



Civil Resolution Tribunal

Date Issued: April 25, 2024

File: SC-2023-000805

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan NW2150 v. Quay Pacific Property Management Ltd.*, 2024 BCCRT 403

B E T W E E N :

The Owners, Strata Plan NW2150

APPLICANT

A N D :

QUAY PACIFIC PROPERTY MANAGEMENT LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Alison Wake

INTRODUCTION

1. This dispute is about strata management services. Quay Pacific Property Management Ltd. (Quay Pacific) is the former strata manager for the strata corporation The Owners, Strata Plan NW2150 (strata). The strata says that Quay Pacific failed to comply with its contract or provide adequate services, and claims

\$4,837.31 in damages, as detailed below. The strata is represented by a strata council member.

2. Quay Pacific denies the strata's claims, and says it owes nothing. Quay Pacific is represented by an employee.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 says that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
4. 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. In some respects, the parties in this dispute call into question the credibility, or truthfulness, of the other. However, oral hearings are not necessarily required where credibility is in issue.¹ In this dispute, neither party requested an oral hearing, and I find that I am able to resolve the strata's claims on the basis of the documentary evidence before me. Considering the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
5. 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.
6. Where permitted by CRTA section 118, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

¹ *Yas v. Pope*, 2018 BCSC 282

Additional Claims

7. In submissions, the strata raises additional claims that were not in its Dispute Notice. Specifically, it asks for orders that Quay Pacific:
 - a. Pay it \$2,000 for alleged breaches of section 37(1) of the *Strata Property Act* (SPA),
 - b. Provide documents and prepare financial statements,
 - c. Reimburse invoices that it says Quay Pacific paid without approval, and
 - d. Pay interest for failing to close Quay Pacific's trust accounts.
8. The purpose of the Dispute Notice is to define the issues and provide fair notice to the other party of the claims against them. I find it would be procedurally unfair for me to consider the strata's new claims at this late stage. Adjudicating these entirely new claims would also undermine the CRT's facilitation process. Finally, while CRT rule 1.19(1) allows applicants to request amendments to a Dispute Notice, rule 1.19(3) says the CRT will not allow amendments at the decision phase except in extraordinary circumstances.
9. The strata amended its Dispute Notice once already before the tribunal decision process, and I find there are no extraordinary circumstances here that would justify amending the Dispute Notice further now. So, I find the strata's additional claims are not properly before me, and I have not considered them in this dispute. Nothing in this decision prevents the strata from bringing additional claims against Quay Pacific in a future dispute, subject to any applicable limitation period.

ISSUES

10. The issues in this dispute are:
 - a. Whether Quay Pacific must pay the strata \$1,491.88 for lost discounts due to late payment of its utility bills,

- b. Whether Quay Pacific must pay the strata \$59.89 for late fees on Fortis and BC Hydro bills,
- c. Whether Quay Pacific must reimburse the strata \$1,391.29 for copying and postage charges, and
- d. Whether Quay Pacific must reimburse the strata \$1,790 for one month of management fees.

EVIDENCE AND ANALYSIS

11. As the applicant in this civil proceeding, the strata must prove its 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.
12. The background facts are undisputed. Quay Pacific provided management services to the strata under a May 17, 2019 management agreement. Disagreements arose between the parties about the services provided. Quay Pacific terminated the agreement in a February 10, 2022 letter to the strata with an effective termination date of April 10, 2022. The strata now makes various claims for alleged breaches of the management agreement while it was in force, and a claim for "failure to provide services", which I find is a negligence claim, as discussed below.

Late bill payments

13. The strata says that Quay Pacific paid its August 2020, December 2021, and March 2021 water and sewer bills late. The City of Langley undisputedly charges a discounted rate on these bills if they are paid on or before the due date. The strata says that it lost discounts totaling \$1,491.88 from the City of Langley due to Quay Pacific's late payments, as explained below.
14. Additionally, the strata says that it incurred late fees due to Quay Pacific's late payments of its Fortis and BC Hydro bills.

15. Article 3.1(6) of the management agreement says that Quay Pacific agrees to examine routine expense invoices for accuracy and effect payment. While the agreement does not specifically say that Quay Pacific must pay invoices on time, the court (or CRT) may imply a term into a contract if it is necessary to give business efficacy to the contract. In other words, an implied term must be something that both parties would have considered obvious when they entered the contract.² Here, I find it was an implied term of the management agreement that Quay Pacific would make reasonable efforts to pay invoices on time.

August 2020 City of Langley bill

16. I begin with the strata's claim for its lost discount on its August 2020 bill. I considered whether this claim was filed in time under the *Limitation Act* (LA). The LA provides for a two-year limitation period for most claims, which I find includes a claim for damages for negligence or breach of contract. A limitation period is a specific time period within which an applicant can pursue a legal claim. Here, the strata applied to the CRT for dispute resolution on February 25, 2023, which is more than two years after the late payment in September 2020.

17. However, LA section 6 says that a claim must not be started more than two years after the date it is discovered. Here, the strata says it did not discover the lost discount from the August 2020 bill until May 2022, when it asked the City of Langley to provide details of its previous payments. Quay Pacific does not dispute that this is when the strata discovered this issue, and does not argue that the strata could or should have discovered it sooner. So, I find the strata brought this claim within the applicable limitation period.

18. The strata's utility bill for June 1 to July 31, 2020 was billed on August 17 and was due on September 15. Both parties provided copies of the bill in evidence, which show that Quay Pacific marked it as received on August 31. The bill shows that if it was paid on or before the due date, the total owing was \$6,485.57. If paid after the

² See *Zeitler v. Zeitler (Estate)*, 2010 BCCA 216.

due date, the total was \$7,206.18. The strata says Quay Pacific paid the bill late, and it claims the difference of \$720.61.

19. Quay Pacific says it issued a cheque for this bill on September 11, and mailed it the same day. Both copies of the bill in evidence show a “paid” stamp dated September 11. The strata says that Quay Pacific altered the stamp’s date, because the second digit in the date is handwritten in ink instead of stamped. The strata says the stamp originally read either September 14 or September 17.
20. The strata also provided emails it exchanged with the City of Langley’s Manager of Revenue and Business Systems, PG, in June 2022. PG explained that when the City of Langley receives a payment via Canada Post after the bill deadline, it processes the payment as “on time” if the postmark on the payment envelope is before the bill’s due date. PG confirmed that the strata’s September 2020 payment was due on September 15 but was not received until September 25. PG explained that the City of Langley did not still have the envelope, but confirmed that it must have been postmarked after the deadline if the payment was processed as late.
21. While I find the strata’s allegation that Quay Pacific intentionally altered the “paid” stamp is speculative, I find the stamp is not determinative of the date Quay Pacific mailed the cheque. Quay Pacific provided no other evidence in support of its argument that it mailed the cheque on September 11, such as an employee statement or any internal records relating to the cheque. On balance, I prefer PG’s explanation about the postmark, and I find it is more likely than not that Quay Pacific did not mail the cheque before the payment deadline. I find this was a breach of the management agreement, and the strata is entitled to reimbursement of the lost discount amount of \$720.61.
22. The strata is entitled to interest on this amount under the *Court Order Interest Act* (COIA) from September 15, 2020, the bill’s due date, to the date of this decision. This equals \$57.78.

December 2021 City of Langley bill

23. The strata's utility bill for October 1 to November 30, 2021 was issued on December 15, 2021 and was due on January 17, 2022. The strata says that the City of Langley received payment for this bill late, resulting in a lost discount of \$694.14.
24. Quay Pacific marked the bill as received on December 24, 2021. The strata says that Quay Pacific paid the bill at the bank on January 14, 2022. I find this is consistent with the strata's bank statement in evidence, which shows a debit of the bill amount on January 14, 2022.
25. In a June 2, 2022 email in evidence, PG explained that the bank did not send this payment to the City of Langley until March 4, 2022. They said that the City uses the date it receives a payment from the bank or credit union as the payment date. They suggested contacting the bank to investigate why the payment was sent so late.
26. Quay Pacific says in submissions that it issued and mailed a cheque for this bill on January 23, 2022. As Quay Pacific maintains that it did not make the payment late, I infer this is a typographical error and Quay Pacific likely intended to say January 13. However, Quay Pacific provided no evidence that it mailed a cheque in any event. I prefer PG's explanation as it is consistent with the bank statement in evidence, so I find that Quay Pacific paid the bill at the bank on January 14. As this is before the bill's due date of January 17, I find the strata has not established that Quay Pacific breached the management agreement by paying this bill late. So, I dismiss the strata's claim for reimbursement of the lost discount for this bill.

March 2022 City of Langley bill

27. The strata's utility bill for December 1, 2021 to January 31, 2022 was billed on February 15, 2022 and was due on March 15. Because the strata's payment for the December 2021 bill had not been processed before this bill was issued, as explained above, the previous bill amount without the discount applied was included in the March 2022 bill.

28. The strata says, and Quay Pacific does not dispute, that Quay Pacific made handwritten alterations to the March 2022 bill before paying it. The strata submitted a copy of the bill, which shows that someone wrote “paid” next to the previous bill amount of \$6,941.52. It appears that person then deducted the previous bill amount and the available discount from the bill’s total, and paid the balance. However, this was an error, because the amount Quay Pacific had paid for the previous bill was only \$6,247.38. This left a portion of the March 2022 bill unpaid, which resulted in a further lost discount of \$77.13, as confirmed by the City of Langley’s records in evidence.
29. While I have found that the late payment of the December 2021 bill was not Quay Pacific’s responsibility, I find Quay Pacific was obligated to confirm the figures on the March 2022 bill before paying it. As noted, the management agreement requires Quay Pacific to examine routine expense invoices for accuracy.
30. Quay Pacific did not address this portion of the strata’s claim in its submissions. Absent any explanation from Quay Pacific, I find that it breached the management agreement by failing to adequately examine the March 2022 bill. If it had done so, it would have recognized that the previous payment had not been processed in time and that the amount owing was higher than what it had paid already, due to the lost discount. The strata would not have incurred the additional lost discount of \$77.13. So, I find Quay Pacific is responsible for paying this amount to the strata as well.
31. The strata is entitled to interest under the COIA on this amount, from March 15, 2022, the bill’s due date, to the date of this decision. This equals \$5.67.

December 2021 BC Hydro bill

32. The strata’s December 2021 BC Hydro bill was due on January 14, 2022. The strata submitted a copy of the bill in evidence, which shows that Quay Pacific marked it as received on January 14, and paid it online on February 10.
33. The strata’s following BC Hydro bill shows a late payment charge of \$8.87 for the December 2021 bill. The strata says that Quay Pacific should have paid the

December 2021 bill online on January 14, or paid it directly at the bank, to ensure that it was received on time. Quay Pacific does not address this bill or late payment in its submissions. I accept the strata's submission that it would not have incurred the late fee if Quay Pacific had paid the bill on January 14. In the absence of any explanation from Quay Pacific as to why this was not possible, I find Quay Pacific breached the management agreement by failing to pay the December 2021 bill on time.

34. I find Quay Pacific must reimburse the strata \$8.87 for the late fee. The strata is entitled to interest under the COIA for this amount, from February 14, 2022, which I infer is the date the late fee was due, to the date of this decision. This equals \$0.65.

January 2022 Fortis bill

35. The strata's January 2022 Fortis bill was due on January 13. Both parties submitted a copy of the bill showing that Quay Pacific marked it as received on January 14, and marked it as paid on January 18.
36. The strata says this late payment resulted in a late fee of \$51.02 on the next bill. The strata submitted a copy its February 2022 Fortis bill, which shows a late charge of this amount. However, this bill shows a different address for the strata than the January 2022 bill. The strata plan in evidence shows that the strata consists of two separate buildings, so I infer Fortis bills the strata separately for each building.
37. Because the two bills are for different buildings, it is not clear whether the \$51.02 late fee on the February bill is the result of the late payment on the January bill. In any event, the strata has not explained why Quay Pacific did not receive the January bill until the day after it was due. I find it is unreasonable for the strata to expect Quay Pacific to pay a bill it had not yet received. While the strata argues that Quay Pacific should have paid the bill at the bank rather than by mailing a cheque, and that Quay Pacific should have contacted Fortis and requested an adjustment to the bill, there is no evidence before me that doing either of these things would have eliminated or reduced the late fee.

38. I find the strata has not established that Quay Pacific is responsible for the late fee on its February 2022 Fortis bill. So, I dismiss this part of the strata's claim.

Copying and postage expenses

39. Quay Pacific issued an invoice to the strata on March 17, 2022 for \$1,495.24. This included charges of \$978.08 for copies and \$413.21 for postage, as well as other charges that the strata does not specifically dispute.

40. The strata says the copying and printing charges were incurred to send out the strata's annual general meeting (AGM) notice. The strata argues that Quay Pacific is responsible for these charges, because it sent out the first AGM notice late, and agreed that it would pay for the cost of the second notice.

41. Emails between the parties in evidence show that Quay Pacific agreed to bear the expense of distributing the second AGM package. Quay Pacific does not dispute this, but says that the strata would have had to pay for one package in any event. I agree. I find Quay Pacific's responsibility for the copying and postage charges is limited to the charges associated with the second AGM package.

42. The difficulty is in calculating the amount of copying and postage attributable to the second AGM package. Quay Pacific says that the charges on this invoice are for the month of February 2022, which included printing and postage charges for other documents and cheques that were not related to the AGM.

43. Quay Pacific says that the second AGM package had 32 pages, with a copying cost of 25 cents per page plus GST. It says that there are 76 units in the strata, and postage cost \$1.94 plus GST per package. However, the parties agree that some owners had registered to receive the AGM package by email instead of by mail. The strata says that only 9 units required a mailed package, so it would only have had to pay \$90.55 for postage and copies if the packages were sent out correctly. I infer the strata argues that Quay Pacific mailed the second AGM package to all owners, and incurred additional copying and postage expenses.

44. Emails in evidence show that the strata asked Quay Pacific for a breakdown of the invoice's charges multiple times, but there is no response from Quay Pacific in evidence. Quay Pacific also did not provide a breakdown of the copying and postage charges in evidence in this dispute. Where a party fails to provide relevant evidence without a good explanation, the CRT may draw an adverse inference. This means that the CRT may assume that the party did not provide the evidence because it would not help their case.
45. Here, I find it is appropriate to draw an adverse inference against Quay Pacific for failing to provide evidence about the copying and postage charges. While Quay Pacific agrees that some owners registered to receive the AGM package by email, it provided no evidence about how many packages it mailed. It also provided no evidence about what portion of these charges was attributable to non-AGM matters. In the absence of evidence from Quay Pacific to the contrary, I accept the strata's argument that it would only have had to pay \$90.55 for postage and copies for the AGM package if Quay Pacific had only mailed it to the 9 owners who had not agreed to receive it by email.
46. However, I acknowledge Quay Pacific's argument that at least some of the photocopying and postage charges on this invoice were for routine matters unrelated to the AGM package, which the strata did not directly address. On a judgment basis, in light of the adverse inference, and in the absence of any evidence from either party about the typical monthly expenses for copies and postage, I find 5% of these charges can be attributed to routine expenses. This equals \$69.59.
47. So, I find Quay Pacific must reimburse the strata for the copying and postage charges on this invoice, less the \$90.55 the strata agrees it would have had to pay in any event, and \$69.59 for non-AGM postage and copies. This equals \$1,231.15.
48. The strata is entitled to interest under the COIA on this amount from March 17, 2022, the date of the invoice, to the date of this decision. This equals \$90.40.

Refund of management fees

49. The strata alleges that Quay Pacific failed to provide services under the management agreement, and claims a refund of one month of Quay Pacific's management fees. In the Dispute Notice the strata claimed \$1,790 for this amount, but in submissions it reduced the amount claimed to \$1,779.75, which is consistent with Quay Pacific's invoice in evidence.
50. The strata makes numerous complaints about Quay Pacific's services, including additional late payments, errors in the AGM package, failure to comply with applicable legislation including the SPA and the *Real Estate Services Act*, unanswered or delayed correspondence, and failure to provide proxies to the AGM chair.
51. The management agreement does not contemplate a refund of management fees for a failure to provide adequate services. So, I find the strata essentially argues that Quay Pacific was negligent in its provision of services under the agreement.
52. To succeed in a claim for negligence, the strata must prove that 1) Quay Pacific owed the strata a duty of care, 2) Quay Pacific breached the applicable standard of care, 3) the strata suffered damage, and 4) the damage was caused by Quay Pacific's breach.³
53. In claims of professional negligence, expert evidence is generally required to establish the relevant standard of care, unless the negligence is obvious, or the standard of care is within an ordinary person's knowledge and experience.⁴ Here, while the correspondence in evidence generally shows that the strata was frustrated with aspects of Quay Pacific's services, I find the evidence falls short of egregious or obvious negligence. I find Quay Pacific's professional responsibilities as a strata manager are outside the knowledge of an ordinary person, so expert evidence is required to prove the applicable standard of care.

³ See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3.

⁴ See *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196, at paragraph 112.

54. The strata did not provide expert evidence about the standard expected of a strata manager. In the absence of such evidence, I find the strata has not proven that Quay Pacific acted negligently in providing strata management services. So, I dismiss this part of the strata's claim.
55. I note that I would have dismissed this claim in any event, as the strata provided no evidence that it incurred damages because of Quay Pacific's alleged negligence. To the extent that the strata incurred monetary damages due to Quay Pacific's failure to pay bills on time, I have awarded damages for those specific instances above. There is no evidence before me that the strata incurred any other damages for Quay Pacific's alleged substandard performance, or that it obtained no benefit from the management agreement for an entire month, and so I would have dismissed the strata's negligence claim in any event.

Summary

56. I find the strata is entitled to \$806.61 in damages for Quay Pacific's late payments of its bills, and \$1,231.15 in debt as a refund of copying and postage expenses. The total interest under the COIA for these amounts is \$154.50.

CRT FEES AND EXPENSES

57. 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 was partially successful, so I find it is entitled to reimbursement of half of its CRT fees, or \$87.50. The strata did not claim dispute-related expenses. Quay Pacific says the strata should pay for its legal costs and administrative time, but did not explicitly make a claim for dispute-related expenses. Quay Pacific was unsuccessful and did not provide evidence of its alleged expenses, so I would not have allowed this claim in any event.

ORDERS

58. Within 21 days of this decision, I order Quay Pacific to pay the strata a total of \$2,279.76, broken down as follows:

- a. \$2,037.76 in debt and damages,
- b. \$154.50 in pre-judgment interest under the COIA, and
- c. \$87.50 in CRT fees.

59. The strata is entitled to post-judgment interest, as applicable.

60. I dismiss the strata's remaining claims.

61. This is a validated decision and order. Under CRTA section 58.1, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Alison Wake, Tribunal Member