



# Civil Resolution Tribunal

Date Issued: August 15, 2022

File: ST-2021-009620

Type: Strata

Civil Resolution Tribunal

Indexed as: *Corenblum v. The Owners, Strata Plan V.R. 1269*, 2022 BCCRT 922

B E T W E E N :

DAVID CORENBLUM

**APPLICANT**

A N D :

The Owners, Strata Plan V.R. 1269

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell, Vice Chair

## INTRODUCTION

1. This strata property dispute is about water damage.
2. The applicant, David Corenblum (owner), owns strata lot 10 (SL10) in the respondent strata corporation, The Owners, Strata Plan V.R. 1269 (strata).

3. The owner says the strata failed to maintain a chimney, contrary to its obligations under strata bylaws. He says this failure led to water ingress which damaged SL10 in January 2020 and January 2021. He says the strata was negligent, because it was aware of the potential for water damage and did not act.
4. As remedy for these claims, the owner requests:
  - \$3,000 for repairs to SL10 from the January 2020 leak,
  - \$3,000 for repairs to SL10 from the January 2021 leak, and
  - an order that the strata inspect the chimney and its mortar, flashing, caulking and sealant each spring, and each summer do any work recommended to prevent water ingress.
5. The owner filed a prior Civil Resolution Tribunal (CRT) dispute about alleged leaks into SL10, including leaks from the same chimney. The decision in that dispute is indexed as *Corenblum v. The Owners, Strata Plan VR 1269, 2020 BCCRT 535* (Corenblum 2020). I summarize that decision below.
6. The strata says that since Corenblum 2020 was published, it has taken various steps to repair and maintain the chimney, and has met its obligations under the *Strata Property Act* (SPA) and bylaws. The strata also says that some of the owner's claims were already decided in Corenblum 2020, or should have been raised at that time.
7. The owner is self-represented in this dispute. The strata is represented by a lawyer, Molly Li.

## **JURISDICTION AND PROCEDURE**

8. These are the CRT's formal written reasons. The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must

apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.

9. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate which includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.
10. 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.

## **ISSUES**

12. The issues in this dispute are:

- a. Are any of the owner's claims *res judicata* (already decided)?
- b. Must the strata reimburse the owner for leak repairs in SL10?
- c. Should the CRT order the strata to annually inspect chimneys and related components and do recommended repairs?

## **BACKGROUND**

13. The strata plan filed in the Land Title Office (LTO) shows that the strata consists of 33 strata lots in a 3-storey building with underground parking. SL10 is on the first floor. It has a fireplace with a brick chimney.

14. In Corenblum 2020, the tribunal member said that photos in evidence showed that the chimney is attached to the outside of the building extending from the first floor to the roof top.

15. In Corenblum 2020, the owner alleged the strata had been negligent in repairing and maintaining the building's roof, leading to water damage in SL10. The tribunal member summarized the evidence, including the following events:

- In November 2018, the strata's contractor, EPS, completed building envelope repairs.
- In late November 2018, the owner informed the strata that there was moisture around the SL10 fireplace.
- The owner, who was on the strata council at the time, contacted EPS.
- Around December 16, 2018 the owner noticed the leak was getting worse.
- Sometime before December 16, 2018, the baseboards and walls in SL10 were damaged by water from the leak, and there was moisture under the floorboards.
- Around December 20, 2018 another contractor tarped the chimney.
- The strata hired a roofing contractor, BQR, to inspect the leak's source. BQR reported that the chimney flashing was not installed to industry standards, which allowed water ingress. BQR performed a temporary repair with polyurethane adhesive.
- The strata permanently repaired the flashing in April 2019.

16. The tribunal member noted that the parties agreed the roof and chimney exterior were common property that are the strata's responsibility to repair and maintain under SPA section 72.

17. The tribunal member found that the strata had acted reasonably in dealing with the leak, and was not negligent. She therefore dismissed the owner's claims for SL10

repair costs, lost wages, electricity use, and labour. The tribunal member relied on binding precedents from the BC Supreme Court and BC Court of Appeal, which say that unless the bylaws say otherwise, a strata corporation is not responsible for repairs to the interior of a strata lot unless it has been negligent: see *Kayne v. LMS 2374*, 2013 BCSC 51 and *Basic v. Strata Plan LMS 0304*, 2011 BCCA 231. This is the case even where the strata lot damage was caused by a common property failure: see *Wawanesa Mutual Ins. Co. v. Keiran*, 2007 BCSC 727.

## **REASONS AND ANALYSIS**

18. In a civil claim like this one, the owner, as applicant, must prove his claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision.

### ***Res Judicata***

19. The strata submits that some of the owner's claims were either already decided in *Corenblum 2020*, or should have been raised at that time.

20. *Res judicata* can arise in two ways. The first cause of action estoppel, which stops someone from pursuing a matter that was or should have been the subject of a previous process. The second is issue estoppel, which stops someone from raising an issue that has already been decided in another process: see *Erschbamer v. Wallster*, 2013 BCCA 76 at paragraph 12, quoted with approval in *Tuokko v. Skulstad*, 2016 BCSC 2200 at paragraph 16.

21. I agree that there is some overlap between *Corenblum 2020* and this dispute. Both disputes involve leaks into SL10 in the area near the chimney. Also, in both disputes the owner raises arguments about whether the strata properly acted on a 2018 depreciation report, and whether EPS's building envelope repairs were adequate. However, for the following reasons I find the owner's claims in this dispute are not *res judicata*.

22. First, in this dispute the owner says the leaks in SL10 occurred because of faulty or deteriorated chimney mortar. That is a different issue than the faulty chimney flashing on the roof that the tribunal member found to be the source of the leak at issue in *Corenblum 2020*.
23. Second, the strata has an ongoing duty to repair and maintain common property, including the roof and the chimney. The fact that an owner raises a claim about common property repairs in one dispute does not bar them from raising future claims about different repair issues.
24. Third, the owner says the water damage for which he claims compensation in this current dispute was caused by leaks that occurred in January 2020 and January 2021. The owner filed the dispute application for *Corenblum 2020* in 2019, before those leaks allegedly occurred, and before the water damage could have been discovered.
25. For these reasons, I find the owner's claims are not barred by cause of action or issue estoppel.

***Must the strata reimburse the owner for leak repairs in SL10?***

26. As in *Corenblum 2020*, the parties agree that the strata is responsible under the SPA and strata bylaws to repair and maintain common property, including the chimney. As summarized in that decision, case law from the BC Supreme Court and BC Court of Appeal says that a strata corporation is not responsible for repairs to the interior of a strata lot unless it has been negligent, even if the strata lot damage was caused by a common property failure.
27. To prove negligence, the owner must establish that the strata owed him a duty of care, that the strata breached the standard of care, that the owner sustained damage, and that the damage was caused by the strata's breach: see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.
28. The strata had a statutory duty of care, based on the SPA and bylaws, to repair and maintain the chimney. The courts have said that the standard of care for a strata corporation's repair and maintenance obligations is reasonableness. This means the

strata must act reasonably in discharging these obligations: see *Weir v. Strata Plan NW 17*, 2010 BCSC 784, *John Campbell Law Corp. v. Strata Plan 1350*, 2001 BCSC 1342, and *Wright v. Strata Plan #205 (Owners)*, 1998 CanLII 5823.

29. In *Wright*, the BC Court of Appeal said a strata corporation is not an insurer, and is not responsible for damage as long as it acted reasonably in the circumstances. This means that even if a strata corporation's contractors fail to carry out work effectively, the strata is not responsible, and cannot be found negligent: see *Wright* at paragraph 30.

30. I find the evidence before me does suggest the strata was negligent in repairing the chimney. A report from Best Quality Roofing (BQR) indicates that the strata hired BQR to inspect the chimney on an emergency basis on January 31 and February 1, 2020, after the owner reported the first leak. BQR reported that its technicians found water appeared to be entering through the chimney, due to deteriorated and failing mortar. The BQR report said its technicians found large cracks and missing mortar throughout the chimney and the chimney crown was missing large pieces of concrete, allowing water ingress.

31. The owner notes that the strata's September 2018 depreciation report said that while the strata's chimneys appeared to be in "reasonable" condition, "re-pointing/grouting of the brick" would be required and should be completed in the "near future." The owner argues that while the strata budgeted for this work in 2019, it was not completed.

32. The strata says that after the owner reported leaks in 2019, it had BQR and Onside Restorations inspect the area, and neither contractor identified potential issues with the chimney. The strata says it reasonably believed that the water ingress problems into SL10 had been solved.

33. I find the strata's assumption was unreasonable, given that it appeared to do nothing about the recommended chimney re-pointing/re-grouting identified in the depreciation report. While BQR and Onside Restorations may not have suggested that work when investigating leaks into SL10 in 2019, there is also no evidence they were asked to

inspect the chimneys, or specifically the mortar. Rather, the evidence suggests the focus of the 2019 investigations was the roof, and the flashing between the roof and the chimney.

34. For these reasons, I find the strata was negligent in not following up on chimney maintenance recommended in the depreciation report, either by getting a second opinion or by completing the work.

35. However, I find the owner is not entitled to the claimed \$6,000 in damages or repair costs for the 2020 and 2021 leaks. For the following reasons, I find that claim is unproven.

36. The owner provided no receipts, invoices, or other documents showing that any work has been done, or materials purchased.

37. Based on the evidence before me, particularly the invoices the strata provided from Phoenix Restorations (Phoenix) dated March 30, 2020 and January 29, 2021, I accept that there was water ingress into SL10 in January 2020 and January 2021. I also accept that those incidents caused some amount of water damage in SL10. In particular, both of those invoices say Phoenix provided "Emergency Services for Water Damage" in SL10. However, the nature, extent, and location of the damage is not described in Phoenix's invoices, nor in Phoenix's Contractor Reports which the owner provided in evidence. Therefore, I cannot tell from the evidence what repair work was necessary following the leak in 2020 or the leak in 2021.

38. Also, while Phoenix's January 31, 2020 Contractor Report says "demo" was planned, it does not say what was or should have been demolished. The Report gives an estimate of \$3,000 for "repairs", but does not say what those repairs would be.

39. Significantly, Phoenix's second Contractor Report, which the owner says was prepared after the second leak in January 2021, says:

Only the flooring was reading with elevated levels of moisture at this time. Our Technician was advised by the Occupant that this has happened previously and the flooring has not been removed.



40. I find this statement does not support the conclusion that the owner is entitled to \$3,000 in leak repair costs for either leak, since it does not suggest flooring replacement was necessary. Also, there is no evidence before me about what other repairs, if any, were necessary following the 2020 and 2021 leaks.

41. The owner provided some photos showing water damage. However, I place little weight on these photos, since they are undated, and there have been at least 3 leaking incidents in SL10. I find I cannot tell from the photos and other evidence before me what repairs were required, when the damage occurred, whether it pre-existed the January 2020 leak, or how much it did or would cost to do any of the claimed the repair work. Also, the owner provided no particulars about what repair work is required.

42. For these reasons, I find the owner has not proven his claim to damages. I dismiss this claim.

***Should the CRT order the strata to annually inspect chimneys and related components and do recommended repairs?***

43. I dismiss this claim, for the following reasons.

44. Although I have found the strata was negligent in not following up on the chimney repair work recommended in the 2018 depreciation report, I find it would be inappropriate for the CRT to order the strata to do future inspections or repairs.

45. First, the CRT does not generally make prospective orders about things that have not yet occurred. The strata is now aware of the chimney problems and potential for leaks, and is obligated under SPA section 72 and the bylaws to do necessary maintenance and repairs to a reasonable standard. An order from the CRT is therefore unnecessary in the circumstances.

46. Also, the court in cases such as *Oldaker v. The Owners, Strata Plan VR 1008*, 2010 BCSC 776, *Oldaker v. The Owners, Strata Plan VR 1008*, 2010 BCSC 776 and *Lum v. Strata Plan VR519 (Owners of)*, 2001 BCSC 493, the BC Supreme Court has said the democratic government of the strata community should not be overridden by the Court except where absolutely necessary. I find this reasoning also applies to the

CRT. I find that ordering the strata to do annual work would be overstepping the strata council's role to oversee the strata's repair and maintenance obligations, as voted on and approved by the strata ownership. I therefore dismiss this claim.

## **CRT FEES AND EXPENSES**

47. 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. The strata is the successful party. It paid no CRT fees and claims no dispute-related expenses, so I award no reimbursement.

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

## **ORDER**

49. I dismiss the owner's claims and this dispute.

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Kate Campbell, Vice Chair