



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Yang v. The Owners, Strata Plan BCS 1013*, 2020 BCCRT 349

B E T W E E N :

ZE BING YANG

APPLICANT

A N D :

The Owners, Strata Plan BCS 1013

RESPONDENT

A N D :

ZE BING YANG

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a dispute about costs associated with a plumbing leak.
2. The applicant, and respondent by counterclaim, Ze Bing Yang (owner), owns a strata lot (SL88) in the respondent strata corporation, The Owners, Strata Plan BCS 1013 (strata). The strata is also the applicant in the counterclaim. The owner is self-represented, and the strata is represented by a council member.
3. The owner says he is not responsible for the costs of \$2,938.87 charged back to him by the strata for a plumbing leak from his strata lot. He says the strata is responsible because the strata's building manager mistakenly indicated the wrong shut-off valve to his plumber and that the manager's mistake caused a flood in his strata lot.
4. The owner requests orders that the strata's insurance pay the costs and that the strata's building manager pay the insurance deductible. I infer the owner also requests an order that he should not be liable to pay the charged back amounts. The owner originally sought an apology from the strata's building manager, but withdrew the requested remedy during facilitation.
5. The strata says the owner's plumber caused the leak and that the owner is responsible for the costs under its bylaws. The strata asks that the owner's claims be dismissed.
6. In the its counterclaim, the strata says the total cost of \$2,938.87 it charged to the owner includes \$313.95 for its plumber to repair the plumbing in the owner's strata lot and \$2,624.92 for emergency water extraction and drying of the owner's strata lot by its restoration company. The strata seeks an order that the owner pay it \$2,938.87.
7. The owner says the strata's building manager promised that the strata's insurance would pay for the water damage. The owner also says he wrote on the restoration company's work order that the strata's insurance would pay the invoice when he signed the work order. The owner reiterates his position that the strata's building manager caused the leak and that he should not be responsible for the costs.

8. For the reasons that follow, I find the strata must remove the \$2,938.87 charge from the owner's SL88 account, and reimburse the owner \$225.00 for tribunal fees.

JURISDICTION AND PROCEDURE

9. 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* (CRTA). 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.
10. The tribunal has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, email, 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.
11. 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.
12. 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, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUES

13. The issues in this dispute are:
 - a. Is the valve that caused the plumbing leak common property (CP) or part of SL88?

- b. Was the strata's building manager negligent when he misidentified the correct shut off for repair of the leaking valve in SL88?
- c. Did the strata's building manager promise the owner that the strata's insurance policy would cover the repair costs?
- d. Is the strata entitled to charge the repair costs to the owner?
- e. Who is responsible for the costs related to the plumbing leak?
- f. What is an appropriate remedy?

BACKGROUND, EVIDENCE AND ANALYSIS

- 14. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
- 15. In a civil proceeding such as this, the owner must prove each of his claims on a balance of probabilities. The strata must prove each of its counterclaims on the balance of probabilities.
- 16. The strata was created in October 2004 under the *Strata Property Act* (SPA). It consists of 190 residential strata lots in two 4-storey buildings located in Burnaby, B.C.
- 17. The strata employs a building manager. Based on the overall evidence, I find the building manager is an employee of the strata.
- 18. I summarize the undisputed relevant sequence of events leading up to and following the plumbing leak as follows:

January 28, 2019

- a. The owner noticed a dripping valve in his strata lot. He attempted to turn off the water in SL88, but the dripping valve did not stop, so he contacted the building manager by text message.

- b. The building manager attend SL88 and advised him that there were shutoff valves located outside his strata lot that could be accessed when the owner had a licenced plumber available to do the repair.

January 30, 2019

- a. In the morning, the owner contacted the building manager advising that his plumber would be on site in the afternoon to do the repair.
- b. In the afternoon, the building manager met with the owner and his plumber, opened an access panel in the hallway ceiling outside SL88 and located 2 water shut off valves for SL88. After testing the cold water flow at the owner's kitchen faucet, the manager turned off 1 of the values. The manager then left to do other business.
- c. The owner's plumber let water drain from the open kitchen faucet and then began replacing the leaking value. This is when the flooding occurred. The owner contacted the building manager and a second shut off valve, in a different panel in the hallway ceiling outside SL88, was located and the water supply to the leaking valve inside SL88 was turned off. It is unclear who located the second shutoff for the leaking valve. The strata's plumber replaced the leaking valve in SL88 and turned the water supply for SL88 back on.
- d. The building manager then arranged for the strata's restoration contractor to attend to drying SL88.

March 25, 2019

- a. The strata wrote 2 separate letters to the owner requesting he reimburse the strata for the cost of the plumbing and restoration work its contractors completed within SL88. One letter requested payment of \$313.95 for the plumbing invoice and the second letter requested payment of \$2,624.92 for the restoration invoice. The total of the 2 invoices is \$2,938.87, which is the amount in dispute. The letters state the strata paid the invoices on the owner's behalf and do not give reasons why the strata concluded the owner was responsible.

19. At my request, tribunal staff obtained from the strata a copy of a single-page document on the strata insurance broker's letterhead entitled "Summary of Coverages". The document was attached to the March 20, 2019 annual general meeting minutes and shows the water damage deductible for the strata's insurance policy in place at the time of the plumbing leak was \$10,000. The owner did not dispute this, and I accept the water damage deductible under the strata's insurance policy was \$10,000 on January 28, 2019, when the leak was first discovered.
20. The strata confirmed it did not file an insurance claim for the plumbing leak, which I find reasonable given the amount of the damage resulting from the plumbing leak was below the amount of the deductible. As such, the strata's insurance policy was not triggered.

Is the valve that caused the plumbing leak CP or part of the owner's strata lot?

21. The parties agree the leaking valve was located in SL88 but that does not mean the valve is part of SL88. As I discuss below, the location of the valve and its intended use determine whether the valve is CP or part of SL88.
22. Quite simply, if the leaking valve is CP, it is the strata's responsibility to repair under section 72(1) of the SPA and bylaw 8.4(b). If the leaking valve is part of SL88, it is the owner's responsibility to repair under bylaw 8.1.
23. CP is defined under section 1(1) of the SPA to include pipes and other facilities for the passage of water if they are located:
 - i. within a wall, floor or ceiling that forms a boundary with another strata lot or with CP, or
 - ii. wholly or partially in a strata lot provided they are capable of being used and intended to be used in connection with the enjoyment of another strata lot or CP.

24. I find the leaking valve was a pipe or “other facility” for the passage of water as under the SPA’s definition of CP.
25. Through tribunal staff, I requested the parties provide further submissions on the location of the leaking valve and specifically if it was located within a wall, floor or ceiling that forms a boundary with another strata lot or with CP, which they did. However, the precise location of the leaking valve was not identified. The photographs provided in evidence show the leaking valve was located behind a panel door within a closet wall inside SL88 near the main entrance to SL88.
26. I cannot determine from the evidence provided, including the strata plan, whether the leaking valve was located within a wall that forms a common boundary between SL88 and the neighbouring strata lot. Further, there is no evidence to identify what areas of the building the pipe and valve serviced. Therefore, I am unable to conclude if the valve that caused the leak was CP or part of SL88.

Was the strata’s building manager negligent when he misidentified the correct shut off for repair of the leaking valve in SL88?

27. Much of the parties’ submissions were focused on the activities of the building manager, including whether he was negligent when he incorrectly identified and shut off the wrong valve to permit the repair to the leaking valve in SL88. The owner says the manager was negligent. The strata admits the manager turned off the wrong valve but says the manager was not negligent. The strata says that it was the owner’s plumbing contractor who caused the damage, not the building manager.
28. As earlier noted, I find the building manager is an employee of the strata. Under common law, an employer is generally liable for the actions by employees committed in the course of their employment. This is known as “vicarious liability” and it means that if the building manager was negligent in identifying and turning off the wrong valve, the strata would be responsible for any damages. In this dispute, it is clear that the building manager was acting in the course of his employment, and that at all relevant times, the strata was acting through the building manager.

29. To prove negligence, the owner must show that the strata owed him a duty of care, the strata, breached the standard of care, the owner sustained damage, and the damage was caused by the strata's breach (See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, at par 33).
30. I find the strata owed a duty of care to the owner not to cause damage to SL88.
31. The standard of care is reasonableness. That is, what would be expected of an ordinary, reasonable, and prudent person in the same circumstances. There is no evidence before me to suggest the actions of the strata's building manager were unreasonable. In a statement dated June 28, 2019, the building manager recounted his actions of January 30, 2019, stating that he identified the shut off valve for SL88 and turned it off. He confirmed he did so by opening the kitchen faucet in SL88 in the presence of the owner and his plumber. The manager also confirmed that when he was recalled to SL88 because of the flooding, he did not know what to do to stop the leak. He expressly stated:
- In all my previous experience – including with the strata unit A221 where I reside – this one valve shuts off all cold water to the unit, including water to the outdoor hose bib. The situation with [SL88] was different. Further down the hallway was a second hatch with a different valve shutting off water to the hose bib.
32. I accept the building manager's written statement as the owner's submission was essentially the same. I find the owner has not proven the manager knew or should have known of the second shut off valve. I find the building manager's actions were reasonable in the circumstances and that the strata's standard of care was not breached.
33. The test for showing causation is the "but for" test. The owner must prove that it is more likely than not that the damage would not have occurred "but for" the strata's negligent act or inaction (see *Clements v. Clements*, 2012 SCC 32 at paragraph 8). Given my finding that the strata was not negligent through the actions of its building

manager, I cannot find that the strata (or building manager) caused the damage in SL88.

34. Therefore, I find the building manager and the strata were not negligent in identifying the wrong shut off for the leaking valve in SL88.

Did the strata's building manager promise the owner that the strata's insurance policy would cover the repair costs?

35. The owner asserts that the building manager informed him the strata's insurance would cover the cost of repairs. In a second written statement dated January 31, 2020, the building manager stated:

I don't remember exactly what was said at the time of the incident but I am 100% certain that I never guaranteed that the strata would pay all costs. For one thing I don't have the authority to make that call – in all such cases it is up to the strata council to decide. At most I may have said the it was possible that the strata would cover some costs, depending on who found to be at fault.

36. While the building manager's statement does not address insurance coverage, I infer the statement applies equally to costs paid directly by the strata as stated, and costs paid under the strata's insurance policy.
37. More importantly, the owner did not provide any evidence to support his assertion, such as correspondence or text messages between the building manager at or near the time of the leak. Text messages exchanged between the owner and building manager were provided in evidence, but none referenced who would pay the costs associated with the leak repair or water damage. There is an email from the owner to the strata's property manager in evidence that does raise the issue of costs. However, the owner admits the email was dated April 4, 2019, which I find was more that likely after the owner received the strata's March 25, 2019 letters charging him for the costs of the repairs.

38. Based on the evidence provided, I find the owner has not proved the strata's building manager advised him that the strata, or the strata's insurer, would cover the cost of the repairs.
39. For the reasons stated above, I find the owner has not proven his claims on a balance of probabilities and I dismiss his claims.
40. I note that even if I found in the owner's favour, I would decline to make the owner's requested orders that the strata's insurance pay the charged back amount, and that the strata's building manager pay the insurance deductible. I say this because the neither the strata's insurer or building manager is a party to this proceeding. In the interest of justice and fairness, I cannot make an order against a non-party. I have also noted that the strata's insurance policy was not triggered because the amount of the damage was below the amount of the insurance deductible.

Is the strata entitled to charge the repair costs to the owner?

41. The strata says it is entitled to charge the owner the cost of the repairs because the leaking valve was located in SL88 and that it was the owner's plumber that caused the damage. As I have mentioned, the owner disagrees and says the building manager caused the damage, which I have found not to be the case.
42. I have previously relied on the BC Court of Appeal decision in *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512 to find that a strata corporation must have the authority to collect a debt that is not created under section 116 of the SPA. See for example, *Wang v. The Owners, Strata Plan EPS3444*, 2019 BCCRT 1334 and *Rintoul et al v. The Owners, Strata Plan KAS 2428*, 2019 BCCRT 1007. I rely on *Ward* here also as I find the circumstances of this dispute are similar to those in *Wang* and *Rintoul*.
43. In this dispute, the strata's charge back of the plumbing and restoration invoices is not captured by section 116 of the SPA and is commonly referred to as a non-lienable amount, as it cannot be included in the amount of the Certificate of Lien filed under section 116. In order to collect a non-lienable amount, the strata must have the authority to do so under a valid and enforceable bylaw or rule that creates the debt as set out in *Ward*.

44. Although not argued, I find the strata's bylaw 12.3 is the only bylaw that applies. It states:

An owner/resident shall indemnify and save harmless the Strata Corporation from the expense of any maintenance, repair or replacement of any damaged common property, limited common property, common facilities, strata lots or the contents thereof caused by the owner or by any member of the owner's family or their guests, employees, contractors, agents, tenants or volunteers or for any loss, damage or expense arising from the owner's strata lot or any adjoining strata lots where such loss, damage or expense arising (sic) from that part or parts of a strata lot that an owner is required to repair and maintain under these bylaws but only to the extent that such expense is not met by the proceeds received by operation of any strata insurance policy and the application of any direction of payment caused to be made by the Insurance Bureau of Canada and its publications or the Strata Property Act of B.C.

For the purposes of this bylaw, any insurance deductibles paid or payable by the application of the Strata Corporation's policy or damage done and requiring repair that is under the appropriate deductible of the Strata Corporation's policy shall be considered as an expense chargeable to the owner [my emphasis]

45. Stated differently, bylaw 12.3 only allows the strata to charge an owner for repair costs that arise from parts of SL88 that the owner is required to repair and maintain under the strata's bylaws. I have already found that there is insufficient evidence to determine if the leaking valve was part of SL88, so I find the strata has not proven its counterclaim. Therefore, I find the strata does not have the authority to charge the \$2,938.87 invoices amount to the owner.

Who is responsible for the costs related to the plumbing leak and what is an appropriate remedy?

46. Given my conclusion above, I find the strata is responsible for the plumbing and restoration costs of \$2,938.87. I order the strata to immediately remove the \$2,938.87 it charged the owner from the owner's account, made up of Trotter & Morton Facility Services Inc. invoice #2692 in the amount of \$313.95, and 0459478 BC Ltd dba Paul Davis Greater Vancouver invoice # GV7989 in the amount of \$2,624.92,

TRIBUNAL FEES AND EXPENSES

47. 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 find the owner was the successful party and is entitled to reimbursement \$225.00 for tribunal fees he paid. I order the strata to pay the owner this amount. The strata is responsible for tribunal fees it paid. No party claimed dispute-related expenses, so I order none.

48. The strata must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the applicant owner.

ORDER

49. I order that the owner's claims are dismissed.

50. I also order that the strata must:

a. Immediately remove the \$2,938.87 charged against the owner's account, made up of Trotter & Morton Facility Services Inc. invoice #2692 in the amount of \$313.95, and 0459478 BC Ltd dba Paul Davis Greater Vancouver invoice # GV7989 in the amount of \$2,624.92, and

b. Within 14 days of the date of this decision, pay \$225.00 to the owner for tribunal fees.

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

52. 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 British Columbia Supreme Court (BCSC). Once filed, a tribunal order has the same force and effect as a BCSC order.
53. 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, a party 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.

J. Garth Cambrey, Vice Chair