



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Naryan v. The Owners, Strata Plan BCS 3832*, 2022 BCCRT 789

B E T W E E N :

ASHIKA NARYAN

APPLICANT

A N D :

The Owners, Strata Plan BCS 3832

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about water ingress and property damage in a strata corporation.
2. The applicant, Ashika Naryan, owns strata lot 19 (SL 19) in the respondent strata corporation, The Owners, Strata Plan BCS 3832 (strata). Ms. Naryan says the strata has failed to adequately repair and maintain the building envelope, resulting in water

ingress into her strata lot in 2020 and 2021. Ms. Naryan says the strata failed to fix the building envelope as advised and failed to investigate water leaks. She also says the strata negligently remediated the mould and water damage in her strata lot, causing further damage to the strata lot and her belongings, and making her strata lot unsafe to live in.

3. Ms. Naryan claims reimbursement of damages totalling approximately \$42,000, including paid strata fees, and replacement costs for her belongings. She also claims reimbursement of her extra living expenses and utility costs while living elsewhere, and income loss for time she took to manage the work in her strata lot. Ms. Naryan also seeks orders for the strata to clean or replace the contents of her suite, to pack, move and store her belongings, to remediate the mould in her strata lot and to repair the structural damage including cracks to the exterior of the building and on her balcony.
4. The strata denies responsibility for Ms. Naryan's claimed damages. While it acknowledges that the building envelope was defective and water leaked into SL 19, the strata says it reasonably followed the advice of its experts in deciding how to address the building envelope issues and water ingress. The strata also says it is not responsible for strata lot repair absent any negligence, which it specifically denies. Finally, the strata says that if it was negligent, Ms. Naryan has failed to mitigate her damages.
5. Ms. Naryan represents herself. A strata council member represents the strata.
6. As explained below, I find the strata was not negligent in maintaining and repairing the building envelope or in how it chose to remediate the mould and water damage in Ms. Naryan's strata lot. So, I find Ms. Naryan is not entitled to any of her claimed damages or requested orders and I dismiss her claims.

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 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

Legal Representation

11. In an October 21, 2021 preliminary decision, another CRT member refused the strata's request for legal representation in this dispute. However, during the evidence and submission upload process, CRT staff mistakenly corresponded directly with the strata's lawyer instead of the strata council member. As a result, the strata submitted late submissions written by its lawyer.
12. I find the lawyer's submissions do little more than repeat the strata's initial argument that it relied on the advice of its contractors in taking the steps it did to identify and

repair the water leaks into SL 19. I address the lawyer's argument about Ms. Naryan's rebuttal submissions below. On balance, I find Ms. Naryan was not prejudiced by the strata's use of a legal representative for late evidence and submissions. So, I accept the strata's lawyer's late arguments.

Rebuttal and Late Submissions and Evidence

13. In the adjudication process, the CRT invites submissions from the applicant, a reply from the respondent, then a rebuttal from the applicant. The strata's lawyer argues that Ms. Naryan's rebuttal submissions go beyond responding to the strata's arguments as they raise new arguments and introduce a timeline Ms. Naryan should have produced in her initial arguments.
14. The strata did not provide a substantive response in its Dispute Response form. Rather it simply stated that it had complied with its obligations under the *Strata Property Act* (SPA) and bylaws. I find it likely would have been difficult for Ms. Naryan to anticipate the strata's defence arguments from such a brief response. Further, the strata had the opportunity, and did, respond to Ms. Naryan's rebuttal submissions. So, I find no procedural unfairness to either party in allowing Ms. Naryan's extensive rebuttal submissions. As noted above, the CRT's mandate calls for a flexible and informal approach to dispute resolution, which I find supports the acceptance of the extensive rebuttal submissions. So, I accept Ms. Naryan's rebuttal submissions which were received on time.
15. I further accept and will consider the late evidence and submissions submitted by both parties. I note that each party provided 3 sets of late evidence or further submissions. I find each party has had the opportunity to respond to the other's late evidence and submissions. So, I find there is no procedural fairness issue here.
16. However, I refuse to accept several more pieces of evidence Ms. Naryan asked to submit in mid-June and July, 2022. Relying on Ms. Naryan's descriptions, I find much of the proposed late evidence relates to an alleged new leak and new drainage pipe back-up in #508. As the new events occurred after Ms. Naryan applied for dispute resolution on August 20, 2021, they were not included in her original claim and

therefore are not properly before the CRT in this dispute. As I explain below, it would be procedurally unfair to consider claims that the strata did not have sufficient notice of.

17. I decline to accept Ms. Naryan's resubmission of a "blurry" Sense Engineering report, as I find none of the submitted reports were "blurry". I find the strata's insurance coverage is not relevant to this dispute, and the proposed Health Canada information is not acceptable as expert evidence under the CRT rules. So, I accept none of Ms. Naryan's proposed extra late evidence.

Scope of Dispute

18. In her submissions, Ms. Naryan claims the strata unfairly charged her for its cost to maintain a common property drainage pipeline and asks that the charge against her strata lot be reversed.
19. I find this is a new claim which Ms. Naryan did not raise in her Dispute Notice. I find it is distinct and separate from her claim for water and mould damage resulting from building envelope leaks. I find it would be procedurally unfair to consider this new claim at this late stage, as the strata received insufficient notice of this claim to properly defend against it. So, I will not consider Ms. Naryan's claim about the plumbing charge or quarterly plumbing maintenance in this dispute.
20. For the same reasons, I also decline to consider Ms. Naryan's new claim about lost potential rental income for her unit. Lost rental income was not included in the 28 remedies Ms. Naryan requested in her Dispute Notice, nor was it mentioned. So, I find the strata has not had sufficient notice of this claim and find it would be procedurally unfair to consider it here.
21. Contrary to the strata's arguments, I do not find Ms. Naryan's request that the strata repair her balcony ceiling is a new claim raised for the first time in her submissions. In her Dispute Notice, Ms. Naryan asked for an order that the strata "repair property damage caused by the interior and external structural issue (including patio and

balcony cracks) and resolving the structural issues for the building” as Requested Remedy 23. So, I find it is not procedurally unfair to consider that issue in this dispute.

ISSUES

22. The issues in this dispute are:

- a. Was the strata negligent in:
 - i. Failing to investigate and repair building envelope deficiencies,
 - ii. Failing to properly remediate the water damage and mould in SL 19, or
 - iii. Failing to fix the SL 19 balcony cracks?
- b. If the answer to any of the above is yes, did that negligence damage SL 19 or cause mould contamination?
- c. If so, what is an appropriate remedy?

EVIDENCE AND ANALYSIS

23. In a civil dispute like this one the applicant, Ms. Naryan, must prove her claims on a balance of probabilities (meaning “more likely than not”). I have reviewed the parties’ extensive submissions and weighed the evidence submitted but only refer to that necessary to explain and give context to my decision.

24. The strata was created in 2010. It consists of 194 residential strata lots in a 27-storey concrete tower. According to the strata plan, SL 19 is a corner strata lot with a limited common property (LCP) balcony for SL 19’s exclusive use. The parties agree that SL 19 is known as #508. According to various diagrams and photos submitted, #608 is directly above #508. #608 has a larger corner balcony than #508 including a sunken open deck space. As I explain below the #608 balcony design and construction became a significant focus of water ingress investigation and repairs.

25. The strata is managed by a strata manager (D) and the property is managed by a building manager (B).
26. The strata's bylaws are the Schedule of Standard Bylaws set out in the SPA, with amendments filed by the strata from time to time, none of which I find apply here. I will address applicable bylaws below.
27. Ms. Naryan found water damage in her second bedroom and reported it to the strata manager on April 1, 2020. At the time, the strata had already arranged for targeted repairs of failing joint sealant on the outside of the building. The strata manager told Ms. Naryan to wait and monitor the situation. None of this is disputed.
28. Around January 5, 2021 Ms. Naryan and the strata's painter found the second bedroom was leaking again, with wet ceiling and walls. The restoration company found visible mould and recommended remediation. None of this is disputed.
29. Ms. Naryan's photos also show water staining and damage to her primary bedroom ceiling, along the outside wall.
30. Ms. Naryan specifically argues that the strata failed to:
 - a. replace all the external sealant in 2018 as recommended in the depreciation report,
 - b. inspect and source a water leak and the balconies above hers, as recommended in 2018,
 - c. inspect and source the April 1, 2020 water leak in her strata lot,
 - d. immediately or correctly remediate the water damage and mould found in her strata lot in January 2021, and
 - e. fix cracks found in her balcony.
31. Ms. Naryan argues that, if the strata had not failed in these ways, there would have been no water ingress into her strata lot, no mould, and no need for her to move out and replace her allegedly contaminated personal belongings.

Repair and Maintenance Obligations

32. Section 72 of the SPA requires the strata to maintain and repair common property (CP) and LCP, unless the strata has passed a bylaw requiring owners to repair and maintain LCP designated for their exclusive use. Bylaw 8 requires the strata to maintain and repair the structure and exterior of a building, including balconies. So, I find the strata is responsible to repair and maintain the outside of the building, and SL 19's balcony, under both the SPA and its bylaws.
33. Bylaw 2 requires an owner to repair and maintain their own strata lot.
34. Section 68 of the SPA says a strata lot boundary is the midway point of the wall separating it from CP. Based on photos in evidence, I find Ms. Naryan's exterior facing walls consist of a concrete wall (outside), insulation and metal studs, then drywall sheets (inside). As there are no specific measurements before me, I find the midway points in those walls are likely the point between the insulation and the interior side of the concrete building wall. So, I find the strata is responsible for the both the inside facing and outside facing exterior concrete walls. I find Ms. Naryan is responsible for the insulation and drywall part of the walls, as part of her strata lot, as well as her carpet, baseboards and paint.
35. A strata corporation is not an insurer but is liable to pay for repairs in 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. So, in order for the strata to be responsible for repairing the inside of her strata lot or for replacing her belongings, Ms. Naryan must prove the strata was negligent in repairing and maintaining the common property, including the building envelope.
36. In order to succeed in her negligence claim, Ms. Naryan must prove that the strata owed her a duty of care, the strata breached the standard of care, and that the breach caused Ms. Naryan's reasonably foreseeable damages (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3). The strata's standard of care in repairing

and maintaining common property is one of reasonableness, and not perfection (see *Weir v. Strata Plan NW 17*, 2017 BCSC 784). So, Ms. Naryan must prove the strata acted unreasonably in its approach to repairing and maintaining the common property.

External Sealant Replacement

37. RDH Building Engineering Ltd. (RDH) wrote a February 6, 2014 depreciation report. The report noted various types of sealant used at interfaces and service penetrations in the concrete exterior. It recommended replacing the sealant in 2018, at the approximate end of the sealant's 5 year service life.
38. According to strata council meeting minutes between November 2017 and March 2018, several strata lots reported water ingress into their units. The exterior leaks were repaired with external caulking and sealant as needed.
39. In an April 2, 2018 report, Protec Rope Access Ltd. (Protec) reported that expansion joint sealant failure was typical at all levels of the strata building. It also found failed window frame sealant and soffit paint failures. April and May 2018 strata council meeting minutes show the strata obtained a scope of work from Protec and planned to call a special general meeting to propose a special levy to fund the general sealant replacement project cost of approximately \$220,000.
40. In a July 11, 2018 report, WSP Canada Inc. (WSP) proposed a further inspection of the building's sealant joints and balcony membranes, after reviewing Protec's April 2, 2018 report. In its October 10, 2018 report, WSP said the primary area of failed sealant was the horizontal joints between concrete walls and floor slabs, and some vertical window joints. Based on its assessment, WSP recommended completing the sealant repairs in a targeted manner.
41. According to strata council meeting minutes, the strata hired WSP to oversee the repair work on November 14, 2018 with an estimated \$5,000 to \$10,000 total project cost. The minutes show Remdal Painting and Restoration (Remdal) did the repair work and completed it by February 21, 2019.

42. In April 2019, the strata decided to replace the remaining sealant on the building. In June 2019 it hired Sense Engineering Ltd. (Sense) to design the scope of work, deal with the tender process, and oversee the work.
43. The strata set an approximate budget of \$420,000 for the work in September 2019. At the October 21, 2019 annual general meeting (AGM), the owners approved a \$210,050.92 special levy to partially fund the sealant replacement project. On October 24, 2019 Sense and the strata hired Remdal to do the work.
44. Strata council meeting minutes and Remdal notices show Remdal began the general sealant replacement project on July 30, 2020 and completed it by November 12, 2020. As noted, Ms. Naryan first reported a leak in her second bedroom on April 1, 2020, before the general sealant replacement project began.
45. Contrary to Ms. Naryan's argument, I do not find the strata was negligent in failing to replace all the sealant in 2018. When deciding whether and how to repair CP, the strata has discretion to approve "good, better or best" solutions to any given problem. The court (or tribunal) 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 *Weir v. Strata Plan NW 17*, 2010 BCSC 784 at paragraphs 28 and 29). As noted, the strata must act reasonably, and in the best interests of all owners.
46. Strata corporations are entitled to rely on professional advice in carrying out their statutory duties (see *Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74). So, I find the strata was entitled to rely on the October 2018 WSP report in deciding to perform only targeted repairs of the failing external sealant at that time. Ms. Naryan has not shown any reason the WSP report was deficient at the time it was written, or its recommendation of targeted repairs was unreliable. I note that WSP considered the Protec report and its own physical observations of the building in reaching its conclusion that targeted repairs would be sufficient. Considering that the estimate for targeted repairs was significantly less than replacing all the sealant, I find the strata's decision was a reasonable one in the circumstances.

47. In any event, the strata did replace all the building sealant in 2020, before Ms. Naryan reported the January 2021 leak in the second bedroom. So, I find it unlikely that replacing the building sealant sooner would have prevented water ingress into Ms. Naryan's second bedroom.

Alleged Failure to Investigate Source of Water Leak and Balcony Parapet

48. In its October 10, 2018 report WSP noted water damage signs of efflorescence and blistering outside the primary bedroom window of #608, where water ingress had been reported. WSP found no obvious path for the water damage and recommended finding the leakage path. It also recommended investigating the balcony parapet between levels 6 and 7 which might contribute to water ingress into the suite above #608 and "subsequently into lower suite".

49. Ms. Naryan says the strata failed to follow these recommendations, resulting in water ingress into her strata lot from #608 above and the balcony.

50. First, it is unclear how determining the source of #608's leak would have prevented water ingress into Ms. Naryan's strata lot. None of the many reports in evidence indicate that water travelled from the #608 leak site into Ms. Naryan's primary or second bedroom. Further, none of the reports indicate that water travelled from #708's balcony (the parapet between the 6th and 7th floors) into #508. Of note, many reports propose that water leaked into Ms. Naryan's suite from #608's balcony. However, I find the October 2018 WSP report did not recommend investigating that balcony.

51. Second, there is no WSP final report in evidence. Based on strata council meeting minutes and later emails between Ms. Naryan and the strata manager, I find WSP did not issue a final report. So, it is unclear whether WSP and Remdal did, or did not, investigate the balcony parapet between the 6th and 7th floors. In other words, Ms. Naryan has not proven the strata failed to investigate those areas.

52. Third, strata council meeting minutes show multiple other strata lots reported water leaks between 2018 and 2020. Although the strata initially suspected condensation

as a likely source, by April 2020 the strata council noted that the likely cause was water ingress from failed sealant and that the cause would be fixed by the sealant replacement project. So, even if the strata did not inspect the balcony at that time for potential future leaks, I find it reasonable for the strata to focus on active leaks and sealant replacement at that time.

Alleged Failure to Investigate and Source April 1, 2020 Water Leak

53. Contrary to Ms. Naryan's argument, I find no statutory or other duty for the strata to investigate leak complaints in person.
54. I find Ms. Naryan's April 1, 2020 email to the strata manager contained a very detailed description of flaking and damaged ceiling and drywall by the window in the second room, as well as cracked baseboard and stained carpet. Further, Ms. Naryan sent the strata manager photos of the damage, which appeared to be dry. She also spoke with the building manager on the phone. So, I find the strata likely had the detail needed to decide how to address Ms. Naryan's April 1, 2020 water damage report. In other words, I find the strata's decision not to inspect the damage in person was reasonable.
55. In the email, both the strata and building manager said the leak was likely caused by a combination of condensation and exterior sealant issues, which would soon be fixed with the sealant replacement project.
56. I find it significant that strata council meeting minutes between January to April 2020 show several other units reporting water damage. According to the minutes, Sense had inspected the units and believed the issues would be addressed once the sealant replacement project scheduled for the spring or summer was completed. So, I find the strata reasonably concluded #508 was similar to the other units and that the water damage was from water ingress due to failed sealant. Although it later turned out that was not the sole cause of the leak, I find it was reasonable for the strata to have reached this conclusion at that time.

57. I also find it reasonable for the strata to advise Ms. Naryan to monitor the leak. I note that, on August 9, 2020, Ms. Naryan experienced a leak into her living room and kitchen from the strata lot above. Platinum Pro-Claim (Platinum) investigated and also checked all other rooms at Ms. Naryan's request, finding that all rooms were "reading dry". As the second bedroom water damage was dry at that time, I find no urgent reason for the strata to attend to Ms. Naryan's second bedroom leak which was reasonably presumed to be a result of failed exterior sealant.
58. In any event, I find Sense inspected Ms. Naryan's balcony and the outside of her strata lot in September or October, in part, to investigate the source of Ms. Naryan's second bedroom leak. In an October 6, 2020 report, Sense noted the entire membrane over #608's balcony needed to be replaced but it did not fit within the current project budget. Sense recommended the membrane replacement wait for an upcoming anticipated balcony project. However, Sense also recommended some targeted sealant repairs and drain tie-ins to remedy any water seepage from #608's balcony to Ms. Naryan's balcony or external walls and thus into her strata lot. The report notes that Sense instructed Remdal to complete those repairs. So, I find the strata's contractors did investigate potential sources of water ingress into Ms. Naryan's second bedroom and take steps to remedy them in 2020.

January 2021 Leak

59. Around January 5, 2021 the strata's painter found Ms. Naryan's second bedroom ceiling and walls were wet. On January 8, 2021 Platinum inspected the leak and set up drying equipment to address the observed mould. According to Platinum's report it suspected the exterior window flashing above and possibly ducting and condensation had caused the leak.
60. On January 11, 2021 Sense and Remdal inspected #508 and identified 2 exterior construction joints with hairline cracks. In its January 28, 2021 email to the strata manager Sense wrote that those hairline cracks likely contributed to the leaks, along with potential water flowing from the 5th and 6th floor balconies. Sense instructed Remdal to seal the cracks and install cant bead sealant on the balconies.

61. On April 9, 2021 Sense reported that it water tested #508. The tests showed that Remdal's repairs fixed the leak above the window but found a new leak below the window. Sense believed the new leak was likely caused by a concealed crack or open joint in the concrete behind the window sill flashing. Sense also found water on the floor of the second room and wet walls. It found #608's balcony railing base plate a was unsealed and suspected water passing through that. Sense also found formwork tie holes leaked on testing. It instructed Remdal to repair all those potential leak sources.
62. On June 7, 2021 Remdal began those targeted repairs. On June 22, 2021 Sense again water tested #508 and found that, although some leaks had been repaired, new leaks from other tie in holes and bedroom window leaks occurred. Sense instructed Remdal to do further investigations and repairs.
63. In a July 15, 2021 email Sense advised the strata and property managers that Remdal had completed the requested repairs and that Sense's water testing could not reproduce any more leaks into the second or primary bedroom of #508.
64. Based on these steps, I find the strata reacted reasonably and in a timely manner to investigate the source of Ms. Naryan's water ingress and repair the CP building envelope.
65. I further find these reports show that the water ingress into Ms. Naryan's strata lot came from multiple sources, including the balcony above hers (#608). However, as noted above, none of the reports show the water ingress came from #708's balcony or directly from the leak into #608. I find this further supports that investigating the #608 leak source or #708's balcony parapet would not have prevented water ingress into Ms. Naryan's unit, as Ms. Naryan claims.

Water Damage and Mould Remediation

Immediate Repairs

66. In its January 11, 2021 report, Platinum noted mould on the second bedroom baseboards, carpet and underpad in #508. It sprayed a mould disinfectant and tried

to remove the mould but could not. Platinum recommended removing all the affected structure and highly recommended cutting the drywall near the leak.

67. It is undisputed that the strata did not authorize Platinum to do further remediation work and, on January 13, 2021 Platinum removed its drying equipment. Ms. Naryan argues the strata should have immediately remediated the mould as recommended.
68. Contrary to Ms. Naryan's argument, I find sections 149 and 150 of the SPA do not require the strata to immediately mitigate damage to her strata lot. Rather, those sections require the strata to obtain and maintain insurance for common property, property damage, and personal injury. Further section 98(3) does not require the strata to undertake emergency measures to ensure safety and prevent significant loss or damage. Rather, that section allows the strata to fund emergency measures without owner authorization, in certain circumstances.
69. As noted above, Ms. Naryan is responsible for maintaining and repairing her own strata lot unless the strata's negligence caused the damage which I find is not the case here.
70. However, I agree with the strata and find it is responsible to remediate mould located on the interior face of the concrete wall, as I found above that the entire concrete wall is CP. I find the only way the strata could investigate the condition of the concrete wall, and remediate the mould found there, was to remove Ms. Naryan's drywall then the insulation between the drywall and CP concrete wall.
71. On February 10, 2021 Blueshore Projects (Blueshore) attended to #508 to remediate the mould and water damage. According to Blueshore's February 19, 2021 report, it cut the second bedroom drywall, finding mould on the interior face of the concrete wall. Blueshore cleaned the mould from the concrete, did airborne mould testing and set up air scrubbers in the unit. Although the strata is only responsible for remediating the mould found on the CP concrete wall, I find it reasonable that the strata also removed the mouldy drywall and insulation in order to reach the CP concrete wall. Further, I find it reasonable for the strata to clean the mould from the strata lot air, in order to prevent more mould from forming on the CP concrete wall.

72. I note that, although the strata was not required to follow Platinum's advice in remediating the mould in Ms. Naryan's strata lot, it essentially did so within 1 months' time.
73. Ms. Naryan also says the strata failed to communicate with her and advise her of the remediation plan. Emails between the strata manager and Ms. Naryan show that the manager did not respond to Ms. Naryan's January 13 voicemail or email. However, I find the strata manager did respond to Ms. Naryan's January 29, 2021 email, contrary to Ms. Naryan's argument. At that time, the strata manager provided a copy of Sense's January 28, 2019 email, explained that the external repairs were being done and then the leaks would be monitored. Although I find the strata, and the manager, could have responded to Ms. Naryan more quickly, I find the 2 week delay was not negligent given the strata was waiting for Sense's report on the source and also dealing with other leaking strata lots at the same time.

Spreading Mould and Contaminating Belongings.

74. Ms. Naryan argues the strata was negligent in using fans to dry out #508, which spread mould through the strata lot and contaminated her belongings. She relies on print outs from Health Canada and the Center for Disease Control. As there is no indication who wrote the information, or what their qualifications were, I find those printout are not expert evidence under the CRT Rules. So, I find Ms. Naryan has not proven fans spread mould spores.
75. In any event, I find no evidence that either Platinum or Blueshore blew a fan over the mouldy carpet, walls or areas of the strata lot during remediation. There are no photos of any fans being used. Platinum and Blueshore's invoices both note the use of a dehumidifier, rather than a fan. On balance, I find it unproven that the strata spread mould by using a fan.
76. Ms. Naryan also argues the restoration company failed to properly remove or seal her belongings before remediating the mould, thus allowing mould to contaminate her clothes, fabric furniture, window coverings, carpets and other belongings. Based on photos in evidence I find the second bedroom mattress was only partially covered

and left in the room during mould remediation. Further, other fabric furniture and belongings were not covered at all and left in the living room.

77. As noted, a strata's responsibility is to act reasonably in the circumstances, and it is entitled to rely on professional advice. If a strata corporation acts reasonably in hiring a contractor to perform its repair and maintenance obligations, and the contractor fails to perform that work effectively, the strata has fulfilled its statutory duty (see *Wright v. The Owners, Strata Plan #205*, 1996 CanLII 2460 (BC SC), affirmed in 1998 CanLII 5823 (BC CA)).
78. Ms. Naryan has not shown that the strata acted unreasonably in hiring either Platinum or Blueshore. She specifically says the restoration companies told her they would seal and protect her belongings. So, I find the strata acted reasonably in relying on its contractors to carry out the investigation and remediation work properly and that the strata is not responsible for any failure to protect Ms. Narayan's belongings.

Strata Lot Repairs

79. Ms. Naryan also says the strata has failed to properly remediate the mould and repair her strata lot. As explained above, Ms. Narayan is responsible for remediating the mould and repairing her own strata lot as I found the strata was not negligent in how it repaired and maintained the CP envelope. However, I find the strata must replace the insulation and drywall it removed to investigate and remediate the mouldy CP concrete wall, as explained below.
80. Other tribunal members have found strata corporations responsible to repair damage intentionally caused to a strata lot when inspecting or repairing CP (see, for example, *Manak v. The Owners, Strata Plan KAS 21116*, 2020 BCCRT 567). I find this approach reasonable and apply it here. So, I find the strata must repair the drywall and insulation it removed in Ms. Naryan's strata lot. To be clear, I find the strata is not responsible for Ms. Naryan's carpet, underpad, baseboards, or paint.

81. I decline to order the strata to use a specific, recommended, type of insulation in Ms. Naryan's walls. As noted above, the strata is entitled to choose between good, better, and best choices, so long as it acts reasonably in the circumstances.

Balcony

82. Ms. Naryan also says the strata has failed to repair structural defects, including visible cracks in her balcony. As noted, the strata is responsible for repairing and maintain the LCP balcony.

83. Meeting notes show Sense and Remdal told the strata and building managers at a September 8, 2020 meeting that the polyurethane waterproofing on the balconies and eyebrows (balcony overhangs) needed to be repaired in the near future but did not fit in the sealant replacement project budget. Sense recommended that the strata defer those repairs until the next balcony repair project.

84. In an October 5, 2020 report, Sense noted cracks observed in #508's balcony, along with efflorescence (evidence of water seepage) and water staining in the building corner.

85. In a December 13, 2021 report, Sense observed that the 6th and 7th floor balconies were unique to the rest of the building and needed waterproofing. In a February 22, 2022 SGM the owners passed a \$216,191.54 special levy to re-waterproof the balconies on the lower 7 floors and address other building envelope issues. So, I find that Ms. Naryan's cracked balcony will likely be addressed within this scheduled scope of work.

86. To the extent Ms. Naryan argues the strata has delayed in repairing her balcony cracks, I find she has not proven that such delay is unreasonable in the circumstances. Given the strata's focus on investigating and repairing identified water ingress into strata lots, I find it reasonable that water ingress, or balcony cracks would not be prioritized. Further, I find the strata was entitled to rely on Sense's recommendation that such repairs could be deferred. As noted, the strata is entitled

to repair and maintain common property as it wishes, so long as it acts reasonably in doing so, which I find is the case here.

Remedies

87. As I find the strata has not been negligent in repairing or maintaining the building envelope, I find Ms. Naryan is not entitled to damages for her belongings, her living expenses, or reimbursement of her lost wages to attend to her strata lot. I also decline to order the strata to pack, move, clean or replace Ms. Naryan's belongings, or pay for the air purifier she purchased or further mould testing she commissioned.
88. I find Ms. Naryan is not entitled to reimbursement of strata fees she paid while not living in her strata lot. This is because strata fees are mandatory and cannot be waived or withheld in protest (see *Stewart v. The Owners, Strata Plan KAS 2601*, 2020 BCSC 809).
89. Finally, I decline to order the strata to "repair property damage caused by the interior and external structural issue (including patio and balcony cracks) and resolve the structural issues for the building". The strata is already statutorily obliged to repair CP and LCP, including building structure. Further, the requested order is too general and vague to be enforceable.

CRT FEES and EXPENSES

90. 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. As Ms. Naryan was unsuccessful in her dispute, I find she is not entitled to reimbursement of her paid CRT fees or any of her claimed dispute-related expenses.
91. As the successful respondent, the strata paid no CRT fees. However, it claims reimbursement of \$23,476 in legal fees and \$352.60 in disbursements as dispute-related expenses. Based on a March 24, 2022 summary from the strata's lawyers, I

find \$163.76 is for LTO search fees, which I allow. As the CRT is an online tribunal, I find the strata's claim for copying costs unreasonable and do not allow it.

92. CRT rule 9.5(3) says the CRT will not order reimbursement of lawyer's fees in a strata dispute unless there are extraordinary circumstances. CRT rule 9.5(4) says the CRT may consider the complexity of the dispute, the degree of the lawyer's involvement, whether the conduct of a party or their representative has caused unnecessary delay or expense, and any other factors the CRT finds appropriate.
93. Although there was a large volume of evidence and submissions in this dispute, I find the legal concepts were not overly complex. Although the strata requested legal representation, it was not allowed until the very end of submissions. Neither party caused unnecessary delay or expense during the proceedings and there is no indication of reprehensible conduct from either party in the course of this dispute. Both parties provided volumes of evidence, submissions, late evidence, and late responses. I am not persuaded that any of these factors create extraordinary circumstances which might justify reimbursement of legal expenses. Overall, I find the rule 9.5(4) factors and lack of extraordinary circumstances weigh against ordering reimbursement of the strata's legal fees as a dispute-related expense.
94. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Naryan. In other words, Ms. Naryan is not required to pay her proportional share of the strata's expenses of defending this dispute, including management and legal fees.

ORDERS

95. I order Ms. Naryan to pay the strata \$163.76 as reimbursement of dispute-related expenses within 14 days of this order.
96. The strata is entitled to post-judgment interest, as applicable.
97. I dismiss Ms. Naryan's claims.

98. 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.

Sherelle Goodwin, Tribunal Member