



Civil Resolution Tribunal

Date Issued: April 5, 2022

File: ST-2021-006063

Type: Strata

Civil Resolution Tribunal

Indexed as: *Nutt v. The Owners, Strata Plan VIS 5385, 2022 BCCRT 380*

B E T W E E N :

BRIAN NUTT and LINDSAY NEILSON

APPLICANTS

A N D :

The Owners, Strata Plan VIS 5385

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about a strata corporation's repair and maintenance responsibilities. Contractors hired by the respondent, The Owners, Strata Plan VIS 5385 (strata), undisputedly scratched glass panes in the front door of a strata lot owned by the applicants, Brian Nutt and Lindsay Neilson. The strata chose not to repair the scratches. The applicants request an order that the strata repair the front door

damage, and an order that the strata provide “complete documentation” about the process that led to the decision not to repair it.

2. The strata says the front door glass scratches at the applicant’s strata lot, and at 3 other strata lots, are minor and are not repairable. It says the doors would be expensive to replace, and all strata lot front doors are old and have minor flaws. The strata says, essentially, that it reasonably determined that it was not in the ownership’s best interests to repair the scratched doors. The strata also says that it provided the applicants with all of the requested records it was required to disclose.
3. Mr. Nutt represents the applicants in this dispute. The strata council president represents the strata.
4. For the reasons set out below, I dismiss the applicants’ claims.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.

8. 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.
9. In a December 10, 2021 preliminary decision, another tribunal member denied the strata's request that the CRT refuse to resolve this dispute because it was allegedly trivial and frivolous, and therefore did not disclose a reasonable claim or was an abuse of process. Although not binding on me, I find the tribunal member's reasoning in the preliminary decision persuasive. I find the applicants' claims raise issues which are not obviously frivolous or trivial, and should be determined on their merits.
10. The applicants say that despite their requests, the strata never held a hearing with them about the disputed issues. The strata says the applicants never requested a formal hearing in writing, and the CRT never waived that hearing requirement under section 189.1(2) of the *Strata Property Act* (SPA). I find the evidence shows the parties communicated their positions on the disputed issues to each other in detail, both verbally and in writing, before initiating the CRT process. Further, I find it would be contrary to the CRT's efficiency mandate to require a strata council hearing at this late stage, in particular because neither party says such a hearing is likely to resolve the disputed issues. So, regardless of whether the applicants requested a hearing, or the strata failed to hold one, I find it is appropriate to hear this dispute on its merits.

ISSUES

11. The issues in this dispute are:
 - a. Is the strata required to repair the applicants' front door?
 - b. Is the strata required to provide any further records requested by the applicants?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. I have read and weighed the parties' evidence and submissions, but I refer only to that which I find necessary to explain my decision.
13. The strata was formed in 2003 under the SPA. It consists of 20 multi-level townhouse-style strata lots in 4 main buildings. The applicants jointly own strata lot 9, which is between 2 other strata lots in one of the buildings.
14. The strata did not file a complete set of different bylaws at the Land Title Office. So, under SPA section 120, its bylaws are those set out in the SPA's Schedule of Standard Bylaws, as amended by the strata in 2004, 2006, 2007, and 2020. The 2020 amendment changed bylaw 21(2) so that the strata could only spend \$5,000 or less per year for all unapproved expenditures from the "operating budget", which I infer means the strata's operating fund. The other bylaw amendments are not relevant to this dispute.

Front Door Damage

15. Under strata bylaws 8(b), 8(c)(ii)(D), and 8(d)(iv), the strata is responsible for repairing and maintaining doors on the exterior of a building. This dispute is about strata lot 9's front door. The front door is on the exterior of a strata building, so I find the strata is responsible for repairing and maintaining it. The parties do not dispute this, although they disagree about the extent of repairs the strata must make in the circumstances of this dispute.
16. For the following reasons, I dismiss the applicants' request for front door repairs.
17. The parties agree that the strata began a door refinishing project in July 2020. As a first step, the strata hired a contractor to stain 4 strata lots' front doors. It is undisputed that when the contractor scraped off the masking tape used to protect the doors' glass panes from the stain, it scratched the glass. These glass pane scratches are the front door damage at issue here. Nothing before me suggests that the applicants

requested or received any compensation for that damage directly from the contractor, which is not a party to this strata dispute.

18. The applicants suggest that the strata negligently hired an unqualified contractor to stain the doors, which led to the glass scratches. BC courts have determined that if those hired by the strata fail to carry out their work effectively, the strata cannot be held responsible as long as it acted reasonably in the circumstances (see *Oldaker v. The Owners, Strata Plan VR 1008*, 2007 BCSC 669 at paragraph 54). I find the evidence does not show that the contractor was unqualified for the door staining work, or that strata had any reason to suspect that the contractor would scratch the door glass. I find the strata's actions did not cause the scratches at issue, and the strata was not negligent in hiring the contractor.
19. I turn now to the applicants' primary argument, which is that the strata failed in its bylaw 8 duty to repair and maintain their front door. The contractor undisputedly scratched the front door glass panes of 4 strata lots, including the applicants', at the same time. I find the evidence shows that the strata considered solutions that would address the scratches on all 4 doors, in the interests of fairness among those owners.
20. What was the applicable standard of care for the strata maintaining the applicants' door? The court in *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784 indicated that courts should be cautious before interfering with the manner in which a strata corporation decides to carry out its repair and maintenance duties. The court said that the strata corporation may consider the cost and impact to owners of different solutions, and may select among "good, better or best" solutions without breaking its repair and maintenance obligations. Further, *Oldaker* confirms that strata corporations are held to a standard of reasonableness in their repair and maintenance obligations. I find that the strata was required to reasonably maintain the applicants' front door.

21. I find that reasonable maintenance does not necessarily include repairing every defect regardless of its size, severity, or cost to repair. The applicants say previous strata council members assured them that the door would be repaired, although there was no written agreement about that. I find the evidence does not show that the strata had a binding agreement with the applicants to remediate the scratches regardless of the difficulty or cost of any repair or replacement. Correspondence in evidence shows that the strata told the applicants it was gathering information about its repair options, not that it would repair the damage regardless of what the options ended up being. I find that the strata's verbal repair assurances were likely an acknowledgement of its repair and maintenance responsibilities under the bylaws, and were not an irrevocable agreement to repair or replace the front door at any cost.
22. The applicants' wooden front door has 6 square glass panes, each approximately 8 inches wide and tall, near the top of the door at approximately head height. It is undisputed that the scratches in those glass panes are purely cosmetic and the door remains fully functional. There are conflicting witness statements in evidence about the appearance of the scratches. In any event, I prefer the more objective photo evidence submitted by the parties.
23. The applicants submitted photos of the scratches which I find were likely taken from a few inches away, because only part of a glass pane is shown in each photo and the shallow depth of field is tightly focused on the scratches. I find those photos show the scratches are mostly along the glass pane edges, and although they are easily noticeable, they do not significantly interfere with visibility through the glass. In those photos, I find the scratches are most visible in areas that have a dark or shaded background, and are not easily visible in well-backlit regions. The applicants provided no photos from further away.
24. The strata provided photos and video of the applicants' door from further away, that each captured one or more glass panes in the door. The applicants say 2 of these photos are not of their front door. However, I find the strata provided more than 2 door photos, and all of them show similar glass pane scratches. Having considered all of the door photos and video in evidence, I find the photos taken from further away show

that the applicants' front door has faint marks around the edges of some glass panes, which have the appearance of light smudges or fingerprints.

25. Having reviewed the available evidence, I find the glass scratches are visible with close inspection, but appear to be minor. I find the scratches are not immediately obvious or significantly unsightly upon casual observation from further away. I find the scratches do not limit the applicants' view through the glass panes. Further, the applicants do not dispute the strata's submission that all of the front doors at the strata are 18 years old and have minor defects due to age.
26. The applicants also do not dispute the strata's submission that it consulted with the staining contractor, carpenters, material suppliers, a glass company, and a window film company, about its repair options. The parties agree with opinions from some of those companies that say the glass panels are not repairable, and cannot be reliably replaced within the door, so the only way to eliminate the scratches is a complete door replacement. The strata submitted multiple door replacement estimates that I find showed the replacement cost for each of the 4 glass-scratched doors would be approximately \$2,500 to \$3,500. These estimates were for a solid wood door, a new door frame recommended by an estimator, finishing, and installation. The strata determined that the replacement price was too expensive considering the minor and cosmetic nature of the scratches. The strata also notes that replacing all 4 doors would exceed the \$5,000 non-budgeted expense limitation in the strata bylaws. However, the strata does not say that it could not have budgeted for door repair or replacement expenses in the next fiscal year.
27. The applicants do not say the replacement cost estimates obtained by the strata were inaccurate, but they say the strata should not have relied on them because there are less expensive door replacement options. The applicants submitted other emailed estimates, which I find are significantly less detailed than those obtained by the strata. Taken together, I find those other estimates say that less expensive veneer doors could be purchased and installed, without new doorframes, for as little as \$1,300 each. However, I find it is unclear whether those other estimates included the same

quality of finishing, and complete transportation and installation costs, as were quoted to the strata.

28. I find that simply identifying a lower-priced estimate for a different type of door and mounting option does not necessarily mean the strata was required to choose that option, or that the lower cost was reasonable for the ownership to bear. In the circumstances, I find the evidence does not prove that the strata unreasonably refused to repair the applicants' door, even if a \$1,300 replacement cost could have provided a door of adequate quality, appearance, function, and longevity, which I find is also unproven.
29. Courts have found a strata corporation's discretion in managing its repair and maintenance obligations should not be interfered with if it acted in the best interests of all the owners (see *Browne v. Strata Plan 582*, 2007 BCSC 206 at paragraph 30). I find the evidence, including the cost estimates and strata decision letters to the applicants, show that the strata comprehensively investigated and considered its options, and balanced the interests of all owners in deciding not to replace the applicants' door. I find the strata's considerations included the seriousness of the scratches, the age and condition of all the front doors in the strata, the number of strata lots affected by scratches, and the door replacement price to be paid by the strata ownership, among others.
30. Keeping in mind *Weir*, *Oldaker*, and *Browne*, I find the strata met a reasonable standard of care in deciding not to replace the applicants' door. So, I find that decision did not violate the strata's repair and maintenance obligations under the strata bylaws. I dismiss the applicants' request for an order that the strata repair the damage to their front door.

Records Requests

31. In alleging that the strata's front door repair decision-making process was flawed, the applicants also say that the strata did not properly justify its decision to the applicants with adequate documentation. The applicants request an order that the strata provide "complete documentation regarding the consideration and decision-making process"

about the door repair issue. The strata says it has already provided the applicants with everything they are entitled to receive under the SPA.

32. For the following reasons, I dismiss the applicants' request for additional documentation.
33. SPA section 35 sets out certain types of records that the strata must prepare or retain copies of. SPA section 36 says that the strata must make the section 35 records available to a strata lot owner on request. In *Kayne v. The Owners Strata Plan LMS 2374*, 2007 BCSC 1610, the court said owners are not entitled to documents beyond those listed in SPA section 35.
34. I find the applicants do not clearly describe which specific section 35 records the strata allegedly failed to provide. The applicants say they requested certain information including "which trades people had been contacted, exact costs, or quotes". Section 35 requires the strata to keep copies of written contracts the strata is a party to, and correspondence sent or received by the strata and its council. The strata submitted several pieces of correspondence with trades people, including door repair estimates, and says it has nothing further. The evidence before me does not show that any trades correspondence remains undisclosed to the applicants.
35. The applicants say that the minutes of council meetings in which the door repairs were discussed are incomplete and inadequate. Courts have found that the SPA does not set out any degree of detail that must be contained in strata minutes other than recording the outcome of votes (see *Kayne* at paragraph 8). Minutes must contain records of decisions taken by council but may or may not report in detail the discussions leading to those decisions. The strata council retains discretion to determine what level of detail it includes in its minutes, provided it meets the minimum SPA requirements and acts legally.
36. I find that the strata council's decision not to repair the applicants' door, and the other scratched doors, is recorded in a January 13, 2021 document in evidence titled "Discussion Notes: Hill Rise Strata Council Planning Session". The document says all strata council members were present at the planning session. The strata

undisputedly communicated this decision to the applicants in a letter dated January 28, 2021.

37. Strata council decisions may be made valid by ratification at a formal council meeting (see *Kayne* at paragraph 23). I find April 21, 2021 strata council meeting minutes ratified the January 13, 2021 door repair decision, and confirmed that it was communicated to the affected parties on January 28, 2021. Those minutes recorded the ratification as an amendment to previous February 17, 2021 meeting minutes, although the applicants say the door repairs were not discussed at the February 17, 2021 strata council meeting. Regardless of the exact timing of its ratification, I find the evidence before me shows that by April 21, 2021, the strata had made its decision about the door repairs and ratified it in strata council meeting minutes as required.
38. I find the applicants also suggest they did not receive copies of communications between strata council members about the door repair issue. However, I find the applicants do not identify which specific communications, between specific persons or on specific dates, were requested but withheld. Further, I find that SPA section 35(2)(k) does not require the strata to provide that type of correspondence between strata council members (see *Kayne* at paragraphs 16 to 22).
39. The applicants say they requested that the strata have trades people visit their strata lot and produce written quotations, but nothing in the SPA or bylaws requires the strata to request further written quotations from contractors at an owner's request. The applicants also say they requested information to help them understand how and why the council came to its decision, but I find such a request is vague and fails to identify specific SPA section 35 records.
40. Overall, I find that the applicants have not proven that they requested specific, identifiable records that the strata failed to disclose as required under SPA section 35. So, I dismiss the applicants' claim for "complete documentation".

Strata Council Standard of Care

41. In arguing that the strata failed to meet its repair and maintenance obligations and document production obligations, the applicants also say that because of alleged public “attacks” and poor judgment, strata council members failed to meet the required standard of care set out in SPA section 31. That section says that each council member must act honestly and in good faith, with a view to the best interests of the strata. Council members must also exercise the care, diligence, and skill of a reasonably prudent person in comparable circumstances.
42. No strata council member is a party to this dispute, and the applicants claim no direct remedies for a section 31 breach. In *Rochette v. Bradburn*, 2021 BCSC 1752 at paragraph 82, the court found that the SPA does not allow a strata lot owner to sue the strata for violations of section 31. Further, in *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 at paragraph 267, the court found that the duties of strata council members are owed to the strata and not to individual strata lot owners. This means that a strata lot owner may not bring a claim against the strata for a breach of strata council members’ SPA section 31 duties. So, I find the applicants have no standing to bring a SPA section 31 claim against the strata, either directly, or by implication in their submissions. As noted above, I found the strata met its obligations with respect to the claimed front door repairs and document production.

CRT Fees and Expenses

43. 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. I find the applicants were unsuccessful in their claims, but the strata paid no CRT fees, and neither party claimed CRT dispute-related expenses. So, I order no reimbursements.
44. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicants.

ORDER

45. I dismiss the applicants' claims, and this dispute.

Chad McCarthy, Tribunal Member