



# Civil Resolution Tribunal

Date Issued: March 7, 2023

File: ST-2022-000134

Type: Strata

Civil Resolution Tribunal

Indexed as: *1159662 BC Ltd. v. The Owners, Strata Plan EPS5053, 2023 BCCRT 187*

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

1159662 BC LTD.

**APPLICANT**

**A N D :**

The Owners, Strata Plan EPS5053

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

David Jiang

## **INTRODUCTION**

1. The applicant, 1159662 BC Ltd. (115) owns a commercial strata lot (SL1) in the respondent strata corporation, The Owners, Strata Plan EPS5053 (strata). 115 says the strata is responsible for concrete slab cracks in SL1 and unreasonable noise caused by the strata's contractors, for the period of August 2018 to March 2022. It claims \$20,000 as damages. 115 also says the strata is responsible for its contractors

contaminating SL1 with dirty water since August 2018 from power washing 2 garbage rooms on parkade level 2 (P2). Further, it says the strata harassed 115 and trespassed into SL1 in connection with wrongly blaming 115 for causing water to leak from the parkade level 3 (P3) ceiling. It claims an additional \$20,000 as compensation for this.

2. 115 also says that since March 2021 the strata has, through its conduct, driven away potential tenants. In particular, it says the strata 1) did not repair cracks on SL1's floor, 2) did not make the concrete slab of P2 watertight, 3) contaminated SL1 with dirty water, 4) made false allegations that SL1's walk-in freezer causes water to leak or drop from the P3 ceiling, and 5) unreasonably refused to approve 115's request to install a sink and commercial dishwasher. It claims \$20,000 for lost rental income. 115 also claims \$40,000 as further lost rental income from April 2021. It attributes this specifically to the strata's refusal to approve the already-mentioned sink and dishwasher.
3. 115 also seeks orders for the strata to refrain from approaching 115 or 115's future tenants about the parkade leak. It also asks for an order that both the strata and another strata corporation, which the parties call the residential strata corporation, allow 115 or 115's future tenants to drill drain holes in the concrete slab on P2. This is so that the planned sink and dishwasher can drain into the plumbing system on P3. The residential strata corporation (residential strata) is not a party to this dispute.
4. The strata denies liability for all claims. It says there is no evidence the strata's contractors caused the cracks or unreasonable noise. It also says 115's water ingress claims should be against another party. It denies harassing 115 and says an engineering report shows that 115's walk-in freezer is responsible for water dripping from the P3 ceiling. It also says it conditionally approved 115's request for alterations, but 115 did not provide the required documents to finalize the approval. The strata also says 115's losses are based on changing its business to rent out SL1 as a commercial kitchen. The strata says 115 has not provided the necessary expert evidence to prove any loss.

5. 115's director, Benny Leemingjuen, represents it. A lawyer, Robert Barnashuk, represents the strata.
6. For the reasons the follow, I refuse to resolve some of 115's claims and dismiss the rest.

## **JURISDICTION AND PROCEDURE**

7. 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.
8. 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.
9. 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.
10. 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.

### ***The CRT's October 28,2022 Preliminary Decision***

11. In an October 28,2022 preliminary decision, the strata submits that the dispute is too impractical and complex for the CRT to resolve. The CRT decided not to refuse to resolve this dispute under CRT sections 11(1)(a)(i) or (c) of the CRTA. Section 11(1)(a)(i) allows the CRT to refuse to resolve a claim or dispute within its jurisdiction if it would be more appropriate for another legally binding process. Section 11(1)(c) allows the CRT to refuse to resolve a dispute if the issues are too complex for the CRT process or otherwise impractical for the CRT to case manage or resolve. I agree with the CRT's reasoning in the preliminary decision and find it unnecessary to repeat it here.

### ***Claims Outside the CRT's Jurisdiction or Claims 115 Lacks Standing to Make***

12. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.

13. 115 alleges that the strata bullied and harassed 115 and abused its power. 115 also says the strata council president, DM, should be held liable for damages. The strata denies bullying or harassing 115 or otherwise abusing its powers. It says 115's complaints are at least partly about its conclusion that 115's walk-in freezer caused water to form on the P3 ceiling. It says it reasonably reached this conclusion based on an engineer's report from MEC Mechanical Inc. (MEC).

14. Prior CRT decisions have held that claims for bullying and harassment are outside the CRT's strata property claim jurisdiction. See, for example, *Rishiraj v. The Owners, Strata Plan LMS 1647*, 2020 BCCRT 593 at paragraphs 22 to 29. Although CRT decisions are not binding, I find this reasoning applies. So, I refuse to resolve 115's harassment and bullying claims.

### ***Claims or Requested Remedies Omitted from the Dispute Notice***

15. In submissions, 115 requests remedies that are not in the amended Dispute Notice. For example, it asks for 1) an order that the strata to repair the concrete slab at the strata's expense, which I infer includes cracks on SL1's floor, 2) \$29,204 plus interest for time spent leading up the filing the Dispute Notice, 3) punitive damages of \$10,000, and 4) further lost rental income of \$175,000 for a period of 14 months following March 2021. 115 also alleges that the strata failed to consider 115's complaints about the building manager, ST.
16. 115 also requests new remedies in reply submissions that the strata did not have an opportunity to respond to. These include an order to allow 115 to core 2 holes in SL1 through the concrete slab to connect the dishwasher to a drain located below on P3.
17. I find it would be procedurally unfair to consider these additional claims or remedies as they were not included in the Dispute Notice. Consistent with my conclusion, CRT rule 1.19 allows applicants to ask the CRT to amend the Dispute Notice. Under CRT rule 1.19(3), the CRT will not issue an amended Dispute Notice after the dispute has entered the CRT decision process, except where exceptional circumstances apply. Notably, 115 has already amended the Dispute Notice twice. So, I find it is familiar with the process to do so and chose not to include these claims or remedies.
18. For those reasons, I decline to consider the claims or remedies not included in the already-amended Dispute Notice.

### ***Claims against the Residential Strata***

19. The strata plan shows the strata consists of part of a building. There are also airspace parcels above, below, and throughout the building and its parkade levels. The strata plan states that the residential strata owns these airspace parcels.
20. 115's claims sometimes appear to refer to the residential strata. 115 says the strata and residential strata share the same strata manager, MA. Based on the emails in evidence I find this is the case. However, the residential strata is a separate legal

entity and it is not a party to this dispute. So, I make no findings about any claims 115 may have against the residential strata.

### ***115's Evidence Included in the Reply Submissions***

21. CRT reply submissions are generally made through text only. Contrary to the CRT's instructions, 115 uploaded reply submissions in a PDF document. The document includes additional evidence labelled exhibits A through J. 115 provided the additional evidence after the strata provided its evidence and submissions. So, I find the strata did not have the opportunity to reply to it.
22. Under section 2(1) of the CRTA, the CRT's mandate includes providing dispute resolution services in a manner that is accessible, speedy, economical, informal, and flexible. So, I have decided to admit the late evidence. The late evidence ultimately does not affect my conclusions. As I find the strata was not prejudiced by it, I did not ask the strata for comments on it.

### **ISSUES**

23. The issues in this dispute are as follows:
  - a. Is the strata liable for cracks or damage to the concrete slab on P2?
  - b. Did the strata fail to repair and maintain the concrete slab on P2?
  - c. Is the strata liable for unreasonable noise?
  - d. Is the strata liable for water ingress into SL1?
  - e. Did the strata act in a significantly unfair manner in connection with 115's request to complete installing the commercial dishwasher?
  - f. Did the strata trespass into SL1?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

24. In a civil proceeding like this one, 115 as the applicant must prove its 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.
25. The strata plan shows that the strata was created in May 2018. The strata plan and parties' submitted diagrams show the strata's property includes part of 1 building. Those parts include portions of 3 underground parking levels, a ground level floor, and a level 1 mezzanine. From lowest elevation to highest, the parking levels are labelled P3, P2, and P1. P1 is directly below the ground level.
26. A title search shows that 115 became the registered owner of SL1 in August 2018. The strata plan shows that SL1 vertically spans both P1 and P2. No part of it appears on the ground level or P3. Photos of SL1's interior show its floor is the same concrete slab used in for the parkade. The photographs show the areas in dispute also lack any carpets or flooring. 115 says, and I find, that SL1 is used as a cafe and kitchen.
27. The strata repealed and replaced its bylaws in November 2020. Of note, bylaw 3(2)(3) generally prohibits anyone from using their strata lot for residential purposes, save where permitted by zoning bylaws and with the strata's written permission.
28. As noted above, the residential strata owns the airspace of other parts of the building.
29. Much of this dispute centers around the 2 garbage rooms located on P2. They are not marked as such on the strata plan. 115's diagram shows the garbage room closest to SL1 shares a wall with SL1. 115 notes it is normally used by the residential strata. This area that matches the area on the strata plan is part of the residential strata's airspace. So, I find this garbage room is not the strata's common property.
30. There is another garbage room west of that one. The strata plan labels the same area as the strata's common property. Both garbage rooms have doors on their north sides facing inwards into the parkade.

31. SL1 has a metal rollup door that opens to the parkade. It is not part of a storefront. 115 alleges that water entered into SL1 from under the rollup door and I discuss this below.

***Issue #1. Is the strata liable for cracks or damage to the concrete slab on P2?***

32. Photos show that each of the 2 garbage rooms has a metal garbage compactor bin. 115 says the following. The strata's waste removal contractor regularly drops the bins onto the slab. The contractor comes twice weekly, for a total of 4 weekly impacts. This resulted in 2 problems. First, the impacts cracked the concrete slab on P2. In particular, it caused cracks on SL1's floor. Second, the impacts shook and rattled the entire building, causing unreasonable noise. In the Dispute Notice, 115 requests damages of \$20,000 for the cracks and noise, and a further \$20,000 in lost rental income for various reasons that include the cracks driving away potential tenants.

33. The strata denies its contractor caused any cracks or unreasonable noise. It says 115 first raised these issues in fall 2021. The strata says that 115 did so at the time to deny responsibility for its walk-in freezer causing water to drip from the P3 ceiling.

34. I will first consider whether the strata or its contractors caused the cracks. I will consider below, separately, whether the strata must repair them. I will also discuss the noise as another separate issue below.

35. I turn to the evidence about the cause of the cracks. The strata says all its waste is picked up solely by the Waste Management of Canada Corporation (WMCC). It provided a copy of its agreement with WMCC dated May 14, 2018. Under its terms WMCC picks up garbage once weekly. Notably, the contract does not mention garbage compactor bins. However, 115 provided photos showing that WMCC-branded trucks move and drop a metal garbage compactors in each of the 2 garbage rooms. The strata does not deny the bins exist or that WMCC empties them. So, I find WMCC contracted to provide this service to the strata as well, though only for the compactor in the strata's 1 garbage room.



36. I find it unproven that WMCC caused the cracks, either negligently or at all. 115's pictures show cracks in the floor slab of SL1, some of which lead to a floor drain. 115 says that the cracks only appeared after it moved in. While I accept that is the case, there is no evidence that the cracks are related to WMCC's activities. Based on 115's photos of P2 and the strata plan, I find there is a considerable distance between the SL1 cracks and the strata's garbage room. There is no indication the cracks originate from the garbage room.
37. Consistent with my conclusion, the photos of the garbage rooms do not show any cracks on their floors.
38. Here, I find that determining the source of the cracks in SL1, or anywhere else in the parkade, requires expert evidence. This is because I find that this issue is beyond an ordinary person's knowledge and experience. See *Bergen v. Guliker*, 2015 BCCA 283. There is no such evidence is not before me.
39. For all those reasons, I find it unproven that the strata's contractor caused the cracks. As 115 based its claim on this unproven allegation, I dismiss it.

***Issue #2. Did the strata fail to repair and maintain the concrete slab on P2?***

40. 115 says the strata must repair and maintain the concrete slab of P2. It says water leaks through cracks in the slab beneath the P2 garbage rooms. 115 claims damages for lost rent as it says the cracks and leaks drove potential tenants away. 115 does not seek an order for the strata to repair the P2 slab. The strata disagrees and says the slab is the residential strata's responsibility.
41. The *Strata Property Act* (SPA) and the strata's bylaws set out the repair and maintenance obligations of the strata and its owners. SPA sections 3 and 72 require the strata to repair and maintain common property and common assets. Bylaw 13 says the strata must repair common assets, common property, certain forms of limited common property (LCP), and parts of a strata lot. The parts of the LCP and strata lot the strata must repair and maintain include the structure of the building.

42. The strata must act reasonably to discharge its repair and maintenance obligations, which can include replacement when necessary. See *The Owners of Strata Plan NWS 254 v. Hall*, 2016 BCSC 2363. The standard is not perfection. The starting point for the analysis should be deference to the decisions made by the strata council as approved by the owners. See *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784 at paragraphs 23 to 32. Similarly, an owner cannot direct the strata how to conduct its repairs. See *Swan v. The Owners, Strata Plan LMS 410*, 2018 BCCRT 241 at paragraph 51.
43. As noted earlier, the strata plan shows that some parts of P2 are the strata's common property. This includes its garbage room. So, I find the strata is obligated to repair and maintain this area of the slab. I also find the strata must repair and maintain the slab beneath SL1 as I find it is part of the building's structure.
44. Overall, I find it unproven that the slab on P2 leaks, either below the strata's garbage room or anywhere else. I find the best evidence about it is a September 2, 2021 email by MEC's president, JB. JB wrote that MEC's technician reviewed the parkade and found that there were no water lines in the slab from the original construction of the building. JB found there was one area with water. So, I find JB provided an opinion on the entire slab. JB said there was condensation from the walk-in freezer in SL1. They wrote that there was condensation forming on the slab itself. JB did not say there was a leak or water seeping through any cracks. JB did not say there were any problems with the slab.
45. Although brief, I find this email is expert evidence. This is because JB identified their credentials as required by CRT rule 8.3(2). Specifically, JB said they were the president of MEC and held an applied science technologist degree. 115 says MEC's email is "fraudulent" but I find this allegation unsupported by any evidence and unlikely in the circumstances. So, I put significant weight on JB's email.
46. Similarly, I find there is no evidence that the parkade requires repairs. For example, there is no depreciation report or contractor's report that say any cracks in the parkade or within SL1 require repairs. There is nothing that say the cracks will worsen

or cause structural issues. 115 says a February 1, 2022 depreciation report does not mention the cracks.

47. 115 says that it hired a plumber, Callum McCluskie, from Calley Mechanical Ltd. 115 says the plumber inspected SL1's walk-in freezer and found there was nothing wrong with it. He said the plumber "suspects" the cause of the leak was from water on P2 seeping through cracks to appear on the ceiling of P3.
48. 115 did not provide any evidence from the plumber so I do not find these submissions persuasive. I also find that 115's summary is not expert evidence, given that it comes from 115 and not the plumber. I acknowledge that 115 included the plumber's contract information, but it is a party's responsibility submit evidence that it intends to rely upon.
49. 115 also provided a picture that it says shows staining from a water leak. While it shows a brown area on the P3 ceiling insulation, I find the cause of the discolouration is not apparent from the picture and unproven.
50. 115 says that the strata should have used a "blue dye" test to see if the P2 slab is leaking from the garbage room. I disagree and find that the strata acted reasonably by relying on JB's email.
51. I acknowledge the P2 slab has some visible cracks in it. In particular, the photographs show cracks in SL1. As noted earlier, SL1 uses the same slab as its floor. However, I find the cracks' effects are limited to aesthetics as there is no evidence otherwise. 115's main complaints are about what I find are unproven leaks. So, I find the strata has not breached its obligation to repair and maintain the structure of the building, including the parts of the parkade it is responsible for.
52. Finally, as noted above, 115 claims damages for lost rent. I find the allegation that the cracks drove away tenants speculative, unproven by evidence, and too remote to claim against the strata. For all those reasons, I dismiss this claim.

### ***Issue #3: Is the strata liable for unreasonable noise?***

53. As noted above, 115 says WMCC causes unreasonable noise, and the strata is liable for this. The strata denies WMCC causes unreasonable noise. It also notes that its garbage room is some distance away from SL1, and further away that the residential strata garbage room.
54. Bylaw 3(1)(b) says an owner, tenant, occupant, their employee(s), or a visitor must not use a strata lot, the common property, or limited common property or common assets in a way that causes unreasonable noise.
55. Unreasonable noise or a noise nuisance in the strata context is a substantial, non-trivial, and unreasonable interference with use and enjoyment of property. See *The Owners, Strata Plan LMS 1162 v. Triple P Enterprises Ltd.*, 2018 BCSC 1502 at paragraph 33. The objectivity requirement of reasonableness guards against those with abnormal sensitivity or unreasonable expectations. See *Sutherland v. Canada (Attorney General)*, 2001 BCSC 1024. The test for nuisance depends on several factors, such as its nature, severity, duration, and frequency. See *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64.
56. Here, I find that the nature of the noise supports a finding that the noise is reasonable. As noted above, SL1 is used as a kitchen and cafe. It is a business located inside a parkade next to a garbage room. WMCC empties metal bins for waste collection, which I find it both reasonable and likely necessary in for a commercial strata like this one. Given this context, I find that 115 must reasonably expect a higher level of noise than, for example, a residential strata lot.
57. I also find there is little evidence about the severity of the noise. 115 provided a witness statement from another person, SWH. SWH said they once heard a loud bang and saw that it was the garbage compactor bin being dropped on the floor. However, SWH's evidence is about an isolated event so I put less weight on it.
58. I find the duration and frequency are both minimal. As noted above, the contract shows WMCC visits once a week for the strata and the sound is limited to the impact

of the bin on the concrete slab. It is not, for example, an ongoing sound that lasts minutes or hours.

59. 115 says that the noise improved since April 2022. It says this shows the strata could have acted earlier. However, I find the fact that noise lessened does not, by itself, show that the prior noise was unreasonable.
60. Given the above, I find it unproven that WMCC caused unreasonable noise. I dismiss the claims in connection with unreasonable noise.

***Issue #4. Is the strata liable for water ingress into SL1?***

61. 115 says the strata's contractor caused dirty water from the garbage room to enter SL1 under a rolling door. The strata acknowledges 115 reported water entering SL1 3 to 5 times. It denies liability for these incidents and says 115's valid claims, if any, are against the residential strata and a resident of the residential strata.
62. I turn to the evidence. The strata provided a copy of its October 30, 2018 contract. It shows Marantha Cleaning (Marantha) contracted with the strata to hose down 1 of the garbage rooms 3 times a week starting from November 1, 2018. Marantha and the strata continued this arrangement under the terms of another similar contract dated December 11, 2019. Both contracts had no end date.
63. The evidence shows the following water ingress events. On August 10, 2021, 115 advised the strata manager about water ingress. The strata manager replied that they would try harder to mitigate the overflow of water. On September 3, 2021, 115 said the water entered from the residential strata's garbage room and requested compensation from the residential strata. So, I find the water came from whatever cleaning contractor the residential strata used at the time.
64. On May 9, 2022, 115 emailed the strata manager about another water ingress incident. A strata manager, FB, replied that a resident caused the ingress. They dropped 2 potted plants and washed the area without consulting anyone. I find this was likely the case as nothing contradicts FB's email.

65. Given the above, I find the water ingress of August 10, 2021 and May 9, 2022 have no connection with the strata.
66. Even if the strata's contractor somehow caused the water ingress, as noted earlier, a strata corporation is generally not liable for a contractor's negligence as long as the strata corporation acted reasonably in the circumstances. See *Slosar v. The Owners, Strata Plan KAS 2846*, 2021 BCSC 1174. I find it unproven that the strata acted unreasonably.
67. 115 also provided evidence about other water ingress events resulting from annual parkade power washing. The emails indicate that water entered into SL1 from this power washing on August 25, 2018, August 9, 2019 and April 27, 2020. However, in the Dispute Notice, 115 specifically claims compensation for strata's "regular power wash of the garbage rooms". So, I find it does not claim for water ingress from the parkade power washing.
68. Even if it did, I find there is no indication that the strata is responsible for the parkade power washing. The parties' emails indicate a contractor named No Monkey Biz (NMB) did the parkade power washing. There is no evidence that the strata, as opposed to the residential strata, hired NMB to do this work. The strata plan shows that P2's parkade largely consists of airspace parcels that belong to the residential strata, as opposed to the strata. So, I find it likely that the residential strata is responsible for this work.
69. 115 also emailed the strata manager about water ingress on June 15, 2021. However, 115 said the water ingress was caused by the strata lot above SL1. So, I find this claim is not before me and in any event, the strata is not responsible for it.
70. 115 says there were other incidents it did not complain about to the strata or document. As there is no evidence about them, I must conclude they are unproven.
71. Finally, I find it unproven that 115 suffered any loss from the water ingress. The emails and photos show that 115 does not use any carpet or flooring near the rollup door, floor drain, or elsewhere. There are no receipts or invoices about the cost of cleaning

the water or damage to 115's property. 115 says the water contaminated its food but the parties' emails indicate it keeps food on shelves off the ground. 115 claims for lost rental income but I find it unlikely and unproven that it lost any potential tenants from such occasional water ingress.

72. For all those reasons, I dismiss all of 115's claims about water ingress from the garbage room.

***Issue #5. Did the strata act in a significantly unfair manner in connection with 115's request to complete installing the commercial dishwasher?***

73. 115 says that the strata refused its request to connect a commercial dishwasher to a pre-existing drain on the ceiling of P3. It also says that, in any event, the owner developer previously approved the work in May 2018. 115 says the work consists of coring a hole in the concrete slab at P2 to connect the dishwasher drain to the P3 plumbing system. 115's reply submissions indicate it needs 2 holes in total.

74. The strata says it has no record of the owner developer's approval. It says it never denied 115's request. Instead, it says it requested further information. It also says that 115's work requires the approval of the residential strata because it affects P3.

75. SPA section 5(1) says an owner developer must exercise the powers and perform the duties of a strata council from the time the strata corporation is established until a council is elected at the strata corporation's first annual general meeting.

76. Bylaw 7(2) says that an owner must obtain the strata's written approval before making an alteration, addition, or carrying out certain improvements to a strata lot. The listed categories include, under bylaw 7(2)(a), alterations to the structure of a building including the concrete slab comprising the floor or ceiling between 2 strata lots.

77. Bylaw 7(3) says that the strata must not unreasonably withhold its approval under bylaw 7(2). However, as a condition of its approval, it may require the owner to fulfill certain conditions. These include the following under these subsection: a) presenting drawings and specifications about the work, b) obtaining all necessary permits and government approvals and providing them to the strata, and c) providing other

documents or complying with other terms and conditions the strata may reasonably consider necessary in the circumstances, including having the owner enter into a written indemnity agreement.

78. Bylaw 8 contains similar language that says an owner must obtain the strata's written approval before making an alteration to common property.
79. I turn to the facts. In a May 24, 2018 letter, the owner developer at the time, Strathcona Village Limited Partnership, approved 115's application to "fit out" SL1 as specified in an attached floor plan. 115 annotated the floor plan and says a sink and dishwasher are shown on the plan. 115 says it decided to delay installing them at the time.
80. According to the strata plan, the strata was created on May 22, 2018. So, I find it likely the owner developer had authority at the time to approve these alterations to SL1 under SPA section 5(1). However, I also find that, at most, the owner developer approved 115's request to install a sink and dishwasher but not any coring of the concrete slab. This is because the floor plan lacks any indication that the dishwasher must be connected to the P3 plumbing system, either through a hole in the P2 slab or otherwise. So, I find the owner developer did not approve the specific alteration request in this dispute.
81. On March 24, 2021, 115 emailed the building manager, ST, for temporary access to P3. 115 said it needed access for a plumber to connect its commercial dishwater to a drain on P3. ST replied back the same day that they would give access once the plumber arrived, but asked if the strata and residential strata were aware of this work.
82. 115 emailed the strata manager, MA. It said it wished to connect a commercial dishwasher to the drain. It asked for permission to do so. It said the owner developer approved this work in 2018, though I have found this was not the case.
83. On April 9, 2021, MA sent a letter to approve the alteration on certain conditions. These included 1) signing the enclosed indemnity agreement, 2) providing permits to



the strata as required by the City of Vancouver, and 3) evidence that plumbing work would use only licensed and qualified plumbers.

84. On April 21, 2021, 115 replied by attaching a signed indemnity agreement. As shown in the agreement, 115 sought to connect a commercial dishwasher to the existing drain on the ceiling of P3. 115 also referred to P3 as the “residential parkade”. The agreement did not include the residential parkade as a party.
85. The strata says that MA did not tell the strata about the alteration request at the time. There is no indication anyone immediately followed up on the issue, and the area for the strata’s representative to sign is unsigned. So, I find it likely that the strata council was unaware of it. That said, I find MA conditionally approved the alteration in the April 2021 letter on the strata’s behalf as its agent.
86. On November 1, 2021, 115 wrote an email to MA that it intended to “resume the improvement project for my unit in December 2021” that was approved in April 2021. The strata council president emailed on November 3, 2021, that the strata council had no record of the improvement request and wanted to review it.
87. 115 requested a hearing that the strata held on January 4, 2022. In a January 7, 2022 letter, MA wrote that the strata council had received the alteration request. The strata decided the request was incomplete and it had no record of preapprovals prior to that date. The strata council said it would review any proposed alteration with complete and required documentation. It also said that 115’s improvement might have to be reviewed by the residential strata. 115 applied for dispute resolution on January 8, 2022.
88. As noted earlier, strata must not unreasonably withhold its approval of alteration requests under the bylaws. Based on the letters from April 2021 and January 2022, I find the strata did not withhold its approval. I find it had approved the work, subject to the 115 providing the strata further documents.
89. I find that 115 essentially alleges that the strata acted in a significantly unfair manner. Section 123(2) of the CRTA gives the CRT the power to make an order directed at

the strata, if the order is necessary to prevent or remedy a significantly unfair action, decision or exercise of voting rights.

90. Significantly unfair conduct must be more than mere prejudice or trifling unfairness. See *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44. Significantly unfair means conduct that is oppressive or unfairly prejudicial. Oppressive is conduct that is burdensome, harsh, wrongful, lacking fair dealing or done in bad faith, while prejudicial means conduct that is unjust and unequitable. See *Reid v. Strata Plan LMS 2503*, 2001 BCSC 1578, aff'd 2003 BCCA 126.
91. In *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342, the BC Court of Appeal confirmed that an owner's reasonable expectations continue to be relevant to determining whether the strata's actions were significantly unfair.
92. In considering an owner's reasonable expectations the courts have applied the following test from *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44:
  - a. What was the applicants' expectation?
  - b. Was the expectation objectively reasonable?
  - c. Did the strata violate that expectation with a significantly unfair action or decision?
93. Here, I find that 115 expected the strata to allow it to commence the work. I find this expectation was objectively unreasonable for the following reasons.
94. First, I find the strata was entitled to request further information. The April 9, 2021 letter shows the strata conditionally approved the work. Its approval was still subject to providing permits and proof that 115 would use a qualified plumber. There is no evidence that 115 provided the necessary documents.
95. 115 says that the strata made it impossible for 115 to obtain the necessary permits. It relies on an April 19, 2007 bulletin from the City of Vancouver. The bulletin says that to obtain building or trade permits the City requires a strata corporation's written approval for the work. I find that, on its face, the April 9, 2021 letter appears to satisfy

the bulletin requirements. I find that, acting reasonably, 115 should have tried to obtain the permits using this document. There is no indication it did so. So, I am not persuaded that the strata's actions prevented 115 from obtaining the necessary permits.

96. Second, in discussions with the strata, 115 relied on its understanding that the owner developer had already approved the alteration request. I find 115 was mistaken, as noted above, and caused some confusion on the matter.

97. Third, the strata says that 115's work would impact the residential strata's property. I find this is likely the case. The strata plan shows that the airspace directly below SL1 is owned by the residential strata. So, I find that 115 would need the residential strata's approval as well, in order to legally start the work.

98. Finally, I find that even if 115's expectations were objectively reasonable, I find the strata did not act in a significantly unfair manner. The strata requested further information in its January 7, 2022 letter and I find it was entitled to do so.

99. I also find at least part of 115's claims for damages are unproven and largely speculative. It claims damages for lost rent. It says the dishwasher would make SL1 more desirable to rent. 115 seeks damages from March 2021 onwards. However, its own emails show it did not seek to install the dishwasher at that time. Instead, its November 1, 2021 email shows it decided to pause installing the dishwasher and intended to resume the project in December 2021. This is about 9 months later. Given the above, I find it unlikely that 115 would have installed the dishwasher in March or April 2021 in any event.

100. For all those reasons, I dismiss this claim.

***Issue #6. Did the strata trespass into SL1?***

101. 115 says that both the building manager ST and strata manager MA trespassed. The strata says its agents and council members only ever entered SL1 with 115's consent.

102. 115 describes the following events. It says that in early 2020, ST visited SL1 numerous times to check if water from P3's ceiling originated in SL1. SL1's floor is located directly above on P2, as noted earlier. 115 says its representative and ST together inspected SL1 and the garbage rooms on P2.
103. 115 also says that on August 19, 2021, ST and 115's plumber together inspected SL1.
104. Emails show that after this, in August and September 2021, the strata manager asked 115 to provide access the strata access to SL1. This is because around this time, JB wrote the above-mentioned email to the strata, attributing water on the P3 ceiling to condensation from SL1's walk-in freezer. The strata asked for entry under bylaw 9(1).
105. Bylaw 9(1) generally states that an owner must allow a person authorized by the strata to enter the strata lot at a reasonable time, on 24 hours' written notice, to inspect, repair, or maintain certain forms of property, including common property and parts of the strata lot the strata must repair and maintain or insure under the SPA.
106. In response to the strata's request, 115 emailed the strata a "trespass notice". Among other things, it warned agents of the strata, including ST and DM, to stay away from 115's property.
107. I turn to the applicable law. Trespass consists of entering upon the land of another without lawful justification. To constitute trespass the respondent must in some direct way interfere with land possessed by the applicant. See *Lahti v. Chateauvert*, 2019 BCSC 1081 at paragraph 6, citing G.H.L. Fridman, *The Law of Torts in Canada*, 3rd ed. (Toronto: Carswell, 2010) at 29. Mistake is not a defence to trespass. Trespass will occur, even if the respondent is not conscious of wrongdoing, so long as the respondent intends to conduct themselves in a certain way and willingly does so. See *Lahti* at paragraph 8. If trespass is proven, one measure of damages is the actual damages suffered by the owner. See *Kolny (Litigation Guardian of) v. Moghaddam*, 2021 BCSC 1243.

108. I find it unproven that the strata entered SL1 without lawful justification. 115's version of events shows that ST entered into SL1 with 115's consent, both in 2020 and in August 2021. ST entered in order to carry out an inspection that I find was part of the strata's repair and maintenance duties.

109. 115 did not describe any other incidents that could be trespass. There is no indication that the strata entered into SL1 without permission or after 115 emailed its warning. There is no indication it directly interfered with SL1. 115 alleges that the strata tried to break into SL1 by force. I find there is no proof of this. To the extent that 115 is referring to the strata request for entry under bylaw 9(1), I find this is not a break-in attempt. In any event, 115's language indicates the strata did not enter SL1 after the alleged break-in attempt.

110. Finally, there is no proof that 115 suffered any loss from the alleged trespass. So, had I found 115 successful on this claim, I would have only awarded nominal damages of \$1.00. I dismiss this claim.

## **CRT FEES AND EXPENSES**

111. 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 115's claims for reimbursement. The parties did not claim any specific dispute-related expenses.

112. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against 115.

## **ORDERS**

113. Under CRTA section 10(1), I refuse to resolve 115's claims about harassment.

114. I dismiss 115's remaining claims and this dispute.

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David Jiang, Tribunal Member