



# Civil Resolution Tribunal

Date Issued: July 19, 2022

File: ST-2021-008106

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan 901 v. Strudwick*, 2022 BCCRT 823

**BETWEEN:**

The Owners, Strata Plan 901

**APPLICANT**

**AND:**

ALEXANDER REYNOLDS STRUDWICK

**RESPONDENT**

**AND:**

The Owners, Strata Plan 901

**RESPONDENT BY COUNTERCLAIM**

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## **REASONS FOR DECISION**

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Tribunal Member:

Leah Volkers

## INTRODUCTION

1. This dispute is about noise and flooring repairs in a strata corporation.
2. The respondent and applicant by counterclaim, Alexander Reynolds Strudwick, owns strata lot 13 (SL13) in a strata corporation, The Owners, Strata Plan 901 (strata). The strata is the applicant in the main claim, and the respondent to Mr. Strudwick's counterclaim.
3. The strata says it completed structural flooring repairs between SL13 and the strata lot located directly above it (SL21), as recommended in an acoustic engineer's report. The strata says Mr. Strudwick continues to request further repairs and alleges strata has failed to complete repairs required by the *Strata Property Act* (SPA) and the strata's bylaws. The strata asks for an order that Mr. Strudwick stop asking the strata to repair the flooring.
4. Mr. Strudwick says the strata has failed to complete the flooring repairs recommended by the acoustic engineer's report, in violation of the SPA and the strata's bylaws. In his counterclaim, Mr. Strudwick asks for a work order under SPA section 83 that the strata immediately and completely remediate the problem structural areas including the living room, dining room and primary bedroom areas, and complete full testing of the repairs. Mr. Strudwick also alleges strata council members breached SPA section 31. Finally, he also alleges various other breaches of the SPA and the strata's bylaws.
5. The strata is represented by a strata council member. Mr. Strudwick is self-represented.
6. For the reasons that follow, I dismiss the strata's claim, I refuse to resolve Mr. Strudwick's counterclaim that strata council members have breached SPA section 31, and I dismiss Mr. Strudwick's remaining counterclaims.

## 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. 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.
10. 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.
11. 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.
12. CRT documents incorrectly show the name of the applicant as The Owners, Strata Plan, VIS901. Based on section 2 of the SPA, the correct legal name of the strata is The Owners, Strata Plan 901. Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, I have exercised

my discretion under section 61 to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the strata's name above.

### ***SPA section 31 claim and other alleged SPA breaches***

#### *SPA section 31*

13. In his counterclaim, Mr. Strudwick alleges that the strata council has acted prejudicially and in bad faith, and is not maintaining the standard of care required by SPA section 31. SPA section 31 sets out the standard that strata council members must meet in performing their duties. It says that each council member must act honestly and in good faith, with a view to the best interests of the strata, and exercise the care, diligence, and skill of a reasonably prudent person in comparable circumstances.
14. In *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 at paragraph 267, the B.C. Supreme Court (BCSC) found that the duties of strata council members under section 31 are owed to the strata corporation, and not to individual strata lot owners. More recently in *Rochette v. Bradburn*, 2021 BCSC 1752 at paragraph 82, the BCSC confirmed that the SPA does not allow another strata owner to sue for section 31 violations. This means that a strata lot owner cannot bring a claim against a strata corporation for duties owed by its strata council members under section 31.
15. The court decisions in *Sze Hang* and *Rochette* are binding precedents. So, I find the CRT has no jurisdiction to decide Mr. Strudwick's section 31 claim, as set out above.
16. Under CRTA section 10, 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.
17. For these reasons, to the extent that Mr. Strudwick's counterclaim is based on any alleged breach of SPA section 31 by a strata council member, I refuse to resolve it under CRTA section 10.

### Other alleged SPA and bylaw breaches

18. Mr. Strudwick also made several other allegations that the strata and strata council breached various sections of the SPA. In particular, Mr. Strudwick specifically alleged that the strata breached SPA sections 3, 34.1, and 36, and bylaws 19(3) and 26. SPA section 3 sets out the strata's responsibility to manage the strata for the benefit of the owners. SPA section 34.1 sets out the strata's obligations related to strata council hearing requests. SPA section 36 addresses its obligation to provide access to strata records. Bylaw 19(3) is about council hearings, and bylaw 26 is about strata council members' standard of care. However, Mr. Strudwick did not request any remedies flowing from these allegations. Given this, I find it is not necessary for me to address them in this dispute, except as they relate to Mr. Strudwick's allegation that the strata failed to meet its repair and maintenance obligations under the SPA and its bylaws.

## **ISSUES**

19. The issues in this dispute are:

- a. Has the strata met its obligation under the SPA and its bylaws to repair the structural flooring?
- b. Did the strata treat Mr. Strudwick significantly unfairly?
- c. If yes to either of the above, what remedy is appropriate?
- d. Should I order Mr. Strudwick to stop asking the strata to repair the flooring?

## **BACKGROUND**

20. In a civil proceeding such as this one, the strata, as the applicant, must prove its claims on a balance of probabilities (meaning more likely than not). Mr. Strudwick must prove his counterclaim to the same standard. I have read all the parties' submissions and evidence, but I only refer to what I find relevant to provide context for my decision.

21. The strata filed consolidated bylaws in the Land Title Office in February 2020.

## **EVIDENCE**

22. The floor noise issue first arose in 2017. Given this, I have summarized the history of the flooring noise issue leading up to the 2021 flooring repairs that give rise to this dispute.

23. It is undisputed that the former owners of SL21 replaced the flooring in their strata lot with laminate flooring at some point prior to 2017. As noted, SL21 is located directly above SL13, Mr. Strudwick's strata lot.

24. In 2017, Mr. Strudwick advised the strata council by that he was hearing quite a bit of noise "coming from the flooring in [SL21]". He alleged that the flooring noise only started after SL21's flooring was replaced. He complained of loud snapping, that sounds like someone is breaking tree branches. He said the issue seemed to be isolated to the dining room/living room areas and parts of the hallway.

25. The strata initially investigated the flooring noise in early 2018 and determined that it was reasonable. In a statement, the strata council's former president, JR, said that they attended SL13 and SL21 with other strata council members in January 2018. They say they used a "db meter", which I find means decibel meter. They said they jumped up and down on the floor and did not register any levels "higher than normal expectations".

26. In June 2018, a new strata council was elected. In July 2018, Mr. Strudwick requested a hearing about the strata's flooring noise decision and an unrelated issue.

27. It is undisputed that after the hearing, the strata council retained a flooring expert who evaluated the flooring in SL21 and determined it was "substandard". The strata council's former president also said they spoke to SL21's owner who agreed to remove the laminate flooring and replace it with carpet. In March 2019, SL21's owners replaced the laminate flooring in SL21's primary bedroom and dining room/living room areas with an underlay and carpet.

28. After SL21's flooring was replaced, Mr. Strudwick continued to complain of flooring noise.
29. In March 2020, the strata council noted that the floor noise issue was not resolved. In May 2020, the strata manager sent one of Mr. Strudwick's noise recordings to Paula Knapp-Fischer, a "Building Science Consultant" at Morrison Hershfield, an engineering firm. They advised the strata manager that they did not think a structural engineer was needed because there was no sign of structural distress in the living room based on the video. They also said their guess was that the subfloor above the joists was moving up and down on the fasteners with weight applied as people move about. They said the strata manager should not rely on their guess, and alternate consulting opinions should be found. They recommended acoustic/vibration testing.
30. In July 2020, the strata council agreed to hire BAP Acoustics Ltd. (BAP) to complete acoustic testing.
31. On October 20, 2020, a BAP engineer attended to complete acoustic testing and prepared and submitted an October 22, 2020 report to the strata. The BAP report noted the following:
  - a. Noise levels were measured in the dining room area and the primary bedroom.
  - b. The popping noises observed during testing were localized to two discrete locations in SL13, the dining room area and near the entrance to the primary bedroom.
  - c. SL21's living room and primary bedrooms were carpeted.
  - d. During testing, the floor produced a readily audible "pop" in SL13, but the same noise was not evident in SL21.
  - e. Based on its observations, it could be that the popping noise was produced by "a nail(s)" rubbing against the sub-floor, which is a common occurrence in aging wood-framed buildings.

- f. The level of noise produced by the popping floor could result in sleep disturbance and/or annoyance to SL13's occupant. This would depend on the frequency at which the popping noise occurred under typical living conditions.
32. The BAP report recommended re-securing the sub-floor to the floor joists to resolve the popping floor issue, and noted that the work could be done from above or below. It also recommended consulting with a structural engineer for details on the optimal approach for re-securing the sub-floor. Importantly, the BAP report did not specifically identify repair locations, and did not say that the entire floor required repair.
33. The strata says the strata manager made efforts to contact engineering firms about the remedial work but had difficulty engaging interest. A statement from the strata manager is in evidence. In it, the strata manager said that one engineer provided a proposal for repairs from below, and the proposed repairs were expensive. The engineer's proposal is not in evidence. The strata manager said they also contacted Gordon J Campbell Construction Services (Campbell), which provided a proposal for remedial work from above. The strata manager said the strata council decided to repair one of the two areas of concern using Campbell's proposed method to evaluate its effectiveness.
34. In February 2021, Campbell reconnected the sub-floor to floor joists in three locations above SL13's dining room area.
35. In their statement, the strata manager said they talked to Mr. Strudwick to ask if there was improvement, and said Mr. Strudwick "answered positive to the repairs". They said they would not have continued with further repairs if the results of the first repair had not been effective. The strata manager said they received the strata council's approval to complete repairs in the primary bedroom. Mr. Strudwick says he did not "answer positive to the repairs", but only said that the popping and snapping sounds "maybe" decreased.
36. In August 2021, Campbell re-connected the sub-floor to floor joists in three locations above SL13's primary bedroom area. At that time, Mr. Strudwick asked the strata manager to confirm when repairs would be performed in the living room/dining room



area. The strata manager advised that they were waiting on Campbell to provide a timeline for the work.

37. On September 21, 2021, Mr. Strudwick complained of further noise in the dining room/living room area, and asked the strata to remediate the remaining problem areas without delay.
38. On September 28, 2021, the strata manager informed Mr. Strudwick that the strata had decided not to proceed with further work on the flooring. The same day, Mr. Strudwick requested a hearing asking for the strata to explain its decision.
39. Before the hearing, the strata council asked Mr. Strudwick if he had any new information to present prior to the hearing. Mr. Strudwick responded that he could not present new information until he knew why the strata had refused to complete further repairs. Mr. Strudwick did not say whether the completed repairs had improved the flooring noise.
40. The hearing was held on October 20, 2021. The strata manager sent Mr. Strudwick an October 26, 2021 letter in response to the hearing. In it, the strata manager said the strata council had worked towards improving the flooring noise and had remediated the primary bedroom and dining room areas, based on the BAP report. It also said that from the strata council's perspective, "due diligence" was done in addressing the flooring noise issue. It said the strata council therefore declined Mr. Strudwick's request to remediate the living room area because there was no independent, objective evidence that pointed to a problem in the living room.

## **ANALYSIS**

41. I will first address Mr. Strudwick's counterclaim.
42. Mr. Strudwick's requested remedy is a work order under SPA section 83 that the strata immediately and completely remediate the problem structural areas including the living room, dining room and primary bedroom, and complete full testing of the repairs. SPA section 83 applies to public or local authority orders. See for example:

*Robinson v. The Owners, Strata Plan NW 3308* at paragraphs 68-72. Here, there is no order from a public or local authority, so section 83 does not apply. Given this, I interpret Mr. Strudwick's requested order as a request that the CRT order the strata to complete further flooring repairs in accordance with its repair and maintenance obligations under the SPA and bylaws, and complete testing of the repairs once completed. I also find that the strata has interpreted Mr. Strudwick's requested remedy in the same manner. So, I will address Mr. Strudwick's counterclaim and requested remedy on this basis, and without further reference to SPA section 83.

***Has the strata met its obligation to repair the structural flooring?***

43. Mr. Strudwick says he is awoken multiple times a night, every night, and is disturbed every day by noise originating from "the defect in the building's structure". He says the noise occurs in SL13's combined living room and dining room area, which is one large room, and in SL13's primary bedroom. Mr. Strudwick says that the strata has failed to resolve the flooring noise issue, despite committing to do so.
44. The strata plan shows that SL13 is on the second floor of a multi-storey building, and SL21 is located directly above it. The strata plan does not show different boundary lines between these strata lots, so based on SPA section 68(1), the boundary between each strata lot is the midway point in the dividing floor or ceiling. This means there is no common property between the strata lots. Therefore, the building components within the floor-ceiling assembly are all entirely within strata lot boundaries, and are part of either SL13 or SL21.
45. SPA section 72(1) says that the strata must repair and maintain common property. SPA section 72(3) allows the strata to pass a bylaw to take responsibility for the repair and maintenance of specified portions of a strata lot. Bylaw 12(1)(d)(i) says that the strata must repair and maintain a strata lot when the repairs are for the structure of the strata's building. The parties do not dispute that the the floor joists and sub-floor repairs at issue in this dispute are for the structure of the strata's building. So, for the purposes of this decision, I have assumed the strata is responsible for the repairs under the bylaw 12(1)(d)(i).

46. In fulfilling its repair and maintenance obligations, the strata must act reasonably. The case law in support of this proposition is based on strata's obligations to fulfill its statutory repair and maintenance obligations under SPA section 72(1). However, I find the principles equally apply to repair and maintenance obligations a strata takes responsibility for by bylaw, as permitted by SPA section 72(3). In *Weir v. The Owners, Strata Plan NW 17*, 2010 BCSC 784, the court noted that strata corporations must work within a budget that the owners can afford. With that, strata corporations are often called upon to choose between different repair options, what the court called "good, better or best" solutions. The court found that if a strata corporation chooses a good solution over a perfect solution, it will not necessarily be considered unreasonable even if the repair later turns out to be ineffective.
47. It is undisputed that the strata has taken several steps to address the flooring noise, including directing SL21's former owner to replace their carpeting and underlay, inquiring about the flooring noise with an engineering firm, retaining BAP to perform acoustic tests, and hiring Campbell to complete BAP's recommended flooring repairs above SL13's primary bedroom and dining room areas.
48. Mr. Strudwick disagrees with the strata's decision to limit flooring repairs to the areas above SL13's primary bedroom and dining room based on the BAP report recommendations. I find Mr. Strudwick's primary argument is that the strata mischaracterized the BAP report's recommended repairs, and unreasonably restricted its flooring repairs to the dining room, when those repairs should have extended into the living room area as well. He says the BAP report only identifies noise in the dining area, which he says is ambiguous because the dining room and the living room are one large open area. He says the flooring noise extends throughout both areas.
49. Based on a video Mr. Strudwick submitted of his strata lot's layout, I accept that the dining room and living room areas adjoin. I also accept that given this, some flooring noise could be heard in the living room area. However, I disagree with Mr. Strudwick's assertion that the strata mischaracterized the BAP report's noise findings. The BAP report said that the popping noises observed during testing were localized to two

discrete locations in SL13, the dining room area and near the entrance to the primary bedroom (my emphasis added). The BAP report did not identify any discrete popping noises originating from the living room area. As noted, the BAP report also did not recommend any specific repair locations. So, I find the strata has not failed or refused to follow professional advice. Rather, I find that the strata reasonably interpreted the BAP report by attempting flooring repairs above the areas where BAP identified noise. Mr. Strudwick also says the strata refused his request to clarify the wording of the BAP report. However, Mr. Strudwick did not explain why he did not retain his own engineer or similar expert to assess the flooring from below via SL13, which the BAP report suggests is possible.

50. Mr. Strudwick also did not provide expert evidence that shows the alleged ongoing flooring noise could reasonably be resolved by completing further repairs above the living room area. Further, Mr. Strudwick says the flooring noise persists in the primary bedroom, dining room and living room. These submissions suggest that the repairs completed in the primary bedroom and dining room areas have not been effective. This calls into question whether further, similar repairs in other areas would make any difference. Mr. Strudwick does not explain why the strata should undertake further repairs when the similar repairs completed to date have not had a positive result. Based on the evidence before me, I cannot conclude that the further repairs Mr. Strudwick wants would resolve or reduce the noise.
51. Finally, Mr. Strudwick did not provide expert evidence to establish what is causing the flooring noise, or what could otherwise be done to resolve it. Under the SPA and the strata's bylaws, the responsibility to repair and maintain the area between SL13's ceiling and SL21's floor is divided between Mr. Strudwick, SL21's owners, and the strata. As discussed above, the strata is only responsible to repair specified portions of strata lots under its bylaws. So, the specific location of the flooring noise's cause and any suggested repairs is relevant in determining who is responsible for any further repairs. Without expert evidence about what is causing the ongoing flooring noise and what could be done to address it, I cannot conclude that any further repairs are even the strata's responsibility under the SPA or its bylaws.

52. As mentioned above, Mr. Strudwick bears the burden of proving his claim. I find that Mr. Strudwick has not proven that the strata failed to act reasonably in its repair and maintenance obligations. For these reasons, I dismiss Mr. Strudwick's claim that the strata failed to fulfill its repair and maintenance obligations under the bylaws and the SPA.

***Were the strata's actions in addressing the floor noise issue significantly unfair?***

53. Section 123(2) of the CRTA gives the CRT the power to make an order directed at the strata to remedy a significantly unfair action or decision. This provision mirrors section 164(1) of the SPA, which gives the same power to the court. In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, the court interpreted a significantly unfair action as one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust, or inequitable.

54. Mr. Strudwick's also argues that the strata's conduct was significantly unfair. Mr. Strudwick says that after completing repairs above the dining room and primary bedroom areas, the strata abruptly decided not to proceed with further repair work to the living room area without explanation. As noted, Mr. Strudwick argues that the strata should have immediately and fully complete further similar repairs to the flooring above his living room area, after he complained of ongoing flooring noise. He also suggests that it was significantly unfair for the strata to refuse to do so. As noted above, the strata advised Mr. Strudwick that it was not completing further repairs because it had completed the repairs recommended in the BAP report. I also discussed above why I find that the strata's decision not to conduct further repairs was reasonable. I find that it was not significantly unfair for the same reasons.

***Should I order Mr. Strudwick to stop asking the strata to repair its flooring?***

55. The strata says that after the strata council decided not to complete any further flooring remediation work in September 2021, the volume of emails and calls from Mr. Strudwick to strata council members increased. The strata says Mr. Strudwick did not raise any new information but just continued to reiterate his position that flooring

should be repaired. The strata says it recognizes that owners have a right to question a decision made by the strata council, and the strata council must respond in full, but says that communication should be appropriate and civil for all parties.

56. Mr. Strudwick says the strata has exaggerated the extent of his communications with the strata council and strata manager. However, Mr. Strudwick submitted in evidence a 385 page document that he says contains all his emails to and from the strata council and the strata manager. It includes several emails in September and October 2021. Call logs submitted in evidence by Mr. Strudwick also show Mr. Strudwick made repeated calls to strata council members and the property manager on September 28 and September 29, 2021, after he was told that the strata council decided not to proceed with further repairs. Given this, I find Mr. Strudwick's communications with the strata council and strata manager about the flooring repairs have been significant, and at times repetitive and excessive.
57. In *Tenten v. The Owners Strata Plan VR113*, 2019 BCCRT 1427 a CRT vice chair found that there was no legal requirement for the strata to respond to every item of correspondence from an owner.
58. Similar requests have also been considered in other CRT decisions, including *The Owners, Strata Plan EPS 2409 v. Cao*, 2020 BCCRT 466 and *Norman v. The Owners, Strata Plan VIS 5710*, 2020 BCCRT 796.
59. In *Cao*, the strata sought an order requiring the owner to stop sending "harassing and repetitive" emails to the strata council and the property managers. The tribunal member declined to make such an order, and found the owner was entitled to email the strata council if she had legitimate concerns but noted the owner should refrain from rude or repetitive emails in doing so.
60. In *Norman*, the strata said that the owner sent multiple and repetitive emails containing complaints on a daily basis. The strata requested an order requiring the owner to limit their emails. The tribunal member relied on *Cao* and the cases cited within, declined to order the owner to stop emailing the strata, and said the owner

should limit their emails to legitimate concerns and refrain from rude or repetitive emails.

61. Although these decisions are non-binding, I rely on them for the proposition that the strata need only respond to owner communications where necessary to fulfil its responsibilities. I have already found that the strata's flooring repairs complied with the strata's repair obligations under the SPA and the strata's bylaws, and were not significantly unfair. Given this, I find it is not necessary to make any orders limiting Mr. Strudwick's communication with the strata.

## **CRT FEES AND EXPENSES**

62. 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. Neither party was successful in their respective claims, so I decline to order any reimbursement of paid CRT fees. Neither party claimed any dispute-related expenses, so I award none.

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

## **ORDERS**

64. I refuse to resolve Mr. Strudwick's counterclaim that strata council members have breached SPA section 31 under CRTA section 10.

65. I dismiss the strata's claim and Mr. Strudwick's remaining counterclaims.

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Leah Volkens, Tribunal Member