



# Civil Resolution Tribunal

Date Issued: March 24, 2022

File: ST-2021-002266

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VR 2197 v. Wu*, 2022 BCCRT 326

BETWEEN:

The Owners, Strata Plan VR 2197

**APPLICANT**

AND:

SHENG WU and HONG YI LU

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## INTRODUCTION

1. This is a strata property dispute about firestopping upgrades in a strata lot.
2. The applicant, The Owners, Strata Plan VR 2197 (strata) is a strata corporation existing under the *Strata Property Act* (SPA). A strata council member represents the strata.

3. The respondents, Sheng Wu and Hong Yi Lu co-own strata lot 3 (SL3) in the strata. Hong Yi Lu is the son of Sheng Wu. The respondents are represented by Ms. Wu.
4. The strata says the respondents must, at their cost, remove their personal belongings from, and vacate SL3 to allow the strata to complete fire code upgrades to the second floor ceiling of SL3 (firestopping upgrades). The strata says the firestopping upgrades are required under a 2019 building permit issued by the City of Vancouver (City) that included other work to the building roof and roof decks, which has already been completed. It says the only remaining work under the City building permit is rear stair repairs and the firestopping upgrades in SL3. The strata seeks an order that the respondents vacate SL3 to allow the strata to complete the firestopping upgrades and that the respondents pay for costs of moving, storage and alternate accommodation while the firestopping upgrades are being completed.
5. The respondents say the strata has not confirmed their need to vacate SL3, nor the duration of the firestopping work. They also say the 2019 building permit has been suspended due to a potential structural issue with the building roof and roof decks. The respondents say the strata should take responsibility for their moving, storage and accommodation expenses while the firestopping upgrades are completed, but only after the potential structural issue is resolved. I note the respondents did not file a counterclaim.
6. As explained below, I find the strata has not proven the respondents must vacate SL3 in order for the firestopping upgrades to be completed nor that the firestopping upgrades are necessary. I dismiss the strata's claims and this dispute.

## **JURISDICTION AND PROCEDURE**

7. 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.

8. 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.
9. 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.
10. Under CRTA section 61, the CRT may make any order or give any direction in relation to a CRT proceeding it thinks necessary to achieve the objects of the CRT in accordance with its mandate. The CRT may make such an order on its own initiative, on request by a party, or on recommendation by a case manager.
11. CRT documents incorrectly show the name of the respondent as The Owners, Strata Plan, VAS 2197. Based on section 2 of the SPA, the correct legal name of the strata is The Owners, Strata Plan VR 2197. Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, I have exercised my discretion under section 61 to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the strata's name in the style of cause above.
12. 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.

### ***Preliminary Decision***

13. On October, 26, 2021, a CRT member considered whether the CRT should refuse to resolve this dispute because a BC Supreme Court (BCSC) action was commenced by the respondents against some of the same parties. The Dispute Notice for this dispute was issued on March 26, 2021. On June 8, 2021, the respondents filed a Notice of Civil Claim with the BCSC naming the strata and a previous strata lot owner as defendants. In the BCSC action, the respondents claim damages from the strata and the former strata lot owner arising from the former strata lot owner's representations in a contract of purchase and sale and property disclosure statement, and the strata's disclosure of documents.
14. The CRT member found this dispute should continue because it is separate from the BCSC action, and it is unlikely that resolving the CRT dispute would result in inconsistent findings of fact and conclusions of law between the CRT and BCSC. Although not binding on me, I agree with the preliminary decision and will decide this dispute on its merits.

### **Amended Dispute Notice and Dispute Response**

15. As part of its submissions for the preliminary decision, the strata requested amendments to its original remedy, to which the respondents objected. The CRT member declined to allow the strata's requested amendments largely because of the late stage of the dispute in the CT process and because CRT rule 1.19 required the strata to amend the Dispute Notice by contacting the CRT, requesting an amendment and paying the required fee, which the strata had not done. The member directed the strata to request any Dispute Notice amendment by November 15, 2021, which the strata did. The amended Dispute Notice was issued on November 18, 2021 and the respondents were given an opportunity to amend their Dispute Response, which they did. The tribunal decision process resumed on December 13, 2021.
16. I have set out the amended information above and see no need to discuss the original requested remedy or Dispute Response, given they have changed.

### ***Late evidence***

17. Both parties provided late evidence in this dispute and were both given the opportunity to respond to the other party's late evidence and provide further submissions, which they did. Neither party objected to the late evidence. Consistent with the CRT's mandate that includes flexibility, I find there is no prejudice to the parties in allowing this late evidence and, where relevant, I have relied on it in my decision below.

### ***Anonymization***

18. The respondents asked the CRT to anonymize their names in this decision for privacy reasons. The CRT's decisions generally identify the parties because the CRT considers its decisions open proceedings to provide transparency and integrity in the justice system. The CRT generally anonymizes party names only in certain limited situations, such as disputes that involve a vulnerable party, such as a child or person with limited mental capacity, or which involve sensitive information, such as medical issues. Other than these circumstances, the CRT generally discloses the parties' names.

19. I find the respondents have not established that the need to protect their personal information outweighs the goal of transparent proceedings. Therefore, I decline to anonymize the published version of this decision. Given my decision not to anonymize this decision, I did not seek submissions from the strata on this issue.

### **ISSUE**

20. The issue in this dispute is whether the respondents must vacate SL3 to allow for the fire stopping upgrades in SL3 to be completed and if so, at whose cost.

### **BACKGROUND, EVIDENCE AND ANALYSIS**

21. In a civil proceeding such as this, the strata, as applicant, must prove its claims on a balance of probabilities, meaning more likely than not. I have read all the submissions

and evidence provided by the parties, but refer only to information I find relevant to explain my decision.

22. The strata was created in July 1988 under the *Condominium Act (CA)*. It is a strata corporation consisting of 4 residential strata lots located in a single 3-storey building. The strata plan shows strata lots 1 and 2 are located on the ground floor and second floor, and strata lots 2 and 3 are located on the second and third floors. There are 2 sets of stairs leading from the ground floor to the second floor on the front and back of the building. These stairs are designated as limited common property (LCP) for strata lots 2 and 3. There is a third set of stairs leading from the third floor to the roof that is also designated as LCP for strata lots 2 and 3. The roof of the building is divided in half from front to back. The portion of the roof above SL3 is designated as LCP for SL3 and portion of the roof above strata lot 2 is designated as LCP for strata lot 2. Based on the evidence and submissions, there are roof decks located on portions of the LCP roof areas.
23. Section 26(2) of the CA, in force when the strata was created, stated the strata's bylaws were the bylaws set out in Part 5 of the CA until they were altered or repealed. On April 20, 1989, the strata filed bylaw amendments with the Land Title Office (LTO) to prohibit rentals and designate the building as an "adult orientated complex". On January 1, 2002, the Standard Bylaws under the SPA replaced all bylaws filed under the CA except those that were in conflict with the Standard Bylaws and were not in conflict with the SPA. (See section 17.11 of the *Strata Property Regulation* (regulation)). Therefore, I find the strata's bylaws are the Standard Bylaws plus the bylaw amendments filed April 20, 1989. I discuss any relevant bylaws below as necessary.
24. The building history plays a role in this dispute. The building was constructed in about 1910 and was converted to strata corporation in 1988. The building included original roof decks with railings that measured about 6 feet by 10 feet in size. In about 1991, the strata approved requests for the owners of strata lots 2 and 3 to increase the size of both roof decks to about 16 feet by 23 feet. The decks were enlarged at the expense of the then owners when the strata was completing other work at the roof

level. A building permit was not requested or obtained when the decks were enlarged. None of this is disputed.

25. In June 2019, the strata received a building permit from the City. The permit states the approved work includes “removal of existing roof deck components and install new roofing membrane complete with decking and guardrails”. The approved drawings attached to the building permit also show the lower back stairs were to be replaced and that ½ inch drywall would be added to the upper floor ceiling of SL3, which I understand is the firestopping upgrade at issue in this dispute. The drawings note that the firestopping was already added to the upper floor ceiling of strata lot 2 under “an interior-design renovation”. The strata says the strata lot 2 work was completed by the owner in early 2019, which the respondents do not dispute.
26. Based on the overall submissions and photographs in evidence, I accept that the roof membrane and roof decks and railings noted in the building permit have been replaced and are complete. I also accept that the outstanding construction relating to the building permit is the lower rear stairs and firestopping upgrades to SL3. The construction on this work has been halted because the City has suspended the building permit. In an email to the respondent Ms. Wu, a City building inspector confirms he suspended the building permit because of “the Peng issue” and “structural concerns”.
27. I find the “structural concerns” are related to whether the original roof joists below the roof decks, believed to be 2” x 6” lumber, provide adequate support for the enlarged roof decks. I find “the Peng issue” relates to opposing views of 2 professional engineers, also known as P. Eng., about the structural safety of the current main roof construction.
28. It is unlikely the repairs can be completed while the building permit is “suspended”. However, it is undisputed that on February 3, 2022, the strata approved the expense to obtain an opinion from a professional engineer on any potential structural issues with the roof supporting the roof decks. I accept the strata’s submission that it will have the structural assessment completed and delivered to the City as quickly as possible.

***Must the respondents vacate SL3 to allow for the firestopping upgrades in SL3 to be completed?***

29. For the following reasons, I find the strata has not proved the firestopping upgrades are necessary nor has it proved the respondents must vacate SL3 for the firestopping to be completed if the work is required.
30. It is clear the firestopping upgrades form part of the building permit. The strata submits the firestopping upgrades in SL3 will be necessary even if there is no structural issue found with the main roof. It makes this assertion based on alleged City requirements that the roof deck constitutes habitable space, but it did not provide any evidence to support the City requirements. I would have expected to receive in evidence a copy of a municipal bylaw or correspondence from the City confirming the work is necessary, especially considering the current building permit suspension as result of potential structural concerns. As the respondents point out, if the structural concerns with the main roof turn out to be valid, the strata may be faced with a decision to remove the roof decks versus approving the expenses of structural upgrades. While the permit is suspended, I find the strata's claim the firestopping upgrades are necessary is unproven and perhaps premature.
31. As for the need that the respondents must vacate SL3 while firestopping upgrades are completed, I find the strata has also not proven this to be the case. For example, there is no contract before me that requires SL3 to be vacant while the upgrades are completed. There is also no bylaw or SPA provision that requires this.
32. SL3 is a 2-level strata lot and, as the respondents point out, it is possible they could occupy the lower floor while the upgrades are completed on the upper floor. I find it is a decision of the respondents whether they want to vacate SL3 while the upgrades are being done. I find the same analysis applies to removing and storing personal belongings while the work is underway. Although it is possible there would be a great amount of drywall dust in the areas being repaired, I find it is common knowledge that drywall repairs are often completed to peoples' homes that do not require the residents to move out. This option does not appear to have been considered or discussed with potential contractors.



33. I also agree with the respondents that the strata does not have a legal right to complete the upgrades to SL3 based on the SPA and bylaws. I find that the firestopping upgrades are a form of repair and maintenance. Under SPA sections 72(1) and (2), the strata is responsible for repair and maintenance to common property that has not been designated as LCP. There is no dispute the ceiling of SL3 is part of SL3, and is not common property or LCP. Section 72(3) permits the strata to take responsibility for repair and maintenance of specified portions of a strata lot but only if the strata passes a bylaw to that effect. The strata has not passed such a bylaw that addresses repair and maintenance to strata lot ceilings.
34. Under bylaw 2, an owner is responsible for repair and maintenance to their strata lot, except for repair and maintenance that is the strata's responsibility under the bylaws. Bylaw 8 follows SPA section 72(1) and (2) and makes the strata responsible for common property that has not been designated as LCP. Based on the SPA and bylaws, I find the respondents are responsible for repair and maintenance of the SL3 ceiling, not the strata. While the respondents could agree to allow the strata to complete the repair, they clearly have not done so.
35. For these reasons, I find the strata has not proved the respondents must vacate SL3 or remove their personal belongings from SL3, to allow the firestopping upgrades in SL3 to be completed. I dismiss the strata's claim.
36. Given my conclusions above, I find I need not address who would be responsible for moving, storage and living accommodation expenses if the respondents did vacate SL3 during the firestopping upgrades.
37. I have also not addressed the respondents' allegations the strata was negligent when it approved enlarging the roof decks without a building permit in 1991 because, as mentioned, the respondents did not file a counterclaim.

## **CRT FEES AND EXPENSES**

38. 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. Here, the strata paid \$225 in CRT fees but was not successful, so I make no order for reimbursement of CRT fees.

39. Neither party claimed dispute-related expenses, so I order none.

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

## **ORDER**

41. I dismiss the strata's claims and this dispute.

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J. Garth Cambrey, Vice Chair