



# Civil Resolution Tribunal

Date Issued: September 23, 2022

File: ST-2022-000974

Type: Strata

Civil Resolution Tribunal

Indexed as: *Leustean v. The Owners, Strata Plan NW180*, 2022 BCCRT 1050

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

**CARMEN LEUSTEAN**

**APPLICANT**

**A N D :**

**The Owners, Strata Plan NW180**

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Nav Shukla

## **INTRODUCTION**

1. This strata dispute is about document requests.
2. The applicant, Carmen Leustean, co-owns a strata lot in the respondent strata corporation, The Owners, Strata Plan NW180 (strata).

3. Mrs. Leustean says the strata has failed to provide her with a report about the strata's water pipes replacement project (project). She seeks an order that the strata provide this report to her and all strata lot owners.
4. In its Dispute Response, the strata says the information Mrs. Leustean seeks is not available because the project was only 90% completed. Since filing its Dispute Response, the strata confirms the project has completed but says that the report Mrs. Leustean asks for does not exist.
5. Mrs. Leustean represents herself in this dispute. The strata is represented by a strata council member.

## **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.

### ***Preliminary Issues***

10. In her Dispute Notice, Mrs. Leustean put a \$1,000 amount next to her requested order for the strata to provide the report. However, Mrs. Leustean has not explained this \$1,000 claim, so I make no findings about it.
11. The strata's evidence includes a May 24, 2022 letter to all owners advising that the project was complete. The parties' written submissions did not address whether or not the strata had obtained the report requested by Mrs. Leustean since the project's completion. At my request, CRT staff asked the parties to provide further submissions about whether the strata now had the requested report. Mrs. Leustean provided reply submissions in response to the strata's further submissions after the CRT's deadline. Given both parties have had a chance to review each other's submissions, and consistent with the CRT's flexible mandate, I allow the parties' further submissions, including Mrs. Leustean's late submissions. I have considered these submissions in my decision below.

### **ISSUE**

12. The issue in this dispute is whether I should order the strata to provide the requested report to Mrs. Leustean and all strata lot owners.

### **EVIDENCE AND ANALYSIS**

13. In a civil proceeding like this one, as the applicant, Mrs. Leustean 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.

## ***Background***

14. In July 2016, the strata filed amended bylaws with the Land Title Office replacing all previous bylaws. I find these are the bylaws that apply to this dispute. The strata filed subsequent amendments to the bylaws after July 2016 which I find are not relevant here.
15. The evidence includes a November 3, 2021 request for a special general meeting (SGM) which I infer was made under *Strata Property Act* (SPA) section 43. In this SGM request, one of the matters on the agenda included a request for a report about the project. In particular, the SGM request stated that the owners wanted a report “explaining how the performance obligations identified in the contract were satisfied regarding total cost estimated versus actual total cost”.
16. The SGM was held on December 1, 2021. The SGM minutes are not in evidence. However, on December 5, 2021, Mrs. Leustean emailed LT, the strata manager, and requested a council hearing under SPA section 34.1. In this email, Mrs. Leustean said that since the project was now 99% complete, she soon expected to receive a report that addressed 3 points:
  - a. How much the strata paid in taxes and permits to the City of New Westminster and the reason for paying that amount, if higher than normal.
  - b. Proof that the booster pump installed was a German pump, as allegedly required under the contract for the project.
  - c. Whether a second trench had been dug, as allegedly proposed by the project engineer.
17. On February 18, 2022, Mrs. Leustean made an email request under SPA section 36 for the report. On February 22, 2022, LT replied and said that the strata did not have the final report yet.
18. As noted above, on May 24, 2022, the strata manager wrote to the owners advising that the project was now complete.

***Should I order the strata to provide the report?***

19. Mrs. Leustean says that the strata has not provided her with any proof that it has requested the report or provided a timeframe for when the report will be released.
20. The strata says that its strata manager has responded to Mrs. Leustean's inquiries and provided all available information to her. It further says that there is no final report from the engineer other than the April 21, 2022 Assurance of Professional Field Review and Compliance that is in evidence. From these submissions, I infer the strata says that it has not requested and does not have a report that addresses the issues raised by Mrs. Leustean in her December 5, 2021 email.
21. Section 35 of the SPA governs the records a strata is required to prepare or retain. SPA section 35(2)(n.2) includes any reports obtained by the strata about repair or maintenance of major items in the strata. Section 36 says that on receiving a request, the strata must make the records listed in section 35 available for inspection and provide copies to an owner, tenant or person authorized by an owner or tenant within 2 weeks.
22. Here, I find the evidence does not show that the report Mrs. Leustean seeks actually exists. So, I decline to order the strata to provide the requested report.
23. Though Mrs. Leustean takes issue with the fact that the strata has not obtained the report she seeks, she has not referred to any strata bylaw or SPA sections that require the strata to get the report. I find the strata is not required under the SPA or the strata's bylaws to obtain the requested report. The evidence before me also does not show that the owners voted for the strata to obtain the report at the December 1, 2021 SGM. So, I find the strata currently has no obligation to obtain the report Mrs. Leustean requests.
24. For those reasons, I dismiss Mrs. Leustean's claims.

## **CRT FEES AND EXPENSES**

25. 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. Since Mrs. Leustean was unsuccessful, I find she is not entitled to any reimbursement. The strata did not pay any CRT fees or claim any dispute-related expenses so, I order no reimbursement.

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

## **ORDER**

27. I dismiss Mrs. Leustean's claims and this dispute.

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Nav Shukla, Tribunal Member