the strata failed to carry these actions out". She says that strata failed to seal the roof vents or to tarp and repair the portion of the roof over her main bedroom in 2019 to prevent further damage and argues this was unreasonable. It only repaired the roof over her bathroom, which is a different section of roof.
41. However, I find the evidence, as summarized above, shows the strata did carry out its professional roofers' recommendations. I find the strata was entitled to rely on these professionals and it would not be responsible if their repairs failed or were insufficient: *Hirji*. Also, the submitted evidence does not establish that the roof leaked

again after the 2019 repairs were completed in any event. Again, the strata's roofer inspected the roof in 2021 and concluded it had no deficiencies and so the reoccurring presence of mould in SL3 suggests the source is unrelated to the roof.

42. Based on the overall evidence, I find Ms. Goch has not proven on a balance of probabilities that the strata failed to reasonably maintain or repair the CP roof or that it caused her claimed losses. I dismiss Ms. Goch's negligence claim.

Did the strata act significantly unfairly towards Ms. Goch?

43. SPA section 164 sets out the BC Supreme Court's authority to remedy significantly unfair actions. The CRT has jurisdiction over significantly unfair actions under CRTA section 123(2), which has the same language as SPA section 164. See *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164.
44. Significantly unfair means conduct that is oppressive in that it is burdensome, harsh, wrongful, lacking in probity or fair dealing, or done in bad faith, or conduct that is unfairly prejudicial in that it is unjust or inequitable. See *Reid v. Strata Plan LMS 2503*, 2001 BCSC 1578, affirmed in 2003 BCCA 126 and *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173.
45. Ms. Goch refers to and relies on the "reasonable expectation" test in *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44. The test asks: What was the applicant's expectation? Was that expectation objectively reasonable? Did the strata violate that expectation with a significantly unfair action or decision?
46. Ms. Goch says the strata violated her reasonable expectation that it would take greater steps to maintain the roof and prevent and subsequently fix the pre-existing or all subsequent deficiencies. She says after issues were identified, at her own cost, the strata was dismissive and refused to carry out all "necessary work" or to reimburse her for the work she carried out at her own expense. Meanwhile, she says the strata carried out repairs for other owners who sustained leaks and strata lot damage.
47. As mentioned, Ms. Goch has not proven that the strata failed to adequately inspect, maintain or repair the roof. Ms. Goch also knowingly purchased SL3 with pre-existing

damage and mould, and she has not proven that the continuing mould is related to a CP deficiency. So, I find Ms. Goch had no reasonable expectation that the strata would remediate SL3 or reimburse her for strata lot related work. I find the strata's decision to dismiss her reimbursement request was not unjust or harsh in the circumstances.

48. The strata admits that it performed or paid for repairs inside other strata lots. However, it says those payments or repairs were to restore parts of those units that it deliberately removed to resolve a CP problem. It says its actions were consistent with prior CRT decisions such as *Manak v. The Owners, Strata Plan KAS 2116, 2020, BCCRT 567*. In *Manak*, I ordered the strata to pay to restore a strata lot to paint ready condition where it had caused deliberate damage to the owner's strata lot to carry out its statutory obligations
49. Ms. Goch submitted no contrary evidence about the nature of the other strata lot repairs and so, I accept they were done to restore the strata's deliberate damage. I find the situation here is not comparable to the facts in *Manak* because the strata never caused deliberate damage to SL3. There is also no evidence that the strata restored any of these other strata lots at its own cost because of a roof leak or some other non-deliberate cause.
50. I find Ms. Goch has not established that the strata treated her differently or inequitably by refusing to restore SL3 at its cost. I also find the strata was following the bylaws in refusing responsibility for Ms. Goch's strata lot repairs and its decision was reasonable. I find no significant unfairness here and I dismiss this aspect of Ms. Goch's claim.

What if any, are the appropriate remedies?

51. Given my findings above, I find the strata is not liable for Ms. Goch's claimed damages and I dismiss her monetary compensation claims.
52. In addition to monetary remedies, Ms. Goch seeks an order that the strata inspect the CP roof and deck, undertake any recommended repairs, and fix the "roof issues".

As discussed, the evidence indicates that as of 2021 the roof above SL3 has no deficiencies or “issues”. Again, Ms. Goch has not proven that the strata has failed to reasonably repair and maintain the common property and I find no basis for the CRT to intervene in the strata’s management of its common property. If Ms. Goch is concerned about the mould inside SL3, I find it is open to her to carry out her own investigation as this is part of her obligation to maintain her strata lot under bylaw 3. I dismiss Ms. Goch’s claims.

CRT FEES AND EXPENSES

53. 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.
54. As the unsuccessful party, I find Ms. Goch is not entitled to any reimbursement of her paid CRT fees or claimed expenses, including for legal fees. I find this dispute was not complex, the strata caused no delay, and Ms. Goch has not otherwise established any exceptional circumstances apply to award legal fees under CRT rule 9.5. I dismiss Ms. Goch’s claim for legal fees.
55. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Goch.

ORDER

56. I dismiss Ms. Goch’s claims and this dispute.

Trisha Apland, Tribunal Member