



Civil Resolution Tribunal

Date Issued: December 31, 2018

File: ST-2018-004335

Type: Strata

Civil Resolution Tribunal

Indexed as: *Zhao et. al. v. The Owners, Strata Plan BCS 2342*, 2018 BCCRT 929

B E T W E E N :

Yue Zhao, Zhinqiang Lu and Jessica Lu

APPLICANTS

A N D :

The Owners, Strata Plan BCS 2342

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Michael F. Welsh, Q.C.

INTRODUCTION

1. The applicants, Yue Zhao, Zhinqiang Lu and Jessica Lu, seek compensation from the respondent strata corporation, The Owners, Strata Plan BCS 2342 (strata), for expenses and losses they submit arise from a 6 week long electrical power outage to the strata lot in which they live. The applicants commonly go by the names Clare

Zhao, Peter Lu and Jessica Lu, but are named in the Dispute Notice as noted above. The title to the subject strata lot, strata lot 28, shows that it is owned by Zhinqiang Lu only, and Mr. Lu is representing the applicants, who as noted all reside in strata lot 28. The respondent strata is represented by the strata council president.

JURISDICTION AND PROCEDURE

2. 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.
3. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I have decided this dispute based on written submissions and documents supplied by the parties, as I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
4. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether the information would be admissible in a court of law or not. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
5. 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

6. The strata agrees to pay for the costs for the 2 electricians retained by the applicants in the amount of \$410 and I will make this order by consent.
7. The issues in this dispute are:
 - a. Is the strata liable to reimburse the applicants for their claimed additional living expenses of \$5,085 during the power outage?
 - b. Is the strata liable to pay compensation of \$2,750 for claimed loss of income?
 - c. Is the strata liable to pay damages for “pain and suffering” in a claimed amount of \$3,000?

BACKGROUND AND EVIDENCE

8. I outline those facts necessary for me to decide this dispute.
9. On July 15, 2017, there was a power outage in strata lot 28, which the applicants reported to the strata’s property management company (strata agent.) The strata council president went with one or more of the applicants to the strata electrical room, where they discovered the main breaker for strata lot 28 had tripped. It was reset.
10. On July 15, 2017 the applicants contacted a strata council member as their stove and hot water tank were not working, although the lights were working. The applicants arranged for an electrician to inspect and the electrician advised that the problem was coming from the breaker box in the electrical room.
11. On July 17, 2017, the strata agent called BC Hydro to report the issue, and on July 18, 2017, the strata agent arranged for an electrician to investigate. On July 19, 2017, the electrician recommended that the strata run a new electrical feed through the concrete slab between the strata property immediately below strata lot 28 (the lower unit) and strata lot 28 in order to restore power.

12. The electrician submitted a quotation for the work, and given the amount, the strata arranged for a second quotation. It took the strata about 10 days to review and approve a quotation for the work. The electrician was retained on July 31, 2018, but there were difficulties as the owner of the lower unit was reluctant to give necessary access for this work, and as the coring company that needed to provide the coring through the concrete slab for the feed had scheduling issues.
13. On August 2, 2107, the strata council president advised the strata agent to give priority to the work, to get legal advice on how to deal with the reluctant owner of the lower unit, and to look for alternative routes for the feed.
14. The electrician set a site visit for August 9, 2017 to explore an alternative route. On August 10, 2017, the owner of the lower unit gave consent for access for the work necessary to run the new electrical feed. There was another delay as coring company was not available until August 23 and 24, 2017.
15. The work was completed, and power restored to strata lot 28, on August 24, 2017. A final electrical inspection was conducted, and the work passed on September 25, 2017.
16. During all this period, the applicants remained living in strata lot 28.

POSITION OF THE PARTIES

17. The applicants submit that, during the weeks it took to restore full electrical power to strata lot 28, their lives were disrupted and extremely uncomfortable. They state they experienced hardships and extra expense to eat, bathe, obtain drinking water, and cleaning. They could not rest or eat well, lost use of their home as they had to stay outside until bedtime due to only half-powered lights, and suffered both physically and mentally as a result of the power outage. They also had to go to restaurants or friends' house to have dinners, and they took a vacation after power was restored in order to recover. All this, they say, resulted in extra costs to them.

18. The applicants seek an order that strata to pay them the electrician fees of \$410, another \$10,835 for a combination additional living expenses, loss of income, non-pecuniary (pain and suffering) damages, interest at 5%, and their tribunal filing fee of \$225.
19. The strata submits that it acted reasonably in its maintenance and repair obligations. It refers to caselaw stating that, if a strata's contractors and consultants fail to carry out work effectively, the strata should not be found negligent if it acted reasonably in the circumstances. (*Kayne v. LMS* 2374, 2013 BCSC 51, *John Campbell Law Corp v. Strata Plan 1350*, 2001 BCSC 1342 and *Wright v. Strata Plan 205*, (1996) 20 BCLR 343 (SC), aff'd (1998) 43 BCLR (3d) 1 (CA).)
20. The strata submits that it took active steps to restore electrical power to strata lot 28 and that the delays were beyond its control. It further submits that it was not made aware by the applicants that they remained residing in strata lot 28 throughout the period until power was restored.
21. The strata requests that, except for the \$410, I dismiss the applicants' claims. It denies liability for extra living expenses or loss of income or other damages, pointing out that the applicants have not, despite requests of the strata, provided any documentation to substantiate the nature and amount of their claims for extra living expenses or loss of income.
22. The applicants state that they did not keep receipts or other documentation as they did not realize at the time they incurred their extra expenses that they would need them.

ANALYSIS

23. Under section 3 of the *Strata Property Act*, (SPA) the strata is responsible for managing and maintaining common property and common assets of the strata for the benefit of the owners, and under Section 72 of the SPA, the strata must repair and maintain common property and common assets.

24. The strata has adopted the Schedule of Standard Bylaws under the SPA with 4 amendments, none of which deal with the issues in dispute. The standard bylaws, at bylaw 8, also state that the strata must repair and maintain its common assets and common property.
25. In *Tam v. The Owners, Strata Plan BCS 282*, 2017 BCCRT 93, this tribunal noted that courts have found that a strata corporation, when repairing and maintaining common property, is not held to a standard of perfection, but is required to act reasonably when fulfilling its obligations. If the strata or its contractor failed to carry out work effectively, the strata will not be found negligent if the strata acted reasonably in the circumstances.
26. These same principles of law are set out in the cases referred to earlier at paragraph 18 and relied on by the strata. I adopt and will apply the principles noted in *Tam* and in those cases.
27. To succeed in a claim for negligence, the applicants must demonstrate that the strata owed them a duty of care, that the strata's behaviour breached the standard of care, that the applicants sustained damage, and that damage was caused by the strata's breach. (See *Mustapha v. Culligan of Canada Ltd*, 2008 SCC 27)
28. I find that the strata did owe a duty of care to the applicant, Zhinqiang Lu, as owner of strata lot 28, and to the other applicants as lawful occupants of strata lot 28, but I also find that the strata acted with reasonable dispatch in determining the nature of the electrical problem and arranging for a new electrical feed. While there were delays, they were not due to any action or inaction of the strata. In fact, given the nature of the work and the need to obtain cooperation of the owner of the lower unit, some delays were to be expected. I find the strata met its standard of care to the applicants.
29. I further find that the claimed damages have not been established. There is nothing in the evidence provided by the applicants to substantiate the amounts claimed. They must prove their case both on liability and damages, and it is not enough to say they did not realize this and failed to keep necessary evidence.

30. In conclusion, other than payment by consent of the \$410, I dismiss the applicants' claims. The payment will be made to Zhinqiang Lu, as owner of strata lot 28.

INTEREST, TRIBUNAL FEES AND EXPENSES

31. I order payment of pre-judgment interest under the *Court Order Interest Act*, R.S.B.C. 1996, c. 79, as amended, on the \$410 from July 15, 2017 in the amount of \$6.77. No legal basis to claim interest at 5% has been provided and the applicants are limited to this amount.
32. 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. As the strata was substantially successful, I dismiss the claim of the applicants for payment of the tribunal fee. The strata has made no claim for dispute-related expenses.
33. The strata corporation must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owner, unless the tribunal orders otherwise.

DECISION AND ORDERS

34. I order the strata to pay the applicant, Zhinqiang Lu the sum of \$416.77, comprising the \$410 and pre-judgment interest as noted earlier in this decision.
35. The applicant, Zhinqiang Lu, is also entitled to post-judgment interest under the *Court Order Interest Act* R.S.B.C. 1996, c. 79, as amended, as applicable.
36. The balance of the claims of the applicants is dismissed.
37. 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 respondent strata to ensure that no part of the amount ordered to be paid by the respondent strata, or any other expenses incurred by the

respondent strata in defending this claim, are allocated to the applicant owner, Zhiqiang Lu.

38. 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.
39. 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.

Michael F. Welsh, Q.C., Tribunal Member