



Civil Resolution Tribunal

Date Issued: February 6, 2024

File: ST-2022-002512

Type: Strata

Civil Resolution Tribunal

Indexed as: *Ram v. The Owners, Strata Plan NW406*, 2024 BCCRT 113

B E T W E E N :

RAJESH RAM

APPLICANT

A N D :

The Owners, Strata Plan NW406

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. Rajesh Ram owns a strata lot in the strata corporation, The Owners, Strata Plan NW406 (strata). Mr. Ram makes 4 distinct claims against the strata. First, they say the strata allowed another strata lot owner to convert a common property deck into a bedroom. Second, they say the strata is failing to meet its duty to repair and maintain

common property, including solarium windows associated with Mr. Ram's strata lot. Third, Mr. Ram says the strata has retaliated against them for a previous CRT dispute. Fourth, they say the strata has not followed its bylaws about council meetings. As remedies, Mr. Ram asks for orders that the strata repair common property, allow observers in council meetings, and give proper notice of council meetings. They give the claim a value of \$5,000.

2. The strata says the CRT previously resolved the common property conversion issue and Mr. Ram cannot bring the same claim again. The strata says it has repaired some common property, but Mr. Ram's solarium windows are not part of the original structure, so Mr. Ram is responsible for repairing them. The strata denies that it retaliated against Mr. Ram.
3. Mr. Ram is self-represented. A 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). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between parties that will likely continue after the CRT process has ended.
5. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, 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.
6. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court.

7. Under CRTA section 123 and the CRT rules, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. Is the common property conversion claim *res judicata* or an abuse of process? If not, has the strata breached its statutory obligations or failed to enforce its bylaws by allowing common property to be converted into a bedroom?
 - b. Has the strata breached its duty to repair and maintain any common property?
 - c. Did the strata retaliate against Mr. Ram by accusing them of breaching bylaws with no evidence?
 - d. Has the strata failed to follow its bylaws about council meetings?
 - e. What remedies, if any, are appropriate?

EVIDENCE AND ANALYSIS

9. As the applicant in this civil proceeding, Mr. Ram must prove their 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. The strata did not provide written submissions or evidence, despite receiving multiple extensions. So, I have relied on the strata's Dispute Response provided at the outset of this dispute.
10. The strata was created in 1975 and includes 15 strata lots in a 4-storey building. The strata repealed and replaced its bylaws in 2004, and the only bylaw amendment filed since then is not relevant to this dispute. Mr. Ram has owned strata lot 15 since 2009.

Is Mr. Ram's common property conversion claim res judicata or an abuse of process?

11. Mr. Ram says another owner has turned a common property deck into a bedroom and listed their strata lot for sale with increased square footage without paying increased strata fees. The strata says this issue was resolved in a previous CRT dispute, ST-2021-000324 (2021 dispute). In that dispute, like in the present dispute, there were many unrelated claims grouped into one large claim. One of those claims was "Common property use – changing deck into a bedroom". The parties came to an agreement and the CRT issued an April 13, 2021 consent resolution order (CRO).
12. On February 9, 2023, a CRT vice chair issued a preliminary decision finding that Mr. Ram's claim was not *res judicata*, meaning already decided. That decision noted that I could reach a different conclusion and refuse to resolve the claim.
13. *Res judicata* exists to support the interest of finality in disputes and the principle that a party should not have to litigate the same issues twice. There are 2 types of *res judicata*: issue estoppel and cause of action estoppel. Both require that the parties in the 2 legal proceedings are the same – the requirement of mutuality.
14. The vice chair observed that the respondents in the 2 disputes are not identical. In the 2021 dispute, Mr. Ram claimed against the strata and 2 individuals. In this dispute, Mr. Ram claimed against the strata and 1 of those 2 individuals, but the vice chair refused to resolve the claim against that individual, finding that Mr. Ram had no standing (legal right) as an individual owner to bring a claim against another owner about common property conversion. So, Mr. Ram's claim is against the strata only.
15. Courts have applied the issue estoppel and cause of action estoppel test strictly. I agree with the vice chair's conclusion that because the parties in this dispute are not the same as the parties in the 2021 dispute, the "mutuality" requirement is not met and *res judicata* does not apply. However, as I explain below, I refuse to resolve the common property conversion claim as an abuse of process.
16. Abuse of process engages the court's (or the CRT's) inherent power to prevent the misuse of its procedure. The CRT has applied the abuse of process doctrine before

(see e.g., *Carroll et al v. The Owners, Strata Plan VIS 2499*, 2019 BCCRT 125). Abuse of process is more flexible than *res judicata* and does not require that the parties are exactly the same (see *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, at paragraph 37). Its purpose is to uphold judicial integrity by ensuring that final decisions are indeed final.

17. The April 13, 2021 CRO is a final decision. Courts have consistently observed that consent orders are a formal expression of an agreement between parties and operate as a final judgment (see *Shackleton v. Shackleton*, 1999 BCCA 704 at paragraph 12). Also, the CRO says it is in full and final settlement of dispute ST-2021-000324.
18. The parties in the present dispute – Mr. Ram and the strata – were both parties in the 2021 dispute. The relevant cause of action in both disputes is that the strata is alleged to have breached a statutory duty or failed to enforce its bylaws by allowing common property conversion. Mr. Ram does not say that the strata has done this again since 2021 or that his present claim is about a different deck.
19. For these reasons, I find that allowing the common property conversion claim to proceed would violate the principle of finality, would be unfair to the strata, and would waste the CRT's resources. I therefore refuse to resolve Mr. Ram's property conversion claim under CRTA section 11(1)(b) as it is an abuse of process.
20. There is no suggestion that the remaining claims about common property repair and maintenance, retaliation and meeting procedures are *res judicata* or an abuse of process, and I find they are not, so I consider them below.

Has the strata breached its duty to repair and maintain any common property?

21. Mr. Ram says the strata is failing to meet its duty to repair and maintain common property in several areas.
22. Section 72 of the *Strata Property Act* (SPA) says strata corporations generally must repair and maintain common property and common assets. In performing this duty, strata corporations are not measured against a standard of perfection. They must

only act reasonably. The courts have recognized that strata corporations must act in the best interests of owners and try to achieve the greatest good for the greatest number. That involves making necessary repairs within a budget the owners can afford and balancing competing needs and priorities. Courts (and by extension, the CRT) should be cautious before inserting themselves into the process (see *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784).

Glass enclosures

23. I begin with the glass balcony enclosures or solariums. Mr. Ram wants a declaration that the strata is responsible to repair and maintain them, and an order to make “necessary repairs” to the solarium associated with Mr. Ram’s strata lot. The CRT can only make a declaratory order if it is incidental to a claim over which the CRT has jurisdiction (see *The Owners, Strata Plan VR320 v. Day*, 2023 BCSC 364, at paragraph 54). I find the requested declaratory order goes beyond being incidental to Mr. Ram’s claim to repair their solarium. Further, as I explain below, the repair claim lacks specificity and evidentiary support. So, I find it would be inappropriate to make a declaratory order.
24. The strata plan shows that each strata lot has a common property balcony attached. It is unclear how many balconies are enclosed, or when they were enclosed. I take from the limited evidence before me that the enclosures are not original to the building and have been added by owners over the years.
25. Bylaw 9(b) says the strata must repair and maintain common property that is not designated as limited common property. There is no suggestion that any balconies have been designated as limited common property.
26. The strata says the glass enclosures are individually owned and not common property. I disagree. Although there is little evidence about the enclosures, I accept for the purposes of this dispute that they are affixed relatively permanently to the common property balconies and thus are common property. CRT decisions have found that common property alterations become common property that the strata is required to repair and maintain (see *Muller v. The Owners, Strata Plan NW 281*, 2021

BCCRT 807 at paragraph 34 and *Previer v. The Owners, Strata Plan NW651*, 2023 BCCRT 601 at paragraph 16). Although CRT decisions are not binding on me, I agree with the reasoning in these decisions.

27. Bylaw 6 says an owner must obtain the strata's approval before altering common property, and the strata may require owners to take responsibility for any expenses relating to the alteration. There are no alteration agreements in evidence. However, the strata has additional relevant bylaws. Bylaw 7(3) says owners who alter common property, and subsequent owners, are responsible for all alteration repair and maintenance costs. Bylaw 7(5) says the strata may repair or maintain alterations if, in the council's opinion, the owner has not done so, and may charge those costs to the owner. These bylaws were in place when Mr. Ram purchased their strata lot. I find the bylaws mean Mr. Ram has to pay for any necessary repairs to the glass enclosure associated with their strata lot.
28. I acknowledge that SPA section 72 (2)(b) prohibits bylaws that make owners responsible for common property repair and maintenance as there are no regulations that allow them. I find this means that because the enclosures are common property, the strata is ultimately responsible to ensure they are repaired and maintained. However, the bylaws here only make owners responsible for the cost of an alteration's repair and maintenance. The CRT has found that such bylaws are not contrary to the SPA. In *Kincaid v. The Owners, Strata Plan NW 2496*, 2020 BCCRT 171, the CRT dismissed the owner's claim to have the strata corporation repair a common property fence the owner had installed because the bylaws said owners had to pay for such repairs. The CRT said if the owners did not repair the fence, the strata had authority to do so or to remove it. Similarly, in *Hamilton v. The Owners, Strata Plan VR17*, 2023 BCCRT 641, the CRT dismissed an owner's claim for reimbursement of the cost of replacing a window they had previously installed as an alteration.
29. For the following reasons, I decline to order the strata to "make necessary repairs" to Mr. Ram's solarium. First, there is no evidence, other than Mr. Ram's assertion, to show that Mr. Ram's solarium is in a state of disrepair. Mr. Ram says there is cracked glass, fogged windows, jammed windows, and gaps, but they provided no photos in

support. There is no suggestion of leaking, which could indicate urgent action is necessary. Ultimately, the evidence does not show that the strata is in breach of its common property repair and maintenance obligations. I considered ordering the strata to hire a professional to assess Mr. Ram's solarium and make repair recommendations. However, under the bylaws, Mr. Ram would have to pay for that inspection. Since nothing prevents Mr. Ram from hiring a professional to inspect their solarium, such an order would serve no purpose. I therefore decline to make any orders for glass enclosure repair and maintenance.

Taps and broken downpipes

30. In the Dispute Notice, Mr. Ram said the strata has refused to repair a water tap attached to the building's exterior and "broken downpipes". In the Dispute Response, the strata said it shut off a south tap due to nearby construction, but a north tap was available for owners' use. It said it "readjusted" the downpipe. In submissions, Mr. Ram does not mention the downpipe again. They submitted a photo of an exterior pipe but I cannot tell what it does or whether it needs repair. I dismiss the claim about the downpipe.
31. As for the tap, from the photos I find it was likely used by the owners, although Mr. Ram does not say for what. It appears to be mounted on a fence, connected by a hose to the strata building. The fence is leaning over. The photos showing construction in the background were taken nearly 2 years ago, so the strata's construction justification likely no longer exists. Further, the strata does not dispute Mr. Ram's assertion that it recently advised Mr. Ram that it had no money to repair the tap. While the strata is entitled to deference on repair decisions, the strata has not provided any evidence about how much it would cost. This is not a case of the strata doing "good" repairs and the owner wanting "better or best" repairs. The strata has simply not repaired the tap, without real justification. In the circumstances, I order the strata to repair the south exterior water tap so it is useable, within 90 days.

Other property

32. In submissions, Mr. Ram identifies other issues of common property repair and maintenance, such as burned-out lights, exposed wiring, fire safety equipment inspections, a utility hole cover, and snow removal. Mr. Ram provided a few photos, but nothing showing exposed wiring or burned-out lights or the location of those things. Municipal letters in evidence indicate the strata is now complying with fire inspections. The snow appears to be on a municipal sidewalk, not common property. It is not clear that the utility hole cover is unsafe. Overall, I am not satisfied that there are any proven breaches of the strata's repair and maintenance duties that warrant an order.

Retaliation and council meetings

33. Mr. Ram says after the 2021 dispute, strata council retaliated against them by accusing them of repairing their vehicle on common property and threatening to fine them. They say after pressing council for details, council finally responded that the complaint was of no concern. So, I find council likely sent a bylaw contravention warning letter and then decided not to impose a fine after Mr. Ram denied the accusation. I see nothing wrong with this approach given that the SPA requires the strata to enforce its bylaws and the strata undisputedly received a bylaw complaint. I find no evidence the strata's approach involved retaliation for the 2021 dispute that the parties settled.
34. As for council meetings, Mr. Ram says on an unspecified date they told a council member that they wanted to attend a January 18, 2021 meeting as an observer. That member told Mr. Ram the meeting would start at 7pm in the meeting room. Council then held the meeting electronically. Mr. Ram says the council did this intentionally, without advising them, so Mr. Ram could not observe the meeting. Mr. Ram also says council generally does not post meeting times or dates or publish them in minutes from the previous meeting. Mr. Ram wants an order that the strata give proper notice of council meetings and allow observers. The strata does not deny the allegations and simply says new council will meet on the third Tuesday of the month moving forward.

35. Bylaw 18(3) says owners may attend council meetings as observers, subject to certain exceptions for sensitive portions of meetings. Bylaw 15(4) says council must inform owners about a council meeting as soon as possible after the meeting has been called.
36. The CRT does not normally order a strata corporation to follow the SPA or its bylaws, because it is already required to do those things. However, given the undisputed evidence that the strata has not followed its bylaws with respect to meeting procedures, it is appropriate to make an order. I order the strata to include in its council meeting minutes the date, time and location of the next council meeting and instructions for attending the meeting as an observer if the meeting is held by electronic means. For unscheduled meetings, the bylaws already require the council to inform owners about the meeting as soon as possible after it is called.
37. In submissions, Mr. Ram says I should award punitive damages because the strata is often in breach of the SPA and refuses to resolve issues through hearings. The Supreme Court of Canada has said that punitive damages serve to punish extreme conduct worthy of condemnation, and may only be awarded in cases involving harsh, vindictive, reprehensible and malicious behaviour (see *Vorvis v. ICBC*, [1989] 1 SCR 1085). On the evidence before me, the strata's struggles to find volunteers for strata council appear more to blame for Mr. Ram's concerns than malicious intent. I do not find that the strata's conduct was harsh, vindictive, reprehensible, or malicious, so I make no punitive damages order.

CRT FEES AND EXPENSES

38. As Mr. Ram was partially successful in this dispute, in accordance with the CRTA and the CRT's rules I find they are entitled to reimbursement of \$112.50 for half their paid \$225 CRT fees. Neither party claims dispute-related expenses.
39. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Mr. Ram.

ORDERS

40. Within 21 days of the date of this order, I order the strata to pay Mr. Ram \$112.50 in CRT fees.
41. Mr. Ram is entitled to post-judgment interest as applicable.
42. I refuse to resolve Mr. Ram's claim about common property conversion.
43. I order the strata, within 90 days, to repair the south exterior water tap to useable condition.
44. Effective immediately, I order the strata to include in its council meeting minutes the date, time and location of the next council meeting and instructions for attending the meeting as an observer if the meeting is held by electronic means.
45. I dismiss the rest of Mr. Ram's claims.
46. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under CRTA section 58, 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.

Micah Carmody, Tribunal Member