



Civil Resolution Tribunal

Date Issued: December 18, 2019

File: ST-2019-005245

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wang v. The Owners, Strata Plan EPS3548*, 2019 BCCRT 1425

B E T W E E N :

TIANYU WANG

APPLICANT

A N D :

The Owners, Strata Plan EPS3548

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about a fine imposed on an owner for allegedly failing to stop when exiting the strata parkade.

2. The applicant Tianyu Wang owns a strata lot in the respondent strata corporation The Owners, Strata Plan EPS3548 (strata). The applicant asks that the tribunal set aside a \$200 fine imposed by the strata for failing to wait for the parking gate to close.
3. The applicant says that he waited for the gate to close. The applicant also says that failing to wait for the gate to close violates a rule, not a bylaw. The applicant says the maximum fine for breaking a rule is \$50, not \$200. The applicant asks that the dispute be dismissed.
4. The strata says that it followed the requirements of the *Strata Property Act* (SPA) and acted reasonably in imposing the \$200 fine. The strata asks that the dispute be dismissed.
5. The applicant is self-represented. The strata is represented strata council member Alan Wong.

JURISDICTION AND PROCEDURE

6. 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.
7. The tribunal has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.
8. 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 the parties and witnesses questions and inform itself in any way it considers appropriate.

9. 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.

ISSUE

10. The issue in this dispute is whether the \$200 fine imposed by the strata is reasonable.

EVIDENCE AND ANALYSIS

11. This is a bylaw violation dispute in which the applicant owner bears the burden of proving that the strata imposed a fine upon him unreasonably. For the reasons given below, I find he has met that burden.
12. The bylaws and rules relevant to this dispute are as follows:
 - a. Bylaw 3 says that an owner or occupant must not use common property in a way that causes a nuisance or hazard to another person or unreasonably interferes with another person's rights to use that common property.
 - b. Neither party filed a copy of the Rules in evidence. The strata did not prove that it has a valid Rule 3 under the SPA section 125. However, as I decide the dispute on other grounds, I have assumed that Rule 3 says a vehicle must stop completely and wait for the parkade gate to close when exiting the parkade. I take the content of Rule 3 from the strata's April 1, 2019 letter, discussed further below.
 - c. Bylaw 23 sets a maximum fine of \$200 for each bylaw contravention, and \$50 for each rule contravention.

13. On April 1, 2019, the strata wrote to the applicant to say that it had received a complaint. The complaint was that, on March 22, 2019 at about 10:41 p.m., someone from the applicant's strata lot left the parkade without waiting for the gate to close. The April 1, 2019 letter referred to contraventions of Bylaw 3 and Rule 3.
14. The strata also referred to SPA section 135 and offered an opportunity for the applicant to respond to the complaint and have a hearing before strata council. I find that this letter met the requirements of the SPA section 135 to give the applicant notice of the complaint.
15. The applicant's evidence is that, on March 22, 2019, he stopped as he exited the parkade to ensure the gate would close. The applicant writes that he stopped again when he re-entered the parkade later that evening. The applicant agrees that he stopped beyond the yellow line that the strata relied on to assess whether he stopped to let the gate close. However, the applicant knows he stopped within sight of the gate and waited until it closed. He says this is part of his daily routine when he picks up his wife from work. His wife provided a statement to the same effect.
16. The applicant says he asked the strata for video surveillance footage, which he says would show his car stopped both when exiting and re-entering the parkade. However, he says the strata did not provide him with the video footage.
17. The strata says the building manager showed surveillance video to the applicant. The strata did not say when this viewing took place. The strata says the video showed that the applicant failed to stop at a yellow line to wait for the gate to close.
18. The strata did not file any evidence in this proceeding. In particular, the strata provided no video evidence.
19. Even if the strata had video evidence showing the applicant failed to stop at a yellow line, it would not prove that the applicant failed to stop slightly further forward, but within range to ensure no unauthorized access to the parkade. Put differently, if valid, Rule 3 does not require residents to stop at a yellow line or other

specific location to wait for the parkade gate to close. I infer that Rule 3 only requires an owner to stop within sight of the gate.

20. I prefer the applicant's evidence about what happened on March 22, 2019. My finding is supported by the applicant's routine and his wife's statement. As well, I draw an adverse inference against the strata for failing to file contrary video evidence, while referring to it in submissions. I find that the applicant stopped both as he exited and re-entered the parkade, to ensure that no unauthorized vehicle could enter.
21. Neither party filed minutes or correspondence to prove the outcome of the strata council hearing into the parkade complaint.
22. In submissions, the strata says it decided to fine the applicant \$50 for contravening Rule 3. However, in its Dispute Response, and elsewhere in its submissions, the strata says it "chose to impose a fine of \$200." The applicant says he was fined \$200.
23. I find that the strata fined the applicant \$200 for failing to stop as he exited the parkade.
24. I find that the applicant did not contravene Rule 3, if valid, or Bylaw 3, because I have found that he stopped as required. I order that the strata reverse the \$200 fine levied against the applicant immediately.
25. The applicant also argued that a "strata agent" was abusing his power against the applicant.
26. Section 31 of the SPA says that a strata council member must act honestly and in good faith with a view to the best interests of the strata corporation, exercising the care of a reasonably prudent person in that role.
27. The BC Supreme Court has held that duties of strata council members under the SPA section 31 are owed to the strata corporation, and not to individual lot owners (see *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 at paragraph 267, cited with approval by this tribunal's Vice Chair in *Harvey v. the Owners, Strata Plan VR390*, 2019 BCCRT 1416 at paragraph 22).

28. I find that the applicant did not prove that the strata agent abused his power. As well, I am bound by *Sze Hang*, which means that an individual strata lot owner cannot succeed in a claim against the strata or individual strata lot owners for a breach of section 31. By extension, I find that this reasoning includes the strata agent acting on behalf of strata council. For these reasons, I dismiss the applicant owner's claim under SPA section 31.

TRIBUNAL FEES and EXPENSES

29. 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 will follow that general rule. I therefore order the strata to reimburse the applicant for tribunal fees of \$225. The applicant did not claim dispute-related expenses.

30. The strata corporation must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owner.

ORDERS

31. I order that:

- a. the strata immediately cancel the \$200 fine imposed on the applicant's strata lot account for the March 22, 2019 parkade issue, and
- b. within 14 days of the date of this decision, the strata pay the owner \$225 in tribunal fees.

32. I dismiss the applicant's remaining claims.

33. 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). Once filed, a tribunal order has the same force and effect as an order of the BCSC.

34. 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 owner can enforce this final decision by filing a validated copy of the attached order in the BCPC. Once filed, a tribunal order has the same force and effect as a BCPC order.

Julie K. Gibson, Tribunal Member