



# Civil Resolution Tribunal

Date Issued: December 11, 2017

File: ST-2017-002095

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan BCS 1419 v. Zhao*, 2017 BCCRT 138

**B E T W E E N :**

The Owners, Strata Plan BCS 1419

**APPLICANT**

**A N D :**

Hongyan Zhao

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Maureen Abraham

## INTRODUCTION

1. Strata Plan BCS 1419 is a leasehold strata comprised of multiple buildings developed in or about 2004/2005.
2. The applicant is a strata corporation legally known as the Owners, Strata Plan BCS 1419 (strata). It is represented by a member of the strata council.

3. The respondent Hongyan Zhao (owner), is an owner of strata lot 28 in the strata. The respondent is self-represented.
4. The strata says the owner is responsible the cost of investigating and fixing a broken fire system speaker and two bypassed fire system speakers in the owner's unit. The owner says she is not responsible for paying that expense.
5. The strata also asks for an order that the owner reimburse it for tribunal fees paid in the amount of \$225.00.

## **JURISDICTION AND PROCEDURE**

6. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 3.6 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.
7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
8. 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.
9. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
10. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute the tribunal may make one or more of the following orders:

- a. order a party to do or stop doing something;
- b. order a party to pay money;
- c. order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

11. The issues in this dispute are:
- a. Is the owner responsible to pay the cost of fixing the broken and bypassed fire system speakers?
  - b. Is the strata entitled to reimbursement of tribunal fees paid?

## **BACKGROUND AND EVIDENCE**

12. By early 2016, a fire panel in the strata indicated a trouble signal. The strata's fire alarm system provider (contractor) initially traced the problem to another unit in the owner's building where a speaker had been taken down as part of a renovation. When fixing that speaker did not resolve the problem, the contractor did some investigation and unit inspections, and found that the owner's broken and bypassed speakers were the problem.
13. The applicant provided invoices from the contractor which show that the contractor charged the strata for the initial investigation and repairs separately from the investigation and repairs of the owner's unit. The cost of the investigation and repairs to the owner's speakers totalled \$1,389.05, for visits by the contractor on February 15, February 26 and March 3, 2016.
14. The contractor's notes state that two speakers in the owner's unit had been bypassed and one speaker was broken.
15. The applicant provided an email from the contractor's service manager, which says that bypassing the speakers could have been done by anyone comfortable with basic electrical wiring such as replacing a light fixture.

16. In June 2016, the strata wrote the owner and requested reimbursement of \$1,389.05 it had paid the contractor. It enclosed two invoices: one for the February 2016 investigations of the trouble signal, and one for the replacement of the broken speaker. The strata told the owner she was responsible to pay the entire amount because the speakers were an in-suite fixture that the owner was required to maintain and repair.
17. The owner says she received that demand for repayment and that she disputed the charges. She says that she was the first and only owner of the strata unit and has never touched any fire speaker in her unit.
18. She says she told the strata that she would consider paying the cost of replacing the broken speaker, but would not pay the charges for the February 2016 contractor visits as they had “nothing to do with my unit”. She says she told the strata that she had not ever taken the buzzer down or done renovations and was not responsible for the problems with the system. She says she did not receive a reply from the strata. The owner emailed the strata again on September 26, 2016, and November 6, 2016, wanting to discuss the chargeback but did not receive a reply to her emails.
19. In January 2017, the owner sent the strata and its property manager a letter stating that she had not received responses when she had tried to contact them, and that she thought bylaw 4.4 only required her to pay for the cost of repairing the broken speaker. She states that the other expenses were all for investigation outside of her strata unit. She stated that it was her final response to the chargeback, and enclosed a cheque for \$375.27. That amount was the labour and materials cost of replacing the broken speaker.
20. The owner says she spoke with the contractor in March 2017 when they came to her unit for scheduled in-suite service, and asked about the cause of the fire system issues. She says they told her that the fire system is a circuit and a buzzer being taken down could cause a trouble signal on the fire panel as well as damage or bypass of other units on the same circuit.

21. In April 2017, the strata sent the owner a letter returning her cheque and demanding full payment in the amount of \$1,389.05. The strata said in that letter that the owner was responsible for the cost because strata bylaw 4.4 requires owners to pay the expense of repairing damage to strata lots when the expense is not covered by the strata's insurance policy.
22. The respondent says she has lived in the strata lot since 2005, and that she did not bypass or break the fire system speakers.

## **POSITION OF THE PARTIES**

23. The applicant strata's position in its submissions is different than the position it took when it filed the dispute notice.
24. In the dispute notice, the strata said that the owner was responsible for the cost of the chargeback (whether or not any tampering had occurred) because the strata bylaws state that owners must maintain and repair all in-suite fixtures at their own expense. At that time, the strata said that the owner was responsible to repair and maintain the speakers as the owner's property.
25. In the submissions made by the parties, the strata's arguments are all based on an assertion that the speakers are the strata's common property. The owner's arguments also assume the speakers are common property. For the purpose of this decision, I accept that the fire system speakers are common property.
26. The strata argues that:
  - The fire system is the strata's common property and the strata must maintain and repair it;
  - The strata bylaw says that if an owner or their visitor causes damage to common property the strata can charge back the repair cost to that owner;
  - That two speakers in the owner's unit were bypassed means that someone in the owner's unit must have tampered with them; and,

- The tampering damaged the common property and so the owner is responsible for the cost of repairing the system.
27. The applicant requests that I order the respondent to pay it \$1,389.05 plus reimbursement of tribunal fees in the amount of \$225.00.
28. The respondent argues that;
- They are the first and only owners of strata lot 28 and have never touched the fire speakers in the unit;
  - They do not know what caused the broken and bypassed speakers;
  - The problems with the speakers in her strata lot may have been caused by renovation work in another strata lot which tampered with the fire system buzzer; and,
  - Bylaw 4.4 doesn't apply to make her responsible for the cost because she didn't do anything negligent or careless.
29. The respondent requests that I dismiss the applicant's claim, and order the strata to remove the \$1,389.05 from her strata account. She also asks that the strata provide an explanation from the contractor of how the bypass happened.

## **ANALYSIS**

### **Is the owner responsible to pay the cost of fixing the broken and bypassed fire system speakers?**

30. Section 72 of the Strata Property Act (SPA) requires a strata corporation to maintain and repair the strata's common property and common assets.
31. Strata bylaw 3.1 requires owners to repair and maintain their own strata lots, except for repair and maintenance that is the strata's obligation under the bylaws.

32. Bylaw 4.2 says that an owner must not cause damage, other than reasonable wear and tear, to the common property or common assets of the strata.
33. Bylaw 4.4 says that an owner will be responsible for paying the expenses paid by the strata for any repair, replacement or maintenance of common property necessary because of that owner's "act, omission, negligence or carelessness".
34. Bylaw 4.4 uses the same language as a bylaw which was considered by the court in the case *Strata Plan LMS 2446 v. Morrison*, 2011 BCPC 519. The court found that the wording in the bylaw must be read as a whole. Including the words 'negligence' and 'carelessness' means that the strata must prove the owner was actually negligent in order for the owner to be liable for the strata's expense.
35. In order to prove negligence, the strata must prove:
  - (a) It was owed a duty of care by the other person;
  - (b) A breach of the duty by the owner not meeting the standard of care; and,
  - (c) Damage or loss was caused by that person not meeting the standard.
36. The strata proves two of the requirements without an issue. The strata is generally owed a duty of care by the owners that owners will maintain and repair their strata unit so as to avoid causing damage to the strata or common property. This duty is set out in strata bylaw 4.2.
37. The damage or loss caused to the strata was the cost of investigation and repairing the broken and bypassed speakers.
38. The strata must still prove that it is more likely than not that the owner breached their duty to the strata by acting unreasonably in the circumstances.
39. The language used in Bylaw 4.4 means the strata must prove a third element: that the owner caused the speakers to break or be bypassed through the owner's negligence or carelessness.

40. There is no evidence about the cause of the broken speaker. The strata's argument on liability is based entirely on the bypassed speakers.
41. The strata is asking that I make a finding of negligence based on an inference that the owner was responsible for the broken and bypassed speakers. The strata says the fact that the speakers in the unit were bypassed means that the owner (or her guest) must have tampered with them.
42. The strata provided invoices mentioning the system problems and speaker bypass in support of its position. It also provided its property manager's notes detailing her conversations with the contractor. The strata says the contractor concluded that there was tampering.
43. The owner firmly denies that anyone in her unit tampered with the speakers. She says she spoke to the contractor's technician and was told that another owner's renovation (during which they "tampered" with the fire system by removing a buzzer) might have caused the problem with her speakers.
44. An email from the contractor's service manager to the strata's representative dated August 2 states that the service manager asked senior technicians about whether the bypass could have happened spontaneously or because of tampering in another strata lot. She says the technicians confirmed that tampering with the system in one unit could not cause a bypass in another, and that bypassing the speaker could be done by anyone comfortable touching the speaker wiring within the unit.
45. I accept that physical bypass of the speakers' wires within the owner's unit could not have been done through tampering in another strata lot, but the strata's evidence does not explain how one speaker was broken or whether tampering with the wiring in another strata unit could have caused a broken speaker.
46. The strata's evidence does not include anything to establish that the bypassed speakers had been inspected and were working prior to the trouble signal.



47. The fact that the technician bypassed the broken speaker until it could be fixed suggests that a bypassed speaker will not interrupt the circuit and cause a trouble signal on the fire panel.
48. In order to make out an inference of negligence, there must be no reasonable explanation for the bypassed and broken speakers other than the owner tampering with them.
49. It is unknown whether the speakers were actually connected and working anytime prior to the trouble signal. It is equally possible that the bypass existed and was simply not discovered until a speaker had broken.
50. I find that the strata has not provided the necessary evidence for a finding that the owner must have tampered with the speakers or failed to prevent someone in her unit from tampering with the speakers.
51. I find that the owner is not responsible to pay the cost of investigating and repairing the broken and bypassed speakers in the owner's unit. that I order the strata to remove the \$1,389.05 charge from the owner's account.

### **Is the strata entitled to reimbursement of tribunal fees paid?**

52. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable expenses related to the dispute resolution process.
53. The strata did not prove that the owner was negligent and so was not successful with its claim. I see no reason in this case to deviate from the general rule, and so the strata is not entitled to reimbursement of its filing fees from the owner.

### **DECISION AND ORDERS**

54. I order the strata to remove and cancel the \$1,389.05 chargeback from the owner's account.

55. Under section 167 of the *Strata Property Act* SBC 1998 c.43, when a strata corporation brings a tribunal claim against an owner, the owner is not required to contribute to the strata's expenses of bringing that claim. I order the strata to ensure that no part of the strata's expenses with respect to this claim are allocated to the owner.
56. Under section 57 of the Act, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia, a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.

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Maureen Abraham, Tribunal Member