



# Civil Resolution Tribunal

Date Issued: July 24, 2023

File: ST-2022-006647

Type: Strata

Civil Resolution Tribunal

Indexed as: *Buchanan v. The Owners, Strata Plan NWS 3275*, 2023 BCCRT 621

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

MARY JEANNE BUCHANAN and MELANIE BUCHANAN

**APPLICANTS**

**A N D :**

The Owners, Strata Plan NWS 3275

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about repairs and maintenance of common property (CP) and limited common property (LCP) in the respondent strata corporation, The Owners, Strata Plan NWS 3275 (strata). The applicants, Mary Jeanne Buchanan and Melanie Buchanan, co-own strata lot 25 (SL25) in the strata.

2. The Buchanans say that the strata breached its obligation to fix common property (CP). They seek orders for the strata to 1) complete outstanding repairs to address water ingress and moisture in a crawlspace under SL25, 2) replace a missing crawlspace firewall outlined in a June 22, 2021 WSP Engineering (WSP) report, 3) complete exterior foundation wall repairs, 4) complete recommended drainage investigations, and 5) repair SL25's limited common property (LCP) patio that is sloping and cracked. The Buchanans also say that SL25's floor is sagging. They seek orders for the strata to complete structural work outlined in an Omega Engineering report (Omega) about sagging floor joists, and then replace the sloping and damaged flooring inside SL25.
3. The strata says it completed work dealing with water ingress and moisture in the crawlspace. It also says that under the bylaws, Buchanans are responsible for repairing the SL25 flooring, and not the strata. It says that the remaining issues, including the missing firewall, foundation wall, drainage investigations, sloping and cracked patio slab, and structural work, are all part of ongoing work. As such, the strata says it has not breached any obligations to repair or maintain CP.
4. Mary Jeanne Buchanan represents the Buchanans. A strata council member represents the strata.
5. For the reasons that follow, I find the Buchanans have partially proven their claims.

## **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.

### ***Allegations of Breaches of Section 31(b) of the Strata Property Act***

10. In submissions the Buchanans specifically allege that the strata breached section 31(b) of the *Strata Property Act* (SPA). Section 31(b) says that in exercising the powers and performing the duties of the strata corporation, each council member must exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.
11. These allegations are not set out in the Dispute Notice. So, I find it would be procedurally unfair to consider them. Further, the CRT has no jurisdiction to decide claims about a council member's alleged failure to meet their duty of care, as set out under SPA section 31. See *Williams v The Owners, Strata Plan NW 1340*, 2021 BCSC 2058 at paragraph 66. For both those reasons, I will not be considering any claims about SPA section 31.

## **ISSUES**

12. The issues in this dispute are as follows:

- a. Did the strata fail to repair and maintain the CP or LCP at issue?
- b. Is the strata responsible for repairing the flooring in SL25?
- c. Are any remedies appropriate?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

13. In a civil proceeding like this one, the Buchanans must prove their claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence, including cited case law, but refer only to the evidence and argument that I find relevant to provide context for my decision.
14. The various engineering reports indicate that the strata consists of townhouses clustered in varying configurations. The buildings were constructed around 1990. There are a total of 51 strata lots. A title search shows that the Buchanans have co-owned SL25 since late 2014.
15. According to the strata plan, SL25 is located on the ground floor of a building that contains strata lots 18 through 28. The various reports in evidence sometimes refer to this building as the south building.
16. SL25 has an outdoor backyard patio designated as LCP for SL25's exclusive use. This is the patio that the Buchanans want the strata to fix. It is also undisputed that SL25 is located over a crawlspace that is CP, which has historically had water ingress and moisture-related issues. The crawlspace is also missing a firewall, discussed below. The building has exterior foundation walls that are above and below grade. They are also at issue in this dispute.
17. The evidence discussed below shows that the south building strata lots each have an uneven ground floor because of sagging floor joists. It is undisputed that this has caused the flooring inside SL25 to slope in some areas, instead of staying level. The parties sometimes refer to repairs to address the sagging as the structural work, so I use this phrase below. The south building also has storm drainpipes and perimeter drains that the Buchanans want investigated and fixed.

18. I turn to the chronology. It is undisputed that in 2016 the strata hired a contractor to do mould remediation in SL25's crawlspace. The contractor likely removed a firewall in the crawlspace at the time, as noted in a February 3, 2021 report by a restoration contractor, T.W. Manley & Sons (TW).
19. On March 16, 2020, Melanie Buchanan emailed the strata about mould and a musty smell in the crawlspace. She asked the strata to investigate. According to the May 21, 2020 strata council meeting minutes, the strata hired a restoration contractor to attend. The contractor found the crawlspace firewall was missing. The strata also asked 2 engineers to provide quotes to address potential water ingress issues in strata lots 18 through 26. It also hired a plumbing contractor to scope a portion of the drainage line, but the scope did not discover any issues.
20. In August 2020, the strata held a special general meeting (SGM) to approve what the strata refers to as the "initial special levy work". It included major asphalt cutting and drainage work at a cost of \$41,662.95. The work is documented in an August 30, 2020 invoice from H2O Pro Drainage Ltd. (H2O). The strata says, and I accept, that H2O completed the work in September 2020.
21. The September 14, 2020 strata council meeting minutes show the strata decided to hire WSP to provide an engineering report about what work needed to be done on the SL25 crawlspace, SL25 patio, and strata lot 18 foundation. The WSP report is the most comprehensive report in evidence. WSP took several months to prepare it. I discuss it below.
22. The January 18, 2021 strata council meeting minutes show that the strata also hired a structural engineer, Omega, to help WSP complete its report and give guidance on what the structural work had to be done. Some of the evidence also refers to another engineering firm, Ecora Engineering & Resource Group Ltd. (Ecora). The evidence indicates Ecora acquired or merged with Omega, so for the purposes of this dispute I find nothing turns on the distinctions between them.
23. Omega's February 9, 2021 report commented on the ridge in the main floor hallways affecting all strata lots in the south building. The report discussed joist deflection, or

a “sag” in the strata lot floor joists caused by a heavy load. Omega confirmed the floor joists could carry the imposed loads and were meeting BC Building Code criteria for deflections under uniform loading conditions. Omega did not say there was any immediate danger. However, Omega recommended installing blocking and doubling some floor joists in certain areas to restore the floor back to level in all the south building strata lots. In a September 23, 2021 letter, Omega also suggested that instead of doubling up the joists in some areas, building a pony wall under certain locations would be acceptable.

24. I find the Omega report is expert evidence under the CRT rules as its authors, David Seida and Dough Clough, are identified as are their qualifications. In any event, no party alleges the report is incorrect or deficient in any manner.
25. While WSP was still preparing its report, the strata hired TW to inspect the crawlspace on January 19, 2021. TW emailed a February 1, 2021 inspection report. The report said the measured humidity levels were too high. It noted active mould and fungal growth. The report also noted the missing firewall. TW said that the majority of the crawlspace moisture ingress and source of humidity was coming through the ground because of the absence of a vapour barrier between the crawlspace and existing concrete slab. TW said that creating the barrier would require relocating or replacing any framing currently at floor level. TW also recommended repairing the foundation’s cracks and waterproofing it from the outside. TW further recommended professional mould and fungus remediation.
26. The strata hired TW to address the mould and humidity. In a March 30, 2021 email, TW said it had completed the work. TW said SL25 crawlspace’s humidity had significantly improved, and the joists and framing were dry. The strata says the work included sealing cracks and creating the vapour barrier. I find this was likely the case as the email references pouring concrete into the crawlspace.
27. WSP finally provided its report on June 22, 2021. The report discussed humidity and mould problems affecting strata lots 18 through 28. It also focused on the SL25 crawlspace area, the perimeter drains and storm drainpipe. While not its primary

focus, it also discussed reports of sloping or deflection in the lower floor framing system. WSP incorporated the findings of H2O and Ecora to comment on the interior storm pipe lines and floor framing in the crawlspaces and floor sloping in the strata lots. Notably, the report did not comment on SL25's LCP patio, though the meeting minutes indicate this was part of the strata's original intent.

28. WSP reported that moisture in the crawlspaces was possibly due to water leaks in the foundation wall, poor performance of the perimeter drains, moisture wicking through the ground slab, groundwater accumulating under the ground slab, and plumbing leaks. The report recommended 11 different repairs of varying priority. It said that high priority repairs included sealing the foundation wall cracks, sealing and insulating mud slabs in strata lots 22 and 23, investigating the storm drainpipes and perimeter drainpipes, and further duct and plumbing repairs. WSP estimates that the cost of these high priority repairs alone was up to \$170,000.
29. I find the WSP report is expert evidence under the CRT rules as its authors, Jeff Vermette and Guillaume Vadeboncoeur, are identified, as are their qualifications. In any event, no party says the report is flawed or provided evidence to contradict its findings.
30. An excerpt from the July 13, 2021 annual general meeting (AGM) minutes shows that the owners in the strata approved a special levy of \$67,229.34 to fund additional work. The work included hiring TW to repair the structural issues and further crawlspace repairs in strata lots 22, 23, and 25. The strata refers to this as the subsequent special levy work.
31. The correspondence shows that from January to October 2022, the strata asked TW for updates and to start work. TW said it had encountered "unforeseen obstacles" that would delay its work, and the work itself would take longer than expected. At one point, it said it would start work in September 2022. TW eventually stopped replying to the strata. The November 14, 2022 strata council meeting minutes show that the strata concluded that TW simply did not want to do the work. The strata decided to

find a new contractor. The minutes also state that the drainage projects for strata lots 18 through 39 was still pending.

32. On August 18, 2022, the strata's president, JL, said the strata's council would take over handling repairs and maintenance from the strata manager. JL acknowledged that the pending work as affecting the sale of certain strata lots. The Buchanans applied for dispute resolution on September 17, 2022.

***Issue #1. Did the strata fail to repair and maintain any property it is responsible for?***

33. The 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 CP and certain forms of LCP. The strata's bylaws are filed in the Land Title Office. Bylaw 15.1 similarly says the strata must repair and maintain CP. It is undisputed that the strata must repair and maintain the CP crawlspace and the SL25 LCP patio.
34. The strata's obligation to repair and maintain such property is measured by the test of what is reasonable in all circumstances and can include replacement when necessary. The standard is not one of perfection. The strata has discretion to approve "good, better or best" solutions. The CRT 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 *Ricci v. The Owners, Strata Plan LMS 3940*, 2021 BCCRT 755 at paragraph 40, citing *The Owners of Strata Plan NWS 254 v. Hall*, 2016 BCSC 2363 and *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784.

***The Structural Work***

35. As noted above, the Buchanans seek orders for the strata to complete structural work outlined in Omega's February 2021 report about sagging floor joists. The strata says that the structural work is ongoing, so any orders are premature.
36. The WSP report explicitly said that it did not focus on structural concerns such as the sloping of the lower wood-framed floors in the south building. Instead, WSP said that



it retained Ecora or Omega to comment on the floor framing in the crawlspace, to determine the cause of the sloping, and to advise of any long-term performance or capacity issues with the structure. WSP did not include the structural work in its table of recommended work, sorted by priority and cost. I have discussed Omega's February 9, 2021 report above.

37. In any event, the structural work is the subject of the subsequent special levy. So, I find the strata has taken concrete steps to fund it. I acknowledge that the strata hired TW for the structural work, and TW decided to abandon the project. However, I find there is no reason that the strata is blameworthy for TW's actions or inaction in this dispute.
38. Further, the evidence shows that the strata has continued to take steps towards structural repairs. In November 2022, the strata asked Ecora to provide updated drawings. Ecora provided new drawings dated December 2, 2022. The strata then obtained quotes for the structural work. On April 8, 2023, the strata finally hired B-Mac Construction (B-Mac) to complete the work. B-Mac said that the work would be done in June or July 2023. The strata says this is because concrete work such as this is best done in warmer months. I accept this is the case, as B-Mac scheduled the work for the summer.
39. Given the above, I find the strata did not breach its repair and maintenance obligations in connection with the structural work. I also find that ordering the strata to make repairs would serve little useful purpose given that repairs are or were scheduled for June or July 2023. For both those reasons, I dismiss this part of the Buchanan's claims.

### ***The Exterior Foundation Walls***

40. The Buchanans say they want the strata to complete exterior foundation wall repairs. The strata says this work is ongoing.
41. WSP's June 2021 report said the foundation walls were made of concrete measuring 6 inches thick. WSP observed vertical cracks in the walls from the interior of the

crawlspaces. WSP said that these were concerning as they appeared to be allowing water and soil inside. WSP believed water ingress through the cracks was occurring and was contributing to high moisture loads. WSP also expressed some concern that some areas behind a pipe were not properly dampproofed using asphalt emulsion, and that moisture in a nearby storage room might be contributing to increased moisture load at the back of the property.

42. WSP recommended sealing the cracks in the foundation wall at a cost of \$75,000 to \$100,000. It said this was a high priority task. The work would consist of exposing and applying 2-ply SBS membrane over the cracks from the exterior, and crack injection from the interior. I find from this that TW's work largely resolved the immediate humidity and moisture concerns, but not the long-term problems caused by the unrepaired foundation walls.
43. There is no indication that the strata included the exterior foundation walls as part of the subsequent special levy work approved in July 2021. Consistent with this, in March 2022, the strata manager emailed the Buchanans to advise that they were trying to find an excavation company to look at the drainage issue and provide a quote for waterproofing the exterior foundation. There is no indication the strata obtained these quotes or that the foundation wall work will be done soon.
44. A significant period of time has passed since WSP's June 2021 report without any discernible progress. I find the Buchanans have proven a breach and are entitled to a remedy that at least forces the strata to put some measures forward for the owners to consider. However, I also find that the strata should be given some flexibility in the timing of the repairs. This is because I find that I should not usurp the strata's ability to reasonably prioritize repairs, particularly here given the complexity and volume of work that must be done.
45. I order the strata to, within 60 days, obtain estimates or quotes to carry out the foundation wall work, using the method of repair outlined in WSP's June 2021 report, and taking into account as the strata sees fit, any recommendations of the contractors providing such estimates or quotes.

46. I order the strata to hold a general meeting within 60 days of obtaining the above-mentioned quotes or estimates for the owners in the strata to consider how to move forward or prioritize and pay for the foundation wall work.
47. I order the strata to repair and maintain the foundation wall within a reasonable period of time.

### ***The Perimeter Drains and Storm Drainpipes***

48. As noted above, the Buchanans seek an order for the strata to complete recommended drainage investigations. The WSP report commented on both the perimeter drains and storm drainpipes. WSP also incorporated the findings of H2O using its equipment. So, I find the Buchanans' claim is referring to WSP's recommendations for investigation and repairs in its June 2021 report about the perimeter drains and storm drainpipes.
49. The strata says that the recommended drainage investigations in connection with water in SL25's crawlspace is completed. I find this submission does not directly address the Buchanan's claim, which is about WSP's recommendations, discussed above.
50. In its report, WSP said the perimeter drain was generally in serviceable condition. However, it observed an excess of moisture along the back of the property. It said there was greater moisture in that area and wet conditions at alcoves within the crawlspaces. WSP recommended perimeter drain investigation and work. The purpose of the work was to confirm the outlet and look for breaks and damage, cut off branches that extend under the slab, and conduct testing to confirm silty soil around the pipes is not obstructing the flow. It is also classified this as high priority. It estimated the investigation and work would cost \$29,000.
51. As for the storm drains, WSP said that some areas appeared damaged by slight crushing or deformation. It said this raised concerns that there might be damage in other areas. It also found some areas had standing water, which could indicate improper sloping, settlement, or restricted drainage. WSP said that mapping and

assessing the system needed to be completed in order to confirm the outlets and look for breaks or damage. Once this was done, WSP said it could better understand how or if the system affected moisture issues in the crawlspace. WSP classified this as high priority. It estimated the work would cost \$16,000.

52. The September 7, 2021 strata council meeting minutes indicate that H2O was too busy to provide a quote for this work. The February 23, 2022 strata council meeting minutes state that the strata decided to obtain a quote from Riverstone Excavating (Riverstone). The strata's undisputed submission is that Riverstone ultimately provided no quote. Around this time, in a March 28, 2022 email, the strata manager emailed Melanie Buchanan that they were trying to find an excavation company to look at the drainage issues and see about waterproofing the crawlspaces, as part of WSB's recommendations. There is no indication the strata obtained such a quote about the drainage.
53. In the July 7, 2022 strata council meeting minutes, the strata said it was following up with WSP regarding a second opinion concerning the remaining drainage repair work to be done, and for the opinion to be reported to council. There is no indication the strata followed through with this. The strata council meeting minutes of December 6, 2022 and January 9 and 16, 2023 show that the strata decided to postpone the drainage work until starting the structural work. So, I find the strata never started WSP's recommendations about the perimeter drains and storm drainpipes. Contrary to the strata's submissions, I find the drainage work at issue was never addressed nor is work on it ongoing.
54. Given the lack of progress, I find the strata has breached its repair and maintenance obligations in connection with the perimeter drains and storm drainpipes. I order the strata to, within 60 days, obtain estimates or quotes to carry out the work on the perimeter drains and storm drainpipes, using the method of investigations and repair outlined in WSP's June 2021 report, taking into account as the strata sees fit, any recommendations of the contractors providing such estimates or quotes.

55. I order the strata to hold a general meeting within 60 days of obtaining the above-mentioned quotes or estimates for the owners in the strata to consider how to move forward or prioritize and pay for the perimeter drains and storm drainpipes investigation and repairs.
56. I decline to order the strata to complete the drainage repairs at this time, as the Buchanans did not specifically request this. So, I only order the strata to investigate the perimeter drains and storm drainpipes in accordance with WSP's June 2021 within a reasonable period of time.

### ***The SL25 Crawlspace***

57. The Buchanans seek an order for the strata to complete outstanding repairs to address water ingress and moisture in a crawlspace under SL25. The strata disagrees and says work on the crawlspace is complete.
58. As noted above, the Buchanans complained about humidity and mould in the crawlspace in March 2020. I find that by March 30, 2021, TW substantially addressed these issues through its work. This included creating a vapour barrier as part of a longer-lasting solution. At the time, TW reported that the humidity in the crawlspace below the SL25 had significantly improved and the joists and framing were dry. TW did identify a ground seepage issue in one area, but the area was otherwise fine.
59. The Buchanans also provided an inspector's February 1, 2023 home inspection report from A Buyer's Choice Home Inspections. Similarly, the report does not mention any mould or water ingress in the crawlspace.
60. I acknowledge that TW's work did not address the issues identified in WSP's June 2021 report that could cause the moisture and humidity to return to the crawlspace. These included cracks in the foundation wall, storm drainpipes and perimeter drain investigations, and ducting and plumbing repairs. That said, there is no indication that the crawlspace mould and humidity are currently at unacceptable levels. So, I do not find it necessary to make a specific order about the crawlspace.

61. I note that the July 2021 AGM minutes indicate that the strata raised \$6,375 for crawlspace repairs for SL25. However, the evidence does not describe any work that must be urgently done in the crawlspace. So, I find it unnecessary to order the strata to take any additional measure about it.

62. For those reasons, I dismiss this claim.

### ***The Missing Crawlspace Firewall***

63. The Buchanans seek an order for the strata to repair and replace the firewall in the manner described in WSP's June 2021 report. The strata says this is being addressed and is ongoing.

64. WSP's June 2021 report said that the existing drywall in the south building crawlspaces in general should be replaced with fibreglass-faced paperless gypsum board. It said this work was key to achieving fire separation. It estimated this would cost \$2,000 per strata lot. It also said this work was medium priority. However, WSP added that where the original gypsum board was removed in the crawlspace, it "must be replaced ASAP". So, I find WSP's view is that the firewall replacement is actually a high priority. I also find that WSP's report says the firewall relates to fire safety.

65. The strata says there is "ongoing" work or progress about the firewall, but I find this is not the case. There is no particular submission or evidence from the strata about when it will replace the firewall. It has been missing for quite some time now, and there is no indication that installing it would necessarily delay or complicate any other work.

66. Given its urgency and that it is about safety, I find the strata has breached its repair and maintenance obligations in connection with the missing crawlspace firewall under SL25. I order the strata to, within 90 days, replace the missing firewall in SL25's crawlspace area, using the method of repair or replacement outlined in WSP's June 2021 report, taking into account as the strata sees fit, any recommendations of the contractors providing estimates or quotes.

### ***SL25's Sloping and Cracked LCP Patio Slab***

67. The Buchanans seek an order for the strata to repair SL25's sloping and cracked LCP patio slab. The strata says this work is being addressed and is ongoing.
68. On March 12, 2020, Melanie Buchanan emailed the strata about the LCP patio. She noted it had sunken significantly and had a crack. She asked the strata to investigate in a March 16, 2020 email. More recently, on March 28, 2022, the Buchanans complained that the patio was now a safety issue. They said the patio had sunken significantly, making it difficult to step outside from the patio door, and it also had a crack. They said could not sit on the outside patio due to the slope. They asked the strata to investigate why it has sunken and how to fix it.
69. I note that I find it unproven that the patio is unsafe as, unlike the issue of the firewall, there is no evidence to support this specific conclusion.
70. As noted earlier, in March 2022, the strata manager emailed the Buchanans to wait on the patio repairs until they found a contractor for the drainage and crawlspace waterproofing. The strata manager said they were concerned that the patio would have to be taken out and replaced in the process of other repairs.
71. The February 1, 2023 home inspection report shows photos of the patio. The concrete patio has a crack spanning one end. The inspector said it was "heavily sloped/settled". Currently, there is no indication that the strata has any specific plans to repair the patio.
72. Over 3 years have passed since the Buchanans complained about the LCP patio in March 2020. The strata has yet to carry out any basic steps, such as obtaining an estimate or opinion about repairs. Given this, I find the strata has breached its repair and maintenance obligations in connection with the patio as well.
73. However, as noted earlier, the WSP report does not comment on SL25's patio, or any other patios, nor does it comment on the priority or cost of such repairs. So, I find there is no clear evidence on the immediacy required for this work. I find that another

order without a strict deadline for repairs would be appropriate, so the strata has some flexibility in how it chooses to prioritize this work.

74. I order the strata to, within 60 days, obtain estimates or quotes to repair the crack and level the SL25 LCP patio, taking into account as the strata sees fit, any recommendations of the contractors providing such estimates or quotes.
75. I order the strata to hold a general meeting within 60 days of obtaining the above-mentioned quotes or estimates for the owners in the strata to consider how to move forward or prioritize and pay for the SL25 LCP patio work.
76. I order the strata to carry out the SL25 LCP patio repairs and maintenance within a reasonable period of time.

***Issue #2. Is the strata responsible for repairing the flooring in SL25?***

77. The Buchanans say that the strata must replace the sloping and damaged flooring inside SL25. The strata denies liability.
78. A strata corporation is not an insurer and is only liable to pay for repairs to a strata lot where it has been negligent. See, for example, *Kayne v. LMS 2374*, 2013 BCSC 51, *John Campbell Law Corporation v. Owners, Strata Plan 1350*, 2001 BCSC 1342, and *Basic v. Strata Plan LMS 0304*, 2011 BCCA 231. To prove negligence, the Buchanans must show that the strata owed them a duty of care, the strata breached the standard of care, and the failure resulted in the claimed damages. The claimed damages must also be reasonably foreseeable. See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, at paragraph 33.
79. Bylaw 2.1 says that an owner must generally repair and maintain their strata lot. As discussed above, the strata must repair and maintain the common property discussed above. So, I find the strata owes the Buchanans a duty of care to repair and maintain the CP.
80. I find the applicable standard of care is reasonableness. In *Wright v. The Owners, Strata Plan #205*, 1996 CanLII 2460 (BCSC), aff'd 1998 CanLII 5823 (BCCA) at



paragraph 30, the court said a strata corporation is not responsible for damage as long as it acted reasonably in the circumstances. This means that even if a strata corporation's contractors fail to carry out work effectively, the strata is not responsible, and cannot be found negligent as long as it acted reasonably in the circumstances.

81. Here, I find it unproven that the strata acted unreasonably, or that the alleged breach caused any damage. The best evidence on this issue is Omega's February 2021 report. Omega said that it investigated the sloping issue in SL25 approximately 10 years ago. However, Omega did not say whether the flooring inside SL25 was already damaged 10 years ago, or if it worsened over time. Omega also did not comment on whether the strata caused the flooring issues, or caused them to worsen, through action or inaction. The other reports, such as WSP's June 2021 report, are similarly silent on this issue.
82. Given the above, I find it unproven that the strata acted unreasonably, or that its unreasonable actions or inaction caused the flooring in SL25 to become damaged or further damaged over time. I dismiss this claim.

## **CRT FEES AND EXPENSES**

83. 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 find the Buchanans are largely successful. So, I order the strata to reimburse them for CRT fees of \$225.
84. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owners, the Buchanans.

## **ORDERS**

85. I order the strata to, within 60 days, obtain estimates or quotes to carry out the foundation wall work, using the method of repair outlined in WSP's June 2021 report,

and taking into account as the strata sees fit, any recommendations of the contractors providing such estimates or quotes.

86. I order the strata to hold a general meeting within 60 days of obtaining the above-mentioned quotes or estimates for the owners in the strata to consider how to move forward or prioritize and pay for the foundation wall work.
87. I order the strata to repair and maintain the foundation wall within a reasonable period of time.
88. I order the strata to, within 60 days, obtain estimates or quotes to carry out the work on the perimeter drains and storm drainpipes, using the method of investigation and repair outlined in WSP's June 2021 report, and taking into account as the strata sees fit, any recommendations of the contractors providing such estimates or quotes.
89. I order the strata to hold a general meeting within 60 days of obtaining the above-mentioned quotes or estimates for the owners to consider how to move forward or prioritize and pay for the perimeter drains and storm drainpipes investigation and repairs.
90. I order the strata to investigate the perimeter drains and storm drainpipes in accordance with WSP's June 2021 report within a reasonable period of time.
91. I order the strata to, within 90 days, replace the missing firewall in SL25's crawlspace area, using the method of repair or replacement outlined in WSP's June 2021 report, and taking into account as the strata sees fit, any recommendations of the contractors providing estimates or quotes.
92. I order the strata to, within 60 days, obtain estimates or quotes to repair the crack and level the SL25 LCP patio, taking into account as the strata sees fit, any recommendations of the contractors providing such estimates or quotes.
93. I order the strata to hold a general meeting within 60 days of obtaining the above-mentioned quotes or estimates for the owners in the strata to consider how to move forward or prioritize and pay for the SL25 LCP patio work.

94. I order the strata to repair and maintain the SL25 LCP patio within a reasonable period of time.
95. Within 30 days of the date of this decision, I order the strata to reimburse the Buchanans \$225 for CRT fees.
96. The Buchanans are entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
97. I dismiss the Buchanans' remaining claims.
98. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

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David Jiang, Tribunal Member