



Civil Resolution Tribunal

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File: ST-2022-001898

Type: Strata

Civil Resolution Tribunal

Indexed as: *Jackson v. The Owners, Strata Plan Vr391*, 2022 BCCRT 1079

B E T W E E N :

PAUL JACKSON

APPLICANT

A N D :

The Owners, Strata Plan Vr391

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about a strata's alleged failure to promptly repair a common property (CP) roof and windows. The applicant, Paul Jackson, co-owns a strata lot in the respondent strata corporation, The Owners, Strata Plan Vr391 (strata). Mr. Jackson says the strata has delayed making necessary replacements of CP windows and roofing, has said that strata lot owners should repair CP defects, and has ignored Mr.

Jackson for “many years.” He requests an order for the strata to immediately repair unspecified CP windows and a roof. Based on his submissions, I find Mr. Jackson’s request is for the strata to replace his strata lot’s windows and roof. Also based on his submissions, I find Mr. Jackson alleges that the replacement work is worth \$35,000, but he does not claim that amount in this dispute.

2. The strata denies Mr. Jackson’s claim, and says it continues to fulfill its repair and maintenance obligations under the *Strata Property Act* (SPA).
3. Mr. Jackson is self-represented in this dispute. The strata is represented by a strata council member.
4. For the following reasons, I dismiss Mr. Jackson’s claim.

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.

ISSUE

9. The issue in this dispute is whether the strata failed to maintain and repair the windows and roof at Mr. Jackson's strata lot, and if so, should I order the strata to immediately replace those items?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Mr. Jackson, as the applicant, must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read and weighed the parties' evidence and submissions, but I refer only to that which I find necessary to explain my decision.
11. The strata was formed in 1976 and presently exists under the SPA. It consists of 82 townhouse-style strata lots. The strata repealed and replaced all of its bylaws on December 20, 2001. I find those bylaws are applicable to this dispute, and that subsequent bylaw amendments are not relevant here.
12. SPA section 72 says that the strata must repair and maintain CP. That section also allows the strata, by bylaw, to take responsibility for the repair and maintenance of specified portions of a strata lot. Bylaw 8 makes the strata responsible for some portions of a strata lot. Specifically, under bylaw 8, the strata must maintain and repair the exterior of a building, and windows on the exterior of a building or that front on the CP, regardless of whether those items are CP, including limited common property, or part of a strata lot. I find the exterior of a building includes its roof. So, I find the strata is responsible, under the SPA and its bylaws, for repairing and maintaining the roof and exterior windows at Mr. Jackson's strata lot. None of this is disputed.

13. Mr. Jackson says that the windows and roof at his strata lot require replacement. He says the strata has unnecessarily delayed or refused to do that work. He also says that the strata refused to communicate with him and ignored his legal counsel's correspondence. The strata says, and I find submitted correspondence shows, that the strata is in the process of replacing Mr. Jackson's bathroom window. As explained below, the strata says that the other windows and roof will be replaced in the next few years in accordance with the strata's depreciation report and expert advice. The strata also says it has not refused to communicate with Mr. Jackson.
14. First, contrary to Mr. Jackson's allegations, I find that the submitted evidence does not show that the strata ignored Mr. Jackson, refused to communicate with him, or ignored his legal counsel's correspondence. I make this finding because the submitted correspondence shows that the strata communicated with Mr. Jackson about numerous concerns he raised regarding strata maintenance and management. I find the correspondence shows the strata was well aware of Mr. Jackson's concerns, including those about the roof and windows, and did not ignore him. For example, I find that shortly after a strata council meeting, the strata responded fully and in detail on February 2, 2022 to the many written questions and concerns Mr. Jackson raised on December 21, 2021. I find the strata also provided a timely and detailed written response to February 17, 2022 correspondence from Mr. Jackson's legal counsel, which I find is evidence that the strata did not ignore that correspondence.
15. Further, Mr. Jackson does not adequately identify specific communications that the strata allegedly failed to respond to, or evidence showing that the strata failed to provide required information to Mr. Jackson. The strata admittedly told Mr. Jackson that it would not respond to repeated questions it had already clearly and sufficiently responded to when no additional information was available. Given Mr. Jackson's numerous repetitive email inquiries in evidence, I find that choosing not to unnecessarily repeat a response when no new information was available was not a strata communication failure. For the above reasons, I find the strata did not ignore or refuse to communicate with Mr. Jackson, although it undisputedly did not agree to all of his window and roof replacement requests.

16. I turn now to Mr. Jackson's requested replacements. The standard a strata corporation must meet in performing its SPA section 72 repair and maintenance duties is reasonableness, as described by the BC Supreme Court (BCSC) in *Wright v. The Owners, Strata Plan #205*, 1996 CanLII 2460 (BCSC) and *Weir v. Strata Plan NW 17*, 2010 BCSC 784. As set out in *Wright* and *Weir*, a strata corporation is not held to a standard of perfection in its repair and maintenance obligations, and has a duty to make only those repairs that are reasonable in the circumstances.
17. As the BCSC explained in *Weir*, a strata corporation has discretion to approve different solutions to a problem. In *Weir*, the court noted that in carrying out its duty, the strata must act in the best interests of all owners and attempt to achieve the greatest good for the greatest number. This necessarily involves implementing repairs within a budget affordable to the ownership and balancing competing needs and priorities. The court noted that although disagreements between strata councils and owners are somewhat common, courts should be cautious about inserting themselves in the process, particularly where it involves issues about the manner in which repairs are made. Further, an owner cannot direct how the strata must conduct repairs: see the non-binding but persuasive decision *Swan v. The Owners, Strata Plan LMS 410*, 2018 BCCRT 241.
18. Mr. Jackson says his townhouse roof and windows should be replaced immediately because the strata has unreasonably delayed those replacements. Mr. Jackson does not say when the roof and windows should have been replaced. He generally alleges 40 years of strata mismanagement and that a strata council member "covered up" unspecified maintenance findings. I find those allegations of 40-year mismanagement and a cover up are entirely unsupported on the evidence before me.
19. Mr. Jackson's claim appears to be motivated in part by a roof leak at Mr. Jackson's strata lot in November 2021 and a window contractor's advice that Mr. Jackson's bathroom window should be replaced. The strata undisputedly repaired the roof leak, and I find the evidence does not show that it unreasonably delayed those repairs. Further, Mr. Jackson does not directly refute the strata's submission that it has taken

steps to replace his bathroom window as recommended, despite difficulties scheduling the work with Mr. Jackson and finding available contractors.

20. I find the evidence shows that in October 2020 the strata engaged a consultant, RDH Building Science Inc. (RDH), to produce a depreciation report for the strata. The report was to include information about which items should be replaced and when. Correspondence in evidence shows that RDH inspected the strata in April 2021, and the strata expected the report shortly after that. However, although correspondence shows the strata followed up with RDH with concerns about the report's progress, the final version was not ready until May 2022, when it was distributed to the ownership. Correspondence also shows the strata reviewed the RDH report for accuracy before approving and releasing it.
21. Contrary to Mr. Jackson's allegations, I find there is no evidence that the strata directed any material changes to the report's findings. I also find the evidence does not show that the depreciation report was inaccurate. Mr. Jackson does not adequately explain why he considers the report to be "worthless," and he submitted no expert evidence to contradict the report. Further, I find the evidence before me does not show that the strata should have sought a depreciation report before October 2020, or that the strata was responsible for the report's delay until May 2022.
22. The depreciation report said that the strata's roof was due for renewal in 2025, and the original aluminum framed windows in 2026. The report included a suggested plan where the roof would be replaced in 2025, and the original windows in 2026 and 2027. The report said that next steps should include project planning, contingency reserve fund planning, and a Building Enclosure Condition Assessment (BECA) to refine the renewal timing. I find strata council meeting minutes and other correspondence in evidence show the strata formed a BECA and Long-Term Planning committee, and received 3 proposals for the BECA work by April 2022. I find there is no evidence showing that the strata plans to delay the roof and window replacements beyond the dates recommended in the depreciation report.

23. Mr. Jackson says that the strata's alleged delay in replacing roofs and windows will likely increase his special levy payments for their replacement, because those items have continued to deteriorate during the delay. However, I find there is no supporting evidence before me showing that delays, including any alleged strata replacement delays, will increase roof or window replacement costs or result in other additional costs. Further, the evidence before me does not show that the ownership has voted to approve special levies to fund the strata roof and original window replacements. Although bylaw 21(2) allows the strata to spend money without ownership approval to repair or replace CP if immediately required to ensure safety or prevent significant loss or damage, I find the submitted evidence does not show any need for such immediate roof or window replacements.
24. I also find the evidence does not show that the strata failed to reasonably address any necessary roof or window repairs. Mr. Jackson does not refute the strata's submission that it repairs a few reported roof leaks each year as they arise, and will continue to do so until it can replace all the strata lot roofs. Further, apart from Mr. Jackson's bathroom window that the strata has taken steps to replace, I find submitted reports from window contractors, a home inspector, and a mould inspector, do not say that any windows are not presently working as designed. I find those reports simply identify that the single-paned windows originally installed at the strata are one factor in Mr. Jackson's reported window condensation issues, along with room temperature, ventilation, insulation, type of heating, and other factors.
25. Mr. Jackson expresses additional concerns, as follows. He suggests that the strata's written Window Replacement Policy made owners responsible for replacing their exterior windows, contrary to the SPA and strata bylaws. I disagree, because I find that the policy only contains requirements and approval processes for owners who wish to voluntarily upgrade exterior windows at their strata lots, at their own expense. I find this is consistent with bylaw 6, which requires an owner to obtain the strata's written approval before altering CP. I also find the strata has not denied responsibility for repairing and maintaining the strata's original exterior windows.

26. Mr. Jackson also says that the strata has generally failed to adequately maintain and repair other strata CP. However, I find these other allegations of poor maintenance are anecdotal and are not supported with adequate evidence. Further, I find that the alleged lack of maintenance in other areas is not persuasive evidence that the strata has not fulfilled the specific roof and window repair and maintenance responsibilities that are at issue in this CRT dispute.
27. For the above reasons, and following *Weir*, I find that Mr. Jackson has not proven that the CRT should intervene and order the “immediate” replacement of his strata lot’s windows and roof. I find the strata has not failed to adequately maintain and repair those items. Further, the strata intends to replace them as recommended in the depreciation report as part of a strata-wide renewal project. Despite Mr. Jackson’s disagreements with the nature and timeliness of the strata’s roof and window replacement decisions, I find the evidence shows the strata’s actions have been reasonable, including obtaining a depreciation report, acting consistently with its contractors’ advice, and taking adequate steps to investigate and plan replacements across all strata lots.
28. Mr. Jackson also says that the strata’s decisions about window and roof replacement have been significantly unfair to him. Under CRTA section 123(2), the CRT may make an order directed at the strata corporation to prevent or remedy a significantly unfair action or decision. In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, the BC Court of Appeal found that a significantly unfair action is one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable. In *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342, the court said that a reasonable expectations test, as described in *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, can form part of a significant unfairness inquiry involving allegedly oppressive conduct.
29. Here, I find Mr. Jackson’s expectation was that his strata lot’s roof and windows should have already been replaced, or that he is entitled to their immediate replacement, before other owners, and before replacement planning and budgeting were completed and approved by the ownership. I find that expectation was not

reasonable, because as noted, the evidence does not show that the strata should have already replaced Mr. Jackson's roof and non-bathroom windows, or that those replacements should be prioritized over those at other strata lots. So, I find the strata's roof and window repair and maintenance decisions were not significantly unfair.

CRT Fees and Expenses

30. 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. Mr. Jackson was unsuccessful in this dispute, but the strata paid no CRT fees and claims no CRT dispute-related expenses. So, I order no reimbursements.
31. I note that Mr. Jackson claimed \$7,500 in legal fees as CRT dispute-related expenses, although he says he was unable to adjust the claimed amount to the \$4,946.60 total shown on submitted lawyer invoices. Most of the invoiced expenses occurred before Mr. Jackson applied for CRT dispute resolution, so are not CRT dispute-related expenses. Further, I find he does not describe any extraordinary circumstances that would make it appropriate for the strata to pay the other invoiced expenses under CRT rule 9.5(3)(b).
32. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Mr. Jackson.

ORDER

33. I dismiss Mr. Jackson's claim, and this dispute.

Chad McCarthy, Tribunal Member