



# Civil Resolution Tribunal

Date Issued: April 19, 2022

Files: ST-2021-002574 and ST-2021-007850

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wu v. The Owners, Strata Plan VR2197*, 2022 BCCRT 446

**B E T W E E N :**

SHENG WU

**APPLICANT**

**A N D :**

The Owners, Strata Plan VR2197

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Trisha Apland

## **INTRODUCTION**

1. This decision is about 2 linked strata property disputes.
2. The applicant, Sheng Wu, co-owns a strata lot (SL3) in the respondent strata corporation, The Owners, Strata Plan VR2197 (strata).

3. In dispute ST-2021-002574, Ms. Wu brought two related claims about the front stairs leading up to SL3. Ms. Wu says the front stairs are dangerous and need to be replaced. She says a strata council member hired and paid an architect to design new stairs who was their “old friend” and for their own purpose. She also says the architect’s front stair design is “totally wrong” and the strata failed to obtain unanimous approval for the design, which it submitted to the City of Vancouver. Ms. Wu alleges the council members acted contrary to the *Strata Property Act* (SPA) and she seeks the following orders (as written):
  - a. The strata council/councilors to stop the ongoing unapproved expenditures without [Special General Meeting (SGM)] resolution and pay the cost for any private arrangements between councilors and their hired architect.
  - b. Strata honestly replace the front stairs which have reached service lifespan by correctly following SPA and city building code.
4. Ms. Wu’s third claim in that dispute is about access to a common property (CP) utility room. The utility room is only accessible through another owner’s Limited Common Property (LCP). She seeks an order that the council “unblock and provide owners free and safe access to the strata’s CP designated for all owners’ use – utility room with individual utility controls and open common property” (as written).
5. In dispute ST-2021-007850, Ms. Wu alleges the strata council “misappropriated” special levy funding meant for bylaw amendments for their own legal advice and to take legal action against her. She seeks an order that the “strata councilors reimburse strata owners’ misappropriated special levy funds” of \$900.00.
6. The strata says Ms. Wu’s accusations against the council members are false and it denies any misappropriation of funds. It also says Ms. Wu already has safe access to the utility room and the stairs do not require immediate replacement. Further, it says the work to replace the stairs was under way until the City suspended the permitting process due to Ms. Wu’s complaints. The strata says Ms. Wu’s claims are “ill-founded”, premature, or moot and the Civil Resolution Tribunal (CRT) should dismiss all her claims in both disputes.

7. Ms. Wu is self-represented. The strata is represented by a council member.

## **JURISDICTION AND PROCEDURE**

8. These are the CRT's formal written reasons. 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.
9. 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.
10. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.
11. 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.
12. 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 Issue***

### **Claims Against Council Members Personally**

13. As mentioned, Ms. Wu alleges that a council member acted in his personal interest in making decisions about the front stairs and that a council member misappropriated funds for legal advice. She seeks orders that the council members pay for the architect's expense and \$900 for legal advice. I note the funds for the architect and legal advice expenses were raised by special levy and their respective invoices were paid.
14. Section 31 of the SPA requires that in exercising the powers and performing the duties of the strata corporation, each strata council member must act honestly and in good faith, and must exercise the care, diligence, and skill of a reasonably prudent person in comparable circumstances. I interpret Ms. Wu's allegations against the council members to be allegations that they acted in bad faith and contrary to SPA section 31.
15. However, the BC Supreme Court has said an owner has no standing or legal right to bring a claim against council members under SPA section 31. This is because a council member owes its duty to the strata corporation and not to individual owners: see *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32; *Wong v. AA Property Management Ltd.*, 2013 BCSC 1551; and *Rochette v Bradburn*, 2021 BCSC 1752. So, I find Ms. Wu has no legal right to bring the claims against council members for a breach of the SPA.
16. Ms. Wu has also not named any individual council members as respondents to this dispute and the CRT does not make orders against non-parties. I note this issue was discussed in a prior CRT decision involving the same parties: see *Wu v. The Owners, Strata Plan VR 2197*, 2022 BCCRT 45 at paragraphs 16 and 17.
17. The strata is a separate legal entity from its council members and the strata is the only respondent in these disputes. I find Ms. Wu's claims can only be against the strata. Given this, I find her claims are essentially that the strata made unapproved or improper expenditures, contrary to the SPA. For the reasons that follow, I dismiss

Ms. Wu's claims against the strata and decline to award Ms. Wu's requested remedies against the council or the strata.

## **ISSUES**

18. The issues in this dispute are:

- a. Did the strata breach the SPA when approving the front stair design and related expenditure? If so, what is the appropriate remedy?
- b. Should I order the strata to replace the front stairs and grant Ms. Wu "free and safe access" to the utility room?
- c. Did the strata make an unapproved expenditure for legal advice, contrary to the SPA?

## **EVIDENCE AND ANALYSIS**

19. In a civil proceeding such as this, Ms. Wu as the applicant must prove her claims on a balance of probabilities.

20. I have read all the parties' submissions but refer only to the evidence and argument necessary to explain my decision. I have not addressed issues raised in argument and evidence that are not connected to the claims in the Dispute Notices or to the requested remedies.

### ***Front Stair Claims***

#### **Background**

21. The strata was created in 1988 under the *Condominium Act* and continues to exist under the SPA. Other than several bylaw amendments filed at the Land Title Office in 1989, that are not relevant to this dispute, I find that the strata's bylaws are the Standard Bylaws under SPA section 120.

22. The strata consists of 4 residential strata lots in a single 3-storey building (SL1, SL2, SL3 and SL4). Again, Ms. Wu owns SL3. The strata plan shows SL1 and SL4 are located on the ground and second floors. SL2 and SL3 are located on the second and third floors. There are sets of stairs leading from the ground floor to the second floor on the front and back of the building designated on the strata plan as LCP for SL2 and SL3. Two of the claims in this dispute relate to repairing or replacing the front stairs.
23. Under SPA section 72 and Standard Bylaw 8(c), the strata is responsible to repair and maintain the LCP front stairs. The strata's responsibility for the LCP front stairs is not at issue.

#### Front Stair Repair and Design

24. It is undisputed that the front stairs needed some repairs. In May 2020, the strata council discussed options for replacing or repairing the stairs and obtained quotes from contractors for the work. Ms. Wu was on the council at this time and the emails show that she wanted the strata to hire her preferred contractor to rebuild the stairs by keeping the original stair design. Other council members had different ideas for the stair design, particularly for the railings. The council members did not come to any agreement.
25. At the October 2020 AGM, the strata proposed a \$12,000 expenditure to rebuild or replace the stairs (Front Stair Project) in the 2020-2021 budget. The AGM minutes show the budget was approved. According to the signed statement by the council president "AW", the budgeted Front Stair Project "expenditure" was meant for Dimas Craveiro Architect (DCA) to design and work on permitting the front stairs with the City. I find this expenditure needed to be approved and funded from the strata's contingency reserve fund under SPA section 92(b) or by a special levy under SPA section 108. However, nothing untimely turns on this error as discussed below.
26. DCA was undisputedly the strata's architect for a different, ongoing project for the strata's roof and deck. The strata had an existing City permit for that other project that

DCA was handling, and I find this is why the strata council hired him for this additional Front Stair Project.

27. As of the October 2020 AGM, Ms. Wu was no longer a council member. The remaining council was made up of 3 other owners. I find a large factor underlying Ms. Wu's claims is that she does not always agree with the 3 council members, who are the other owners, on what the strata should do with the front stairs.
28. On November 29, 2020, Ms. Wu filed a CRT dispute seeking an order that the strata immediately replace the exterior stairs because they were dangerous. The strata performed emergency repairs in December 2020 without fully replacing the front stairs and Ms. Wu withdrew the CRT dispute.
29. Once repaired, Ms. Wu emailed the council that she thought the stairs "look safe for now" and she suggested postponing their replacement. The council discussed postponing the Front Stair Project given the resolved safety issue but decided to move forward. In early 2021, the council instructed DCA to assess the front stairs, prepare a design, and coordinate the necessary permit.
30. The strata provided a witness statement from Dimas Craveiro that describes DCA's involvement with the Front Stair Project. In their statement they also described technical information about the design, condition of the stairs, and the City's requirements.
31. Dimas Craveiro stated that the front stairs were originally constructed under an old building code and do not meet the current 2019 Vancouver Building Bylaw (VBBL). They stated that on their review, the stairs did not appear to be a hazard or present a risk to residents that would require immediate repair and there is no requirement to replace the stairs to bring them up to the current VBBL code.
32. Dimas Craveiro's qualifications are not contested. While they are the strata's contractor, I find they are an independent witness. I also find they have the necessary qualifications to meet the requirements of expert opinion evidence under CRT rule

8.3. As there is no contrary expert evidence, I accept Dimas Craveiro's assessment and opinion about the current stairs' VBBL compliance and condition.

33. Dimas Craveiro stated that the council asked DCA to canvass options for safeguards to make the stairs "safer" due to owners' concerns. DCA prepared 3 options for the front stairs: (a) keep *as is* but replace rot and add ventilation; (b) rebuild the stairs with the same dimensions and add graspable handrails; or (c) rebuild the front stairs with a different design. Dimas Craveiro stated that all 3 options required a building permit and City approval but option (c) would likely require a development permit as well. At council's direction, DCA submitted design (b) to the City and the City project coordinator tentatively accepted it, subject to some modifications. As shown in the submitted emails, the City also allowed the strata to amend its existing 2019 building permit to add the Front Stair Project.
34. The strata held a SGM on August 5, 2021 for the 4 strata lot owners to vote (retroactively) to approve DCA's design and for DCA to proceed with the City permit. The SGM meeting minutes show the motion passed by 3/4 vote. I infer Ms. Wu either voted against the motion or abstained from voting.
35. Ms. Wu alleges that the strata council was "hiding every detail of the design from [her] from the very beginning" and acted unfairly in approving DCA to perform the work and the design. I find her allegations are not supported by the evidence.
36. The parties' correspondence shows that Ms. Wu had been involved in the early discussions about the Front Stair Project and it was Ms. Wu who advocated to keep the original design in 2020. Given that DCA's design would have allowed the strata to keep the original stair design with enhanced safety, I find the council's decision was consistent with Ms. Wu's original preference. So, I am somewhat confounded that Ms. Wu now argues it was unfair. With that, I appreciate Ms. Wu now wants a different design to meet the minimal VBBL requirements more similar to DCA's option (c).
37. I find this is not a situation where the strata withheld or hid the information from Ms. Wu about the stair design as she asserts happened. The emails also show the strata



sent her a link to the DCA design documents. While Ms. Wu says it expired before she accessed it over 20 days later, I find it was provided to her to review.

38. Next, Ms. Wu says the designed stairs would be shorter than shown on the strata plan and argues the strata essentially “removed” her LCP stairs. She takes the position that the strata required unanimous approval under SPA section 75(1)(b) and section 257 to approve the DCA design at the SGM, which it did not have.
39. I find Ms. Wu misunderstands SPA sections 75(1)(b) and 257. These 2 sections pertain to the removal of the LCP designation not to an alteration of the physical stairs. I find the SGM vote to approve DCA’s design did not remove SL3’s LCP designation as the stairs would have remained LCP and the strata did not need unanimous approval for the design it submitted to the City.
40. I find Ms. Wu does not otherwise have the ability under the SPA to veto the decision on the design for the LCP front stairs. Giving each owner veto over decisions of the owners as a whole, would effectively undermine the strata’s right to make democratic decisions: *Kunzler v. The Owners, Strata Plan EPS 1433*, 2020 BCSC 576.
41. In any event, the City undisputedly rescinded its tentative approval for the submitted design in December 2021 after receiving complaints about it from owners. The City also suspended the building permit and no additional work was performed on the Front Stair Project. So, I find nothing turns on the dimensions of the submitted design or its retroactive approval.

#### Front Stair Replacement

42. As mentioned, Ms. Wu seeks an order that the strata replace the LCP front stairs, because she says they are dangerous. However, Ms. Wu has not shown that she has the expertise to give an opinion on the safety or condition of the stairs. Her assertion that the stairs are “dangerous” is also contrary to Dimas Craveiro’s expert opinion that the stairs are safe even though they could be improved with some modifications. It is also contrary to the City’s emails that indicate its building inspector found no

safety issue with the stairs requiring their replacement. While they can be safer, I find Ms. Wu has not shown that the stairs need immediate repair or replacement.

43. Further, the strata was already in the process with the City to address the stairs to make them safer. Only the City may grant the ultimate approval. At this stage, the City suspended its permit and rescinded its prior approval for the submitted design. I note the City's emails indicate the suspension was at least in part caused by Ms. Wu's complaints.
44. The courts have been cautious before interfering with the manner in which a strata corporation decides to carry out its repair and maintenance duties: *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784 and *Browne v. Strata Plan 582*, 2007 BCSC 206. I find the same caution applies to the CRT. I find Ms. Wu has not proven that the strata must immediately replace the stairs to meet its statutory duty under SPA section 72 or Standard Bylaw 8(c) or to address an emergency safety issue. I find no basis for the CRT to intervene with the strata's process. I dismiss Ms. Wu's claim for an order that the strata replace the front stairs.
45. I turn to discuss Ms. Wu's claim over the expenditures related to DCA's design work.

#### Expenditures and Special Levy

46. On September 30, 2021, DCA invoiced the strata \$6,474.93 for 55.5 hours of work it performed for the strata. I note Ms. Wu objected to DCA's invoice because it did not include sufficient detail. At Ms. Wu's request, DCA provided further details and itemized the hours spend on the Front Stair Project design.
47. The strata says its council members are volunteers, it was historically self-managed and it made some mistakes. It says it should have passed a separate resolution to approve the expenditure for DCA's work earlier but mistakenly thought it was approved at the prior AGM. It says after receiving legal advice it learned that the actual expenditure was not approved and it corrected it mistake at the 2021 AGM.
48. The November 4, 2021 AGM minutes show the owners approved a special levy by a  $\frac{3}{4}$  vote for DCA's services in the amount of \$6,500 payable on December 1, 2021,

based on a schedule of \$1,625.00 per strata lot. The motion passed with 3 of 4 votes in favour. Ms. Wu voted against it.

49. The council members are volunteers and mistakes may be made even with the best of intentions. I find some latitude is justified when scrutinizing the volunteer council's conduct: *Mitchell v. The Owners, Strata Plan KAS 1202*, 2015 BCSC 2153. The strata admittedly corrected its mistake at the AGM and I find no evidence of any "ongoing unapproved expenditures". I also decline Ms. Wu's requested order that the council members stop "unapproved expenditures" and pay DCA's expense. Again, I find she has no standing to bring a claim against the council members and she did not name them as respondents.
50. I find DCA's \$6,500 invoice was a strata expense incurred to repair the LCP front stairs. Again, the front stairs are the strata's obligation to repair and maintain. I find the strata acted reasonably in hiring a professional architect to assist it with the front stair design, to deal with the challenges of VBBL compliance, and to ensure the stairs are safe. I find the council's procedural and technical mistakes or Ms. Wu's disagreement over the design and cost are not reasons to exempt her from paying the special levy, if this is the result she is seeking.
51. The special levy was approved as required under SPA section 108 by a  $\frac{3}{4}$  vote resolution at an AGM. I find Ms. Wu was required to pay the \$1,625.00 as set out in the approved schedule. I dismiss Ms. Wu's claim against the strata over the expenditures and the special levy for the Front Stair Project.

### ***Utility Room Access***

52. As shown on the strata plan, there is a CP utility room on the ground floor at the back of the building that houses the electrical meter, water shut off, sprinkler suppression system shut off, and telecommunication or internet provider boxes. Ms. Wu says the strata also stores its maintenance related assets (ladders, brooms, paint, salt) outside the CP utility room door. The parties agree that the access to the utility room is through SL4's LCP back yard. SL4's LCP yard is portioned off with a fence to provide

a “pathway” to the utility room. The pathway is fenced off from the rest of SL4’s LCP private “garden” space.

53. The strata’s undisputed evidence is that the building’s stairs at the rear of the building were deteriorating and so the strata rebuilt them in 2021. The completed stairs are larger than the original stairs and encroached on the pathway to the CP utility room so there was not room to pass. As a temporary solution, the strata records show SL4’s owner agreed to permit all owners access to the utility room within his fenced LCP garden in the event of an emergency. He also permitted the strata manager access with reasonable notice.
54. At the November 2021 AGM, the strata approved a  $\frac{3}{4}$  vote resolution to pay for a smaller gate to allow room for the pathway to access the utility room. The smaller gate was installed and there is presently a wide enough pathway to access the utility room. These facts are not disputed.
55. Ms. Wu argues that the solution of a smaller gate was “wrong and not implementable”. She says it still put the SL4 owner in control of who can access his LCP and she is still being treated differently and unfairly as compared to other owners in terms of access.
56. As mentioned, Ms. Wu’s requested remedy is for “free and safe access” to the CP utility room. In argument, she clarified that she seeks an order that the CRT change SL4’s pathway designation to CP to ensure owners’ access. I dismiss her claim for 3 reasons.
57. First, I find the LCP designation gives the SL4 owner a substantial degree of control over the LCP pathway and an expectation of its exclusive use. This means the other owners did not and do not have a statutory right to use and enjoy that space: see *Frank v. The Owners, Strata Plan LMS 355*, 2016 BCSC 1206. So, I find the fact that SL4’s owner maintains some control over his LCP yard access is consistent with the LCP designation and not wrong. In any event, based on the correspondence and witness statements provided, I find the SL4 owner permits the other owners access to the utility room along the LCP pathway.

58. Second, I find Ms. Wu's "free and safe" access to the utility room was restored after the strata reduced the gate size to remove the blockage and widen the path. I find no evidence to support Ms. Wu's assertion that she was then treated differently from any other owner in terms of access to the utility room. The evidence also does not support a finding that Ms. Wu was prevented from reasonable access to the utility room if she required it for some reason.
59. Third, removing the LCP designation from SL4's yard would have a clear impact on SL4's property interest. The process to remove a designation is set out in sections 75 and 257 of the SPA. It would require the strata ownership's unanimous approval. Based on the other owners' statements in evidence, I find the strata is not likely to achieve unanimous approval. I find Ms. Wu has established no legal basis for such an order because she wants unrestricted access. In any event, I find Ms. Wu already has "safe and free" access to the CP utility room and so I find no live access issue remains. I dismiss Ms. Wu's claim about the utility room access.

### ***Legal Advice Expense***

60. At a March 20, 2019 SGM, the strata approved a resolution to retain a lawyer from Access Law to provide legal advice to the strata for bylaw drafting and LTO registration. The strata also approved a special levy resolution of \$1,960 to fund the legal work for the bylaw amendment process, with \$490 payable by each strata lot as shown in the schedule (special levy resolution).
61. After Ms. Wu objected to the strata hiring Access Law, the strata held another SGM in June 2019, rescinded its decision to hire Access Law, and approved hiring Lesperance Mendes to prepare the amended bylaws. The special levy resolution of \$1,960 for legal fees did not change.
62. The strata then hired Paul Mendes of Lesperance Mendes who drafted and provided legal advice about the bylaw amendments. He invoiced the strata \$1,772.41 for these services. The strata paid the invoice from the special levy and says it put the \$187.59 remaining into the strata's contingency reserve fund, which I accept as it is not specifically disputed.

63. The parties agree the strata did not instruct Lesperance Mendes to file the bylaw amendment in the LTO. The strata says it is waiting on the outcome of this CRT dispute before filing the bylaw amendments, which it says will cost about \$180.
64. Ms. Wu says Paul Mendes not only drafted bylaw amendments but also answered 5 legal questions for a council member to make a case “against” her. Ms. Wu says that council therefore, “misappropriated” \$900 or half of the funds to pay for unrelated legal advice that was not part of the special levy’s purpose.
65. The strata says it asked Paul Mendes legal questions but says the questions were related to information it needed for the bylaw amendments. It also says the strata did not incur any additional legal costs for answers to questions and the bylaw amendment work came in under budget.
66. I reviewed Lesperance Mendes’ January 6, 2021 itemized invoice. I find it clearly indicates that each charge related directly to the bylaw amendment work. While the email correspondence shows that Paul Mendes answered many of the strata’s questions, I find no extra charge on its invoice for this work. I find Paul Mendes answered the strata’s questions and provided legal advice at no extra charge to the strata. My conclusion is consistent with Paul Mendes’ March 30, 2021 email to council informing them that he “wrote off a substantial amount of fees”.
67. Based on the submitted evidence, I find the strata did not pay for unrelated legal advice from the special levy funds. I find the strata’s expenditure for Lesperance Mendes’ legal services was for bylaw amendments and was approved by the 2019 resolutions. I dismiss Ms. Wu’s claim over the legal fees.

## **CRT FEES and EXPENSES**

68. 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. As the unsuccessful party, I find Ms. Wu is not entitled to any reimbursement. I dismiss her claim for CRT fees and dispute-related expenses.

69. The strata paid no CRT fees but claims \$606.38 that it paid Dimas Craveiro to prepare for and provide a statement for this proceeding. The strata says that in order to properly respond to Ms. Wu's allegations it needed evidence from Dimas Craveiro who has expertise to comment on the stairs and was directly involved in the discussions with the City, the proposed design, and permitting process.
70. CRT rule 9.5(2)(c) says that the CRT may order an unsuccessful party to reimburse a successful party for any reasonable expenses directly related to the CRT process. Considering the number of technical allegations Ms. Wu raised in this dispute, I find it was reasonable that the strata engaged Dimas Craveiro to help it respond. I also found some of the issues about the stairs were technical and outside ordinary knowledge. I relied, in part, on Dimas Craveiro's expert opinion in evidence to reach my decision about some of the issues related to the stairs. I find the strata's expense for Dimas Craveiro's evidence was reasonably incurred to allow it to respond to this dispute. It is also supported by the itemized January 14, 2022 invoice in evidence. I find Ms. Wu must reimburse the strata the \$606.38 it paid to Dimas Craveiro.
71. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Wu.

## **ORDERS**

72. I order that:

- a. Within 30 days of this dispute, Ms. Wu pay the strata a total of \$606.38 in expenses.
- b. The strata is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
- c. All Ms. Wu's claims in these 2 disputes are dismissed.

73. 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.

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Trisha Apland, Tribunal Member