



Civil Resolution Tribunal

Date of Original Decision: August 24, 2022

Date of Amended Decision: September 8, 2022

File: ST-2022-000021

Type: Strata

Civil Resolution Tribunal

Indexed as: *Yacyshen v. The Owners, Strata Plan NW2594*, 2022 BCCRT 952

B E T W E E N :

BERNICE YACYSHEN

APPLICANT

A N D :

The Owners, Strata Plan NW2594

RESPONDENT

AMENDED REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about who is responsible for repairs for a solarium on a balcony. The applicant, Bernice Yacyshen, owns strata lot 20 (SL20) in the respondent strata corporation, The Owners, Strata Plan NW2594 (strata). Mrs. Yacyshen uses a solarium which was built at the request of a prior owner. She seeks an order for the

strata to take responsibility for repairs of the solarium and to rescind bylaw 2.3. In general terms, bylaw 2.3. makes a current owner responsible for alterations or additions made by prior owners of a strata lot. She also seeks \$500 in damages for time spent on the dispute and emotional distress.

2. The strata disagrees with the requested orders. It says the strata has 4 solariums, and historically owners took over repairing and maintaining them.
3. A family member represents Mrs. Yacyshen. A strata council member represents the strata.
4. For the reasons that follow, I dismiss Mrs. Yacyshen's claims.

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. 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.
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.
9. CRT documents incorrectly show the name of the respondent as The Owners, Strata Plan NWS2594. Based on section 2 of the *Strata Property Act* (SPA), the correct legal name of the strata is The Owners, Strata Plan NW2594. 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.

The Hearing Requirement of the SPA

10. SPA section 189.1(2)(a) says an owner must first request a strata council hearing before commencing a CRT proceeding about a strata property dispute. The strata objected to waiving this requirement SPA section 189.1(2)(b).
11. As discussed in the chronology below, I find Mrs. Yacyshen requested a hearing in March 2021 in connection with this dispute. The request is outlined in several emails between Mrs. Yacyshen's lawyer and the strata. There is no indication that the strata council held the hearing, but SPA section 189.1.(2)(a) does not require this. So, I find it appropriate to resolve this dispute.

Mrs. Yacyshen's Late Evidence

12. Mrs. Yacyshen provided as late evidence an audio recording of the strata's December 15, 2021 annual general meeting (AGM). The strata says it cannot hear the recording. I was able to play it, but I found the voices were very faint. Mrs. Yacyshen says she provided the recording to refute the strata's submission that she "did not speak up". Ultimately, I find nothing turns on this issue and find it irrelevant to deciding this dispute. I have therefore decided not to admit it and place no weight on the recording.

ISSUES

13. The issues in this dispute are as follows:

- a. Did the strata breach any obligation to repair or maintain the solarium on SL20's balcony?
- b. Should the strata pay Mrs. Yacyshen \$500 in damages for time spent on the dispute and emotional distress?

BACKGROUND, EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, Mrs. Yacyshen as the applicant must prove her claims on a balance of probabilities. This means 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.

15. I begin with the undisputed background. Mrs. Yacyshen has been the registered owner of SL20 since 2011. The strata plan shows SL20 is located on the third floor of the strata's building. This is the topmost floor. The plan also shows that on its northern side, SL20 has an outdoor balcony designated as limited common property (LCP) for SL20's exclusive use.

16. The solarium does not appear on the strata plan. It is undisputed that a prior owner either built it or authorized the owner developer to build it. Photos and Mrs. Yacyshen's diagram show it is an enclosed, windowed structure resting on the balcony. It occupies less than half of the balcony. It appears to be attached to a wall bordering strata lot 19 and another wall bordering SL20. SL20's occupants can directly access the solarium through a sliding glass door.

17. The strata's bylaws are filed in the Land Title Office, as well as several subsequent amendments. The strata registered a complete set of bylaws in 2001. They do not explicitly state who is responsible for the repair and maintenance of the solarium. In late 2021 the strata repealed and replaced the existing bylaws. The new bylaws included the new language of bylaw 2.3. It says that an owner is responsible for the

repair and maintenance of any alterations or additions to a strata lot, the LCP, or the common property, which have been made by the owner or by any prior owner or owners of the strata lot.

18. I turn to the chronology. On March 11, 2021, the strata manager sent Mrs. Yacyshen a letter. The letter said the strata had no record of any alteration or indemnity agreement for her solarium. It requested that she sign an indemnity agreement. It said that if she did not, it would proceed with removing the solarium because it presented a risk to the building's structure.
19. Mrs. Yacyshen disagreed and exchanged emails and correspondence through her lawyer. She also requested a hearing. The strata sent an April 8, 2021 letter to Mrs. Yacyshen. It said the strata decided that it would not seek the indemnity agreement. It also said it would not remove the solarium as it was part of the building envelope.¹ April 2021 emails also show that the strata agreed to reimburse Mrs. Yacyshen \$4,990.91 for repairs in connection with the solarium.
20. At the December 15, 2021 AGM, the owners in the strata voted in favour of repealing and replacing the existing bylaws. The new bylaws included bylaw 2.3, discussed above.

Issue #1. Did the strata breach any obligation to repair or maintain the solarium on SL20's balcony?

21. Under SPA sections 3 and 72 and bylaw 12.1, the strata must repair and maintain common assets, common property, and certain forms of LCP. Bylaw 12.1(c) says the duty to repair LCP is also subject to bylaw 2.3, discussed earlier.
22. There is no indication that the solarium requires further repairs. Consistent with this, the strata reimbursed Mrs. Yacyshen for solarium repairs in 2021. There is no indication that the strata has taken any steps to remove the solarium or seek the return of the money it paid Mrs. Yacyshen for the repairs.
23. I find that Mrs. Yacyshen seeks a determination of who is responsible for the repair and maintenance of the solarium in the future. I find it inappropriate to make such a

determination. This is because the CRT generally does not provide legal advice or make prospective orders about future events that have not happened yet. Given the above, I decline to order the strata to repair the solarium.

24. Mrs. Yacyshen also requests that the strata rescind bylaw 2.3. She says the bylaw is unenforceable because it makes her retroactively responsible for the repair and maintenance of an alteration to common property or LCP. The CRT has commented previously on this issue in decisions such as *Turenne v. The Owners, Strata Plan NW1370*, 2017 BCCRT 44, *Allard v. The Owners, Strata Plan VIS 962*, 2017 BCCRT 111, leave to appeal refused 2019 BCCA 45, and *The Owners, Strata Plan VIS 4925 v. Stokhof et al*, 2018 BCCRT 367. I also note that SPA section 72(2) outlines certain restrictions on what repairs and maintenance a strata corporation's bylaws may make an owner responsible for.
25. In the BC Supreme Court's decision of *Lum v. Strata Plan VR519 (Owners of)*, 2001 BCSC 493, the court said it should only interfere with or override a strata's democratic governance when absolutely necessary. I find the reasoning in *Lum* applies to this dispute. I find that rescinding bylaw 2.3 would unnecessarily override the strata's democratic governance. Further, the strata has not alleged a breach of bylaw 2.3 or sought reimbursement under it. I find it premature to make any orders in connection with bylaw 2.3. For similar reasons, I make no findings on whether it is enforceable.
26. For all those reasons, I dismiss this claim.

Issue #2. Should the strata pay Mrs. Yacyshen \$500 in damages for time spent on the dispute and emotional distress?

27. To succeed in a claim for emotional distress, there must be an evidentiary basis for awarding damages, such as medial evidence. See *Lau v. Royal Bank of Canada*, 2017 BCCA 253 and the non-binding but persuasive decision of *Eggberry v. Horn et al*, 2018 BCCRT 224. Mrs. Yacyshen provided no such evidence, so I dismiss her claim for emotional distress.
28. Mrs. Yacyshen did not say if she was claiming for time spent on dealing with the CRT proceeding or on dealing with the strata generally. CRT rule 9.5(5) says that the CRT

will not award reimbursement of time spent on a CRT proceeding except in extraordinary circumstances. I find those circumstances lacking in this dispute. It was not particularly complex and did not involve a large volume of evidence. Further, Mrs. Yacyshen did not provide evidence to show why \$500 was appropriate as compensation for time spent on the CRT proceeding or otherwise. So, I dismiss this claim as well.

CRT FEES AND EXPENSES

29. 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 dismiss Mrs. Yacyshen's claims for reimbursement of CRT fees and \$537.60 for legal fees.

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

ORDER

31. I dismiss Mrs. Yacyshen's claims and this dispute.

David Jiang, Tribunal Member

¹ Amendment Notes: Paragraph 19 has been amended to correct an accidental omission under section 64 of the *Civil Resolution Tribunal Act*. The changes are shown as underlined text in this amended decision.