Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as*: The Owners, Strata Plan BCS4052 v. Richmond Elevator Maintenance Ltd.,* 2019 BCCRT 843

B E T W E E N :

The Owners, Strata Plan BCS4052

APPLICANT

A N D :

RICHMOND ELEVATOR MAINTENANCE LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This small claims dispute is about an elevator and the cost of an engineering report. The applicant strata corporation, The Owners, Strata Plan BCS4052, says the

respondent, Richmond Elevator Maintenance Ltd., caused them unnecessary expenses due to improper elevator maintenance and installation.

2. The applicant says there were a number of electrical surges in October 2016, which the respondent twice said were not caused by the elevator. The applicant seeks the $4,276.13 cost of a March 2018 engineering report it obtained to determine the surges' cause which said it was an incorrect setting of the "soft start" on the elevator's electrical panel.

3. The respondent says it recommended an electrician attend and investigate the electrical supply, and that it never recommended the costly step of hiring an electrical engineer. The respondent denies liability.

4. The applicant is represented by a strata council member, Patrick Dillon. The respondent is represented by Larry Ewanek, who I infer is a principal or employee.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.

6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's

process and found that oral hearings are not necessarily required where credibility is in issue.

7. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

8. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUE

9. The issue in this dispute is to what extent, if any, the respondent must pay $4,276.13 for an engineering report the applicant obtained to identify the cause of electrical surges.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the burden of proof is on the applicant to prove its claims on a balance of probabilities. Although I have reviewed all of the parties' evidence and submissions, I have only referenced what I find necessary to give context to my decision.

11. The evidence before me is relatively straightforward. The applicant provided an email thread, which began on December 7, 2017. The relevant aspects of this thread are as follows:

    a. The respondent confirmed on December 7, 2017 that the elevator was supplied with a 'soft start' option. It is undisputed that the respondent was the supplier and installer of the 'soft start' option.

b. On January 18, 2018, the applicant emailed the respondent noting BC Hydro had encouraged it to engage "their electrical consultants" to have the elevator settings reassessed.

c. On January 30, 2018, the respondent said its technician had checked the elevator and all connections, including the 'soft start', and did not see any issue with the elevator.

d. On April 4, 2018, the applicant's engineer Grant Leese with Vancouver Industrial Electric Ltd. wrote the respondent to say that BC Hydro had recorded a 2.5% voltage deviation or "dip", which suggested it was related to the elevator. The applicant wrote the 'soft start' was set to 120 amps, but noted the technical manual required it to be set at 90 amps. The applicant wrote it had the adjustment made and there were no further voltage dips.

12. On March 31, 2018, Vancouver Industrial Electric issued the applicant its invoice for $4,276.13, the amount claimed in this dispute. The invoice's job description was "power quality investigation to identify the potential cause of rapid voltage change". The applicant provided an excerpt of the engineering report, summarized above. The applicant wrote that the engineer's report was too large to upload to the tribunal's online portal.

13. The engineering report excerpt provided says once the amp setting was adjusted from 120 to 90, the problem was resolved. I do not have the technical manual in evidence, but I find the respondent would have it since it installed the elevator. On balance, I find the respondent set the 'soft start' settings incorrectly.

14. While the respondent says the building power should have been able to support the pump motor's electrical requirements, it did not address the amp setting for the 'soft start' as set out in the technical manual. The respondent also did not directly address the engineering report's findings that 90 amps was the correct setting under the technical manual. While in its Dispute Response the respondent said it "never said the elevator was not causing electrical surge", I find it did essentially say

that in its January 30, 2018 email when, after its technician attended to investigate the surges' cause, it wrote there were no problems with the elevator.

15. In short, the respondent installed the 'soft start' settings incorrectly and then later failed to identify that was the cause of the surges.

16. So, the next issue in this dispute is whether it was reasonable for the applicant to pursue such an expensive report from an electrical engineer, rather than hiring an electrician as suggested by the respondent in its Dispute Response.

17. As noted, the respondent said in its Dispute Response that it told the applicant to have an electrician attend. However, I find this is not supported by the evidence. The parties appeared to regularly communicate by email and there is no email to that effect. Instead, there is the January 30, 2018 email where the respondent wrote it had checked and there was no issue with the elevator.

18. I am satisfied the applicant was entitled to have the elevator investigated, given the respondent's advice there was no issue with the elevator and the applicant felt it had then exhausted all of its possibilities but still needed to find the problem. BC Hydro recommended the applicant retain "their electrical consultants". While the $4,276.13 cost of the report is high, there is no evidence before me that it is so high as to be excessive or that its conclusions were incorrect. The respondent has not specifically addressed the report, and just says the pump motor is fine and the building should be able to handle the pump motor's requirements regardless of the soft start.

19. I find the applicant is entitled to reimbursement for the $4,276.13 report, because the respondent was responsible for improperly setting the soft start settings and because it failed to identify that as the cause of the electrical surges. I find those failures led the applicant to reasonably incur the cost of the engineering report.

20. The applicant is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the $4,276.13 it paid for the report, from March 31, 2018.

21. In accordance with the Act and the tribunal's rules, as the applicant was successful, I find it is entitled to reimbursement of $175 in tribunal fees. No dispute-related expenses were claimed.

ORDERS

22. Within 14 days of this decision, I order the respondent to pay the applicant a total of $4,539.18, broken down as follows:

    a. $4,276.13 in damages,

    b. $88.05 in pre-judgment interest under the COIA, and

    c. $175.00 in tribunal fees.

23. The applicant is entitled to post-judgment interest, as applicable.

24. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

25. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Vice Chair