



# Civil Resolution Tribunal

Date Issued: August 8, 2022

File: ST-2021-007153

Type: Strata

Civil Resolution Tribunal

Indexed as: *Zhou v. The Owners, Strata Plan VR990*, 2022 BCCRT 895

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

LIHUA ZHOU

**APPLICANT**

**A N D :**

The Owners, Strata Plan VR990

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

David Jiang

## **INTRODUCTION**

1. This dispute is about repair and maintenance obligations. The applicant, Lihua Zhou, owns strata lot 2 (SL2) in the respondent strata corporation, The Owners, Strata Plan VR990 (strata). I will refer to the applicant as Lily as that is her stated preference. Lily says that the strata breached its obligation to investigate and repair water leaks that have caused water damage, including black mould. She seeks an order for the strata

to investigate and repair the wall and foundation water leaks affecting the northeast, southeast, and southwest corners of SL2. She also seeks an order for the strata to repair interior water damage in SL2.

2. The strata disagrees. It says any water damage in SL2 is the result of Lily's failure to run dehumidifiers. It also says Lily has fabricated stories about the leaks.
3. Lily represents herself. A strata council member represents the strata.
4. For the reasons that follow, I find Lily has proven part of her claims and make the orders set out below.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act (CRTA)*. CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
6. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "she said, they said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia

Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

7. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Under CRTA section 123, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

### ***Allegations of Document Tampering and CRTA Section 92***

9. The strata says Lily altered or tampered with documents provided to the CRT contrary to CRTA section 92. In particular, the strata says Lily deleted certain words from a marked-up version of the Dispute Response.
10. Section 92 says it is an offence to provide false or misleading evidence or information in a CRT proceeding. The CRT has no jurisdiction to impose fines or a conviction under section 92. I have considered the parties' evidence and submissions and where relevant address the weight I give them below. In any event, I have not relied on the marked-up Dispute Response in making my decision.

## **ISSUES**

11. The issues in this dispute are as follows:
  - a. Did the strata breach its obligations to repair and maintain common property?
  - b. What are the appropriate remedies?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

12. In a civil proceeding like this one, Lily must prove her claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions

and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.

13. I begin with the largely undisputed facts. As shown on the strata plan, the strata consists of a building with 4 floors and an underground parkade. There are a total of 11 strata lots. The strata was created in 1981 under the *Condominium Act* (CA) and continues to exist under its successor, the *Strata Property Act* (SPA).
14. The strata used the bylaws in the *Condominium Act* (CA) with amendments registered in the Land Title Office (LTO). The SPA and the *Strata Property Regulation* (SPR) came into force on July 1, 2000. Section 17.11 of the SPR says that on January 1, 2020 the following took effect:
  - a. The remaining Standard Bylaws under the SPA, being bylaws 2 through 30 inclusive, are deemed to be the strata's bylaws, except if there are conflicting bylaws filed in the LTO.
  - b. Filed bylaws that conflict with the Standard Bylaws continue and prevail over the Standard Bylaws unless the filed bylaws conflict with the SPA.
  - c. Any bylaws under Part 5 of the CA cease to have effect.
15. The materials before me, including a set of the strata's bylaws provided by Lily, indicates that the SPA's Schedule of Standard Bylaws applies to this dispute. The strata did not dispute the accuracy of these submitted bylaws. I also find that there are no filed bylaws that conflict with them.
16. For those reasons, I find that bylaw 2(1) says an owner must repair and maintain their strata lot, except for repair and maintenance that is the strata corporation's responsibility under the bylaws. Bylaw 8 says the strata must repair and maintain common assets of the strata, common property that has not been designated as limited common property (LCP), and certain forms of LCP, including the structure and exterior of a building. Bylaw 8(d) also says the strata must repair and maintain strata lots in the strata, but this duty is restricted to only some parts of the strata lot, such as the structure of a building.

17. As discussed below, the evidence identifies issues with the building's exterior and foundation. I find that these are forms of common property that the strata must repair under the bylaws.
18. SL2 is located on the east side of the first floor. SL2's north, east, and south walls face the exterior. Photos show that there is an exterior concrete area, or vestibule, with a floor drain on the north side of SL2. As the entrance to the building is on the south side, the vestibule is at the back of the building.
19. Lily first reported a leak in the northeast area of SL2 in a December 2, 2020 email to a member of the strata council and the strata manager, CP. Lily advised that her floors were wet.
20. The strata submits this reported leak was a "fake story". The strata says the water in SL2 was actually caused by high humidity and condensation. It refers to a February 2012 report from Basement Systems Vancouver in support of this position. I put little weight on this report as it is approximately a decade old. Further, as discussed below, the more recent contractor reports contradict the strata's submission. The reports support Lily's submissions that water entered into SL2 from the exterior and caused damage, including black mould, under her flooring.
21. The strata hired a plumbing company, APS, to investigate. In a December 4, 2020 invoice, APS confirmed water had entered SL2. APS wrote that the source of the leak was the outside floor drain, mentioned above, that was blocked with dirt and leaves. APS augured the drain to clear it. The strata also hired another plumbing company, DNS Projects Ltd. (DNS), to apply a water sealant to the north wall of SL2 on December 23, 2020. Subsequent August 2021 emails from DNS indicate that this work was meant to be a temporary measure. DNS says it could not take further measures because it could not enter the building at the time due to ongoing concerns about COVID-19.

22. Lily then reported water ingress into SL2 from the east wall of the building, near a gas meter. On December 29, 2020, CP advised the strata council that DNS quoted more repairs for the east wall for \$366.69. CP wrote that the leak problem was likely “bigger than random fixes”. She suggested either continuing with patches to see if this would work or spending more money for a more detailed investigation. To that end, CP obtained quotes from 2 companies: 1) a January 15, 2021 quote from Variant Services Inc. (Variant), and a January 15, 2021 quote and report from Pacific Service Inc. (Pacific). I have reviewed Variant’s and Pacific’s comments in these documents. They confirm that the water in SL2 was caused by water ingress into the building and not humidity or condensation from within SL2. They also included further investigations as part of their recommendations. In particular, Variant explicitly recommended investigating the walls and foundations on the east and north sides of SL2. CP summarized these findings in a January 28, 2021 email to the strata council.
23. The strata council did not proceed with either quote. It decided to end its contract with the strata management firm and CP. They stopped working for the strata in late February 2021. According to the March 3, 2022 AGM minutes, the strata did not employ its new strata manager, AA Management, until August 1, 2021.
24. As shown in the chronology below, the strata took limited action after February 2021. Lily continued to press the strata for repairs. She requested a hearing on February 4, 2021. Strata council members visited SL2 in early March 2021 but did not observe any water ingress. The strata eventually held a hearing with Lily at its August 3, 2021 strata council meeting. The strata decided to hire DNS to return to the building to investigate Lily’s ongoing claims of water ingress.
25. I asked the parties to provide a copy of any report resulting from DNS’ visit and the strata provided DNS’ August 2021 emails and estimate. In the emails DNS’ president, SN, said that water appeared to be entering Lily’s unit through 2 areas, around the vestibule area to the north and near the gas meter on the east wall of SL2. SN wrote that in their opinion, the work in the estimate would stop water from entering SL2. DNS’ August 18, 2021 estimate was for a total of \$2,378.88. It included applying a

watertight seal in the affected north wall area and flashing to divert water away from that same wall. DNS would also apply silicone to the gas meter area.

26. The strata decided not to pursue DNS' suggestions. As shown in the September 19, 2021 strata council meeting minutes, the strata decided to install a cover over the north window of the vestibule. The cover was intended to shield the east and north side of the vestibule from rain. The strata used volunteers, rather than professionals, to build the cover. It was completed on September 26, 2021.
27. The strata also purchased more sealant but there is no evidence it hired anyone to apply it. Lily says, and I find, that the strata gave the sealant cans to Lily.
28. Despite the above, Lily advised the strata that leaks continued on September 27, 2021. In November 2021 Lily also reported leaks in the following areas of SL2: in the southeast corner starting on November 15, 2021, in the southwest corner starting on November 28, 2021, and in the northeast corner starting on November 29, 2021. The last of these was under the covered area.
29. Lily hired Greater Vancouver Home Inspections Ltd. (GVHI) to provide an inspection report on December 2, 2021. GVHI wrote that it detected moisture in the southwest and southeast corners of Lily's living room. This moisture affected the flooring, baseboard, and wall at the southeast corner. There were also signs of moisture and mould-like growth in the northeast bedroom. GVHI felt these issues were likely caused by foundation cracks, cracked exterior walls, insufficient exterior flashing, sealant, and/or a blocked or failed perimeter system. It suggested immediate repairs. It also said an electrician should review the affected areas as the moisture created an electrical safety concern.
30. Lily requested her own quote for repairs on December 17, 2021, from Base Mountain Renovations (BMR). BMR provided a quote for \$28,350 to dig out the east, south, and north walls and reinstall the dimple membrane on the foundation. It also provided a separate December 17, 2021 quote for \$15,750 to replace the laminate flooring, damaged drywall, and other water-damaged areas in SL2. Lily applied for dispute resolution at around this time, on January 18, 2022.

31. At the March 3, 2022 annual general meeting, the owners in the strata voted on whether to collect \$50,000 to repair the south wall and east wall leaks. The owners did not pass the resolution.
32. Lily also obtained an April 7, 2022 report from Lammus Construction (Lammus) about foundation repairs. Lammus found that the foundation was leaking, and water was entering through the south and east walls. It did not provide an estimate for this work.

***Issue #1. Did the strata breach its obligations to repair and maintain common property?***

33. Under SPA section 72, the strata must repair and maintain common property. As noted above, bylaw 8 and requires the strata to maintain such property. I have found that to include the building exterior and the foundation.
34. The strata's obligation to repair and maintain such property is measured by the test of what is reasonable in all circumstances. The standard is not one of perfection. The strata has discretion to approve "good, better or best" solutions. The CRT will not interfere with a strata's decision to choose a "good", less expensive, and less permanent solution although "better" and "best" solutions may have been available. See *Ricci v. The Owners, Strata Plan LMS 3940*, 2021 BCCRT 755 at paragraph 40, citing *The Owners of Strata Plan NWS 254 v. Hall*, 2016 BCSC 2363 and *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784.
35. Here, I find that by the end of January 2021 the strata should have been aware that the wall or foundation required repairs. This is because Variant and Pacific both concluded that water was entering SL2 from the outside. I do not find their evidence to meet the requirements of expert evidence under the CRT rules as they were written in the form of quotes rather than formal reports. However, I choose to rely on them as they are consistent with each other. They both recommended repairs. They also recommended further investigations as part of the work. Further, the strata provided no contrary evidence from a contractor or other expert that viewed SL2 or the strata's building at around the same time.



36. I find that the strata breached its obligation by failing to take any action at this time. This was not a situation where the strata chose to pursue good, better, or best solutions. The strata instead took little action for a long period of time.
37. I find my conclusion is strengthened by the fact that the strata refused to follow DNS' advice in August and September 2021. Instead, the strata decided to pursue what it referred to as a "DIY" cover or shed. It did not follow any professional recommendation in doing so. I therefore find it unsurprising that by late September 2021, Lily started to report more leaks. I find this was likely because the cover was ineffective.

***Issue #2. What is the appropriate remedy?***

38. As I have found that the strata breached its obligation to repair and maintain the exterior walls and foundation, leading to leaks in SL2 on its northeast, southeast, and southwest areas. BMR's quote of December 16, 2021, recommends repairs to the north, south and east wall and foundation of the strata's building. So, I order the strata to, within 120 days of the date of this decision, repair these areas to a condition that stops water ingress into SL2.
39. This leaves whether I should order the strata to pay for repairs in Lily's strata lot. As noted above, bylaw 2(1) says that in general, an owner must repair their strata lot. A strata corporation is not an insurer and is only liable to pay for repairs to a strata lot where it has been negligent. See, for example, *Kayne v. LMS 2374*, 2013 BCSC 51, *John Campbell Law Corporation v. Owners, Strata Plan 1350*, 2001 BCSC 1342, and *Basic v. Strata Plan LMS 0304*, 2011 BCCA 231. The strata may create a bylaw to take responsibility for strata lot repairs, but I find it has not done so here.
40. In order to succeed in a negligence claim, Lily must prove 1) the strata owed her a duty of care, 2) the strata breached the standard of care, 3) Lily sustained a loss, and 4) the loss was caused by the strata's negligence. See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3.

41. I find that the strata owes Lily a duty of care based on SPA section 72, and that she sustained a loss.
42. As noted above, the standard a strata corporation must meet in performing its duty to repair and maintain common property is reasonableness. So, a strata corporation will not be found negligent unless it has been unreasonable in its approach to repairing and maintaining common property. A strata corporation may generally rely on professional contractors' advice. See *Wright v. The Owners, Strata Plan #205*, 1996 CanLII 2460 (BCSC) at paragraph 30.
43. In the non-binding decision of *Caldwell v. The Owners, Strata Plan 166*, 2019 BCCRT 108, a CRT member found the strata breached the standard of care as it did not adequately explain a 3-month delay between receiving notice of a roof leak and inspecting the roof leak.
44. Here, I find that the strata was negligent from February 2021 onwards. I reach this conclusion in part because the strata generally did not take the advice of its contractors and took little action for several months. This includes 1) CP's advice in the December 2020 emails to at least consider further patches of the north wall and to investigate the east wall area next to the gas meter, and 2) Variant's and Pacific's recommendations in January 2021 for further work and inspections. The strata also declined to follow DNS' recommendation in August 2021. I find the strata acted unreasonably in the circumstances and breached the standard of care.
45. This leaves whether Lily's loss was caused by the strata's negligence. I find that it was, as there were further leaks reported after February 2021, including multiple leaks in November 2021. I find these leaks damaged SL2, particularly in the northeast, southeast, and southwest areas. Given this, I order the strata to, within 120 days of the date of this decision, repair or replace the laminate flooring, damaged drywall and insulation, certain cupboards, and other water damaged areas in SL2 as outlined and recommended in BMR's December 17, 2021 quote for this work.

## **CRT FEES AND EXPENSES**

46. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I therefore order the strata to reimburse Lily \$225 in CRT fees. I dismiss the strata's claims for reimbursement, including its claim of \$12.85 for a title search.
47. Lily also requested reimbursement of \$210 for the December 2, 2021 inspection from GVHI. As noted earlier, GVHI identified water ingress or water damage in the southwest, southeast, and northeast areas of SL2. I find this expense was reasonably necessary and order the strata to pay \$210 to Lily.
48. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Lily.

## **ORDERS**

49. Within 120 days of the date of this order, I order the strata to repair the north, south, and east walls and foundation of its building to a condition that stops water ingress into SL2.
50. Within 120 days of the date of this order, I order the strata to repair or replace the laminate flooring, damaged drywall and insulation, and other water damaged areas in SL2 as outlined and recommended in BMR's December 17, 2021 quote.
51. Within 14 days of the date of this order, I order the strata to pay Lily a total of \$435, for \$225 in CRT fees and \$210 for dispute-related expenses.
52. I dismiss the strata's claims for reimbursement of dispute-related expenses.
53. Lily is entitled to post-judgment interest, as applicable.

54. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

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David Jiang, Tribunal Member