



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Hartman v. The Owners, Strata Plan 216*, 2022 BCCRT 894

B E T W E E N :

PAUL HARTMAN

APPLICANT

A N D :

The Owners, Strata Plan 216

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about common property repairs.
2. The applicant, Paul Hartman, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan 216 (strata). He says the strata has failed to repair and maintain the strata building envelope, windows, and balconies, among other things,

despite several engineering reports that recommend repairs. Mr. Hartman says the strata council has tried to obtain the owners' approval to complete and fund the repairs, and has also alternatively proposed winding up the strata. Mr. Hartman says the owners have rejected all of the strata council's proposals. He asks the CRT to order the strata to repair and maintain the balconies, windows, cladding, and end roofs, as recommended in the engineering reports, and lists the cost at \$2,600,000.

3. The strata acknowledges the need to repair and maintain the strata building. The strata says it has diligently sought the owners' approval for the repairs, without success. The strata also says Mr. Hartman's requested remedy is premature. The strata says the strata council should be allowed to continue working with the owners to find a solution that works for the majority of owners.
4. Mr. Hartman is self-represented. The strata is represented by a strata council member.
5. For the reasons that follow, I agree with Mr. Hartman and I find the strata must complete the repairs.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.

8. 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.
9. 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.
10. CRT documents incorrectly show the name of the respondent as The Owners, Strata Plan, VIS 216. Based on section 2 of the *Strata Property Act* (SPA), the correct legal name of the strata is The Owners, Strata Plan 216. 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.

ISSUES

11. The issues in this dispute are:
 - a. Did the strata breach its repair and maintenance obligations?
 - b. If yes, what remedies are appropriate?

BACKGROUND AND EVIDENCE

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

13. The strata has existed since 1975. It consists of 29 strata lots in one apartment-style building.
14. The strata repealed and replaced the majority of its bylaws in the Land Title Office in August 2018, except for existing pet, rental, and alteration bylaws that are not relevant to this dispute. The strata also filed a further bylaw amendment in 2020 that is not relevant to this dispute. I will discuss the relevant bylaws as necessary.
15. As noted, Mr. Hartman says the strata has failed to carry out required repairs to the building envelope, windows, and balconies. Mr. Hartman also listed end-roof repairs in his application for dispute resolution, and mentioned roof, elevator, and sewer pipe repairs in his submissions. The strata says these new matters are not part of Mr. Hartman's claim. In his reply submissions, Mr. Hartman says he specifically wants the CRT to help the owners and strata council move forward with the building envelope, window, and balcony repairs. Mr. Hartman also did not ask for any remedies related to the elevator and sewer pipe repairs. I find the end-roof repairs he refers to are likely related to the building envelope repairs. Given all the above, I find the only issues properly before me in this dispute are the building envelope (including the end-roof repairs), window and balcony repairs.
16. The strata agrees that it is responsible for the repairs at issue in this dispute. The strata says it has openly supported the need for repairs, but says it cannot consent to the repairs without the owners' approval.
17. I note that in addition to being an owner, Mr. Hartman also says he has been a strata council member for a number of years. He says the strata council has been trying to get owners to address the strata building's upkeep and maintenance issues. He says after a November 24, 2021 special general meeting where a resolution to approve and fund the repairs did not pass, he realized that the owners will likely never vote in favour of fixing the strata's building.
18. The strata has received several reports about the building's condition. I will address them in turn.

2014 depreciation report

19. The strata's 2014 depreciation report estimated remaining life spans of 5 years for balconies, 2 years for interior and metal doors, 8 years for aluminum entry doors, and 0 years for common area windows. Several other items also had remaining life spans of less than 5 years.

2015 BECA report

20. In 2015, the strata retained Morrison Hershfield Limited (MH) to assess the current condition of the strata's building envelope. MH provided a July 2015 building envelope condition assessment report (2015 BECA report). It is undisputed that the strata obtained the report in response to water leaks into some strata lots.
21. The 2015 BECA report found limited damage to the building envelope, and found that the building envelope had the ability to balance periods of increased wetness and drying cycles to prevent significant wood decay and deteriorating.
22. However, given the level of damage observed and reported during the assessment, the 2015 BECA report recommended the strata complete the following remedial work as soon as practical, and within the next year:
 - a. A targeted leak investigation to establish one strata lot's water ingress,
 - b. Investigate and repair second floor beam that appeared structurally compromised,
 - c. Re-design the roof system's perimeter (pending study outcome),
 - d. Replace the entrance roof canopies on the east and west elevations,
 - e. Repair, clean and repaint the stucco wall system,
 - f. Repair wood trims and transitions between claddings, clean all vinyl mold to allow for drainage, and replace all sealants

23. The 2015 BECA report also recommended the strata complete balcony enclosure rehabilitation within 2 years, and renew all single pane aluminum windows and rehabilitate cladding within 2 to 5 years.

2016 report

24. After receiving the 2015 report, the strata again retained MH to do a targeted investigation into the cause of one strata lot's reoccurring window and ceiling leaks, investigate potential deterioration in a second floor beam, and perform a full interior balcony review. MH provided an October 2016 report.

25. In the 2016 report, MH noted that it found evidence of water penetration and deterioration of the strata's building envelope. It said the extent and severity of problems appeared to be strongly associated with specific elements of the construction. Among other things, the 2016 report also noted water ingress observed from the windows and balconies.

26. The 2016 report provided the following remedial recommendations:

- a. Renew the window assemblies in the vinyl clad areas of the building in the next 2 to 5 years.
- b. Immediate structural augmentation of one balcony to avoid the railing and glazing system from falling off the building. The report noted the balcony was a safety hazard and the work should be performed right away.
- c. Redesign and remediation of the other enclosed balconies and patios within 1 year.

27. The 2016 report also recommended roof repairs that are not at issue in this dispute.

28. At a September 13, 2018 special general meeting, the owners approved a $\frac{3}{4}$ vote resolution for a \$16,000 expenditure for the design phase of the "exterior renovation project", which I infer relates to repairs listed in the 2015 BECA report and 2016 report.

2019 design brief

29. The strata obtained a design brief from RDH Building Science Inc. (RDH) in 2019 (2019 design brief) that addressed most of the issues identified in the 2015 BECA report and 2016 report. Mr. Hartman submitted an RDH PowerPoint presentation that details the 2019 design brief. It is unclear whether there is a separate document that further details the 2019 design brief, but none was submitted in evidence. In the 2019 design brief PowerPoint, RDH identified the 2015 BECA report recommendations, and noted the strata concerns were balconies, stucco at ends of building, windows and window 'build outs', sliding glass doors, main and secondary entry doors, roof concerns, access from parking by those with mobility challenges, building appearance, and marketability.

30. In the 2019 design brief, RDH projected a cost of \$2,580,000 for:

- a. the balcony renewal,
- b. window and sliding glass door renewal,
- c. fibre cement over rainscreen assembly for the siding renewal, and
- d. east and west entry upgrades, which I find refers to the "end-roofs" or entrance roof canopies.

31. The 2019 design brief also provided various additional options at an additional cost.

32. At a December 12, 2019 special general meeting, the strata council proposed a $\frac{3}{4}$ vote resolution to approve the balcony and window renewal project based on RDH's 2019 design brief at a base cost of \$2,480,000, which the strata council said was less than the 2019 design brief because the strata council removed some features from the proposed balcony reconstruction. The resolution failed with 6 in favour and 19 opposed.

Resolution to consider winding up the strata

33. At an October 1, 2020 special general meeting, the strata council proposed a $\frac{3}{4}$ vote resolution that:

- a. The owners support the idea of winding up the strata and selling the property to a developer pursuant to part 16 of the SPA, and
 - b. The owners direct the strata council to retain a realty company to determine if any developers would be interest, retain an environmental site assessment if necessary, and expend \$10,000 from the contingency reserve fund to obtain an environmental report and to retain a lawyer to draft the wind-up resolution if necessary.
34. The strata council noted that given the strata's age, condition, needed repairs, location, zoning, and the size of its lot, the strata may be suitable for redevelopment by a developer. The resolution failed with 18 in favour and 8 opposed. I will return to this issue further below.
35. At the same general meeting, the owners approved a $\frac{3}{4}$ vote resolution to spend \$23,000 on repairs to the east wall, funded by a special assessment, with 22 in favour and 4 abstaining.

2020 depreciation report

36. The strata also obtained a 2020 depreciation report prepared by RDH. The depreciation report projected that stucco cladding, windows, sliding glass doors, balconies, guard walls and sealant would all need to be replaced in 2022. It also projected that the roof membrane and vinyl cladding would need to be replaced in 2025.

2021 revised design brief

37. The strata obtained a revised design brief from RDH in 2021. Mr. Hartman says the strata did so in an effort to get the owners to agree to some repairs. The strata does not dispute this.
38. The October 2021 revised design brief provided by RDH is in evidence, with a restricted scope of work. In it, RDH provided revised and updated project cost estimates for two options:

- a. First, RDH projected \$1,650,000 to renew all the strata's balconies, including replacing the guardrails, balcony doors, and soffits, among other things.
 - b. Second, RDH projected \$2,040,000 to renew all balconies as described above, and replace all windows.
39. At a November 24, 2021 special general meeting, the strata council proposed a $\frac{3}{4}$ vote resolution to approve a revised balcony and window renewal project based on RDH's revised 2021 design brief at a base cost of \$2,040,000, fund the project with a \$2,040,000 special levy, and to approve an additional \$150,000 contingency reserve fund expenditure to cover cost over runs and any special levy funding shortfalls. The strata council noted that the condition of the strata's balconies and windows had not improved, the strata needed to address them, and the strata had received professional advise that the work needed to be done as soon as possible. The resolution failed with 8 in favour, 10 opposed, and 5 abstaining.

ANALYSIS

Did the strata breach its repair and maintenance obligations?

40. 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 10(1)(d) sets out the portions of a strata lot that the strata must repair and maintain, including the structure of a building, the exterior of a building, balconies and other things attached to the exterior of a building, window casings, sills, frames of doors, doors, windows and skylights, on the exterior of a building or that front on the common property, and fences, railing and similar structures that enclose patios, balconies and yard.
41. The strata agrees it is responsible for the repairs at issue. In fulfilling its repair and maintenance obligations, the strata must act reasonably.
42. Based on the evidence summarized above, and in particular the 2015 BECA report and the 2016 report, it is clear that the building envelope, windows, and balconies require repair. The strata does not dispute this, and there is no evidence to the

contrary. The strata says it has been unable to meet its obligation to repair and maintain because the owners have repeatedly defeated $\frac{3}{4}$ vote resolutions to carry out and fund the recommended repairs. The strata says it has not been unreasonable in its actions and it has simply followed the direction of its owners as it is required to do.

43. Given the above, I find the strata's failure to repair and maintain the building envelope, windows and balconies is not due to any wilful neglect on the strata's part. Rather, I find the strata has not completed repairs because the owners have refused to approve and fund the repairs.
44. However, the BC Supreme Court has found that the strata's repair obligations bind the strata even when the owners will not approve the funds required, and the obligation to repair and maintain the common property continues. See *Tadeson v. Owners, Strata Plan NW 2644*, 1999 CanLII 6999 (BC SC) at paragraph 15, *Browne et al. v. The Owners, Strata Plan 582*, 2007 BCSC 206, and *Davis v. The Owners, Strata Plan NW 3411*, 2020 BCSC 1434.
45. Therefore, despite the strata's efforts to get owners' approval to complete the repairs, I find the strata has failed to fulfill its repair and maintenance obligations under the SPA and its bylaws.

What remedies are appropriate?

46. Mr. Hartman's requested remedy is an order that the strata repair and maintain the balconies, windows, cladding, and end roofs as advised by the engineering reports. He lists the value at \$2,600,000.
47. The strata says the CRT should not order the repairs because Mr. Hartman has not proven that such interference is absolutely necessary yet, and relies on *Lum v. Strata Plan VR519 (owners of)*, 2001 BCSC, 493, and various CRT disputes. The strata says the strata council should be allowed to continue to work with the owners to find a solution that works for the majority of owners, rather than continuing to pursue design plans that the strata says have been primarily driven by Mr. Hartman in his

role as a strata council member. The strata did not explain what other options it is pursuing with the owners, or provide any evidence that it investigated or pursued other options to complete the repairs since the application for dispute resolution was filed in January 2022. Therefore, I find it is necessary and appropriate to order the strata to complete repairs.

Winding-up the strata

48. However, as noted above, a majority of owners supported the strata council's resolution to investigate winding-up the strata at the October 1, 2020 special general meeting.
49. The strata council put forward the resolution as a $\frac{3}{4}$ vote resolution, and it failed on that basis. However, apart from the contingency reserve fund expenditure, a resolution seeking direction from the strata owners requires majority vote approval, which was obtained. Such a resolution does not require a $\frac{3}{4}$ vote, and was not seeking approval to cancel the strata plan and wind-up the strata under SPA section 272(1), which requires 80% approval. The BC Supreme Court has found that the requirement for 80% approval of the resolution to cancel the strata plan does not need to occur at the front end of the process. See *Buckerfield v. The Owners, Strata Plan VR. 92*, 2018 BCSC 839 at paragraph 22. I find the resolution was really asking the owners for direction to explore winding-up the strata. Therefore, apart from the contingency reserve fund expenditure, I find the resolution only required a majority vote under SPA section 50(1), which it would have obtained.
50. Given this, I find it would be inappropriate to order the strata to complete repairs at a significant financial cost without first providing the strata with the opportunity to investigate winding-up the strata.
51. I therefore order the strata to hold a special general meeting within 60 days to reconsider a majority-vote resolution that the strata council investigate winding up, as permitted under the SPA.

52. In the event the resolution passes, I find it reasonable to allow the strata 9 months from the date the resolution passes to obtain a written offer to purchase the property pending the strata being wound up. At that point, the strata can proceed with winding up the strata as set out in Part 16 of the SPA, which requires, among other things, 80% owner approval and court approval.
53. In the event the resolution fails or the strata does not obtain a written offer to purchase the property within 9 months of the date the resolution passes, I find it appropriate to order the strata to complete repairs within 1 year, as discussed below.

Repairing the strata

54. Mr. Hartman did not identify which specific repair options he wants the strata to proceed with, beyond generally stating that he wants the CRT to help the strata council and owners move forward with the building envelope, window and balcony repairs as recommended in the engineering reports. It also unclear whether his reference to the engineering reports refers to all four reports in evidence including the 2019 and 2021 design briefs, or just the 2015 BECA report and the 2016 report. The scope of repairs provided for in the 2015 BECA report and 2016 report is broader than the scope of repairs in the 2019 and 2021 design briefs.
55. The strata says I should limit the scope of any repair order to the minimum amount necessary to deal with repairs deemed urgent by the 2015 BECA report. I find the strata is referring to the repairs with a 1 year, or immediate, timeline. This did not include the balcony and window repairs. As discussed above, the 2015 BECA report recommended balcony rehabilitation within 2 years, and window upgrades within 2 to 5 years. Given the report's date, this means the balcony and window repairs were recommended to be completed by 2017 and 2020 respectively. The 2016 report also recommended remediating the balconies within 1 year and renewing the window assemblies within 2 to 5 years. These timelines have all passed.

56. Further, at the November 2021 special general meeting the strata specifically took the position that the window and balcony repairs needed to be completed as soon as possible, and sought to complete them based on RDH's 2021 revised design brief. Therefore, I find it is not appropriate to limit the scope of repairs to only the immediate repairs recommended in the 2015 BECA report.
57. As noted, both the 2019 and 2021 design briefs propose different repair options. Neither include all the repairs recommended in the 2015 BECA report. Both briefs also failed obtain the required $\frac{3}{4}$ vote in support.
58. The strata says some owners oppose RDH's design briefs for more reasons that just cost, including because the briefs did not deal with other aged building elements, such as alleged ongoing emergency plumbing repairs. However, no plumbing repairs were recommended in the 2015 BECA report or the 2016 report. So, I find this not a valid basis to now oppose the repairs set out in the 2021 revised design brief. The 2019 design brief has a broader scope that includes building envelope repairs. However, I find this brief is somewhat outdated. Further, the evidence indicates that even in 2019, the strata sought to revise the scope of work in the brief. So, I find it is not appropriate to order repairs based on the 2019 design brief. However, the 2021 design brief is the most recent proposal put forward by the strata to address some recommended repairs, and it covers the balcony and window repairs recommended in the 2015 BECA report.
59. Given all the above, I find the most appropriate remedy is to order the strata to complete the window and balcony replacement project as detailed in section 3.2 of RDH's 2021 revised design brief.
60. The 2021 revised design brief does not cover all the recommended repairs in the 2015 BECA report, and I have not ordered any repairs based on the 2019 design brief. Therefore, I also find it appropriate to order the strata to complete the outstanding building envelope repairs recommended on page 25 of the 2015 BECA report that are not covered by RDH's 2021 revised design brief.

Funding the repairs

61. The strata also says Mr. Hartman has applied to the CRT for what is essentially a “*Tadeson* order”. Under SPA section 165(c), a court may order a strata to repair common property, where the strata is unable to obtain the necessary $\frac{3}{4}$ vote resolution approving the repairs. For the courts, this authority includes the ability to impose a special levy. This type of order is sometimes called a *Tadeson* order, after the decision in *Tadeson v. Strata Plan NW 2644*, 1999 CanLII 6999 (BCSC).
62. As noted, a $\frac{3}{4}$ vote resolution to fund the repairs based on 2021 revised design brief and fund the repairs with a special levy failed, with less than 50% approval. However, I find Mr. Hartman did not specifically request the CRT make any order about how the strata should fund the repairs. He only requested an order that the repairs be made.
63. Further, as discussed above, I agree that the CRT should only interfere with or override the strata’s democratic governance when absolutely necessary. The strata has the option to fund the repairs through a special levy, including borrowing some or all of the funds. Without a specific request from Mr. Hartman that the CRT order the strata to impose a special levy to fund the repairs, I decline to do so. Therefore, I find an order about how the repairs are to be funded is not appropriate in the circumstances of this dispute. Nothing in this decision restricts the strata from obtaining legal advice or direction from the BC Supreme Court, if it cannot approve a funding mechanism for the repairs I have ordered.

CRT FEES AND EXPENSES

64. Under CRTA section 49 and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I therefore order the strata to reimburse Mr. Hartman \$225 in CRT fees. Neither party claimed dispute-related expenses, so I award none.

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

ORDERS

66. Within 60 days of the date of this order, I order the strata to hold a special general meeting where owners vote on a majority vote resolution that the strata council investigate winding-up the strata. If the resolution passes, the strata has 9 months from the date the resolution passes to obtain a written offer to purchase the property.

67. If the above resolution fails or the strata does not obtain a written offer to purchase the property within 9 months of the date the resolution passes, I order the strata to complete the following repairs within 1 year of either the resolution failing or the expiry of the strata's 9-month deadline to obtain a written offer to purchase the property, whichever is later:

- a. The balcony renewal and window replacement project as set out in section 3.2 of RDH's 2021 revised design brief, and
- b. The outstanding building envelope repairs recommended on page 25 of the 2015 BECA report that are not covered by RDH's 2021 revised design brief.

68. Within 30 days of the date of this order, I order the strata to pay Mr. Hartman \$225 in CRT fees.

69. Mr. Hartman is also entitled to postjudgment interest under the *Court Order Interest Act*.

70. 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.

Leah Volkens, Tribunal Member