



Civil Resolution Tribunal

Date Issued: July 18, 2023

File: ST-2022-006475

Type: Strata

Civil Resolution Tribunal

Indexed as: *Previer v. The Owners, Strata Plan NW651*, 2023 BCCRT 601

B E T W E E N :

JAMES PREVIER

APPLICANT

A N D :

The Owners, Strata Plan NW651

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicant, James Previer, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan NW651 (strata). In 2022, the strata paid to replace a leaking glass roof with a standard roof. The roof is over what is shown on the strata plan as

a common property balcony attached to strata lot 27, which the parties refer to as unit 402. Unit 402 is 1 of 2 strata lots on the strata's fourth and highest floor.

2. Mr. Previer says this glass roof was not part of the original building and therefore the strata's bylaws required unit 402's owners to pay for the repairs. He seeks an order to "absolve strata council from" repair costs.
3. The strata says the glass roof was part of the original construction and is common property that the strata must repair and maintain. It says it approved the repairs in accordance with its bylaws and the *Strata Property Act* (SPA). The strata says I should dismiss the claim.
4. Mr. Previer represents himself. The strata is represented by a strata council member. As I explain below, I find that regardless of whether the glass roof was part of the original building, it is common property and the strata's responsibility to repair and maintain. I therefore dismiss Mr. Previer'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. Based on the evidence and submissions provided, I am satisfied that I can fairly decide this dispute without an oral hearing.
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 the parties and witnesses questions of 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 replacement of the roof over the common property deck next to unit 402 was a common expense.

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Mr. Previer must prove his claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
11. The strata was created in 1976 and includes 28 strata lots in a 4-storey building. The strata plan shows 2 common property balconies attached to unit 402 on the top floor. This dispute is about the southern balcony, which is the smaller of the 2. It is enclosed with glass walls and, before the strata's 2022 repair, a glass roof.
12. It is undisputed that by 2022 the glass roof had developed a slow leak and needed repair. The strata asked various contractors for recommendations and estimates. The strata says the consensus was that the roof was part of the original construction and should be replaced either with a new glass roof or a "wooden, weather-proof structure." In September 2022, a contractor replaced the glass roof with a wood-framed and shingled roof for \$9,975.
13. The strata says it is "as certain as it can be" that the roof was part of the original building, based largely on architectural drawings and the presence of a similar roof

on the third floor. Mr. Previer disagrees. He relies on a February 9, 2023 letter from the City of White Rock stating that the original building plans showed open balconies.

14. I find it is not necessary to reach a conclusion on whether the glass roof was part of the original building, because, as I explain below, that does not determine who must repair and maintain the roof.
15. The SPA and previous strata legislation, including the *Strata Titles Act* in force when the strata was created, distinguish between common property and limited common property. Unit 402's balcony, like all balconies on the strata plan, is shown as common property. It is undisputed that neither unit 402's balcony nor the roof over it have ever been designated as limited common property, for example by a resolution under SPA section 74.
16. Since the balcony itself is common property, I find the roof over the balcony cannot be part of unit 402 or limited common property. Rather, I find that the roof is either original common property, or an alteration to the common property balcony that the strata allowed to remain and thus forms part of the common property. Mr. Previer does not expressly argue otherwise.
17. Sections 3 and 72 of the SPA say the strata is responsible for repairing and maintaining common property. Bylaw 8(b) says the same thing. The strata may, by bylaw, make an owner responsible for the repair and maintenance of limited common property that an owner has the right to use (section 72(2)(a)). However, the strata may not, by bylaw, make an owner responsible for the repair and maintenance of common property that is not limited common property because there are no regulations allowing it (section 72(2)(b)).
18. Mr. Previer relies on bylaw 8(c)(iii), which says the strata must repair and maintain limited common property, but the duty to repair and maintain it is restricted to "the original structure only. All other alterations or updates are the responsibility of the owner." Thus, this bylaw requires owners to repair and maintain alterations to limited common property only and does not apply to common property alterations. If this

bylaw did attempt to make owners responsible for common property alterations, it would run afoul of SPA section 72(2)(b).

19. Finally, there is no evidence before me of an agreement between the strata and any unit 402 owner taking responsibility for repair and maintenance of the glass roof or the balcony enclosure generally.
20. For these reasons, I find that the unit 402 balcony roof was common property that the strata had a duty to repair and maintain under SPA section 72 and bylaw 8(b). I find the balcony roof replacement was a common expense authorized under that duty. I therefore dismiss Mr. Previer's claim.
21. I acknowledge Mr. Previer's submission that he asked the strata to add the roof repair issue to the 2022 AGM agenda, and asked during the AGM to speak about the roof repair issue but was denied the opportunity. However, Mr. Previer does not seek any remedy for these issues, so I decline to make any order.

CRT FEES AND EXPENSES

22. Under CRTA section 49 and the CRT rules, as Mr. Previer was unsuccessful, I find he is not entitled to reimbursement of CRT fees. The strata did not pay any CRT fees or claim any dispute-related expenses.
23. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Mr. Previer.

ORDERS

24. I dismiss Mr. Previer's claims and this dispute.

Micah Carmody, Tribunal Member