



Civil Resolution Tribunal

Date Issued: April 19, 2024

File: ST-2023-006746

Type: Strata

Civil Resolution Tribunal

Indexed as: *Butler v. The Owners, Strata Plan NWS 3403*, 2024 BCCRT 379

BETWEEN:

KENNETH BUTLER

APPLICANT

AND:

The Owners, Strata Plan NWS 3403

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about strata governance and repair and maintenance obligations. Kenneth Butler owns a strata lot in the strata corporation, The Owners, Strata Plan NWS 3403 (strata). Mr. Butler seeks 3 orders. First, he wants the strata to hold regular annual general meetings (AGMs). Second, he wants the strata to “stop wasting

money on sub-standard depreciation reports.” Third, he wants the strata to create a repair and maintenance schedule and to “fix what needs to be fixed.” He provides some examples of things he says the strata should repair.

2. The strata says Mr. Butler is a vexatious litigant raising issues that have already been decided. It also says his claims are vague and should be dismissed.
3. Mr. Butler represents himself. 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). The CRT’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving dispute, the CRT must apply principles of law and fairness. 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, videoconference, 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, 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.

Previous CRT decisions

8. The strata argues that Mr. Butler’s claims in this dispute are similar to claims that have been addressed in previous CRT decisions. The legal principle of *res judicata*,

meaning “already decided”, prevents a party from bringing multiple legal proceedings about the same issue.

9. The strata says Mr. Butler continues to make claims about the personal life of a strata council member. It is true that Mr. Butler makes several allegations about a council member’s conduct, but as I explain below, I have not considered those allegations in this dispute.
10. There are two previously published CRT decisions involving Mr. Butler and the strata - *Butler v. Nikolaou*, 2022 BCCRT 81 (*Butler 2022*) and *Butler v. The Owners, Strata Plan NWS 3403*, 2023 BCCRT 460 (*Butler 2023*). I find Mr. Butler’s claims in this dispute are distinct from the claims in those disputes. In *Butler 2022*, Mr. Butler wanted an order that the strata fix his garage door, an order that the strata address how water was draining off the roof through gutters, and an order for certain documents. The common property repair and maintenance issues Mr. Butler raises in this dispute are mainly about the roof but not about gutters specifically. *Butler 2023* was about Mr. Butler’s request for financial records and building inspections. I find there is no overlap between those claims and the claims in this dispute. So, I find *res judicata* does not apply here.

Additional claims and remedies

11. In his written arguments, Mr. Butler makes additional claims and seeks additional remedies that were not outlined in the Dispute Notice. For example, he says that owners should be allowed to see certain contractors’ reports, that the strata lost or refuses to deposit his strata fee cheques, that the strata forged signatures on a parking agreement, and that the strata has engaged in lies, manipulation, bullying, deception, and corruption. In his final reply submission, Mr. Butler asks for approximately 30 orders. None of these orders were set out in the Dispute Notice and many of them relate to issues he raises for the first time in his final reply.
12. I find it would be procedurally unfair to consider these potential claims and remedies that the strata had little or no opportunity to respond to. The purpose of the Dispute Notice is to define the issues and provide fair notice to the respondent of the claims

against it. CRT Rule 1.19 says the CRT will not issue an amended Dispute Notice after the dispute has entered the tribunal decision process except in extraordinary circumstances. I find no extraordinary circumstances exist here to justify adding new claims at this late stage in the CRT's process. For that reason, I have not considered these new potential claims, and I confine this decision to the claims identified in the Dispute Notice.

13. The Dispute Notice also referred to "Corrupt dishonest Strata Council" without articulating a related claim. In submissions, Mr. Butler asks for orders prohibiting people who meet certain criteria from serving on strata council. Section 31 of the *Strata Property Act* (SPA) sets the standard expected of strata council members, which is to act honestly and in good faith with a view to the strata's best interests. However, as noted in *Butler 2022*, claims about breaches of the standard expected of strata council members must be made by the strata. Individual owners have no standing, or legal right, to make a claim against a strata council member for breaching SPA section 31. I therefore dismiss this possible claim.

Late evidence

14. Mr. Butler submitted some evidence after the CRT's deadline. Some of the new evidence – a short video showing water pooling somewhere outside without explanation, photos of snow on the ground, photos of wet soffits, and a real estate listing – I find are of little or no relevance to the issues before me. For that reason, I decline to admit those pieces of evidence.
15. The two relevant pieces of evidence are an email from a strata council member indicating that an AGM was scheduled for January 17, 2024, and an email from Mr. Butler asking why the strata had not held an AGM. They are relevant to Mr. Butler's claim that the strata is not holding AGMs. I invited the strata to make submissions on the late evidence and to confirm whether it had held an AGM or special general meeting (SGM) in 2023 or 2024, and if so, to provide the notice package or minutes as appropriate.

- 16. The strata objected to the admission of Mr. Butler’s late evidence. In brief, the strata says accepting late evidence is unfair, and adhering to procedural timelines is essential to the administration of justice. I agree that I must ensure that any relaxation of the CRT’s rules and procedural timelines for one party does not operate unfairly to the other party. Here, the strata does not say why allowing this late evidence impedes the strata’s ability to present its defence on the straightforward issue of whether it has held general meetings. I see no prejudice to the strata in considering both parties’ late evidence and the strata’s submissions on this issue.

- 17. The strata submitted a draft notice and agenda for an AGM to be held on May 25, 2024, which I find relevant. I address it below.

ISSUES

- 18. The issues in this dispute are:
 - a. Is the strata holding AGMs in compliance with the SPA?
 - b. Is the strata complying with the SPA’s requirement to obtain depreciation reports?
 - c. Should I order the strata to prepare a repair and maintenance schedule or repair any specific property?

EVIDENCE AND ANALYSIS

- 19. As the applicant in this civil proceeding, Mr. Butler 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.

- 20. The strata was created in 1990 and includes 9 residential strata lots in 2 buildings. Mr. Butler owns strata lot 8, which is in a building of 6 side-by-side townhouse-style strata lots.

21. The strata filed bylaw amendments in 1992. Those bylaws do not address the repair and maintenance of common property, so I find that standard bylaw 8 applies under section 120 of the SPA and section 17.11 of the *Strata Property Regulation*. Standard bylaw 8 and SPA section 72 both make the strata responsible for repairing and maintaining common property.
22. It is undisputed that the strata has not always followed the SPA's requirements. A January 10, 2022 letter from the strata council president at the time acknowledged that there was no record of a formal meeting of owners after 2014. There were meetings apparently, but they were not minuted or the minutes were lost. It is not clear whether the strata prepared budgets or financial statements as required by the SPA.

Annual General Meetings

23. Mr. Butler says the strata has failed to hold AGMs annually and owners have not voted to waive the requirement. SPA section 40 says that a strata corporation must hold an AGM no later than 2 months after its fiscal year end unless the AGM is waived under section 41, which sets out specific requirements.
24. On February 4, 2022, the strata held its 2022 AGM. The strata's fiscal year aligns with the calendar year, so I find the strata complied with SPA section 40 by holding its AGM within 2 months of its fiscal year end.
25. The strata president's update indicated that the strata anticipated some significant expenses, including window and sliding door replacement for all strata lots, painting of all doors and trim, and obtaining a "Property Conditional Assessment," which I take to mean a depreciation report, which I discuss in the next section.
26. According to the minutes, there was a unanimous vote that the approval of the strata's financial statement would be tabled to a future SGM. There was another unanimous vote that the "Maintenance Fee Schedule", which I take to mean strata fees under SPA section 92, was approved on the condition that the proposed budget would be re-examined and re-presented to all owners at a future SGM.

27. Based on the strata's submissions, as of April 2024 it had not held that future SGM to approve the strata's 2022 financial statement or to re-present the budget. However, I find there would be no purpose in ordering it to do so. Mr. Butler does not ask for that remedy and in any event, the SPA does not appear to contemplate conditional budget approval. Budgets are either approved by a majority vote or they are not. If they are not approved, SPA section 104 sets out how the strata corporation may obtain approval at a subsequent SGM. That section also describes how the strata may spend money out of the operating fund until a new budget is approved while owners continue to pay strata fees as before.
28. Based on the strata's submissions, it did not hold an AGM for 2023. I find there would be no purpose in ordering the strata to do so now, since the fiscal and calendar year 2023 has already come and gone. Evidence shows that the strata is in the process of preparing for an AGM on May 25, 2024, which will be late. The notice package appears to be in draft form and does not contain the wording of resolutions to be voted on.
29. The CRT very rarely makes orders that the strata comply with the SPA. This is because the strata must follow the SPA and its bylaws whether the CRT orders it to do so or not (see, e.g., *Wadler v. The Owners, Strata Plan VR 495*, 2021 BCCRT 748). However, I find that is an inadequate answer for an owner like Mr. Butler who has seen just one validly-held and documented AGM in over a decade.
30. I find it is appropriate to make an order here. I order the strata to hold an AGM in compliance with the SPA within 60 days.

Is the strata complying with the SPA's requirements about depreciation reports?

31. Depreciation reports are reports estimating the repair and replacement cost for major strata components, and the expected life of those items. SPA Section 94 says depreciation reports must contain information set out section 6.2 in the *Strata Property Regulation*.

32. The strata obtained a depreciation report on August 24, 2023, after Mr. Butler started this dispute. It was authored by Reliance Asset Consulting Inc.
33. Mr. Butler says the depreciation report is substandard and the strata should stop wasting money on substandard depreciation reports. He quotes from *Butler 2023*, where a CRT vice chair observed, “it is clear the report does not meet the strict requirements of a depreciation report set out in the SPA.” However, that observation was about a 1-page document dated April 19, 2022. It is not the 50-page August 24, 2023 depreciation report.
34. Mr. Butler does not say how the August 24, 2023 depreciation report does not meet the *Strata Property Regulation’s* requirements. On its face, it appears to meet the requirements. Accordingly, I find Mr. Butler has not proved that the strata is not complying with SPA section 94, and I dismiss this claim.

Should I order the strata to prepare a repair and maintenance schedule or to repair any specific property?

35. In the Dispute Notice, Mr. Butler said he wants the strata to “fix what needs to be fixed” and not to wait until repairs become more expensive. He provides two examples. The first is a garage door dent that he says the strata could have fixed sooner instead of letting it wither away “like exposed wood needing paint.” I find Mr. Butler is likely referring to his wooden garage door that was the subject of *Butler 2022*. In that decision, the CRT ordered the strata to replace Mr. Butler’s garage door. There is no suggestion that the strata failed to comply with this order and in any event, the CRT cannot enforce its own orders. I find that Mr. Butler has provided this example to support his position that the strata has generally failed to proactively maintain common property or make timely common property repairs.
36. The other example provided in the Dispute Notice is painting “trimmings” and doors, which Mr. Butler says was in the 2022 budget but has not been done. The strata does not dispute that it has not painted doors and trim. However, while the president’s report mentioned the need to paint doors and trim, there was no expense identified in the 2022 budget for that purpose, or for painting in general. Further, the operating

fund is for expenses that occur annually or more frequently. The expense of painting doors and trims should only be part of the operating fund if it is being spread out over several years.

37. Section 72 of the SPA says that a strata corporation must repair and maintain common property. In performing this duty, the strata must 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). Because Mr. Butler has not provided sufficient evidence that doors and trim need repainting urgently or should be prioritized over other repairs, I decline to order the strata to paint the doors and trim.
38. The SPA does not require strata corporations to prepare a repair and maintenance schedule, although it may be prudent to do so in some circumstances. Here, the strata has recently taken steps to identify repair and maintenance priorities. Obtaining the depreciation report was the most significant step. Following that, the strata obtained an August 30, 2023 estimate from Paramount Projects to review the depreciation report and provide more detailed assessments of specific areas before preparing a construction budget. The strata says it will decide whether to proceed with this report at its next AGM. I find that approach is reasonable. I dismiss Mr. Butler's claim for the strata to prepare a repair and maintenance schedule.
39. Mr. Butler says the strata has ignored warnings and recommendations from roofers and gutter companies. He says when it rains he has nightmares about bulging wet ceilings. Mr. Butler provided a September 27, 2023 letter from his physician, Dr. Ken Satake, stating that mould from water damage and excessive moisture in Mr. Butler's living space has compromised his health. As the strata points out, the letter is very brief and Dr. Satake does not explain how they reached these conclusions. For example, Dr. Satake does not say what symptoms Mr. Butler had that indicated mould

exposure, or for how long those symptoms had presented. For these reasons, I place little weight on Dr. Satake's letter.

40. Mr. Butler provided some evidence of ceiling water stains and moisture readings but he does not say when the stains occurred or when the readings were taken. There is also no evidence, expert or otherwise, about what the readings mean. I find Mr. Butler has not established the presence of mould in or around his strata lot.
41. There are three roof reports in evidence. None of reports' authors' qualifications are before me, so I do not accept any of them as expert evidence to the extent that they express opinions about the best approach to roof repair.
42. The first roof report, from Taves Roofing, was obtained by a strata council member. It is undated but I accept Mr. Butler's unchallenged submission that it was created in April 2022. Taves made 4 recommendations for the roof – to clean roof debris, spray the roof with moss treatment, repair rotten fascia boards, and reattach leaf guards. The strata does not say whether it did any of these things.
43. The second roof report is from Citadel Roof & Building Maintenance, dated October 7, 2022. It said that roof vents had exposed nails and nail holes that were not sealed. It recommended roof cleaning, resealing B-vents, changing pipe boots, changing attic vents, and replacing fascia boards. Again the strata does not say it did any of these things.
44. The third roof report is from Army Roofing Inc., dated August 12, 2023. Army's report was prepared for Mr. Butler. Army said many roof protrusions, which I take to mean vents and pipes, have degraded. It said this is a "serious concern and is already a significant leak on the roof." Army said rotten fascia boards require immediate replacement. Army took photos in an attic showing the roof deck from below, where it observed water staining and mould staining. Army also said the roofing shingles had significant granular loss, meaning they would break down faster. Army said its "strongest recommendation" is for complete roof replacement.

45. The Taves and Citadel reports do not suggest replacing the roof. The depreciation report said the asphalt shingles have an estimated remaining life of 20 years. It said there was minor moss buildup and uneven sections but otherwise no issues with the roof. However, an email from Reliance to Mr. Butler confirmed that Reliance does not “typically” go up on the roof or inspect attics. So, it is not clear how Reliance concluded that the shingles have 20 years of life remaining.
46. There is agreement among the three reports that the rotten fascia boards must be replaced. There is general agreement between the Army and Citadel reports that attic vents and pipe boots should be resealed or replaced as appropriate. I therefore consider it appropriate to order the strata to complete the repairs set out in Section 1 of the Citadel report within 120 days.
47. That is, I order the strata to:
- a. Clean the roof,
 - b. Re-seal B-vents,
 - c. Ensure all pipe boots have lead flashings,
 - d. Replace attic vents,
 - e. Replace all rotting or damaged fascia boards.
48. The evidence before me is insufficient to warrant an order that the strata replace its entire roof. I find the strata is best positioned to consider the remaining useful life of the shingles and the cost-effectiveness of complete replacement versus spot repairs.
49. I find Mr. Butler has not proven that any other repairs are immediately necessary.

CRT FEES AND EXPENSES

50. Based on the CRTA and the CRT’s rules, as Mr. Butler was partially successful, I find he is entitled to reimbursement of \$50 for half his paid CRT fees. The strata did not pay CRT fees.

51. In his arguments about CRT fees and dispute-related expenses, Mr. Butler asks for several additional remedies ranging from the imposition of a \$10,000 fine against a strata council member to \$200,000 in damages for what he says his home would be worth with a better strata council. These are not dispute-related expenses, and in any event there is no legal or evidentiary foundation for these claims, so I dismiss them.
52. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Mr. Butler.

ORDERS

53. I order the strata, within 60 days, to hold an AGM in compliance with the SPA.
54. I order the strata, within 120 days and in accordance with Section 1 of the Citadel report, to:
 - a. Clean the roof,
 - b. Re-seal B-vents,
 - c. Ensure all pipe boots have lead flashings,
 - d. Replace attic vents, and
 - e. Replace all rotting or damaged fascia boards.
55. I order the strata, within 30 days, to pay Mr. Butler \$50 in CRT fees.
56. Mr. Butler is entitled to post-judgment interest, as applicable.
57. I dismiss Mr. Butler's remaining claims.

58. This is a validated decision and order. 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