



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Section 2 of The Owners, Strata Plan VIS 3573 v. Section 1 of The Owners, Strata Plan VIS 3573, 2025 BCCRT 1292*

B E T W E E N :

SECTION 2 OF THE OWNERS, STRATA PLAN VIS 3573

APPLICANT

A N D :

SECTION 1 OF THE OWNERS, STRATA PLAN VIS 3573

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey

INTRODUCTION

1. This strata property dispute is about cost allocations between separate sections in a sectioned strata corporation.
2. The applicant, Section 2 of the Owners, Strata Plan VIS 3573, forms the commercial section within The Owners, Strata Plan VIS 3573 or strata. It consists of 2 commercial strata lots. The respondent, Section 1 of the Owners, Strata Plan VIS

3573 forms the residential section within the strata. It consists of 6 residential strata lots. The strata consists of a total of 8 strata lots and is not a party to this dispute. The sections are each represented by an executive member.

3. The commercial section acknowledges the strata's roadways and parking areas include both common property and limited common property, or LCP, designated for the exclusive use of the strata lots in each of the sections. I will refer to the LCP designated to the 6 residential strata lots as residential LCP and the LCP designated to the 2 commercial strata lots as commercial LCP.
4. The commercial section says the residential section has failed to contribute to the cost of salting and snow removal in the strata since January 2021. The commercial section calculates the snow clearing and salting expenses it has paid since 2021 to be \$20,753.47. It seeks an order for compensation from the residential section ranging between \$10,376.74 and \$17,432.90 based on different methods it uses to calculate the residential section's responsibility for the incurred costs. The commercial section also seeks an order that residential section include the cost of salting in its operating budget.
5. The residential section denies the commercial section's claims. It says that each section is responsible for maintaining its own LCP and that it performed its own salting and snow removal throughout the strata, including the common property roadway, during the time relevant to this dispute. The residential section also says it was not a party to the commercial section's contract with the salting and snow removal contractor, so it is not responsible to contribute to the claimed expenses. The residential section also says the commercial section has likely recovered its expenses from its tenants through a triple net lease and that some of the claimed expenses are out of time under the *Limitation Act*. The residential section asks that the commercial section's claims be dismissed.
6. As explained below, I dismiss the commercial section's claims and this dispute.

JURISDICTION AND PROCEDURE

7. These are the formal written reasons of the Civil Resolution Tribunal or CRT. The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* or 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.
8. 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 find I am properly able to assess and weigh the documentary evidence and submissions before me. I am satisfied an oral hearing is not necessary in the interests of justice and decided to hear this dispute through written submissions.
9. 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.

Preliminary Decision

10. On January 17, 2025, a CRT vice chair issued a preliminary decision about the commercial section's request to pause this dispute while the commercial section's representative was out of the country and potentially had unreliable access to the internet. The vice chair determined that pausing the dispute was not appropriate, in part, because the representative had already left the country and emailed CRT staff, but also because they had the opportunity to provide submissions and evidence before they left the country. However, she granted each party an extended deadline to provide its evidence and arguments.
11. The commercial section did not provide any evidence or submissions despite CRT staff making repeated email attempts to obtain evidence and submissions from its representative. On February 21, 2025, staff contacted the representative by telephone, and they expressly declined to participate further.

12. As a result, I have considered only the Dispute Notice, Dispute Response, and the residential section's evidence and submissions in reaching my decision.

Preliminary Issues

Jurisdiction

13. The commercial section started this dispute under the CRT's strata property jurisdiction. That jurisdiction extends to claims that are in respect of the *Strata Property Act* or SPA under CRTA section 121. I find that the commercial section's claim for reimbursement of past expenses could be interpreted as a claim for breach of contract. Breach of contract claims are decided under the CRT's small claims jurisdiction as claims for debt or damages.
14. However, one situation can give rise to various legal claims. As discussed below, I find the commercial section and residential section existed at the material times of this dispute. SPA section 194 and 195 directly address the powers and duties of a section and how section expenses are allocated. So, to the extent these SPA provisions are engaged, I find the dispute falls within the CRT's strata property jurisdiction. For those parts of the dispute that are solely about a breach of contract, I find they cannot be decided under the CRT's strata property jurisdiction. Instead, they must be decided under the CRT's small claims jurisdiction.
15. Whether the CRT decides claims under its strata property or small claims jurisdiction matters because the remedies available under these jurisdictions are different. For example, there is no maximum monetary limit for awards made under its strata property jurisdiction, but the maximum award under the CRT's small claims jurisdiction is \$5,000. Ultimately, nothing turns on this given my conclusion.

Sidewalk Maintenance

16. In the Dispute Notice, the commercial section seeks an order that the residential section contribute to the cost of maintaining what I infer is a municipal walkway. Based on the overall evidence, I find the municipal walkway is not located on common property or LCP. Given the municipal bylaw was not provided in evidence, I decline to consider who is responsible to maintain it.

ISSUES

17. The issues in this dispute are:

- a. Must the residential section reimburse the commercial section for any of its claimed expenses, and if so, on what basis?
- b. Must the residential section budget for roadway salt?

BACKGROUND, EVIDENCE AND ANALYSIS

18. As applicant in a civil proceeding such as this, the commercial section must prove its claims on a balance of probabilities, meaning more likely than not. I reiterate that the commercial section declined to provide any evidence or submissions. I refer only to information I find relevant to explain my decision.
19. The residential section incorrectly referred to itself in its minutes and in most evidence as the strata corporation rather than the residential section, which is confusing. Based on the strata's annual general meeting minutes I find the strata did not follow the SPA and specifically did not approve a budget until October 2023.
20. The strata was created in May 1995 under the *Condominium Act* and continues to operate under the SPA. It consists of 2 commercial strata lots located in a single building and 6 residential townhouse-style strata lots located in a separate building. The strata plan identifies areas surrounding each building as LCP for the exclusive use of the strata lots in that building. From a photograph provided, I find there are parking areas included in both the commercial and residential LCP. There is also a common property roadway used to access both section's LCP and individual residential parking garages.
21. There is a restrictive covenant in favour of the District of Langford, where the strata is situated, that restricts the commercial strata lot owners from using 3 of the commercial LCP parking stalls. I discuss the covenant below.
22. Land Title Office documents confirm a confusing history of the strata's bylaws, which demands a brief review. The sections were first created through a bylaw

amendment on March 29, 1996 when the *Condominium Act* was in force. On January 1, 2002, the Standard Bylaws under the SPA replaced all bylaws filed under the *Condominium Act* except those that were in conflict with the Standard Bylaws and were not in conflict with the SPA. See section 17.11 of *the Strata Property Regulation*.

23. On July 7, 2016, the strata repealed all of its filed bylaws and replaced them with a set of bylaws that I find include the Standard Bylaws with some additions and amendments. Notably, the section bylaws were repealed and were not replaced, so the sections were eliminated at that time.
24. On April 3, 2018, the strata repealed all of its filed bylaws and reinstated its March 29, 1996 bylaws plus the Standard Bylaws. This included bylaw 128A about section expenses that I discuss below. These are the bylaws that are relevant to the commercial section's claimed expenses for 2021 until August 11, 2022, when the bylaws were amended again.
25. On August 11, 2022, the strata replaced its bylaws with a new set of bylaws. The new bylaws maintained the sections, but replaced bylaw 128A with bylaw 4, that also addresses section expenses, which I discuss below.

Must the residential section reimburse the commercial section for any of its claimed expenses, and if so, on what basis?

26. I will first address the SPA as it relates to section expenses. Under SPA section 194, a section can establish its own operating and contingency reserve funds and budgets, assess strata fees and special levies, and enter into contracts in the name of the section, among other things. SPA section 195 and *Strata Property Regulation* section 11.2 say that if a contribution to the operating fund relates to and benefits only LCP for the exclusive use of strata lots in a section, the expense is allocated only to those strata lots.
27. The commercial section says the residential section should compensate it for the salting and snow clearing expenses. It makes a number of arguments in the Dispute Notice. I will address those I find relevant.

LCP areas

28. The commercial section says the bylaws do not state who is responsible for the commercial LCP, so the allocation of expenses for that LCP should be among all strata lots on the basis of unit entitlement. I disagree.
29. Bylaw 128A was approved on April 3, 2018. The bylaw stated that expenses common to a section must be divided among the strata lots in that section. On August 11, 2022, bylaw 4 replaced bylaw 128A. Bylaw 4 states that each section is responsible for expenses that relate solely to that section, to areas designated as LCP for the exclusive use of that section, and that relate to matters that the section is responsible to repair and maintain. I find both bylaws comply with SPA section 195 and *Strata Property Regulation* section 11.2 and only make the commercial section responsible for repair and maintenance of the commercial LCP.
30. The commercial section also notes bylaw 14 permits the residential section owners to park in the 3 commercial stalls that are subject to the restrictive covenant during the times and days when the commercial strata lots are prohibited from parking in those stalls. The commercial section says that this benefits the residential strata lots, so the commercial LCP expenses are not solely the responsibility of the commercial section. For the reasons that follow, I find neither the restrictive covenant nor bylaw 14 have any bearing on this dispute.
31. My reading of the restrictive covenant does not expressly give the residential owners use of the 3 stalls during the times when the 2 commercial strata lots are prohibited from parking there. Rather, the covenant is clearly in favour of the District of Langford and only prohibits commercial strata lot parking there during certain times. I find it more likely that the purpose of the covenant is to ensure visitor parking is available for the commercial strata lots during the prohibited times.
32. I also find that bylaw 14 is unenforceable. SPA section 121 says a bylaw is unenforceable if it contravenes the SPA. Under SPA section 1(1), the commercial LCP is designated for the exclusive use of the commercial strata lots. Therefore, I am of the view that only the commercial strata lot owners or their tenants and guests may use the stalls. From this perspective, the commercial LCP is of no

benefit to the residential strata lot owners.

33. For these reasons, I find the residential section is not responsible for salting and snow clearing of the commercial LCP. I dismiss the commercial section's claim that the residential section must contribute to salting and snow clearing expenses related to the commercial LCP.

Common property roadway

34. I next consider the common property roadway. SPA section 72, Standard Bylaw 8(b), and bylaw 32(b)(i) passed on August 11, 2022, to replace bylaw 8(b) all require the strata to repair and maintain common property, which includes the roadway. It is clear then, that all strata lots are responsible for salting and clearing snow from the roadway. The parties appear to agree on this point. The issue is how the maintenance can be performed.
35. The parties also agree that since at least 2021, the commercial section has contracted out salting and snow clearing of the roadway while the residential section has contributed to such maintenance on a volunteer basis. The residential section argues it was not a party to the salting and snow clearing contracts. Although the commercial section says the salting and snow removal expenses were historically shared on a 50/50 basis, the residential section disagrees. The residential section simply says residential owners provided salting and snow clearing of the roadway on a volunteer basis. I accept this based on the residential section executive president's emails to all residential owners in evidence that include instructions to salt and clear the roadway, and because the commercial section has not proved otherwise.
36. The only evidence about the salting and snow clearing provided by the commercial section is a general ledger listing of the commercial section expenses from January 2021 through March 2023 and invoices from the commercial section to the residential section. There are no invoices from the contractor directly to the strata nor is there is no evidence of a contract, verbal or written, between the 2 sections. Given this, I find the commercial section paid all of the salting and snow clearing expenses on its own. As there is no evidence of a contract, I need not consider

whether the residential section breached its contract with the commercial section.

37. The commercial section also says the strata cannot rely on a volunteer system to maintain common property, citing *Fales v. The Owners, Strata Plan BCS 2721*, 2022 BCCRT 455. In *Fales*, it was undisputed that the owners had generally taken responsibility for clearing snow on the driveway outside their strata lot. There, the strata corporation took the position that if there was no able-bodied person in a strata lot, the owner could ask council for a volunteer to clear the driveway. Mr. Fales had not demonstrated he was unable to clear snow from his driveway, so the strata corporation found he must volunteer to do the work.
38. I find that the commercial section has misinterpreted *Fales*. The tribunal member expressly stated, at paragraph 45, the strata corporation's decision to use a volunteer system to assist with snow clearing for owners who request it may be reasonable. The tribunal member went on to say that the strata corporation cannot require owners to prove there is no able-bodied occupant available to do volunteer work, so it ordered the strata to arrange for someone to complete snow clearing for the area next to Mr. Fales' strata lot. I find the circumstances here are not the same, because the residential section did provide volunteer salting and snow removal services, which I have found is not contrary to the SPA. I dismiss this aspect of the commercial section's claim.
39. The residential section says that the commercial section is not entitled to reimbursement because it cannot seek reimbursement for a strata expense without prior approval, which was not given. It cites several CRT decisions involving owners and a strata corporation that it says applies equally to sections. See for example, *Garry v. The Owners, Strata Plan EPS2501*, 2021 BCCRT 409, at paragraph 80, and *Fenske v. The Owners, Strata Plan BCS 2726*, 2021 BCCRT 1319, at paragraph 25.
40. I agree with the residential section that those CRT decisions support not awarding reimbursement of unapproved expenses without prior agreement of authority to do the work. I also find it reasonable to conclude that the same could apply to section expenses. However, there are exceptions. In *The Owners of Strata Plan NWS 254*

v. Hall, 2016 BCSC 236, the court ordered a strata corporation to reimburse an owner for the cost of replacing common property windows. The owner replaced the windows because it was necessary to prevent further damage to their strata lot after the strata corporation had refused to do so. The court found that the owner was justified in doing the work themselves when the strata corporation refused to do so.

41. I find the exception in *Hall* largely depends on whether the strata corporation is responsible for the expense and refuses to do the work, as well as the gravity of the harm. In other words, if a strata corporation refuses to complete common property repairs and further damage is likely to occur, the strata corporation will usually be responsible to pay for reasonable expenses.
42. *Hall* can be distinguished here because the commercial section has not proven the residential section refused to complete the salting and snow removal, nor has it proved further damage, such as liability, would occur as a result of the volunteer efforts.
43. Finally, the CRT has also awarded reimbursement of unapproved repair and maintenance expenses where the strata corporation has not followed the SPA, and other owners have refused to pay for the common property expense. See for example, *Taheri v. The Owners, Strata Plan EPS4265*, 2024 BCCRT 933. Another example is where a small strata corporation does not follow the SPA, and one owner pays a strata corporation expense. See for example, *Rogers v. Briere*, 2019 BCCRT 1359, where I ordered an owner to reimburse the other owner for insurance premiums paid without the owners' agreement.
44. Here, I do not find any of these exceptions apply, so I agree with the strata that the commercial section cannot claim reimbursement of its salting and snow clearing expenses for the roadway. I dismiss the commercial section's claim for reimbursement.
45. Based on this conclusion, it is not necessary for me to consider the residential section's *Limitation Act* defence nor whether the commercial section has recovered any expenses from its tenants.

Must the residential section budget for roadway salt?

46. The commercial section asks for an order that the residential section include a line item in its budget for roadway salt. I decline to make such an order because it is the strata, and not residential section, that is responsible for the common property roadway.

CRT FEES AND EXPENSES

47. 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 residential section was successful but did not pay CRT fees or claim dispute-related expenses, so I make no order for these things.

DECISION

48. I dismiss the commercial section's claims and this dispute.

J. Garth Cambrey, Tribunal Member