



# Civil Resolution Tribunal

Date Issued: November 6, 2019

File: ST-2019-003157

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VR2266 v. 228 CHATEAU BOULEVARD LTD.,*  
2019 BCCRT 1262

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

The Owners, Strata Plan VR2266

**APPLICANT**

**A N D :**

228 CHATEAU BOULEVARD LTD.

**RESPONDENT**

**A N D :**

The Owners, Strata Plan VR2266

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about water damage repair costs arising from a water leak that happened on May 15, 2016. It is closely tied to a May 22, 2018 Civil Resolution Tribunal (tribunal) decision involving the same parties. The decision is indexed as 2018 BCCRT 198.
2. The applicant and respondent by counterclaim, The Owners, Strata Plan VR2266 (strata), is a strata corporation composed of four non-residential strata lots and 98 residential strata lots. The respondent and applicant by counterclaim, 228 Chateau Boulevard Ltd. (owner), is a corporation based in Australia and owns strata lot 34.
3. In its May 22, 2018 decision, the tribunal found that the owner was responsible for the water leak, which caused damage to the common assets and common property of the strata. However, the tribunal dismissed the strata's claims on the basis that the strata breached section 135 of the *Strata Property Act* (SPA). Specifically, the tribunal found that the strata failed to provide an opportunity to respond before charging the owner's strata lot account for the water leak repairs.
4. The strata says it has now fully cured its breach of SPA section 135 and seeks an order for the owner to pay repairs costs for the water leak. The owner disagrees that it should pay for several reasons. It says 1) the strata failed to provide proper notice under section 112 of the SPA before beginning this dispute, 2) the strata's claims are out of time under the *Limitation Act*, 3) the strata's decision to make the owner liable for repair costs is significantly unfair under SPA section 164, and 4) the strata's claim is *res judicata*, as it was previously dismissed and cannot be the subject of another dispute.
5. The owner also counterclaims for related relief, including 1) a declaration that the strata's decision to charge repair costs to the owner's strata lot account is significantly unfair, 2) an order to remove all repair-related charges from the strata lot account, and 3) an order that the strata repay a proportionate share of legal fees charged to the owner in relation to the tribunal's May 22, 2018 decision (being file ST-2017-00370). The strata disagrees that any such orders should be made.

However, it says it intends to issue a refund cheque to the owner for his proportionate share of legal fees incurred by the strata, once this entire matter is concluded.

6. The strata is represented by counsel. The owner is represented by its director, Benjamin Killerby.

## **JURISDICTION AND PROCEDURE**

7. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The tribunal must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the tribunal's process has ended.
8. 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, she said" scenario as to what occurred and did not occur during the respondent's employment. Credibility of interested witnesses, particularly where there is a conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be 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. Further, 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

9. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
10. Under section 123 of the CRTA and the tribunal rules, in resolving this dispute the tribunal may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

11. The strata's claim for \$24,677.60 in damages for repair costs arising from the May 15, 2016 water leak raises the following issues:
  - a. Did the strata provide proper notice under section 112 of the SPA before beginning this dispute, and if not, what is the appropriate remedy?
  - b. Is the strata out of time to bring its claims?
  - c. Is the strata's claim *res judicata*?
12. The owner's counterclaim raises the following issues:
  - a. Is the owner entitled to a declaration that the strata's decision to charge repair costs to the owner's strata lot account is significantly unfair?
  - b. Is the owner entitled to an order to remove all repair-related charges from the strata's account?
  - c. Did the strata pay legal fees from funds to which the owner contributed, contrary to SPA section 189.4, and if so, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

13. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

***Issue #1. Did the strata provide proper notice under section 112 of the SPA before beginning this dispute?***

14. SPA section 112(1) requires the strata to provide at least 2 weeks' written notice to an owner before suing or initiating a dispute under the CRTA. SPA section 112(1) also states that the notice must demand payment and must indicate that action may be taken if payment is not made within the 2-week period. Under section 25(4) of the *Interpretation Act*, the 2-week period excludes the first and last day, for a total of 16 days' notice.
15. I have considered SPA section 112(2) as discussed in *The Owners, Strata Plan BCS 3372 v. Manji*, 2015 BCSC 2503 (*Manji*). Section 112(2) contains similar wording to SPA section 112(1). It provides that the strata must provide an owner at least 2 weeks' written notice before registering a lien. In *Manji* the strata corporation mailed initial demand letters to several owners in October 2013 for unpaid strata fees and related expenses. The strata demanded payment within 14 days of the date of the letters. The strata warned that after the 14 days its lawyers would file certificates of lien and potentially begin legal proceedings.
16. The court found these initial demand letters provided insufficient notice under SPA section 112(2). The court wrote that the strata should have picked a payment date that was more than 14 days from the date of mailing plus 4 more days to account for mailing, to use the deemed delivery provisions of SPA section 61 (paragraph 72). Ultimately the court dismissed the claim for a number of reasons, including improper notice of the initial demand letters (paragraph 98).
17. I have also considered *The Owners, Strata Plan NW 723 v. Gibson*, 2019 BCCRT 435 (*Gibson*), which is not binding but I find persuasive. The tribunal interpreted the court's statements in *Manji* as saying that a strata must strictly comply with section 112 of the SPA before bringing a claim or filing a lien (paragraph 42). In *Gibson* the strata sent the owner a demand letter after it had already started a dispute at the tribunal. The tribunal decided that the strata failed to provide proper notice under SPA section 112(1) and improperly brought the dispute. The tribunal further noted

that there was no provision in the SPA that gives the strata discretion to shorten the time period for giving written notice. The tribunal dismissed the strata's claim for reimbursement of cleaning expenses for that reason.

18. In this dispute, the strata's counsel tried to provide notice by emailing a March 29, 2019 letter to the owner. Counsel wrote that under the May 22, 2018 tribunal decision, the strata was entitled to reverse and reregister its charges. Counsel demanded payment of \$24,677.60 by April 5, 2019. Finally, counsel warned that if payment was not received by April 5, 2019, the strata would restart legal proceedings.
19. There is no dispute that the letter was properly delivered. However, I find that the March 29, 2019 emailed letter does not strictly comply with SPA section 112(1). It does not provide at least 2 weeks' written notice or indicate that action may be taken if payment is not made within a 2-week period. The March 29, 2019 letter demands payment on April 5, 2019. There are only 7 days between these two dates, as opposed to the required 14 days.
20. The strata addressed this in its submissions. It filed its application for dispute resolution on April 23, 2019, 25 days after the March 29, 2019 email. By waiting over 2 weeks to begin proceedings at the tribunal, the strata says it complied with SPA section 112(1). For the reasons that follow, I disagree.
21. In *Manji* the court faced a similar situation. On October 24, 2013, the strata sent initial demand letters to several owners requesting payment within 14 days of the date of the letters. The strata in *Manji* took no immediate action after the deadlines expired. Instead, the strata waited more than a month before filing certificates of lien on December 12, 2013 (paragraphs 11 to 15).
22. The court did not directly comment on whether the strata could cure insufficient written notice under SPA section 112 by simply waiting. However, the court decided that the strata breached SPA section 112(2) by providing insufficient written notice (paragraphs 70 to 73). The court noted the demand letters provided less than 2 weeks' written notice as the notice was not deemed to take effect until four days

after mailing, pursuant to SPA section 61(2). I infer from this that the strata cannot cure insufficient notice under SPA section 112 by delaying its next actions.

23. The tribunal's comments in *Gibson* that this 2-week period of time cannot be shortened under the SPA are consistent with this conclusion.
24. Though not binding on me, I also agree with the tribunal's reasoning in *Wadler v. The Owners, Strata Plan VR 495*, 2018 BCCRT 567. The tribunal noted that the strata failed to provide the owner at least 2 weeks' written notice before filing a lien under SPA section 112(2). While the strata sent a notice on June 29, 2017, more than 2 weeks before registering its lien on December 15, 2017, the letter failed to set out the required 2-week period for payment. The tribunal found the filed lien invalid for this reason alone (paragraph 138).
25. Although not argued, I also considered if the strata's initial demand letter could be valid notice under SPA section 112. The initial demand letter is undated though it includes a ledger dated May 26, 2017. However, the letter asks for payment "within 10 days" (of what, it is unstated) before the strata could take legal action. As this period is less than 2 weeks, I find that this letter also breaches SPA section 112(1).
26. This leaves the question of the appropriate remedy. In *Manji* the strata failed to provide valid notice for multiple reasons. The strata did not prove that it provided the initial demand letters to the respondents (paragraph 66). The court also found the strata did not comply with SPA section 112(2) and wrote incorrect values on its certificates of lien (paragraph 96). The strata sent a second set of demand letters but the court found they did not constitute proper notice under SPA section 112(2) as by then, the strata had improperly refused payment in full of the strata fees by the owner (paragraph 100).
27. The court dismissed the strata's petitions and ordered liens removed from the owners' strata lots. At the time, the liens included sums for outstanding strata fees for March and April 2014. The court noted, "It remains the case that the respondents owe the strata corporation strata fees for March and April 2014". The court added that if the respondents did not pay the outstanding fees, another

demand could be made, notice properly served, and a lien in proper amounts filed (paragraphs 104 to 105).

28. Similarly, in *Gibson* the tribunal dismissed the strata's claims and ordered it to reverse all fines and remove all charges against the owner's strata lot (paragraph 65 to 67). The tribunal chose not to address the owner's arguments that the strata's claim was out of time. Finally, in *Wadler*, the tribunal found the strata's lien was invalid and ordered it discharged, at no cost to the owner. However, the tribunal noted that the strata was entitled to file a new certificate in the correct amount in accordance with SPA section 116 (paragraph 141).
29. Having considered the above-mentioned authorities, I find it appropriate to dismiss this claim and order the strata to, within 30 days, remove the repair costs charged against the owner's strata lot for the May 15, 2016 water leak.
30. Given my conclusion, on this issue, I find it unnecessary to address whether the strata's claim is out of time, whether its claims are *res judicata*, and whether the owner is entitled to a declaration that the strata's decision to charge the repairs was significantly unfair.
31. However, I also find that, similar to the court in *Manji* and the tribunal in *Wadler*, it remains open to the strata to make another demand, properly serve notice, and start another claim. If the strata chooses to do so, the parties may wish to address the above issues at that time.

***Issue #2. Did the strata pay legal fees from funds to which the owner contributed, contrary to SPA section 189.4, and if so, what is the appropriate remedy?***

32. SPA section 171(1) provides a strata corporation may sue as representative of all owners, except any being sued. SPA sections 171(5) and (6) provide that all owners, except any being sued, must contribute to the expense of suing. SPA section 189.4 states that provisions 171(5) and (6) apply to tribunal claims.



33. The owner alleges that the strata breached SPA section 189.4 by paying legal expenses in relation to the May 22, 2018 tribunal decision from the operating fund, without subtracting the owner's proportionate share. In that proceeding, the strata sued the owner. SPA sections 189.4, 171(5), and 171(6) therefore apply.
34. In its Dispute Response, the strata does not disagree that it apportioned legal expenses as alleged by the owner. The strata says that, upon resolution of "this matter", the strata "will issue a refund cheque" to the owner for the owner's proportional share of total legal expenses incurred by the strata. I infer from this submission that "this matter" includes both the dispute before me and the May 22, 2018 tribunal decision.
35. Based on the submissions before me, I find that the strata breached SPA section 189.4. However, the owner does not claim a specific amount for legal expenses in the Dispute Notice. I was also not provided a calculation of the amount of legal expenses payable to the owner in relation to the May 22, 2018 tribunal decision.
36. Given the lack of information, I order the strata to, within 30 days, calculate and pay the amount owing to the owner for his proportionate share of legal fees in relation to the May 22, 2018 tribunal decision.

## **TRIBUNAL FEES AND EXPENSES**

37. Under section 49 of the CRTA, 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 not to follow that general rule.
38. The owner is largely successful in this dispute. I order the strata to reimburse the owner \$225 for tribunal fees within 30 days.
39. The owner claims legal fees. Under tribunal rule 9.4(3), the tribunal generally does not order one party to pay another party legal fees save in extraordinary

circumstances. I do not find the circumstances of this dispute to be extraordinary and therefore order no reimbursement.

40. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses to the owner.

## **ORDERS**

41. I order that within 30 days of the date of this decision,

- a. the strata remove the repair costs charged for the May 15, 2016 water leak against the strata lot of the owner,
- b. the strata calculate the amount owing to the owner for its proportionate share of legal expenses in relation to the May 22, 2018 tribunal decision with reasons indexed as 2018 BCCRT 198 and file number ST-2017-003370, and
- c. the strata pay the owner \$225 for tribunal fees.

42. The owner is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

43. The parties' remaining claims are dismissed.

44. Under section 57 of the CRTA, a party can enforce this final tribunal decision by filing a validated copy of the attached order in the Supreme Court of British Columbia (BCSC). The order can only be filed if, among other things, the time for an appeal under section 123.1 of the CRTA 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 a BCSC order.

45. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia (BCPC). However, the principal amount or the value of the personal property must be within the BCPC's monetary limit for claims under the *Small Claims Act* (currently \$35,000). Under section 58 of the CRTA, the owners can enforce this final decision by filing a validated copy of the attached order in the BCPC. The order can only be filed if, among other things, the time for an appeal under section 123.1 of the CRTA 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 a BCPC order.

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David Jiang, Tribunal Member