



# Civil Resolution Tribunal

Date Issued: December 8, 2023

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Simington v. The Owners, Strata Plan LMS3743*, 2023 BCCRT 1080

B E T W E E N :

RONALD SIMINGTON

**APPLICANT**

A N D :

The Owners, Strata Plan LMS3743

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Nav Shukla

## INTRODUCTION

1. The applicant, Ronald Simington, co-owns strata lot 13 (SL13) in the respondent strata corporation, The Owners, Strata Plan LMS3743 (strata). Mr. Simington says the strata has failed to provide him with requested documents, contrary to *Strata Property Act* (SPA) section 36, used unqualified contractors to repair and maintain

common property around SL13, and misused the strata's operating and contingency funds. Mr. Simington seeks orders that the strata:

- a. provide him with the requested documents,
  - b. repair the common property around SL13 back to its original condition using "skilled labour",
  - c. reduce the current \$5,000 limit on its petty cash account, and
  - d. stop misusing and comingling operating and contingency reserve funds.
2. The strata says that it has now provided Mr. Simington with all requested documents it has in its possession, that its hired contractors are qualified, that the work has been completed with all deficiencies addressed, and that it has not misused its accounts or comingled funds.
  3. Mr. Simington is self-represented. A strata council member represents the strata.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. 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.

6. 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.
7. 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.

### ***Preliminary Issues***

8. Though Mr. Simington did not list it as a requested remedy, in the Dispute Notice, Mr. Simington asks that the strata apologize and retract an October 31, 2022 letter that it sent to him. The letter suggested that he had been confrontational with the strata's contractors. The CRT does not generally order apologies because they are unlikely to serve any useful purpose, which I find is the case here. I find that ordering the strata to retract this letter would similarly serve little purpose. So, I decline to consider these requests.
9. Next, in the Dispute Notice, Mr. Simington also alleges the strata and the strata's contractor have harassed him and his wife. He does not seek a remedy with respect to this alleged harassment. In any event, I note there is no recognized tort of harassment in British Columbia (see *Anderson v. Double M Construction Ltd.*, 2021 BCSC 1473 at paragraph 61). So, I make no findings about whether the strata harassed Mr. Simington as alleged. However, I have considered below how the strata has treated Mr. Simington in deciding whether the strata's actions were significantly unfair to Mr. Simington.
10. Finally, Mr. Simington makes several arguments about the strata's governance, financial management, and other matters that I find are unrelated to any of his requested orders. I find it unnecessary to address any of his evidence or submissions that are not specifically related to his requested orders.

## **ISSUES**

11. The issues in this dispute are:

- a. Did the strata fail to provide documents to Mr. Simington as required by the SPA, and if yes, what remedy is appropriate?
- b. Should I order the strata to undertake further repairs to bring the common property and limited common property (LCP) attached to SL13 back to its original condition, using skilled labour?
- c. Should I order the strata to reduce its current \$5,000 petty cash account limit?
- d. Did the strata misuse or comingle the operating and contingency reserve funds, and if yes, what remedies, if any, are appropriate?

## **EVIDENCE AND ANALYSIS**

12. As the applicant in this civil proceeding, Mr. Simington must prove his claims on a balance of probabilities (meaning more likely than not). I have considered all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.

### ***Background***

13. The strata was created in 1998 and consists of 62 strata lots, all of which are detached, single family homes. The strata was constructed in 13 phases between 1998 and 2004. SL13 (also known as unit 108) was constructed as part of phase 2.
14. The relevant strata bylaws are those filed at the Land Title Office on September 10, 2019, which repealed and replaced all previously existing bylaws. I find these are the bylaws applicable to this dispute.

### ***Document Requests***

15. As noted above, Mr. Simington alleges the strata has failed to provide him with requested documents. The law on providing records and documents under the SPA

is well established. SPA sections 35 and 36 relate to document disclosure and refer to the *Strata Property Regulation*. Put broadly, SPA section 35 and section 4.1 of the regulation set out what documents and records the strata must prepare and retain, and the length of time the strata must retain them. SPA section 36 addresses what documents can be requested and who can request them, among other things. The strata has no obligation under the SPA to create, retain, or disclose records that are not listed in section 35. Similarly, the CRT has no authority to order the strata to create or disclose records that are not listed in section 35 (see *The Owners, Strata Plan NWS 1018 v. Hamilton*, 2019 BCSC 863).

16. In the Dispute Notice, Mr. Simington says he has requested the following documents which the strata has allegedly failed to provide:
  - a. Contractor names that bid on the wood rot project (discussed in more detail below),
  - b. Structural engineer's name and copy of their report for unit 103,
  - c. Business licenses for RM, the strata's handy person and Mel's Painting, who both worked on the wood rot project,
  - d. WorkSafe BC clearance letters for RM, Mel's Painting, and DW (who also worked on the wood rot project), and
  - e. Petty cash documents for 5 withdrawals on August 6, 24, September 18, and 19, 2022 for amounts paid to RM and for door paint.
17. In his written argument, Mr. Simington also requests copies of invoices for materials used on the wood rot project. For the reasons that follow, I find there are no documents that Mr. Simington has requested that the strata has failed to provide.
18. From the parties' submissions, I infer that the petty cash documents Mr. Simington sought were invoices or receipts which the strata has provided to Mr. Simington since this dispute began. I note that invoices and receipts are not included in the list of records the strata must keep under section 35 of the SPA, so they are not producible

under section 36 (see *Hamilton* at paragraphs 21 to 27). So, had the strata not provided the requested invoices and receipts to Mr. Simington, I would have dismissed this part of his claim in any event. It is unclear whether the strata has copies of any invoices for materials used on the wood rot project that Mr. Simington requests. Even if it does, given that the strata is not required to keep invoices or receipts under SPA section 35, I find Mr. Simington is not entitled to these documents.

19. As for the contractor's names that bid on the wood rot project, the evidence shows the strata told Mr. Simington that it did not receive any bids from any contractors that did not end up working on the project, as they could not start the project on the strata's timetable. So, there are no bids from any contractors that did not end up working on the project. There is also no evidence before me that there is written correspondence that the strata may have received from prospective contractors relating to the wood rot project that it would have been required to retain under SPA section 35(k). So, I dismiss this part of Mr. Simington's claim.
20. Next, while I find the evidence shows that RM likely requested an engineer's report relating to unit 103 which was delivered to the City of Mission, there is no evidence that the strata has ever requested or received a copy of this report. Similarly, the evidence does not show that the strata has in its possession copies of the business licenses or WorkSafe BC clearance letters that Mr. Simington seeks. As I cannot order the strata to provide documents that it does not have, I dismiss this part of Mr. Simington's claim.

***Should I order the strata to undertake further repairs to bring the common property and LCP attached to SL13 back to its original condition?***

**Strata's repair and maintenance obligations**

21. I turn now to Mr. Simington's claims with respect to the strata's repair and maintenance obligations. There is no dispute that under the SPA and strata bylaw 9, the strata is responsible for repairing and maintaining SL13's structure, exterior, and LCP decks. Mr. Simington takes issue with the repair and maintenance the strata has

done on his 2 LCP decks, adjoining stairs, column surrounds, wood trim, and other parts of SL13's exterior.

22. Mr. Simington's main complaints are about work the strata undertook between July 2022 and May 2023 addressing wood rot and painting wood trim on SL13's exterior, as well as painting the 2 LCP decks. The strata did this work following a resolution passed by the owners for wood trim repair work and painting to be done at units 101 to 115 at the strata. The strata council hired RM to do the wood rot repairs and Mel's Painting for the painting work. As noted, DW also worked on the project.
23. When Mr. Simington submitted his application for dispute resolution with the CRT, the work was still underway. Based on photographs in evidence, I find the work has since been completed, but not to Mr. Simington's satisfaction. Mr. Simington says that the strata acted unreasonably in hiring RM and Mel's Painting, instead of hiring qualified journeymen contractors. He asks, in essence, that the work be redone by qualified contractors.
24. Mr. Simington's allegations about the substandard work are numerous but can generally be categorized as follows:
  - a. RM's wood rot repair work was deficient as RM failed to address all wood rot and improperly used wood filler instead of replacing the damaged wood in certain areas,
  - b. RM failed to properly caulk some panels and wood trim to provide a waterproof seal,
  - c. The front stairs and deck nosing that were re-done do not meet the BC Building Code,
  - d. The column surrounds RM worked on are no longer square and have mismatched trim joinery, among other things, and
  - e. The paint job on the front and back decks was not properly done and is weathering already.

25. The strata says that the work was completed satisfactorily, and all deficiencies have been addressed.
26. I turn now to the applicable law. A strata is not held to a standard of perfection in its maintenance and repair obligations. The strata only has a duty to make repairs that are reasonable in the circumstances (see *Wright v. The Owners, Strata Plan #205*, 1996 CanLII 2460 (BC SC)). Determining what is reasonable may involve assessing whether a solution is good, better, or best. The starting point for the analysis is deference to the decisions made by the strata council as approved by the owners (see *Weir v. The Owners, Strata Plan NW 17*, 2010 BCSC 784).
27. Also, 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). The strata is also entitled to prioritize its repairs (see *Warren v. The Owners, Strata Plan VIS 6261*, 2017 BCCRT 139 at paragraph 46). While prior CRT decisions are not binding, I find the reasoning in these decisions persuasive and rely on it.
28. Further, in *Oldaker v. The Owners, Strata Plan VR1008*, 2007 BCSC 669 at paragraph 54, the court referred to prior court decisions that said that a strata corporation is not an insurer obligated to fulfill an owner's demand for maintenance of common property. The court also noted that a strata corporation is generally entitled to rely on repair and maintenance advice received from its professionals.
29. With these general principles in mind, I find that the strata was entitled to choose its contractors to complete the wood trim repairs and painting and rely on its contractors' opinions about how the work should be completed. RM had undisputedly been the strata's handy person for many years and had worked with Mel's Painting in the past to complete wood rot repairs and painting work. The evidence before me does not show that the wood rot repairs and painting work that needed to be done here were so complicated or technical in nature that they required new contractors with special expertise to complete. While I accept that Mr. Simington believes that RM and Mel's Painting were unqualified, I do not find the strata acted unreasonably in hiring them, as opposed to the qualified journeymen contractors that Mr. Simington desires.



30. Further, as the person alleging deficiencies, Mr. Simington bears the burden of proving them. In general, expert evidence is required to prove work is deficient, or that a professional's work fell below a reasonably competent standard. This is because an ordinary person does not know the standards of a particular profession or industry. However, expert evidence is not necessary when the work is obviously substandard or the deficiency relates to something non-technical (see *Absolute Industries Ltd. v. Harris*, 2014 BCCA 287 and *Schellenberg v. Wawanese Mutual Insurance Company*, 2019 BCSC 196). I have reviewed Mr. Simington's photographs of the various alleged deficiencies. The strata says that many of these photographs are from before the work was completed, which Mr. Simington does not dispute. Of the photographs that appear to be from after the work was completed, I find some show some minor imperfections. Without expert evidence, however, I am unable to find that the work RM and Mel's painting did was substandard and deficient to a point that it needs to be re-done by other, more qualified, contractors.
31. I find photographs in evidence do show that RM left 2 screws protruding from the trim in a column surround outside of SL13, that had not been properly screwed in. I accept that these protruding screws pose a safety hazard. So, I order the strata to attend to screwing these 2 protruding screws in.

*Alleged significant changes*

32. SPA section 71 says that a strata corporation must not make a significant change in the use or appearance of common property unless the change is approved by a resolution passed by a 3/4 vote at a general meeting.
33. Mr. Simington says that the strata allowed RM to make the following alleged significant changes to common property, contrary to SPA section 71:
- a. Using plywood on the column surrounds in place of the original material, allegedly changing their original design,
  - b. Replacing a panel below a window that was originally made of Crezon with plywood, and

- c. Using screws instead of nails when replacing the stair treads and doing work on the column surrounds.
34. The parties do not dispute that the relevant factors to consider are set out in *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333 at paragraph 19. For the reasons that follow, I find the changes Mr. Simington takes issue with are not significant.
35. While I accept the strata replaced the original material used for the column surrounds and the panel below a window with plywood, based on photographs in evidence, I find there is essentially no change in appearance resulting from this change in material. I also find it unproven that this has resulted in change of use. Further, I find using screws instead of nails to be insignificant and difficult to detect. As for the column surrounds' general design, while I find their construction may not be perfect, I find the imperfections are not noticeable unless one conducts a close examination. Overall, I find the general design of the column surrounds has not changed significantly.
36. While Mr. Simington alleges the above changes impacted SL13's marketability, he has provided no evidence in support. I also find it unproven that these changes impact Mr. Simington's use of SL13 and there is no evidence of any interference or disruption because of these minor changes. On balance, I find it unproven that the strata undertook any significant changes, contrary to SPA section 71.

*Did the strata treat Mr. Simington significantly unfairly?*

37. Though Mr. Simington did not use these exact words, I find he also alleges that the strata treated him significantly unfairly in the way that it undertook the wood trim repairs and painting. In particular, Mr. Simington says that the strata unfairly took SL13 out of rotation for repairs that were being done sequentially. He also alleges that the strata has used more qualified contractors to do decking and roofing work, and that it was unfair that it did not hire similarly qualified contractors for the wood rot repair and painting work.

38. The CRT has authority to make orders remedying a strata corporation's significantly unfair acts or decisions. The court has the same authority under section 164 of the SPA, and the same legal test applies (see *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113). In *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173, the court confirmed that significantly unfair actions or decisions are those that are burdensome, harsh, wrongful, lacking in probity and fair dealing, done in bad faith, unjust, or inequitable. In applying the test, an owner's objectively reasonable expectations are a relevant factor, but are not determinative (see also *Dollan v. The Owners, Strata Plan 1589*, 2012 BCCA 44).
39. The strata says it has tried to treat Mr. Simington the same as all other owners. It further says that SL13 was not taken out of rotation. It says that there was never a plan to start at unit 101 and move unit by unit to number 115. Rather, RM and Mel's painting had a system in place, that they had used for many years at the strata, where they would complete sections based on trim colour. The strata says that any delays were caused largely in part by Mr. Simington's repeated interjections, which Mr. Simington denies.
40. I find that Mr. Simington had a reasonable expectation that the strata would complete the wood trim repairs and painting at SL13 as it did for the other 14 strata lots worked on under the same resolution. I find the work was completed, and the evidence does not show that the quality of work on SL13 was any different than on the other 14 strata lots. Emails in evidence show a high level of discord between Mr. Simington and strata council members. There were also undisputed delays in completing the wood rot repair and painting work at SL13. It is unclear whether there were similar delays for the other units being worked on. However, based on the evidence before me, I find it unproven that the strata has treated Mr. Simington any differently, and certainly not significantly unfairly, in completing the wood rot repairs and painting work.
41. Further, I have already found above that the strata was entitled to choose what contractors it deemed appropriate to work on the wood rot project. As noted, the strata had used RM and Mel's Painting for similar work in the past. Under the

circumstances, I find it was not significantly unfair for the strata to once again hire RM and Mel's Painting to complete this work.

### ***Operating and Contingency Reserve Funds***

42. I turn now to Mr. Simington allegation that the strata has misused and comingled its operating and contingency reserve funds. SPA section 92 requires a strata corporation to establish an operating fund to pay for common expenses that "usually occur either once a year or more often than once a year". It also requires the strata to establish a contingency reserve fund to pay for common expenses that "usually occur less often than once per year or that do not usually occur".
43. The relevant parts of section 97 say a strata corporation must not spend money from its operating fund unless the expenditure is consistent with the purpose of the fund as set out in section 92, and is first approved by passing a  $\frac{3}{4}$  vote, authorized in the budget, or authorized under section 98.
44. SPA section 98 addresses unapproved expenses. In essence, section 98 allows unapproved expenditures from the operating fund in the lesser amount of \$2,000 or 5% of the total contribution to the operating fund, unless a greater amount is set out in the bylaws. The amount applies to the total unapproved expenses for the fiscal year but does not apply to emergency-type expenses as defined in the section.
45. So, except for unapproved expenses, an expense may only be made from the operating fund if it is consistent with the purposes of the fund. In other words, if the expense usually occurs once a year or more often than that, it is a valid operating expense.
46. With these SPA provisions in mind, I turn now to Mr. Simington's specific allegations. First, I note that in his written argument, Mr. Simington makes new allegations and seeks additional remedies than those in the Dispute Notice about the strata's alleged misuse of its operating fund. In particular, he says that there have been 2 times the strata allegedly incorrectly spent money from the operating fund, after he started this dispute. The first is with respect to deck upgrades that the owners approved at a June

21, 2022 annual general meeting and the second for paving work that Mr. Simington says was unapproved. The strata did not respond to these allegations, I infer because Mr. Simington did not raise them in the Dispute Notice.

47. The purpose of the Dispute Notice is to define the issues and provide notice to the respondents about the claims against them and the remedies sought so that they have an adequate opportunity to respond. While Mr. Simington raised claims in the Dispute Notice about the strata comingling operating and contingency reserve funds, he did not request to amend the Dispute Notice to add these new claims and remedies.
48. CRT rule 1.19(3) says that the Dispute Notice will only be amended after the dispute has entered the CRT decision process in extraordinary circumstances. I find there are no extraordinary circumstances here that would justify adding new claims or remedies at this late stage of the CRT process. So, I have not addressed any claims or remedies about the operating and contingency reserve funds that were not in the Dispute Notice.
49. I turn back now to the claims that were raised in the Dispute Notice and are properly before me. As noted, in the Dispute Notice, Mr. Simington seeks orders that the strata reduce its current \$5,000 limit on its petty cash account and that it stop misusing operating and contingency reserve funds by comingling the accounts. I infer the petty cash account is an account the strata has set up for its operating fund which it uses to pay for operating expenses. The strata undisputedly previously had a \$200 limit on this petty cash account, and its strata manager typically managed its general operating fund account and dealt with operating expenses over \$200. Mr. Simington says that the strata's reasoning for increasing the limit up to \$5,000 was so that it could use the operating funds in the petty cash account to pay contractors who required cash payments immediately, instead of having to wait for the strata manager to issue a cheque. However, he says that since increasing the limit, most of the payments the strata has made from the petty cash account are to RM, or to reimburse strata council members for various expenses they incurred.

50. Mr. Simington further alleges that the strata has been drawing funds from the operating account without providing supporting documents, only a note from an Excel spreadsheet to the strata manager. Lastly, he says that the strata has comingled funds by paying RM \$4,000 for the wood rot repair project that should have been paid from the contingency reserve fund, as approved by the owners.
51. The strata says that there has been no comingling of funds, there is a full accounting, and that it has provided all supporting documents for operating fund expenses to the strata manager who manages the strata's finances. The strata further says that it is entitled to have a \$5,000 limit on its petty cash account as there is nothing in the SPA that prohibits the strata council from operating all or part of its finances.
52. I agree with the strata that there is nothing in the SPA that requires it to have its strata manager deal with higher valued operating expenses. I find that as long as the strata is using the \$5,000 petty cash account to pay only for valid operating expenses, there is nothing in the SPA or its bylaws that require it to have a lower limit for its petty cash account.
53. As for Mr. Simington's allegation that the strata may have paid or asked its strata manager to issue cheques to pay for operating expenses without providing adequate documentation in support, I note there is nothing in the SPA or the strata's bylaws that impose any specific requirements for documents that a strata must have in support of operating expenses. In the absence of any clear guidance, I find that the strata must simply act reasonably and fairly to all owners. Though the strata may not have originally provided its strata manager with supporting documentation for some of the operating expenses, it appears the strata has since provided most if not all supporting documents it has. Emails in evidence show that the strata management company has set out its expectations with respect to supporting documents for expenses, which the strata appears to be complying with now.
54. The evidence before me does show that the strata paid RM for some of their wood rot repair work out of the petty cash account (using operating funds), when the owners had approved this work to be paid from the contingency reserve fund. While I find

paying this expense from the operating fund when it had been clearly approved by the owners as a contingency reserve expense was a breach of the SPA, the strata has undisputedly corrected this error by repaying the \$4,000 from the contingency reserve fund back to the operating fund. So, I find no need to make any orders since the breach has been remedied.

55. In conclusion, I find the strata is entitled to keep its \$5,000 limit on its petty cash account and I find no proven breaches by the strata of the SPA's operating and contingency fund provisions that have not already been remedied. So, I dismiss these claims.

## **CRT FEES AND EXPENSES**

56. 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. As Mr. Simington was largely unsuccessful, I dismiss his claim for reimbursement of his paid CRT fees. The strata did not pay any CRT fees and neither party claims any dispute related expenses, so I award none.
57. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Simington.

## **ORDERS**

58. I order that within 14 days of this decision, the strata attend SL13 and screw in the 2 screws that are protruding from the trim in 1 of the column surrounds.
59. I dismiss the remainder of Mr. Simington's claims.

60. 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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Nav Shukla, Tribunal Member