



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Mawji v. The Owners, Strata Plan NW2084*, 2022 BCCRT 389

B E T W E E N :

GULSHAN ISSA MAWJI

APPLICANT

A N D :

The Owners, Strata Plan NW2084

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. The applicant, Gulshan Issa Mawji, owns strata lot 34 (SL34) in the respondent strata corporation, The Owners, Strata Plan NW2084 (strata). Ms. Mawji says her roof leaked in 2018. She seeks orders for the strata to fix or replace the roof using concrete and to repair water damage and stains inside her strata lot. She also seeks orders for the strata to replant trees and shrubs that were damaged in 2019 by a third party.

2. The strata disagrees. It says it repaired the roof and Ms. Mawji confirmed during a visit that there were no new leaks. It says the only necessary interior repair is a water stain around the fire alarm, that it will repair at a later date. As for the trees and shrubs, the strata says it appropriately replanted them and they are still growing.
3. Ms. Mawji represents herself. A strata council member represents the strata.
4. For the reasons that follow, I dismiss Ms. Mawji's 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.

The Strata's Late Evidence

9. The strata provided 3 pictures of the following as late evidence: a cut-down tree, water damage around a ceiling smoke alarm, and a photo of an invoice. Ms. Mawji had the opportunity to view the late evidence and reply to it. I find the evidence relevant to this dispute. Consistent with the CRT's mandate that includes flexibility, I find there is no prejudice to Ms. Mawji in allowing the late evidence. So, I allow the late evidence, but my decision does not turn on it in any event.

Claims about Installing a Soundproof Window

10. In submissions Ms. Mawji says the strata's representative verbally agreed to replace SL34's windows with soundproof ones. Ms. Mawji did not raise this issue in the Dispute Notice. Because it was raised so late, I make no findings about it.

ISSUES

11. The issues in this dispute are as follows:
 - a. Must the strata repair or replace the building roof using concrete?
 - b. Must the strata repair water damage on the inside of Ms. Mawji's strata lot?
 - c. Must the strata plant more trees or shrubs?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicant Ms. Mawji must prove her claims on a balance of probabilities. This means more likely than not. 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.
13. As background, the strata plan shows the strata has 1 building with 3 floors. Ms. Mawji lives in SL34 on the third floor. A title search shows she became its registered owner in 1995.

14. It is undisputed that the building roof is common property. Under section 72 of the *Strata Property Act* (SPA), the strata is responsible for repairs and maintenance to common property. So, I find the strata is responsible for repairing and maintaining the roof under the SPA.
15. I also find the strata must repair and maintain the roof under its bylaws. The strata was created in 1983. It used the bylaws in the *Condominium Act* (CA) with amendments registered in the Land Title Office (LTO). The SPA is the successor to the CA. The SPA and the *Strata Property Regulation* (SPR) came into force on July 1, 2000. Section 17.11 of the SPR says that on January 1, 2020 the following took effect:
 - a. The remaining Standard Bylaws under the SPA, being bylaws 2 through 30 inclusive, are deemed to be the strata's bylaws, except if there are conflicting bylaws filed in the LTO.
 - b. Filed bylaws that conflict with the Standard Bylaws continue and prevail over the Standard Bylaws unless the filed bylaws conflict with the SPA.
 - c. Any bylaws under Part 5 of the CA cease to have effect.
16. The parties made no submissions about which bylaws apply and did not rely on any particular bylaws. From my review, I find the following bylaws from the SPA's Schedule of Standard Bylaws apply to this dispute. I also find that there are no filed bylaws that conflict with them.
17. Bylaw 2(1) says an owner must repair and maintain their strata lot, except for repair and maintenance that is the strata corporation's responsibility under the bylaws.
18. Bylaw 8 says the strata must repair and maintain common assets of the strata, common property that have not been designated as limited common property (LCP), and certain forms of LCP, including the structure of a building. Bylaw 8(d) also says the strata must repair and maintain strata lots in the strata, but this duty is restricted to only some parts of the strata lot, such as the structure of a building.

Issue #1. Must the strata repair or replace the building roof using concrete?

19. The undisputed background follows. In 2018 the strata's roof began leaking and caused water ingress into SL34. The strata hired a roofing company, McBuff Roofing Co. (McBuff) for emergency repairs. McBuff stopped the water ingress.
20. For the reasons that follow, I find that the roof is currently not leaking. While Ms. Mawji claims for repairs to the inside of her strata lot, discussed below, she says the "leak stains and cracks in the ceiling" at issue are due to "past leaks". Further, the strata says its representatives visited SL34 at some point. Their undisputed account is that they saw no leaks and Ms. Mawji confirmed that there are no leaks at the moment. However, the strata acknowledges the roof needs replacing and says this work will likely occur in April 2022.
21. As noted above, the parties agree that the roof is common property that the strata must repair and maintain, so I find SPA section 72 and bylaw 8 apply. The strata's obligation to repair and maintain such property is measured by the test of what is reasonable in all circumstances and can include replacement when necessary. The standard is not one of perfection. The strata has discretion to approve "good, better or best" solutions. The CRT will not interfere with a strata's decision to choose a "good", less expensive, and less permanent solution although "better" and "best" solutions may have been available. See *Ricci v. The Owners, Strata Plan LMS 3940*, 2021 BCCRT 755 at paragraph 40, citing *The Owners of Strata Plan NWS 254 v. Hall*, 2016 BCSC 2363 and *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784.
22. Ms. Mawji as the applicant bears the burden of proof. The parties' submissions demonstrate that the roof stopped leaking but is due for replacement. Aside from this, there is little evidence about the roof's condition. There are some letters from a strata council member, ZG, addressed to the owners. ZG mentions water ingress and repairs occurring in 2020. However, they are not about repairs affecting SL34. So, I do not find them relevant.
23. Ms. Mawji say the roof must be repaired or replaced using concrete. However, there is no evidence about whether this is possible or what it might cost. There are no

reports from any inspectors, contractors, or engineers. There is nothing to indicate that the strata's approach to proceed with roof work in April 2022 is unreasonable.

24. Given the above, I find it unproven that the strata failed to meet its obligations to repair and maintain the roof. I dismiss Ms. Mawji's claim to repair or replace the roof with concrete.

Issue #2. Must the strata repair water damage on the inside of Ms. Mawji's strata lot?

25. Ms. Mawji seeks an order for the strata to repair cracks and water stains inside her strata lot. Photos show that the damage affects her ceilings and interior-facing walls. It is undisputed that water leaks in 2018 caused this damage. The parties did not say Ms. Mawji's claims were out of time under the *Limitation Act*, and I find it unnecessary to consider this as I dismiss this claim for other reasons.
26. As noted above, bylaw 2(1) says that in general, an owner must repair their strata lot. A strata corporation is not an insurer and is only liable to pay for repairs to a strata lot where it has been negligent. See, for example, *Kayne v. LMS 2374*, 2013 BCSC 51, *John Campbell Law Corporation v. Owners, Strata Plan 1350*, 2001 BCSC 1342, and *Basic v. Strata Plan LMS 0304*, 2011 BCCA 231. The strata may create a bylaw to be responsible for strata lot repairs, but I find it has not done so here.
27. In order to succeed in a negligence claim, Ms. Mawji must prove 1) the strata owed her a duty of care, 2) the strata breached the standard of care, 3) Ms. Mawji sustained a loss, and 4) the loss was caused by the strata's negligence. See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3.
28. The standard a strata corporation must meet in performing its duty to repair and maintain common property is reasonableness: *Weir v. Strata Plan NW 17*, 2010 BCSC 784. The standard is not one of perfection. So, a strata corporation will not be found negligent unless it has been unreasonable in its approach to repairing and maintaining common property.

29. As noted above, there is little evidence about the roof's condition or its history. The strata hired McBuff to successfully stop the water ingress in 2018. On its face, the strata's actions appear reasonable. There is no indication the strata ignored any professional advice to act earlier.
30. Given the above, I find it unproven that the strata was negligent. I dismiss Ms. Mawji's claim for water damage repairs to her strata lot.

Issue #3. Must the strata plant more trees or shrubs?

31. It is undisputed that in 2019 a gas leakage from a nearby gas station killed trees on the strata's common property. The evidence shows the affected trees were on the north side of the strata's building, where SL34 is located. It is undisputed that the north side faces a busy street.
32. It is also undisputed that the damaged trees had to be cut down and the strata received \$17,221.85 as compensation from the gas station. As shown in a June 11, 2019 invoice, the strata paid \$14,794.50 to replant trees and shrubs in the damaged area.
33. Ms. Mawji says the strata's replanting decisions were significantly unfair. She submits that the trees previously blocked unreasonable noise from the street. However, the newly planted shrubs and trees are too small to do so. Further, she says many are dying. So, she seeks an order for the strata to replant shrubs or trees that will stop unreasonable noise from reaching SL34.
34. 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 legal test as cases under SPA section 164. See *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164. Significantly unfair conduct is conduct that is 1) oppressive in that it is burdensome, harsh, wrongful, lacking in probity or fair dealing, or done in bad faith, or 2) conduct that is unfairly prejudicial in that it is unjust or inequitable: *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173 at paragraph 88.

35. In *Kunzler*, the Court of Appeal confirmed that an owner's expectations should be considered as a relevant factor. I therefore use the test from *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, to consider the following factors:
- a. What is or was the expectation of the affected owner?
 - b. Was that expectation on the part of the owner objectively reasonable?
 - c. If so, was the expectation violated by an action that was significantly unfair?
36. In submissions, Ms. Mawji sought an order for the strata to replant "full-grown trees" in front of SL34. For the reasons that follow, I find this expectation is objectively unreasonable, so the strata did not act in a significantly unfair manner.
37. Ms. Mawji provided a photo of a pre-existing tree to represent what the strata should have replanted. She provided no measurements. Based on its photographed surroundings I find it likely that the tree was over 10 feet tall. Ms. Mawji provided no evidence about whether obtaining and planting such trees would be feasible or what it would cost. There is nothing from, for example, an arborist about the matter.
38. I acknowledge that there is little evidence about how the strata reached its replanting decisions. An undated excerpt from the strata council's meeting minutes says that the council decided to plant new trees between ages 3 to 4 years. The council said that it was not feasible to bring the landscaping up to its original state, without explaining why. However, Ms. Mawji ultimately bears the burden of proof.
39. Ms. Mawji also provided pictures of the replanted trees to show that they require replacement. The trees resemble short cedar trees and are browning. However, there is no evidence before me about whether such browning means the trees are dead or unrecoverable. So, I do not find it proven that they must be replaced or that it is reasonable to replace them.
40. I considered that the landscaping changes might be a significant change under SPA section 71 that required approval by a resolution passed by a 3/4 vote at an annual or special general meeting. However, Ms. Mawji did not specifically allege this or

request a vote at a general meeting. Further, I have little evidence of what the area looked like previously. So, for the purposes of this decision, I find it unproven that the landscaping was a significant change.

41. For all those reasons, I find it unproven that the strata acted in a significantly unfair manner. I dismiss this claim.

CRT FEES AND EXPENSES

42. 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 dismiss Ms. Mawji's claims for reimbursement. The parties did not claim for any specific dispute-related expenses.

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

ORDER

44. I dismiss Ms. Mawji's claims and this dispute.

David Jiang, Tribunal Member