



# Civil Resolution Tribunal

Date Issued: August 24, 2018

File: ST-2017-007437

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wang v. The Owners, Strata Plan LMS 2970*, 2018 BCCRT 473

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

Yi Wang

**APPLICANT**

**A N D :**

The Owners, Strata Plan LMS 2970 and Chao Wang

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Eric Regehr

## **INTRODUCTION**

1. The applicant, Yi Wang, is an owner in the respondent strata, The Owners, Strata Plan LMS 2970 (strata). The respondent, Chao Wang, is also an owner in the strata (respondent). The respondent is the president of the strata council.

2. This dispute arises because the applicant believes that the respondent vandalized the applicant's vehicle. The applicant believes that the strata has an obligation to post public notices regarding the vandalism. The applicant also believes that the strata should have permitted the applicant's spouse to attend a strata council hearing regarding the vandalism on behalf of the applicant.
3. The strata and the respondent both say that there is no credible evidence to support the applicant's allegation that the respondent vandalized the applicant's vehicle.
4. The applicant and the respondent both represented themselves, although the respondent had the assistance of a lawyer. The strata was represented by a member of strata council.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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 I can resolve the issues of credibility without an oral hearing and there are no other reasons that might require an oral hearing.
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. As a preliminary matter, the applicant took issue with the witness statement provided by the respondent, who has difficulty communicating in the English language. The respondent's evidence was translated by a friend. The applicant submits that the translator is not certified. Tribunal rules 28 and 29 permit any person to act as a translator as long as that person is not a witness and does not have an interest in the outcome of the dispute. The translator for the respondent's evidence is not a witness and there is no evidence that they have an interest in the outcome of this dispute.
9. The applicant also takes issue with the fact that the translator is not a commissioner for taking oaths under the *Evidence Act*, but the tribunal is permitted to accept unsworn evidence.
10. I therefore reject the applicant's arguments regarding the admissibility of the respondent's witness statement.
11. Under section 61 of the Act, the tribunal may make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the tribunal in accordance with its mandate. In particular, the tribunal may make such an order on its own initiative, on request by a party, or on recommendation by a case manager (also known as a tribunal facilitator).
12. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute the tribunal may make order a party to do or stop doing something, order a party to pay money, order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

13. The issues in this dispute are:
  - a. Does the tribunal have the authority to accept the respondent's late reply?
  - b. Did the respondent vandalize the applicant's vehicle?

- c. Did the strata act significantly unfairly by refusing to issue a public notice regarding the vandalism?
- d. Should the strata have permitted the applicant's spouse to attend a council meeting on behalf of the applicant?
- e. Is the applicant entitled to damages for emotional pain and suffering and punitive damages?
- f. Should the applicant reimburse the respondent for their legal fees in responding to this dispute?

## **BACKGROUND**

- 14. I note that the applicant made a number of allegations regarding the governance of the strata that are unrelated to the orders the applicant seeks in this dispute. In particular, the applicant made allegations regarding financial wrongdoing by the strata council. Some of these allegations were the subject of a previous decision by the tribunal: *Wang v. The Owners, Strata Plan LMS 2970*, 2017 BCCRT 97. I only address the arguments raised by the applicant that are related to the relief that the applicant seeks in this dispute.
- 15. While I have reviewed and considered all of the evidence, I only refer to the evidence that are necessary to explain my decision.
- 16. The strata is a large development in Richmond, British Columbia. The strata includes 2 high-rise residential towers and ground floor commercial space. The applicant is an owner of a residential lot.
- 17. The strata retains a management company.
- 18. The strata has a number of security cameras set up in the parking lots of the strata. The strata retains footage from the security cameras for 30 days before deleting.

19. On February 9, 2017, someone egged the applicant's vehicle. On February 10, 2017, the applicant discovered that there were two nails in one of their vehicle's tires. The applicant believes that the respondent egged their vehicle and hammered the nails into the tire. The respondent denies that they are responsible.
20. It cost the applicant \$56 to repair the tire.
21. The applicant reported the vandalism to a representative of the strata's property manager on March 19, 2017. By that time, if there was any footage from a security camera of the incident or the person responsible, it would have been deleted. The applicant's email to the property manager did not name the respondent as the vandal.
22. Following their report of vandalism, the applicant demanded that the strata post notices in the public areas of the strata regarding the vandalism.
23. On June 26, 2017, the applicant emailed the property manager alleging that the respondent was the vandal. The applicant later demanded that the respondent's name be included in a public notice regarding the vandalism.
24. On numerous occasions, the applicant requested that their spouse be permitted to attend a strata council meeting on behalf of the applicant, even though the applicant's spouse is not an owner. The applicant wanted a council hearing regarding the vandalism of the applicant's vehicle and the strata's failure to post public notices naming the respondent as the vandal. The applicant repeated their request several times over the following months.
25. The strata did not permit the applicant's spouse to attend any strata meetings. Initially, the strata's explanation was that it would be inappropriate for the strata to determine who the vandal was because there was an ongoing RCMP investigation. Later, the strata relied on section 34.1 of the *Strata Property Act* (SPA) that states only owners and tenants can request to be heard at strata council meetings.

## **POSITION OF THE PARTIES**

26. The applicant requests that I make the following orders:

- The strata publicly post information about the respondent's vandalism of the applicant's vehicle.
- The strata and the respondent pay the applicant \$50,000 in damages for emotional pain and suffering and as punitive damages.
- The strata and the respondent pay the applicant \$56 to reimburse the applicant for the cost to fix the applicant's tire.
- The strata and the respondent reimburse the applicant's tribunal fee and other reasonable dispute-related expenses.

27. The strata and the respondent request that I dismiss the applicant's claim. The respondent also requests that I order the applicant to reimburse the respondent for legal fees incurred in responding to the applicant's claim.

28. I will address the parties' evidence and specific arguments regarding each of the issues below.

## **ANALYSIS**

### ***Does the tribunal have the authority to accept the respondent's late reply?***

29. The respondent filed their dispute response on February 16, 2018, which was over three weeks past the deadline to respond according to the tribunal rules. The applicant submits that the tribunal should not have accepted the late dispute response.

30. The respondent relies on tribunal rule 44, which allows the tribunal to extend a timeline for any step and on section 2(2) of the Act, which sets out the tribunal's mandate to provide flexible dispute resolution and to apply principles of law and

fairness. I agree that tribunal rule 44 and section 2(2) of the Act give the tribunal the authority to accept the respondent's late dispute response.

31. The applicant states that they were prejudiced by the late dispute response, but does not provide any explanation of how they were prejudiced. The applicant was given the opportunity to respond to the dispute response. The applicant has failed to prove that the tribunal's acceptance of the late dispute response prejudiced their case.
32. I therefore decline to make an order with respect to the respondent's late dispute notice.

***Did the respondent vandalize the applicant's vehicle?***

33. The respondent denies vandalizing the applicant's vehicle or knowing anything about it. The respondent states that they have never been questioned by the RCMP.
34. The applicant provides 2 pieces of evidence to support their claim that the respondent vandalized the applicant's vehicle.
35. First, the applicant says that their spouse observed the respondent acting suspiciously after the vandalism. The applicant says that their spouse sat in their vehicle for a month after February 10, 2017, out of fear that the vandal would strike again. The applicant says that on February 12, 2017, the respondent ran away from the applicant's vehicle once the respondent realized that the applicant's spouse was sitting in wait. The applicant states that their spouse saw the respondent acting suspiciously on 2 other occasions in the following months. The applicant says that the only explanation for the respondent's behaviour is that the respondent was trying to vandalize the applicant's vehicle again.
36. There is no evidence directly from the applicant's spouse. However, even if I accept the applicant's spouse's evidence, I find that it falls far short of proving that the respondent vandalized the applicant's vehicle. The evidence is based solely on

the applicant's spouse's interpretation of the respondent's behaviour. I therefore place little weight on this evidence.

37. Second, the applicant provided a statement from a former owner of the strata (witness). The witness states that someone repeatedly hammered nails into their vehicle's tires in 2010 and 2011. The witness came to believe that it was the respondent, even though the witness never saw the respondent do it.
38. In response to the respondent's vandalism, the witness stated that they worked to become friends with the respondent, thinking that the respondent would not vandalize a friend's vehicle. The witness bought the respondent gifts. The instances of vandalism decreased as the witness and the respondent got closer. The witness stated that over the years the respondent gloated about vandalizing cars as a way to seek revenge against perceived enemies.
39. The witness believes that in January 2017, the respondent again put nails into the witness's vehicle tires, although again the witness did not observe it. The witness believes it was retribution for the witness failing to vocally support the respondent on a strata council matter. The witness states that the respondent then tried to recruit the witness to help the respondent nail other owner's vehicle tires.
40. The witness states that they observed the respondent put the nails in the applicant's vehicle's tires on February 10, 2017. The witness did not tell anyone about the vandalism until after they moved out of the strata in June 2017.
41. The respondent denies that any of the conversations alleged by the witness took place.
42. I find that the witness's evidence is not credible for a number of reasons. First, I agree with the respondent that the witness's story is bizarre and difficult to believe. For example, it does not make rational sense that a person would respond to vandalism of their car by striking up a lengthy friendship with the vandal in order to try to prevent being a target of more vandalism. It also does not make rational

sense that the respondent both victimized the witness and tried to recruit them to help vandalize more vehicles within the span of a few days.

43. Second, the witness states that they told the applicant about the vandalism in or shortly after June 2017. However, there is no evidence that the applicant relayed this information to the strata or the police to bolster their claim that the respondent was vandalizing their vehicle. The applicant states that they have been deeply concerned about their safety since the vandalism. I find that if the witness had told the applicant that they observed the respondent vandalizing the applicant's vehicle in June 2017, the applicant would have brought that evidence to the attention of the strata and the police.
44. Third, I find that the witness's statement betrays a level of personal animosity against the respondent that clouds the reliability of their evidence. The witness refers to the respondent as a "horrible person" who has "no class" and a "hateful face".
45. Finally, I consider it highly unlikely that the respondent would pursue a multi-year campaign of vandalism in order to punish their alleged enemies on strata issues.
46. Therefore, I find that the witness's statement lacks credibility. Although I have not had the opportunity to observe the witness's demeanour, it is well established that decision makers can assess a witness's credibility by comparing their testimony to what is reasonably probable in the particular circumstances of a case: *Johl Estate v. Purewal*, 2015 BCSC 2331, at para. 27. The witness's statement does not stand up to such scrutiny.
47. In response to the applicant's allegations, the respondent submits that it is suspicious that the applicant waited until after any surveillance video would be deleted before making a report to the strata. The respondent states that the applicant knew that surveillance video is deleted after 30 days because the strata has regularly reminded residents of the need to make complaints quickly so the strata can preserve video evidence. The applicant does not deny knowing that the strata deletes video after 30 days. I therefore accept that the applicant knew that

there would no longer be surveillance footage by the time they made the complaint.

48. The applicant points out that the surveillance cameras do not cover where the vandalism took place. Neither party's evidence is entirely clear on this point. However, even though there may not be a security camera pointed directly at the applicant's vehicle, it is entirely possible that other cameras would have some evidence to assist in determining the identity of the vandal.
49. More importantly, the applicant provided no explanation as to why they waited over 30 days to report the incident to the strata even though, according to the applicant, they were deeply afraid for their safety. The delay is inconsistent with the applicant's constant emails to the strata demanding that a public notice be put up after making the report in March 2017. Absent an explanation from the applicant, I agree with the respondent and the strata that the delay in reporting is suspicious.
50. The applicant also states that the strata council's decision to purchase employee dishonesty coverage as part of their strata insurance policy is an admission that they know that the respondent is responsible for the vandalism. I disagree that there is anything suspicious about purchasing employee dishonesty coverage or that it is in any way related to the respondent.
51. The applicant bears the burden of proving that the respondent vandalized their vehicle. I find that the applicant has failed to provide sufficient reliable evidence to establish on a balance of probabilities that the respondent vandalized the applicant's vehicle.
52. It follows that I dismiss the applicant's claim for \$56 to repair the tire.

***Did the strata act significantly unfairly by refusing to issue a public notice regarding the vandalism?***

53. The applicant submits that the strata failed in its duties to the owners by failing to post a public notice that the respondent had vandalized the applicant's vehicle.

The applicant states that it is significantly unfair of the strata not to have warned the owners of the vandalism.

54. The applicant's initial notice to the property manager did not include an allegation that the respondent vandalized the applicant's vehicle. The applicant did not name the respondent until June 26, 2017 after sending several emails to the property manager demanding a public notice about the vandalism.
55. The strata council first considered the applicant's request at a meeting on May 8, 2017. The strata council decided that it was not appropriate to post a public notice as the RCMP was investigating the matter. The strata states that the reason for not making a public posting was that it would name and shame the respondent with no supporting evidence.
56. With respect to the strata's initial reason for refusing to post a public notice, I agree with the applicant that an ongoing RCMP investigation is a poor reason not to post a public notice relating to security. Two of the previous public notices for other incidents stated that the strata had reported the incidents to the RCMP. Given that the purpose of public notices is to protect the residents and owners in the strata, the existence of an ongoing RCMP investigation is irrelevant to the question of whether to post a public notice.
57. The applicant relies on the fact that the strata has a practice of posting public notices when there is criminal activity in the building. The applicant provided 6 examples of such public notices. Four of the notices involved burglaries in the building. One involved 2 people accessing the common areas of the strata building and sleeping there for the night. The final notice referred to an article in the local newspaper reporting on a large number of vehicle break ins in the area. In 4 of the 5 notices that related to incidents in the strata building, there were still images from the strata's security cameras that identified the perpetrators. Each of the notices included information on how the residents of the strata can assist in preventing further incidents.

58. Section 48.1(2) of the Act gives the tribunal the authority to make an order to remedy a significantly unfair action by a strata. Section 48.1(2) of the Act mirrors section 164 of the SPA. The test for what actions are significantly unfair is found in *Dollan v. The Strata Plan BCS 1589*, 2012 BCCA 44, which I summarize as follows:
1. Did the owner or tenant have a reasonable expectation of the strata?
  2. If so, did the strata violate that reasonable expectation in a way that was significantly unfair?
59. The applicant's submission is essentially that because the strata posted other public notices of criminal activity, it has an obligation to post public notices of any allegation of criminal activity. For the reasons that follow, I disagree. I find that the applicant's expectation is not a reasonable one within the meaning of *Dollan*.
60. As mentioned earlier in these reasons, the applicant did not report the vandalism for over one month after the incident occurred. As a result, it was too late for the strata to review the security camera footage to see if they could identify who committed the vandalism.
61. Furthermore, there is no evidence of any further, similar vandalism of the applicant's vehicle or any other vehicle in the strata
62. As the strata points out, there is nothing in the strata's bylaws or the SPA that require it to post public notices.
63. With respect to the applicant's demand that the respondent be specifically named, it would have been irresponsible for the strata to do so given the lack of any persuasive evidence that the respondent was the vandal.
64. Therefore, the strata had little information that would have been useful for the other owners in the strata. A public notice simply would have stated that there had been an incident of car vandalism by an unknown person. Simply knowing that a vehicle

had been vandalized several weeks or months ago, on its own, is likely not something that owners necessarily needed to know.

65. I therefore reject the applicant's argument that it was significantly unfair for the strata not to issue a public notice regarding the vandalism.

***Should the strata have permitted the applicant's spouse to attend a council meeting on behalf of the applicant?***

66. The applicant repeatedly asked that their spouse be permitted to attend a strata council meeting on their behalf.

67. The applicant states that the strata should have allowed their spouse to attend a meeting on their behalf because the strata had allowed other owners to have agents appear on their behalf. The applicant points to the minutes of the strata council meeting held on April 8, 2015. The minutes state that a person appeared as an agent of one of the units. There is no information about why the strata allowed the person to appear as an agent.

68. The applicant also pointed to a number of meetings at which an owner or tenant was allowed to attend. However, because owners and tenants are entitled to attend under section 34.1 of the SPA, these meetings do not support the applicant's case.

69. The applicant provided the strata with no explanation as to why they could not attend the strata council meeting as an owner. In this dispute, the applicant's only reason why they feel it was significantly unfair not to allow their spouse to attend a strata council meeting was that they had allowed other people to do so.

70. Section 34.1 of the SPA gives the applicant a right to request a hearing with strata council, but implicit in the provision is that the owner or tenant requesting the hearing is the person who must attend the hearing. There is nothing in section 34.1 of the SPA that gives the owner or tenant requesting a meeting the right to attend by proxy.

71. Therefore, I find that the applicant's expectation is not reasonable.
72. The applicant has failed to prove that it was significantly unfair not to permit their spouse to attend a strata council meeting in the applicant's place. I dismiss this aspect of the applicant's claim.

***Is the applicant entitled to damages for emotional pain and suffering and punitive damages?***

73. The applicant seeks \$50,000 for emotional pain and suffering and punitive damages. The applicant's claim for compensation is based on the vandalism and on the strata's response to it. The applicant makes their claim based on the duties imposed on members of the strata council under section 31 of the SPA and the law of negligence. The applicant also claims that the strata's and respondent's actions deserve to be punished through punitive damages.
74. I have found that the applicant failed to prove that the respondent committed the vandalism. I have also found that the strata did not act significantly unfairly as the applicant alleges. It follows that I dismiss the applicant's claims for damages.

***Should the applicant reimburse the respondent for their legal fees in responding to this dispute?***

75. The strata retained and paid for a lawyer to assist the respondent to respond to this dispute. The strata council's view was that the applicant's claim against the respondent was related to the respondent's role as strata council president. The respondent submits that it was reasonable for them to have retained counsel. The respondent seeks an order that the applicant pay their legal fees.
76. The general rule is that parties will represent themselves before the tribunal, but there is nothing in the Act or the tribunal rules that prevent a party from hiring a lawyer to help with tasks like completing documents, preparing submissions, and gathering and organizing evidence.

77. While I agree that it was reasonable for the respondent to have the assistance of a lawyer in this dispute, tribunal rule 132 provides that the tribunal will only order that a party be reimbursed for legal fees in extraordinary circumstances. The respondent submits that the tribunal should apply the law of special costs in deciding whether these are extraordinary circumstances. While those Court decisions are not binding on me because they do not relate to the same subject matter, I agree that they are helpful in determining whether extraordinary circumstances exist because the Court often states that special costs will only be awarded in extraordinary cases. This approach is also consistent with past tribunal decisions: see *Napoleone v. The Owners, Strata Plan BCS 2460 et al*, 2018 BCCRT 246.
78. The respondent relies on *Strata Plan LMS3259 v. Sze Hang Holding Inc.*, 2015 BCCA 424. In that case, an owner persisted over several years with repeated civil claims against their strata that included various allegations of fraud, theft, bribery and conspiracy. The Court had cautioned the owner several times that the owner's conduct, especially their baseless allegations of fraud, would eventually lead to an award of special costs.
79. I find that the applicant's claim is not at the same level of persistent, unfounded allegations as the owner in *Sze Hang Holding*. As mentioned above, the applicant has had one previous tribunal claim that proceeded to adjudication. The applicant was partially successful in that dispute. The applicant successfully sought leave to appeal part of that decision: *Wang v. The Owners, Strata Plan LMS2970*, 2018 BCSC 1187.
80. While the applicant's allegations in the previous dispute and this dispute include allegations of fraudulent activity by strata council, allegations of fraud alone are not sufficient to receive special costs. The allegations must be made maliciously, recklessly or without foundation: *Garbutt v. Burbank*, 2000 BCSC 14. In addition, a meritless claim will not attract special costs unless there is evidence of an improper motive: *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352.

81. The applicant relied on evidence from the witness. Because there is no suggestion of collusion between the applicant and the witness, I consider that it would be unfair to punish the applicant for the unreliable evidence of the witness. I therefore cannot say that the applicant's allegations of vandalism were malicious or reckless.
82. Furthermore, while I appreciate that the allegations will have been upsetting to the respondent, I fail to see any improper motive for the applicant's allegations of financial wrongdoing. Rightly or wrongly, the applicant's allegations related to financial wrongdoing at the strata appear to be driven by a genuine concern for its financial health.
83. I therefore decline to order the applicant to pay the respondent's legal fees.
84. That said, the applicant now knows that persistent, unfounded allegations of fraud or other criminal behaviour may lead a subsequent tribunal or Court to order that they pay the other party's legal fees.

## **DECISION AND ORDERS**

85. The applicant's dispute is dismissed.
86. 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 dispute-related expenses. The respondent and the strata have both been successful, but neither has incurred any tribunal fees and neither has claimed any dispute-related expenses other than the respondent's claim for legal fees, which I declined to order. I therefore make no order for reimbursement of tribunal fees or dispute-related expenses.
87. Under section 189.4 of the SPA, an owner who brings a tribunal claim against a strata corporation is not required to contribute to any monetary order issued against the strata corporation or to any expenses the strata corporation incurs in defending the claim. I order the strata to ensure that no part of any expenses incurred by the strata in respect of this claim are allocated to the applicant,

including the legal fees that the strata incurred in retaining a lawyer for the respondent.

88. 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.
  
89. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia. However, the principal amount or the value of the personal property must be within the Provincial Court of British Columbia's monetary limit for claims under the *Small Claims Act* (currently \$35,000). Under section 58 of the Act, the Applicant can enforce this final decision by filing in the Provincial 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 Provincial Court of British Columbia.

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Eric Regehr, Tribunal Member