



Civil Resolution Tribunal

Date Issued: October 19, 2022

File: ST-2021-008659

Type: Strata

Civil Resolution Tribunal

Indexed as: *Parker v. The Owners, Strata Plan NW 3312*, 2022 BCCRT 1145

B E T W E E N :

DAVID PARKER and KRISTINA SZABO

APPLICANTS

A N D :

The Owners, Strata Plan NW 3312

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about a limited common property (LCP) deck repairs.
2. The applicants, David Parker and Kristina Szabo, own a strata lot in the respondent strata corporation, The Owners, Strata Plan NW 3312 (strata). The applicants say adhesive used by the strata's contractor to repair a deck post leaked on to the LCP

deck surface and caused discolouration. The applicants say the strata is responsible to repair the discolouration, but has not done so. The applicants also say the strata has treated them significantly unfairly by not repairing the discoloured deck surface. The applicants ask for an order that the strata repair the damaged deck surface.

3. The strata does not dispute that the deck was damaged, but says it has already hired a contractor to remove the adhesive from the deck's surface. The strata says the remaining discolouration is minor and it has reasonably carried out its repair and maintenance obligations.
4. The applicants are self-represented. The strata is represented by a strata council member.

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.

ISSUES

9. The issues in this dispute are:
 - a. Has the strata met its obligation under the *Strata Property Act* (SPA) and its bylaws to repair the LCP deck surface?
 - b. Did the strata treat the applicants significantly unfairly?
 - c. What remedies are appropriate, if any?

EVIDENCE AND ANALYSIS

10. In a civil proceeding such as this one, the applicants must prove their claims on a balance of probabilities (meaning more likely than not). I note that the strata did not provide any documentary evidence despite being provided with the opportunity to do so. I have reviewed all the parties' submissions and the applicants' evidence, but I only refer to what I find relevant to provide context for my decision.
11. The strata filed consolidated bylaws with the Land Title Office (LTO) in 2018. I find these are the bylaws applicable to this dispute. The strata filed subsequent bylaw amendments with the LTO, which I find are not relevant.
12. The strata plan shows that the applicants' strata lot has an LCP deck designated for their exclusive use. I find this is the deck at issue in this dispute.
13. It is undisputed that the strata had previously hired a contractor to complete repairs to one of the LCP deck posts in 2018. It is also undisputed that at some point afterwards, adhesive used during the deck post repair leaked onto the deck's surface and hardened. Emails in evidence show the applicants told the strata about the adhesive on the deck's surface in April 2020. It is also undisputed that the strata hired

a contractor to remove the adhesive from the deck's surface around August 2020, and the contractor did so.

Has the strata met its repair and maintenance obligations under the SPA and its bylaws?

14. As noted, the strata says it has reasonably met its repair and maintenance obligations concerning the LCP deck. Although the applicants do not dispute that the strata's contractor removed the adhesive from the deck's surface, they say the deck's surface remains discoloured. The applicants says the strata has failed to adequately address the deck surface's discoloration. The applicant asks for an order that the strata repair the damaged deck surface.
15. Under SPA section 72, the strata must repair and maintain common property, but may make an owner responsible to repair and maintain LCP that the owner has a right to use, among other things.
16. Bylaw 3.2 says that an owner who has use of LCP must repair and maintain it, except for repair and maintenance that is the responsibility of the strata under its bylaws. Bylaw 3.3 says, in part, that an owner who has an LCP deck or patio designated for their strata lot's exclusive use is responsible for all regular maintenance, including among other things, cleaning the patio or deck's surface and railings.
17. Bylaw 11.1(c) says the strata must repair and maintain LCP, but the duty to repair and maintain is restricted to, among other things:
 - a. repair and maintenance that ordinarily occurs less than once a year, and
 - b. fences railing and similar structures that enclose patios and decks, no matter how often the repair or maintenance ordinarily occurs.
18. Neither party argued that the adhesive damage or deck surface discoloration is a regular repair and maintenance obligation that is the applicants' responsibility under bylaw 3.3. I find the adhesive damage and deck discoloration does not fall within the applicants' repair and maintenance obligations under bylaw 3.3. Therefore, I find the

strata is responsible under the SPA and its bylaws for repairs and maintenance related to the adhesive damage and deck surface discoloration. However, this does not mean the strata must complete further repairs.

19. The standard a strata corporation must meet in performing its duty to repair and maintain common property, including LCP, under SPA section 72 is reasonableness. See *Wright v. The Owners, Strata Plan #205*, 1996 CanLII 2460 (BC SC) and *Weir v. Strata Plan NW 17*, 2010 BCSC 784. A strata corporation is not held to a standard of perfection in its maintenance and repair obligations. The strata has a duty to make only those repairs that are reasonable in the circumstances: *Wright*.
20. As stated in *Weir* at paragraphs 23 to 32, when performing its duty to repair and maintain common property, a strata corporation must act reasonably in the circumstances. In carrying out its duty, the strata must act in the best interests of all the owners and endeavour to achieve the greatest good for the greatest number. That involves implementing necessary repairs within a budget that the owners as a whole can afford and balancing competing needs and priorities. When deciding whether and how to repair common property, the strata has discretion to approve “good, better or best” solutions to any given problem. The court (or tribunal) 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 *Weir* at paragraphs 28 and 29.
21. The strata says it has met its repair obligations. As noted, it is undisputed that the strata’s contractor removed the adhesive from the deck’s surface around August 2020. The strata says the work done to remove the adhesive material from the deck surface was sufficient. The strata says the remaining deck surface discoloration is minor and it is unreasonable to replace the deck’s entire vinyl membrane to fix the discoloration. The applicants argue that it is reasonable for the strata to replace the entire vinyl membrane to repair the discoloration because the strata’s contractor caused the damage in the first place. For the following reasons, I agree with the strata, and I find it has met its repair obligations.

22. The applicants provided photographs of the deck surface discolouration. I find they show minor discoloration in one small area of the deck, near a deck post. The photographs of the deck surface discoloration are all close up photographs that do not show the full deck area. Further, the applicants estimated the area of discoloration as being approximately 1 foot by 1 foot. The strata does not dispute this. This also supports a finding that the discoloration was limited to one small area of the deck.
23. The evidence also shows the strata investigated further repairs. In the applicant's own submissions, they acknowledge that after the adhesive was removed from deck's surface the strata contacted a contractor to inquire into further repairs to address the remaining surface discoloration, and were advised that nothing could be done to restore the deck's surface colour without replacing the entire vinyl membrane on the deck. A November 2020 email from the strata manager to the applicants shows this information was communicated to the applicants. There is no evidence directly from the contractor. However, as it is undisputed, I accept that the strata received the above advice from its contractor. The applicants against asked the strata to fix the discoloration in April 2021. In July 2021, the strata manager advised the applicants that the strata had decided not to fix the deck discoloration because it was an aesthetic issue. I find the evidence discussed above shows that the strata took reasonable steps to investigate the repair options. I find it also shows that the strata decided not to repair the deck surface discoloration because the only repair option was to replace the entire vinyl membrane, and the discoloration itself was minor and aesthetic only. I find this is not unreasonable.
24. The applicants say that they have spent a tremendous amount of money to repair and upgrade the inside of their strata lot. They say when they walk outside on their deck, they immediately see the discolouration and return inside. They say they have suffered a loss of enjoyment of their property. However, I place little weight on this submission because based on the photographs in evidence and the applicants' own evidence about the size of the discoloured area, I find the minor discoloration would likely not affect the applicants' ability to use or enjoy the LCP deck.

25. As noted, the applicants bear the burden of proving their claims. The applicants have not provided any evidence to show that the discoloration amounts to anything other than a minor aesthetic issue, or that it affects their ability to use the LCP deck. The applicants also have not provided any evidence about the cost to replace the deck's vinyl membrane, or other evidence to show that such a repair would be reasonable in the circumstances. Given all the above, I find the applicants have not proved that the strata has failed to reasonably meet its repair obligations. Based on the evidence, I find the strata's decision not to replace the deck's vinyl membrane to address the discoloration was reasonable in the circumstances.

Did the strata treat the applicants significantly unfairly?

26. Section 123(2) of the CRTA gives the CRT the power to make an order directed at the strata to remedy a significantly unfair action or decision. This provision mirrors section 164(1) of the SPA, which gives the same power to the court. In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, the court interpreted a significantly unfair action as one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust, or inequitable.

27. The applicants say that it is significantly unfair for the strata to refuse to properly repair the discolouration, because the damage was caused by the strata's deck post repair.

28. As noted above, the strata advised the applicants that it was not completing further repairs because it would require the entire vinyl membrane be replaced and the discoloration was aesthetic. I also discussed above why I find that the strata's decision not to conduct further repairs was reasonable. For the same reasons, I find that it was not significantly unfair for the strata not to replace the vinyl membrane. Specifically, I find the strata's actions were not harsh, unjust or done in bad faith.

29. In summary, I find the applicants have not met their burden of proving that the strata failed to meet its repair obligations, or that the strata's decision not to replace the discoloured deck surface was significantly unfair. I dismiss the applicants' claims.

CRT fees and dispute-related 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. As the applicants were unsuccessful, I dismiss their fee claim. The strata did not pay any fees and none of the parties claimed dispute-related expenses, so I award none.
31. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicants.

ORDER

32. I dismiss the applicants' claims and this dispute.

Leah Volkens, Tribunal Member