



# Civil Resolution Tribunal

Date Issued: January 28, 2025

File: ST-2022-008776  
and ST-2024-004539

Type: Strata

Civil Resolution Tribunal

Indexed as: *Cuddington v. The Owners, Strata Plan VR 2686*, 2025 BCCRT 124

B E T W E E N :

GARY DOUGLAS CUDDINGTON

**APPLICANT**

A N D :

The Owners, Strata Plan VR 2686

**RESPONDENT**

A N D B E T W E E N :

RICHARD DUNN

**APPLICANT**

A N D :

The Owners, Strata Plan VR 2686

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

J. Garth Cambrey

## INTRODUCTION

1. This strata property dispute is about repair and maintenance. It involves 2 linked disputes, ST-2022-008776 and ST-2024-004539, that include the same small respondent strata corporation, The Owners, Strata Plan VR 2686 (strata), but different strata lot owner applicants. I have issued a single decision because I find the linked disputes involve the same facts and are sufficiently related.
2. The applicant in ST-2022-008776, Gary Cuddington, owns strata lot 3 (SL3) in the strata. The applicant in ST-2024-004539, Richard Dunn, owns strata lot 2 (SL2). Both applicants are self-represented and each of them represents the strata in the other dispute. Mr. Dunn is also the current council president.
3. The strata consists of 4 strata lots in 3 buildings, all of which are located over an underground parking garage. Strata lots 1 and 2 are in separate buildings and strata lots 3 and 4 are in the same building. Mr. Cuddington alleges all of the buildings have suffered building envelope failure. The strata started repairs to the building comprising strata lot 1 and the parking garage prior to this dispute.
4. In ST-2022-008776, Mr. Cuddington argues repairs to the exteriors and roofs of the remaining 2 buildings are required. He largely relies on 2 engineering reports obtained by the strata. He also says that Mr. Dunn has intentionally obstructed the recommended repairs. Mr. Cuddington argues the remaining building envelope repairs should be completed at the same time to reduce the total time of construction, to realize any economies of scale, and to avoid the potential for further delay. He seeks orders that the strata:
  - a. Complete repair and maintenance of the building exteriors and roofs as set out in a Spratt Emanuel Engineering Ltd. (Spratt) report dated March 18, 2022 within 1 year of the date of this decision.
  - b. Retain Spratt or another qualified building envelope professional engineer to provide professional advice and project management services to complete full remediation and repair to the common property roof and

building envelope of the buildings and underground parkade in a single phase, and

- c. Take all steps necessary to raise funds for the repair by special levy or through financing.
5. The strata does not expressly deny that repairs are required but says that the Spratt report is “discredited and not reliable” without providing any other details. In its Dispute Response, the strata disagrees with Mr. Cuddington’s claims but does not provide any details as to why. In submissions, the strata says its owners agreed to resolve the “issues of remediation” at the annual general meeting (AGM) held February 25, 2024. I find the strata does not agree with the recommendations made by Spratt and believes further investigation is needed to determine what repairs are required. I infer the strata asks that the CRT dismiss Mr. Cuddington’s claims because they are premature.
6. In ST-2024-004539, Mr. Dunn effectively says that no repairs are required to SL2. He asked the strata council to exclude SL2 from the repairs approved at February 2024 AGM, but the strata denied his request. He claims the Spratt report was “riddled with errors and falsifications” and based on speculation rather than physical examination of the buildings’ structure. In his dispute application, he asks the CRT for the same remedy, that is, to exclude SL2 from the repairs approved at the February 2024 AGM.
7. Mr. Dunn sought to withdraw his claim in December 2024. He wrote to the CRT case manager to ask that his dispute be withdrawn. CRT staff contacted the strata, but it did not agree to the withdrawal. So, CRT staff asked Mr. Dunn to provide his submissions, which it appears he did. In submissions, Mr. Dunn agrees that Mr. Cuddington has authority to represent the strata for his dispute, but he says Mr. Cuddington does not have authority to deny withdrawal of his claim. Mr. Dunn says a council meeting has been scheduled to address Mr. Cuddington’s authority and that proposed bylaw amendments to be considered at an upcoming general meeting will “if passed, make the CRT [proceeding] redundant”. I take from Mr. Dunn’s submissions that he expects the proposed bylaw amendments to pass and now seeks approval to withdraw his claim under CRT rule 6.1.

8. The strata says that Mr. Dunn has obstructed the building repairs for several years. It argues that SL2 is in the same condition as strata lots 3 and 4, so it should not be excluded from the needed repairs. The strata says that to allow SL2 to be excluded from the repairs is not in the best interest of the strata and will add expense and further delay for all of the required repairs. It denies the CRT proceeding is redundant and says the proceeding is essential to provide the strata a legally binding obligation to repair the remaining buildings in a single phase.
9. The strata objects to Mr. Dunn's withdrawal request and says that Mr. Cuddington, as the strata's representative, has authority to make that objection. I understand the strata to say that if Mr. Dunn's request to withdraw is denied, he will be required to accept the strata's February 2024 approval to remediate all remaining buildings, including the building comprising SL2, in a single phase. The strata argues that denying his request will also take away any potential avenues for Mr. Dunn to further delay the necessary remediation.
10. As explained below, I permit Mr. Dunn to withdraw his claims and order the strata to complete the remaining repairs largely in line with Mr. Cuddington's requests.

## **JURISDICTION AND PROCEDURE**

11. 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.
12. 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. I therefore decided to hear this dispute through written submissions.

13. 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 Issues***

### **Unresolved claims**

14. Given the strata's limited objection to Mr. Cuddington's claims and its general lack of evidence, I considered whether there is an unresolved claim between the parties. As noted in *Suydam v. The Owners, Strata Plan EPS4233*, 2022 BCCRT 642, there must be an unresolved claim or claims between opposing parties. If there is nothing to resolve, there is no claim as that word is defined in the CRTA. While not binding on me, I agree with the tribunal member's analysis and apply it to the facts in this dispute.
15. Here, I find Mr. Cuddington's claim about completing the remaining building envelope repairs is unresolved because the strata essentially argues the repairs are unproven and premature. Mr. Dunn's subsequent request to exclude the SL2 building from the repairs is further evidence the claims are unresolved. It is unclear why Mr. Dunn requested withdrawal of his claims, but I find, if granted, withdrawal would not fully resolve the issues.
16. I also recognize that the strata's respondent arguments in the 2 linked disputes are essentially those of the strata's representative. For Mr. Cuddington's claims in ST-2022-008776, Mr. Dunn represents the strata. For Mr. Dunn's claims in ST-2024-004539, Mr. Cuddington represents the strata. Therefore, the strata's submissions are inconsistent and make no practical sense. I find this dispute is similar to a 2-unit strata dispute where the strata's arguments can be heavily influenced by the owner who is representing it. In many ways, this dispute can be viewed as one between Mr. Cuddington and Mr. Dunn.
17. As explained below, I find the issue about building envelope repairs has been ongoing for several years and there must be a finality to the remaining building repair process. With this in mind, I have considered the parties' claims on the basis of the arguments and evidence before me, but I have put little weight on the strata's arguments.

Strata Property Act (SPA) section 31

18. Mr. Cuddington argues that Mr. Dunn has made continued efforts to delay the building repairs by using his additional tie-casting vote as council president. I find Mr. Cuddington's allegation is akin to arguing Mr. Dunn has acted contrary to SPA section 31. Section 31 requires each strata council member to act honestly and in good faith in the best interest of the strata and exercise the care, diligence, and skill of a reasonably prudent person in comparable circumstances. However, I note the court has found that individual strata lot owners do not have standing (legal authority) to make claims for breaches of SPA section 31. See for example, *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 and *Rochette v. Bradburn*, 2021 BCSC 1752. Based on this, I will not address Mr. Cuddington's allegations that Mr. Dunn has intentionally delayed the strata's repairs in his capacity as a strata council member.
19. I note the strata makes the same argument in Mr. Dunn's dispute. However, given Mr. Cuddington represents the strata in that dispute, I find it more likely than not that the strata's view is reflective of Mr. Cuddington's personal view as mentioned above, so it does not change my conclusion. Even if I took the strata's submissions at face value, the strata did not seek a remedy for any section 31 breach.

Proposed bylaws

20. Both parties made submissions about proposed bylaw amendments and whether they would make this CRT proceeding "redundant". I have not considered those submissions because there were no claims about proposed bylaw amendments in either of the Dispute Notices, the proposed bylaws are not before me, and there is no certainty the proposed bylaw amendments will be approved.

**ISSUES**

21. The issues in this dispute are:
- a. Should the CRT permit Mr. Dunn to withdraw his claim? If not, should Mr. Dunn be permitted to opt out of the approved repairs for SL2?

- b. Should the CRT order the repairs requested by Mr. Cuddington?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

22. As applicants in a civil proceeding such as this, Mr. Cuddington and Mr. Dunn must prove their 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.
23. The strata plan shows the strata was created in June 1990 under the *Condominium Act*. The strata plan also shows that sun decks, crawlspaces, and "duct spaces" are limited common property (LCP) for the exclusive use of the owner of the adjacent strata lot.
24. Mr. Cuddington purchased SL3 in November 2011. Mr. Cuddington says Mr. Dunn was the strata's owner developer who has resided in SL2 since the strata was created in 1990. Mr. Cuddington also says the Mr. Dunn, or his spouse, have been elected council president since then. Given Mr. Dunn does not dispute this I accept it. It is also undisputed that strata lots 1 and 4 were purchased by new owners in 2020 and 2023, respectively.
25. I have reviewed the strata's bylaws, including the bylaws that remained in force after the transition from the *Condominium Act* to the SPA on January 1, 2002, and the bylaw amendment filed with the Land Title Office on April 2, 2013. Based on my review, I find that only the Standard Bylaws under the SPA are relevant here. I discuss the relevant bylaws below, as necessary.
26. According to Mr. Cuddington, when strata lot 1 was purchased by a new owner in 2020, the owner decided to do a complete interior renovation and hired an architect for that work. Once the interior renovation was underway, Mr. Cuddington says it became apparent the building envelope had failed, so the architect retained Spratt to assess the building envelope associated with strata lot 1. Spratt prepared a report in December 2021 following its investigation, but that report is not in evidence.
27. There are 3 building inspection reports in evidence.

28. The first report is dated January 6, 2006 from MHI Inspections Inc. The report's author is unknown, but they state that the strata retained MHI to prepare a maintenance plan for the exteriors of the 3 buildings. However, the report goes on to say that the purpose of the report "quickly changed from identification of maintenance requirements to identification of areas of building envelope failures". Briefly, based on a visual review, the author noted issues with the following:

- a. Exterior cladding and concrete in contact with exterior walls,
- b. Roofing,
- c. Gutters,
- d. Windows, and
- e. Balconies (sundecks).

29. The report recommended a number of maintenance items for each strata lot, but stated the main decision of the strata would be whether to "patch and repair" the building envelopes to the same construction standards, or "begin replacing exteriors with a "rain-screen" exterior envelope that will be reliable for the foreseeable future.

30. The second report is the March 18, 2022 report from Spratt. It is signed by a professional engineer from the United Kingdom and a professional engineer from British Columbia. Although the authors' more detailed qualifications were not provided, I find the report to be expert evidence under the CRT's rules. This report follows an earlier Spratt report on the building comprising strata lot 1 that is not in evidence. In any event, the report's focus was on "the complete building envelope including roofing, building elevations, door and window installations, decks and the parkade". The report makes a number of similar significant findings for each of the 4 strata lots based on visual inspections, exploratory openings, and moisture probes. I summarize them as follows noting that Mr. Cuddington seeks to incorporate these things as part of his requested remedy:

- a. The exterior cladding is essentially a stucco cladding with "wafer bricks" of ½" thickness adhered to the stucco. The report describes the cladding as

face-sealed assembly “which becomes wet at the start of the winter rains [in] mid-October and remains wet until the winter rains end in early April, with no drying potential in between”. The report notes water staining and black surface mould at all exterior wall elevations “with vertical stress cracking”.

- b. There was evidence of water ingress at wall penetrations including rot and decay to the wood framing and sheathing.
  - c. The fiber cement artificial slate roof shingles were in good condition, but there were excessively wide joints and poorly installed metal flashings.
  - d. The roof skylights were at the end of their service life and contrary to the 2019 Vancouver Building Bylaw.
  - e. The deck membranes were past their serviceable life and in need of replacement.
  - f. Based on drywall openings made in the interior of the strata lots, the structural wood sheathing and wood studs were rotted, thereby compromising the structural integrity of the walls.
  - g. Previously repaired areas were showing signs of moisture and there were high moisture readings at various locations.
31. The Spratt report concluded that it was necessary to immediately remediate the building envelope of all of the wood frame structures “for the health and safety of the occupants” because the structural framing and sheathing had been “significantly compromised” over 32 years of water ingress and mould. It did not address the parkade because it reported parkade repairs were in progress with the strata lot 1 repairs.
32. Spratt recommended that all 3 buildings be completely stripped back to the structural wood stud frame. This included removing exterior cladding and wall sheathing to fully expose the wood framing and allow for structural repairs. At the deck areas, Spratt recommend replacement of the membranes. Spratt also recommended the roofing

be removed to allow for rot repairs to the structural sheathing and frame beneath, and the replacement of metal roof flashings. It also recommended replacing the roof skylights. Spratt suggested that all windows would likely require replacement to meet the requirements of the 2019 Vancouver Building Bylaw. Finally, Spratt recommended the new wall assembly be a rain-screen system because it allows for drying of the wall assembly, which the current face-sealed system does not.

33. Spratt estimated a cost of \$2 million for the repairs and suggested the work could be completed within about 1 year. It also said the most cost-effective approach to complete the work would be under a single building permit and single contract for all 3 buildings.
34. The third report is dated January 27, 2023, from BMAC Technologies and Consulting Inc. The report is signed by a project technologist with a Bachelor of Engineering degree and a professional engineer from British Columbia. Although the authors' more detailed qualifications were not provided, I find the report to be expert evidence under the CRT's rules. From the photographs provided in the report, it appears remediation of strata lot 1 was under way at the time the report was prepared.
35. The BMAC investigation consisted of visual reviews and exploratory openings with numerous moisture readings. I summarize the significant findings as follows:
  - a. Sealant around wall penetrations was in poor condition or missing so water penetration at these locations was occurring.
  - b. Plywood sheathing was "wet, stained and deteriorated at several locations throughout the complex". Given the presence of water and structural damage within the wall assembly of all strata lots, BMAC suspected "rotten structural elements" could occur at all strata lots.
  - c. BMAC assumed moisture-related issues are occurring at all window and door locations because it observed no sealant or flashing around the window and door frames it investigated.
  - d. The existing deck waterproofing at strata lots 3 and 4 was "aged" and showed signs of ponding water.

- e. BMAC identified water ingress through cracks in the ceiling of the parkade. However, BMAC was informed that “full waterproofing membrane replacement” was to be completed, which would eliminate the issue.

36. BMAC recommended the following work be completed as soon as possible:

- a. Full replacement of the exterior wall assembly with “a proper rain-screen cladding system”.
- b. Replacement of all windows and doors with proper transition details.
- c. Replacement of existing waterproof membranes on the decks and access stairs with proper upturns and carefully designed details.
- d. Removal or replacement of structural elements of including plywood sheathing and “sloping members”.
- e. Cleaning of the roof surfaces and gutters and paint fascia boards.

37. BMAC also recommend the roof and skylights be replaced within 5 years.

38. There is also a letter in evidence dated November 28, 2022, signed by a professional engineer from Allester Engineering Ltd. addressed to the architect involved in the strata lot 1 repairs. The letter sets out the engineer’s concern over life safety issues for the remaining buildings base on their involvement with strata lot 1 repairs. Specifically, the stated concern was that the buildings comprising strata lots 2, 3, and 4 have potentially suffered structural failure or collapse. It recommended the strata be advised to undertake a renovation to all buildings.

39. Minutes of the February 2024 AGM confirm 2 resolutions were passed that involved repairs to the remaining buildings comprising strata lots 2, 3, and 4, which I discuss in further detail below.

40. I will first consider Mr. Dunn’s request to withdraw his claims in ST-2024-004539.

***Should the CRT permit Mr. Dunn to withdraw his claims?***

41. Under CRT rule 6.1(2), a party can ask a tribunal member for permission to withdraw

their claims after the dispute has been assigned to a tribunal member for adjudication by contacting the tribunal. As noted, this what Mr. Dunn has done.

42. Mr. Dunn sought an order that SL2 could opt out of the approved building repairs, but in submissions, argues that the repair issues were resolved at the February 2024 AGM. The strata argues that Mr. Dunn should not be given permission to withdraw his claim as it would give Mr. Dunn more potential ways to obstruct the repairs. The strata's logic is confusing because by withdrawing his claim to opt out of the approved repair approach, I find Mr. Dunn essentially agrees that SL2 should be included in the building repairs as approved at the February 2024 AGM. I find this directly aligns with Mr. Cuddington's argument, including his argument on behalf of the strata that repairs to the exterior and roofs of the buildings comprising strata lots 2, 3, and 4 should be completed in a single phase, which I find is an appropriate remedy as I discuss further below.
43. On this basis, I permit Mr. Dunn to withdraw his claims in ST-2024-004539 under CRT rule 6.1(2). Accordingly, I direct the CRT to close dispute file ST-2024-004539. That means, under CRT rule 6.1(3), Mr. Dunn can only re-file his CRT claim with the tribunal's permission, subject to the factors listed in rule 6.1(5) and any limitation period.

***Should the CRT order the repairs requested by Mr. Cuddington?***

44. There is no issue and based on the strata plan and SPA section 68, I find that the building exteriors, roofs, and parkade are common property. Under SPA section 72 and Standard Bylaw 8(1)(a), the strata must repair and maintain common property. Under bylaw 8(c)(i), the strata must also repair and maintain the LCP sundecks, crawlspaces, and duct spaces if the repair and maintenance usually occurs less often than once per year, which I find is the case here.
45. Standard Bylaw 8(d) requires the strata to repair and maintain certain parts of a strata lot. For this dispute, the relevant parts of a strata lot include the structure of a building, the exterior of a building, and doors, windows and skylights on the exterior of the building or that front on the common property. That means the strata is also responsible for repair and maintenance of all exterior windows, doors, and skylights.

46. Under SPA section 3, the strata is responsible for managing and maintaining its common property for the benefit of the owners. A strata corporation's standard of care when fulfilling its repair and maintenance obligations is reasonableness. See for example, *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113, at paragraph 69.
47. The reasonableness test requires balancing competing interests of individual owners against those of the remaining owners. See *Weir v. The Owners, Strata Plan NW 17*, 2010 BCSC 784. In *Weir*, the court found at paragraph 23, that a strata corporation has a fundamental duty to repair and maintain common property and that the starting point for the analysis should be deference to a decision made by the strata council as approved by the owners, citing *Browne v. Strata Plan 582*, 2007 BCSC 206.
48. As noted above, both Spratt and BMAC recommended urgent replacement of the building walls and deck membranes with Spratt providing its recommendations in November 2022. Spratt included the roofs and said that immediate remediation of the building envelope of all of the wood frame structures was necessary “for the health and safety of the occupants” because the structural framing and sheathing had been “significantly compromised”. BMAC’s recommendations were made in January 2023, and I find they support those made by Spratt. BMAC said the roofs should be replaced within 5 years, but it has now been 2 years since that report was written.
49. While Mr. Dunn, as the strata’s representative in ST-2022-008776, said the Spratt report was “discredited and... not reliable”, there is nothing in evidence to support this assertion other than an email from Mr. Dunn stating the same thing. In ST-2024-004539, Mr. Dunn says the Spratt report was full of errors and falsification but did not provide any evidence to support his claims. Further, I disagree with Mr. Dunn that the Spratt report was not based on physical examination of structural building components. For example, on page 6 under item 3.4.1, the report states numerous access ports were opened up in the drywall on the interior of strata lots to allow review of the condition of the rear of the structural sheathing and wood framing. I find this clearly represents a physical examination of structural building components. Spratt also had the opportunity to inspect firsthand the building of strata lot 1 during its remediation which I find assisted Spratt to reach its conclusions in its 2022 report.

50. I find it unproven that the Spratt report was discredited or unreliable and I accept the Spratt report and its conclusions. I note the BMAC report essentially agrees with the Spratt report findings and Mr. Dunn did not address the BMAC report.
51. I also note Mr. Dunn provided evidence that SL2 was not suffering water ingress around its main entrance door and asserts the balcony railing of the SL2 “upper deck” is sound. Based on the dates of the evidence, I find the evidence was provided before he requested permission to withdraw his claims. In any event, I find the photographs fail to prove SL2 has not suffered the same general water ingress as other strata lots because water ingress occurred at many locations other than around the entrance doors, as the engineering reports identify.
52. For these reasons, I place significant weight on Spratt and BMAC reports and find the remaining repairs to the 2 buildings comprising strata lots 2, 3, and 4 as described in the engineering reports are necessary. The identified repairs were urgent in 2022 and are even more urgent now.
53. I also place some weight on the November 2022 Allester Engineering Ltd. letter recommending the strata undertake building renovations to the remaining buildings because of potential structural failure or collapse. I say this because Allester was involved with in the strata lot 1 building repairs and reasonably determined that the remaining buildings were likely suffering the same fate.
54. Given the strata had the Spratt and BMAC engineering reports by early 2023 and did not take the recommended steps to begin the remaining repairs, I find the strata’s actions were unreasonable up until the February 2024 AGM resolutions were passed. Even though the February 2024 resolutions were passed by a majority vote and not a  $\frac{3}{4}$  vote, I find the resolutions are supported by  $\frac{3}{4}$  of the owners and were reasonably based on the 2 engineering reports obtained by the strata. I find they are sufficient to cause the strata to move forward with the remaining repairs as discussed below. Unfortunately, it appears these disputes got in the way of the strata taking timely steps to proceed with the remaining repairs. My orders below are largely in line with Mr. Cuddington’s requested remedies and designed to assist the strata in completing its repairs in timely fashion as permitted under CRTA section 48.

55. I turn now to the 2 resolutions approved at the February 2024 AGM.
56. One of the resolutions approved the strata to hire BMAC to proceed with engineering services (pre-construction, design, field review, and contract administration) for complete building envelope repairs to the 2 remaining buildings comprising strata lots 2, 3, and 4, in a single phase. This resolution clearly approved a full building envelope and roof repair of the 2 remaining buildings in a single phase in a timely fashion. I find that approach is reasonable. I also find it reasonable to add that the approved repairs be completed under a single contract to realize any economies of scale that might be available to the strata, and I so order.
57. The second resolution approved the following guidelines (reproduced as written):
- a. The exterior will remain brick in similar size and shape, and wall thickness to 5 inch. With color selection at the owner's discretion. Increased costs for special order ie: for vintage brick replication will be the responsibility of the unit owner.
  - b. Roofs will be a synthetic slate in grey, black, or green/blue tones, chosen by the unit owner.
  - c. A maximum 12-inch additional roof overhang is permitted to accommodate rain screening, insulation, and other envelope improvements.
  - d. Each owner may select new windows and doors or refurbish and replace original windows & doors. All removal and installation costs will be a shared strata expense. If a unit owner chooses new windows that cost more than \$50,000 the additional cost in excess of \$50,000 will be the responsibility of the owner. The ongoing maintenance and repair of newly purchased windows & doors will be the sole responsibility of the individual unit owner. Owners that have installed new windows will be excluded from the ongoing maintenance & repair costs of owners that have chosen to keep original windows.
  - e. Each unit will be responsible for the costs of new lights, mailboxes, gates, and railings (metal or glass).

- f. All internal aspects including carpentry, painting, HVAC, electrical, gas and sprinkler systems are the responsibility of each unit owner.
  - g. Selection and installation of chimney caps to cover metal vents are at the discretion and financial responsibility of each owner.
  - h. Any structural changes by owners such as increased insulation, modifications to patio or landing covers or balconies must have strata approval and will be paid for by individual unit owner.
58. I appreciate that the strata wishes to permit individual owners some leeway in the design process. However, based on my discussion above, the strata is responsible for the repairs, including windows and chimney caps, so all repair expenses are common expenses to be divided among individual strata lots on the basis of unit entitlement. The only exception is if an owner requests an alteration to the common property, such as the type of exterior brick or windows and doors, or to a strata lot, such as interior wall or floor coverings. Those requests can and should be addressed through the current bylaws, which allow for the strata council to approve alteration requests at the individual owner's expense and subject to an alteration or indemnity agreement. Alterations to strata lots are addressed in Standard Bylaw 5 and alterations to common property are addressed in Standard Bylaw 6. In other words, I find the strata must establish a base design and address any changes through alteration requests under the bylaws. This is not to say that design decisions that do not affect price, such as brick or roof shingle colour, cannot be different for the different buildings if the strata agrees.
59. The design guidelines approved at the February 2024 AGM are not the final design. They are simply guidelines. The resolution also does not specify that the repairs follow the recommendations of the Spratt report as Mr. Cuddington requests. However, since the strata has already decided to hire BMAC to design the repairs, I find the most appropriate way to address the repair design is for the strata and its owners to rely on BMAC for advice. I also note the repairs recommended by Spratt and BMAC are not materially different. It is unclear if repairs are needed to the underground parking as there is evidence some repairs have already been completed

or are in the process of being completed. Therefore, I order that the strata proceed with building envelope, roofs, skylights, LCP sun decks, crawlspaces and duct spaces, and parkade repairs as appropriate, based on repair designs recommended by BMAC. Mr. Cuddington requested the repairs be completed within 1 year of the date of this decision. However, I do not want to make an order the strata cannot meet. While the repairs are urgently required, the timeline required to complete them will depend on BMAC and the strata working together to get the repairs done. Therefore, I find it appropriate to order the strata to work with BMAC to ensure the repairs are completed as quickly as possible.

60. Finally, Mr. Cuddington requests an order for the strata to take all steps necessary to raise funds for repairs by either special levy or financing. The February 2024 AGM resolutions do not address funding either the approved engineering services or repairs. The amount in the strata's contingency reserve fund, if any, is unclear, but the use of the contingency reserve fund for the purpose of retaining BMAC and completing the repairs is appropriate. Therefore, I find it reasonable to order the strata to take all steps necessary to approve funding for the engineering services and repairs by special levy, an expense from the contingency reserve fund, or financing, or a combination of these methods. Nothing in this decision restricts the strata from approving engineering services and repair funding separately or in phases, as may be recommended by BMAC.

## **CRT FEES AND EXPENSES**

61. 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. Mr. Cuddington paid \$150 in CRT fees for his dispute and Mr. Dunn paid \$125 in CRT fees for his dispute. The strata paid \$100 to take Mr. Cuddington's dispute to adjudication and nothing for Mr. Dunn's dispute. Mr. Cuddington was successful, so I order the strata to reimburse him \$150 for CRT fees. Mr. Dunn was unsuccessful in excluding SL2 from the repairs, so I find he is not entitled to reimbursement of his CRT fees.
62. Neither party claimed dispute-related expenses, so I order none.

63. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Cuddington or Mr. Dunn.

## **DECISION AND ORDER**

64. I permit Mr. Dunn to withdraw his claims in ST-2024-004539 and I direct the CRT to close that dispute file.

65. I order that the strata:

- a. pay Mr. Cuddington \$150 for CRT fees within 14 days of the date of this decision,
- b. Complete repairs to the buildings comprising strata lots 2, 3, and 4, including the building envelope, roofs, LCP sundecks, crawlspaces and duct spaces, and parkade as recommended by BMAC in consultation with the strata, under a single contract,
- c. Rely on BMAC for repair and design advice,
- d. Ensure the building repairs are completed as quickly as possible, and
- e. Take all steps necessary to approve funding for BMAC's engineering services and the building repairs by special levy, an expense from the contingency reserve fund, or financing, or a combination of these methods.

66. The parties' remaining claims are dismissed.

67. Mr. Cuddington is entitled to post-judgement interest from the strata under the *Court Order Interest Act*, as applicable.

68. This is a validated decision and order. 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 in which it is filed.

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J. Garth Cambrey, Tribunal Member