



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Bussa et al v. The Owners, Strata Plan NW 1966*, 2019 BCCRT 736

B E T W E E N :

Valerie Bussa and Reginald Symonds

APPLICANT

A N D :

The Owners, Strata Plan NW 1966

RESPONDENT

A N D :

Valerie Bussa and Reginald Symonds

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicant and respondent by counterclaim Valerie Bussa (owner), owns strata lot 7 (SL7) in the respondent (and applicant by counterclaim) strata corporation, The Owners, Strata Plan NW 1966 (strata). The applicant and respondent by counterclaim Reginald Symonds is not on title for SL7, but he resides with the owner in SL7.
2. On May 24, 2018 while Mr. Symonds was entering the strata's underground parkade in his vehicle it collided with the parkade door, causing damage to both the vehicle and the parkade door (incident). The strata determined the incident was Mr. Symonds' fault and charged him and the owner \$1,000 for reimbursement of its insurance deductible.
3. The owner and Mr. Symonds says the incident was caused by the parkade door's mechanical failure, and they want the strata to reverse the \$1,000 charge on the owner's strata lot account. They also want the strata to pay them \$150 for their rental car, \$4,200 for the cost of finding a new vehicle, and \$2,895 for the cost of repairing the new vehicle.
4. The strata brings a counterclaim for the owner and Mr. Symonds to reimburse its \$1,000 insurance deductible for repairing the parkade door.
5. The owner and Mr. Symonds are self-represented, and the strata is represented by a strata council member.

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 121 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. Some of the evidence in this dispute amounts to a “he said, he said” scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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 the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal’s process and that oral hearings are not necessarily required where credibility is in issue.
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 123 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

11. The issues in this dispute are:

- a. What caused the incident on May 24, 2018?
- b. Are the owner and Mr. Symonds required to reimburse the strata's \$1,000 insurance deductible?
- c. Is the strata required to pay the owner and Mr. Symonds for costs associated with damage to their vehicle from the incident?

BACKGROUND AND EVIDENCE

12. The strata is a low-rise residential building created in 1982. The strata's most recent bylaws are set out in the amendments filed with the Land Title Office in 2016. There have been 2 subsequent amendments to the bylaws, none of which are relevant to this dispute.
13. The owner and Mr. Symonds say that on May 24, 2018 the parkade door fell on their vehicle causing extensive damage to it. They submitted evidence to show that their vehicle was written off and they bought a replacement vehicle. They say there have been many problems with the parkade door in the past and the strata has failed to properly maintain it.
14. The strata says Mr. Symonds drove his vehicle into the parkade door while it was closing and hit it, causing damage to the door and the interior of the parkade. After several failed attempts to repair the door the strata replaced it and made an insurance claim for the repair and replacement costs.
15. On August 9, 2018 the strata wrote to the owner stating that the incident was her and Mr. Symonds' responsibility, and demanded payment of \$1,000 as reimbursement of the strata's insurance deductible.
16. On August 11, 2018 the owner requested a hearing, which occurred on September 11, 2018 with both the owner and Mr. Symonds. On September 17, 2018 the strata wrote a letter to the owner and Mr. Symonds informing them of the council's decision that the damage to the parkade door was the owner's responsibility, and

that the strata's \$1,000 insurance deductible would be charged to the owner's account.

ANALYSIS

17. In a civil claim like this one, the owner and Mr. Symonds must prove their claims on a balance of probabilities. This means the tribunal must find it is more likely than not that the owner and Mr. Symonds' position is correct. Likewise, the strata is responsible for proving its counterclaim on a balance of probabilities.
18. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.

What caused the incident on May 24, 2018?

19. Mr. Symonds says that just before the incident he had been driving his vehicle with his friend D.S. and his son who had parked their truck in his parking stall. When Mr. Symonds arrived at the parkade entrance he let D.S. and his son out of his vehicle and let them into the parkade to retrieve their truck. Once they exited the parkade in their truck Mr. Symonds says they talked for a few minutes and the parkade door closed. When he was ready to enter the parkade, Mr. Symonds says he pressed the remote control button to open the parkade door and started moving forward. He says when the door was "on the curve of the guide going up it did a shimmy and came crashing down on my windshield."
20. The owner submitted a statement from D.S. who confirmed Mr. Symonds' version of events. D.S. said when Mr. Symonds opened the parkade door to enter it shook on its way up, and then went crashing down onto Mr. Symonds' windshield. D.S. says he is a licensed engineer and the parkade door sensors should have detected the presence of a vehicle and stopped and reversed its direction. It is undisputed that D.S. did not inspect the parkade door at any time.
21. The strata submitted a statement from an anonymous witness who said they were in the lobby at the time of the incident and saw the parkade door open and a vehicle

drive out. At the same time, they say they saw Mr. Symonds' vehicle driving towards the parkade entrance and heard a "big bang" when the door hit the vehicle. Two strata council members spoke with the anonymous witness and signed the witness statement.

22. The owner submitted 2 photographs of the parkade door taken from the lobby which show either a very limited or completely obstructed view of the parkade door from the lobby. However, I find that despite the limited view, the witness would have been able to see vehicles exiting and entering the parkade, and therefore I find the witness' limited view of the full parkade door does not diminish the credibility of their statement.
23. The strata submitted another statement from R.H., a council member, who lives in a strata lot 2 floors above and just west of the parkade entrance. R.H. did not witness the incident, but they said they heard a "deafening explosion sound, that shook the building." R.H. said they immediately went to their balcony and saw Mr. Symonds get out of his vehicle. R.H. said there were no other vehicles in the driveway or on the street.
24. The strata says that immediately after the incident the parkade door hung midway down with the cables still engaged. Neither the owner nor Mr. Symonds dispute this. The strata says this is not consistent with the door falling on Mr. Symonds' vehicle.
25. The strata immediately contacted its parkade door contractor, Superior Door Services (Superior Door). In emails to the strata on May 25, 2018 and August 16, 2018 and statements on December 11, 2018 and January 18, 2019, Superior Door said they investigated the parkade door on May 24, 2018 and determined that all parts of the parkade door and the associated safety devices were in good working order. They said they replaced the parkade door's rollers, reinserted them in the side tracks, and replaced the damaged hinges to repair the door.
26. Superior Door said there was no evidence that the parkade door suddenly came down and dropped onto Mr. Symonds' vehicle. They said that based on the nature of the damage they believe the parkade door had started to close when a vehicle

raced through the opening and hit the bottom of the door which bent the door sections, forced the opener trolley rails upwards, and caused the lift cables to come off the drums, which bent the torsion spring shaft. Superior Door said the parkade door takes 9 seconds to completely open, stays open for 8 seconds, and then takes 9 seconds to completely close. They said the electric opener has a 1-second delay when the safety device is activated, meaning the door comes to a complete stop for 1 second before reversing. They said the door operates at 10.5 inches per second, so even though the safety device and parkade door and opener were working properly at the time of the incident, the closing parkade door could not reverse itself faster than a vehicle moving as slow as 10 kilometers per hour.

27. The strata says the force of Mr. Symonds' vehicle hitting the parkade door caused the door to shear off the emergency water sprinkler head, and "obliterated" the fluorescent light fixture, both of which were inside the parkade ceiling above the parkade door. The damaged sprinkler head caused the fire alarm to go off and water to pour out and flood the parkade. The strata submitted invoices from Fraser Valley Fire Protection Ltd. and an electrical contractor which support the damage the strata describes. The strata says the nature of this damage indicates Mr. Symonds was driving too fast through the parkade entrance. Neither the owner nor Mr. Symonds dispute that the damage to the sprinkler and light fixture was a side-effect of the vehicle colliding with the parkade door.
28. The owner submitted many photographs of their vehicle immediately after the incident showing much of it covered in what the owner says is hydraulic fluid, a smashed windshield and front frame, and shards of glass inside the vehicle. The strata says the only possible source of oil from the parkade door is the engine, which was not damaged or leaking after the incident. The strata suggests that the fluid stains on the vehicle may be from dirt or debris that was inside the sprinkler pipes. Neither the owner nor Mr. Symonds have provided evidence to support their assertion that their vehicle was damaged by hydraulic oil, and I prefer the strata's explanation because I find it is consistent with the remainder of the evidence.

29. Although Superior Door repaired the parkade door on May 24, 2018, the strata received complaints over the next few days that it was extremely loud when operating. Superior Door investigated and attempted to repair the parkade door on June 5, 2018 and again on June 12, 2018. Its invoice for June 12, 2018 says the parkade door was damaged beyond repair and they recommended replacing it. On July 17, 2018 Superior Door replaced the parkade door and related equipment, which cost over \$6,000.
30. The owner submitted a statement from B.A. who said that in 2014 the parkade door fell on his car and the strata paid his \$300 insurance deductible. The strata agrees that there was a problem with the parkade door in February 2014 which caused the door to collide with B.A.'s car. The strata says it approached that incident by hiring Superior Door to investigate the parkade door, in the same way it did for the incident at issue in this dispute. The strata says in February 2014 Superior Door determined the door was not functioning properly and that was what caused the collision with B.A.'s car. The strata submitted invoices from Superior Door in February 2014 which show that they replaced the door's support cables, plastic air switch, electric door opener, solenoid brake, pneumatic door bottom safety edge, relay switch and photo eye sensors.
31. B.A. also said the parkade door had been misaligned since 2017, however I find this is not borne out by the evidence. The strata submitted maintenance records from Superior Door from February 12, 2015, November 20, 2015, January 29, 2016, July 14, 2016, August 15, 2016, December 12, 2016, and July 25, 2017. The invoice for July 25, 2017 indicates Superior Door adjusted and serviced the gate and opener, adjusted the brake, and replaced the key switch covers. There is no indication the door was misaligned at that time. The owner and Mr. Symonds submitted photographs of the door which they say were taken before the incident and show the door was out of line. However, this photograph is undated, and the strata says it was taken after the incident. Regardless of the date of the photograph, I find I am unable to determine from a single photograph whether the door was misaligned, and there is no professional opinion in evidence to support this contention.

32. The owner and Mr. Symonds say the Superior Door records from 2015 to 2017 show the strata only called Superior Door when there was a problem, and that it failed to regularly maintain the door. However, on the contrary, I find these records establish that the strata was diligent in maintaining and repairing the door and that they called Superior Door to investigate any known issues.
33. On the evidence before me, I find Mr. Symonds caused the incident. In making this finding I place significant weight on the professional opinion of Superior Door which I find is not contested by any expert opinion evidence from the owner or Mr. Symonds. While in his statement D.S. claims to be an engineer, he does not specify what type of engineer he is or provide any credentials, nor did he inspect the parkade door before or after the incident. Therefore, in accordance with tribunal rules 113 and 114 which were in force at the time the owner and Mr. Symonds started this dispute, I find D.S.'s statement is not expert opinion evidence.
34. While D.S.' statement is consistent with Mr. Symonds,' I find these statements are inconsistent with the remainder of the evidence. The owner and Mr. Symonds have not explained how the parkade door's cables remained engaged with the door halfway open immediately after the incident if the parkade door had in fact fallen on the vehicle. I also note that neither the owner nor Mr. Symonds provide an explanation for the damage to the sprinkler or lights on the interior ceiling of the parkade. If the parkade door fell on the vehicle as they claim, they have not explained how this would cause damage to fixtures on the parkade ceiling.
35. I find Superior Door's evidence as to the condition of the parkade door and its theory of how the collision occurred to be detailed and specific. I find it is consistent with the parkade door cables remaining engaged with the parkade door partway open after the incident. I find it is also consistent with the strata's explanation for the damaged sprinkler and light fixture on the ceiling of the parkade. It is also consistent with the strata's witness statement that Mr. Symonds' vehicle tried to enter the parkade at the same time another car was exiting.

36. While the strata admits the parkade door failed in 2014 causing a collision with B.A.'s car, I find the strata has provided sufficient evidence to distinguish the cause of that collision from the cause of the incident in this dispute.
37. For all of these reasons, I prefer the strata's evidence and I find Mr. Symonds caused the incident.

Are the owner and Mr. Symonds required to reimburse the strata \$1,000 for its insurance premium?

38. Bylaw 4.4 says an owner shall indemnify and save harmless the strata from the expense of any maintenance, repair or replacement necessary to the common property by the owner's act, omission, negligence or carelessness or by that of an owner's visitors, occupants, guests, employees, agents, tenants or a member of the owner's family. The owner is only responsible for the expense to the extent it is not reimbursed by the strata's insurance policy. Any insurance deductible paid or payable by the strata is considered an expense not covered by the proceeds of its insurance policy and will be charged to the owner.
39. Having found Mr. Symonds was responsible for the incident and that he is an occupant of SL7, I find the owner is required to reimburse the strata \$1,000 for its insurance premium to repair the damage to the parkade and parkade door. Since Mr. Symonds is not an owner of SL7 I find he is not responsible for this payment under the bylaws, and I dismiss the strata's claim against him.

Is the strata required to pay the owner and Mr. Symonds for costs associated with damage to their car from the incident?

40. Having found Mr. Symonds is responsible for the incident, I find there is no basis on which the strata is required to reimburse the owner or Mr. Symonds for any costs they incurred because of the incident. I dismiss these claims.

TRIBUNAL FEES, EXPENSES AND INTEREST

41. 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. I see no reason in this case to deviate from the general rule. Since the owner and Mr. Symonds were unsuccessful in their claims, I find they are not entitled to reimbursement of their tribunal fees. Since the strata was successful in its counterclaim against the owner, I find the owner must reimburse the strata's \$125 in tribunal fees.
42. The owner and Mr. Symonds claim \$168 in legal fees. They say the strata misled them and behaved maliciously, and in such extraordinary circumstances they are entitled to reimbursement of their legal fees. The strata says this is not an extraordinary case and therefore the owner and Mr. Symonds are not entitled to their legal fees. I agree. I find there is no evidence the strata misled anyone or acted in a malicious manner, and there is nothing extraordinary about this case. The owner and Mr. Symonds were also unsuccessful in their claims. I dismiss the owner and Mr. Symonds' claim for reimbursement of their legal fees.
43. The strata is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the \$1,000 owing, calculated from September 17, 2018 which is the date the strata determined Mr. Symonds was responsible for the incident and that he and the owner were required to reimburse the strata's deductible.
44. The strata must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owner.

DECISION AND ORDERS

45. I order that within 14 days of the date of this decision the owner must pay the strata a total of \$1,138.03 broken down as follows:
 - a. \$1,000 as reimbursement of the strata's insurance deductible,
 - b. \$13.03 in pre-judgment interest under the COIA, and

c. \$125 in tribunal fees.

46. The strata is also entitled to post judgement interest under the COIA, as applicable.
47. The strata's claims against Mr. Symonds are dismissed.
48. The owner's and Mr. Symonds' claims against the strata are dismissed.
49. 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 123.1 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.
50. 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 123.1 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.

Sarah Orr, Tribunal Member