



# Civil Resolution Tribunal

Date Issued: June 6, 2024

Date Amended: July 3, 2024<sup>1</sup>

File: ST-2023-003200

Type: Strata

Civil Resolution Tribunal

Indexed as: *Podolsky v. The Owners, Strata Plan EPS518*, 2024 BCCRT 512

B E T W E E N :

DONALD PODOLSKY

**APPLICANT**

A N D :

The Owners, Strata Plan EPS518

**RESPONDENT**

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## **AMENDED<sup>1</sup> REASONS FOR DECISION**

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## **INTRODUCTION**

1. This strata property dispute is about building envelope repairs and reimbursement of repair expenses relating to a roof leak.

2. The applicant, Donald Podolsky, is a former owner of a strata lot (SL36) in the respondent strata corporation, The Owners, Strata Plan EPS518 (strata). Mr. Podolsky represents himself. A strata council member represents the strata.
3. Mr. Podolsky says the strata was negligent in its repair of a leak in the roof above SL36 and that SL36 sustained water damage as a result. He says the strata is responsible to reimburse him for the cost he paid to repair the roof and SL36. Mr. Podolsky also says the strata is responsible for other building envelope repairs to the “rock siding”. He seeks an order for the strata to “complete building envelope repairs to the roof, skylight, and rock siding” at a value of \$10,000.00. He also seeks an order for \$1,840.00 for temporary building envelope, drywall, and paint repairs, which I infer is the amount he paid to repair the roof and SL36 damage.
4. The strata denies all liability and says it was not negligent. It says it was not aware of any roof problems and reasonably responded to Mr. Podolsky’s leak concerns. It says the repairs were delayed by 2 months because Mr. Podolsky refused to allow its contractor access to investigate the leak. The strata says it never approved Mr. Podolsky to repair the roof, and that once he provided access, it addressed its roof repair obligations in a reasonable manner. As for the claimed rock siding repairs, the strata says it has accepted responsibility for the repairs, which were planned for the spring of 2024. It also says Mr. Podolsky never paid anything for rock siding repairs. The strata asks that Mr. Podolsky’s claims be dismissed.
5. As explained below, I dismiss Mr. Podolsky’s claims and this dispute.

## **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. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the written evidence and submissions provided.
8. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

## **ISSUES**

9. The issues in this dispute are:
  - a. Who is responsible for repair and maintenance of the exterior building components?
  - b. Was the strata negligent in its repair obligations?
  - c. Must the strata reimburse Mr. Podolsky for his claimed repair expenses?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

10. In a civil proceeding such as this, Mr. Podolsky 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 information I find relevant to explain my decision.
11. The strata was created in March 2012 and exists under the *Strata Property Act* (SPA). SL36 is 3 levels with a roof deck. The roof deck is shown on the strata plan as limited common property for the exclusive use of SL36. Access to the roof deck is by way of a roof hatch through SL36.
12. The strata filed a complete new set of bylaws with the Land Title Office on October 24, 2017, which are the bylaws applicable to this dispute. The Standard Bylaws under the SPA do not apply. I consider relevant bylaws below as necessary.
13. The basic facts are undisputed.

14. On December 26, 2022, Mr. Podolsky reported to the strata manager a leak into the upper level of his strata lot near the roof hatch. The manager responded within 2.5 hours and said she would dispatch a roofing contractor (Laing) to investigate the leak. In the same email, the manager suggested Mr. Podolsky contact his personal insurer about emergency repairs as they were likely below the strata's \$25,000.00 water damage deductible.
15. Mr. Podolsky responded to the strata manager immediately and stated he would do the repairs himself. He told Laing the same thing when it contacted Mr. Podolsky to investigate the leak. All of this occurred on December 2, 2022.
16. On January 3, 2023, the strata manager asked Laing to contact Mr. Podolsky again to schedule an investigation. On January 9, 2023, Laing reported that Mr. Podolsky asked who would be paying for the investigation.
17. In later emails, the strata manager advised Mr. Podolsky that the strata was responsible for common property repairs, but that Mr. Podolsky might be responsible for the cost of the investigation "depending on the reported findings". I infer the strata wanted the ability to charge Mr. Podolsky for the cost of the repair if the cause of the water leak was not its responsibility.
18. On January 24, 2023, Laing reported that Mr. Podolsky again refused to allow access for the investigation. The strata manager suspected Mr. Podolsky misunderstood her email.
19. No subsequent emails are in evidence, but Laing did complete an investigation of the roof above SL36 on February 28, 2023, and provided a report on its investigation dated the same day. The report concluded the leak was caused by a lack of a proper membrane under roof flashing that allowed water to enter the strata lot due to a build up of snow. Laing said further investigation was required to determine the repair, which it ultimately completed at the strata's expense.

## ***Repair obligations***

20. Bylaw 51(1) makes an owner responsible for repair and maintenance of their strata lot, unless the strata is responsible under the SPA and its bylaws. The interior repairs to SL36 were to a painted drywall wall damaged by water. There is nothing in the SPA or bylaws that makes the strata responsible for these repairs, so I find they are Mr. Podolsky's responsibility unless the strata was negligent.
21. SPA section 72(1) and bylaw 52(1) make the strata responsible for repair and maintenance of common property. Bylaw 52(1) makes the strata responsible for limited common property that usually occurs less often than once per year. Bylaw 51(1) also makes the strata responsible for the exterior siding and building envelope, and doors, windows, and skylights on the exterior of the building. The exterior roof components consist of sloped metal roofing, a roof hatch, and the limited common property roof deck. There is no dispute that the strata was responsible for repairing the roof leak identified by Laing. The strata also admits it is responsible for any rock siding repairs. I agree with the parties because I find the exterior building components are either common property or limited common property for which the strata is responsible under the SPA and bylaws.
22. Based on the evidence, I find the strata has permanently repaired the roof area above SL36 and has committed to repair the rock siding. Therefore, I decline to order the strata to complete these repairs.

## ***Was the strata negligent?***

23. To be successful in an action for negligence, Mr. Podolsky must demonstrate that the strata owed him a duty of care, that the strata breached the standard of care, that he sustained damage, and that the damage was caused by the strata's breach: see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3. For the following reasons, I find the strata was not negligent in its repair of the building components.

### The strata's duty to repair

24. In *Slosar v. Strata Plan KAS 2846*, 2021 BCSC 1174, the BC Supreme Court summarized a strata corporation's duty to repair at paragraph 66.

The standard against which the Strata's actions are to be measured in assessing its duty under s. 72 of the SPA is objective reasonableness, which requires, among other things, balancing interests to achieve the greatest good for the greatest number given budget constraints. Contrary to the petitioner's arguments, there is no requirement that repairs be performed immediately or perfectly: *Hirji v. Strata Plan VR 44*, 2015 BCSC 2043 at para. 146. Steps required to be taken are dictated by the circumstances at the time. The standard is not perfection nor is it to be judged with the benefit of hindsight.

25. As I have found, there is no question SPA section 72 and bylaw 52(1) require the strata to repair and maintain the building components at issue here. So, the strata clearly owed Mr. Podolsky a duty of care. The next question is whether the strata acted in an objectively reasonable manner when conducting its repair and maintenance obligations. I find that it has for the reasons that follow.

### The roof leak

26. The strata first became aware of a leak into SL36 on December 26, 2022, when Mr. Podolsky emailed the strata manager. There is no evidence the strata was aware of the roof leak at an earlier date. The strata immediately tried to arrange for Laing to investigate the leak, but that investigation was delayed by about 2 months due to Mr. Podolsky's actions. The delay cannot be attributed to the strata and there is no evidence further damage occurred during the 2-month timeframe. I find it was reasonable for the strata to notify Mr. Podolsky that he might be responsible for the cost of the investigation if it turned out that he had caused the leak. This is consistent with bylaw 52(1)(c)(i), which implies the strata is not responsible to repair or maintain damage to limited common property caused by an owner. While the strata manager's email notifying Mr. Podolsky of his responsibilities could have been more clearly

worded, the strata accepted its repair responsibility and took immediate steps to repair the areas identified by Laing once their investigation was complete.

*The rock siding*

27. As mentioned, the strata said it would address the rock siding in the spring of 2024 and may already have started its repair. Mr. Podolsky does not dispute this. There was also no evidence provided about the condition of the rock siding or how it affected Mr. Podolsky.

28. For these reasons, I find the strata acted reasonably when it addressed its repair and maintenance obligations for the roof and rock siding. Since the strata did not breach the standard of care, I dismiss Mr. Podolsky's claim that the strata was negligent.

***Must the strata reimburse Mr. Podolsky for his claimed expenses?***

29. Mr. Podolsky placed a value of \$10,000.00 on his claim for repair to the roof and rock siding. As noted, there is no evidence he was affected by the condition of the rock siding or that he paid anything for its repair. I understand Mr. Podolsky wanted the strata to address the rock siding as a preventative or aesthetic issue, which I find it has. Since Mr. Podolsky did not pay any amount for the rock siding, he is not entitled to any reimbursement.

30. As for the roof leak, Mr. Podolsky refused to allow the strata to investigate the leak. According to his submitted invoices, he paid a total of \$2,190.30 for temporary repairs to the roof (\$1,350.30) and the interior water damage to his strata lot (\$840.00), which is more than the \$1,840.00 he claims. In any event, I have found the strata was not negligent. Therefore, Mr. Podolsky is responsible for any interior wall repairs under bylaw 51(1), so I decline to order reimbursement for them.

31. Based on the overall evidence, I find Mr. Podolsky paid his contractor \$1,350.30 to apply caulking to an area below the sloped metal roof without the knowledge or approval of the strata. The strata did not discover these temporary repairs until Laing completed its investigation. The strata is not obligated under the SPA or its bylaws to reimburse Mr. Podolsky for common property repairs he completed on his own.

Further, it was prepared to complete the necessary work and would have done so sooner had Mr. Podolsky permitted access to the roof.

32. For these reasons, I dismiss Mr. Podolsky's claims for reimbursement.

## **CRT FEES AND EXPENSES**

33. Under CRTA section 49 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. The strata did not pay CRT fees. Therefore, I make no order for CRT fees.

34. The strata claimed an estimated \$1,500 for "obtaining documents, expert reports, and compiling evidence" but did not provide any evidence supporting its claimed amount. Therefore, I dismiss the strata's claim for dispute-related expenses.

## **DECISION**

35. I dismiss Mr. Podolsky's claims, and the strata's claim for disputed-related expenses.

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J. Garth Cambrey, Vice Chair

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<sup>1</sup> Amendment Note: Paragraphs 33, 34, and 35 have been amended to correct an accidental omission under the authority of *Civil Resolution Tribunal Act* section 64.