



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan KAS 2428 v. Germain*, 2020 BCCRT 794

B E T W E E N :

The Owners, Strata Plan KAS 2428

APPLICANT

A N D :

MELANIE GERMAIN and CRAIG CRUICKSHANK

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about repairs to an automatic roadway access gate. The applicant, The Owners, Strata Plan KAS 2428 (strata), is a strata corporation. The strata says the respondent, Craig Cruickshank, hit the gate with his boat trailer. The strata seeks reimbursement for repairs to the gate from Mr. Cruickshank. It also says the respondent, Melanie Germain, is liable under the strata's chargeback bylaws. This

is because Ms. Germain owns a strata lot in the strata, and Mr. Cruickshank was Ms. Germain's visitor or invitee. The strata seeks an order for a total payment of \$10,754.01 from the respondents.

2. Mr. Cruickshank says he only hit 1 of the 2 sides of the gate. He says he should not be responsible for the cost of repairing the entire gate. He also says the amount payable should be reduced to account for the fact that an old expensive component (a mechanical operator) was replaced with a brand new one. He says it would be appropriate for him to pay \$4,332.51. Ms. Germain does not deny the chargeback bylaw applies. In substance, she takes the same position as Mr. Cruickshank.
3. A strata council member represents the strata. Mr. Cruickshank is represented by an ICBC claims adjuster. Ms. Germain represents herself.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.
5. The CRT 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.
6. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.

7. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.
8. The strata has sued Mr. Cruickshank under the CRT's jurisdiction over strata property claims rather than its small claims jurisdiction under CRTA section 118. I must therefore consider whether the CRT has jurisdiction over this claim. I will do so after discussing the background facts below.

ISSUES

9. The issues in this dispute are as follows:
 - a. Is the strata's claim against Mr. Cruickshank within the CRT's strata property claims jurisdiction, and if not, what is the appropriate remedy?
 - b. Is Ms. Germain liable for gate repairs, and if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil dispute such as this, the strata must prove its claim on a balance of probabilities. Although I have reviewed all the evidence and submissions, I only refer to them as needed to provide context for my decision.
11. As I will explain below, I find that I must refuse to resolve the strata's claim against Mr. Cruickshank under CRTA section 10(1) as outside the CRT's jurisdiction for strata property claims. This is because Mr. Cruickshank is not a strata lot owner or tenant, and the strata's claim against him is for damages in negligence. I also find that Ms. Germain is liable to the strata for the entire cost of gate repairs under the strata's bylaws. My reasons follow.
12. The background facts are largely undisputed. The gate at issue is the main access gate for the strata. Its 2 sections (or leaves) swing open inwards and away from the waiting vehicle to provide access on a roadway. Hydraulic gate operators attached

to each leaf open the gate when activated by a radio key. The roadway only goes one way and consists of one lane.

13. On August 31, 2018, Mr. Cruickshank drove his truck and boat trailer through the gate. He was turning left at the time. The trailer hit the gate. Only Mr. Cruickshank and a security guard, MM, witnessed the incident.
14. The parties dispute whether Mr. Cruickshank hit one or both sides of the gate. I find that MM's written report shows that Mr. Cruickshank only hit one side. MM wrote that Mr. Cruickshank caught the gate with "the side wheel" of his boat trailer. This is consistent with Mr. Cruickshank's submission that he only hit one side of the gate (to his left) at the time. However, as I will explain below, I find nothing turns on this in this dispute.
15. The strata hired a contractor, AA, to repair the gate. AA completed repairs in September 2018 and invoiced the strata for \$10,754.01. The invoice and other evidence show that AA worked on both sides of the gate and installed a new gate operator on each leaf.
16. On January 15, 2019, the strata wrote Ms. Germain to advise that it had charged back the full invoice amount to her strata lot account. The strata relied in part on bylaw 41(2) for its authority to do so.
17. The strata's bylaws are registered in the Land Title Office. In general terms, bylaw 41(2) deems a strata lot owner responsible for various forms of loss or damage caused by a strata lot owner's visitors or invitees. It is undisputed that Mr. Cruickshank was Ms. Germain's visitor or invitee at the time of the accident.
18. I will discuss the wording of bylaw 41(2) in greater detail below when discussing Ms. Germain's liability for the gate repairs.

Issue #1. Is the strata's claim against Mr. Cruickshank within the CRT's strata property claims jurisdiction, and if not, what is the appropriate remedy?

19. As noted above, the strata claims against Mr. Mr. Cruickshank under the CRT's jurisdiction over strata property claims. I have therefore considered whether I should refuse to resolve this claim as outside the CRT's jurisdiction.
20. In *Turenne v. The Owners, Strata Plan NW1370*, 2017 BCCRT 44, the CRT Vice Chair considered whether the CRT should refuse to resolve a dispute as being too complex and impractical. The parties consisted of 2 applicant strata lot owners and the respondent strata corporation. The dispute was over who should pay for deck repairs. The strata corporation submitted that the former strata lot owners had agreed to make the applicant owners responsible for deck repairs. The strata corporation had requested the former owners and a third-party contractor (a deck inspector) to be added as parties to the dispute.
21. The Vice Chair concluded that the CRT could not add the former strata lot owners or third-party contractor as parties to the dispute. She noted that the CRT's strata property jurisdiction did not extend to contractual claims against former owners or potential tort claims against third parties. The Vice Chair also wrote that the applicant owners' claim for deck repairs exceeded the strata's monetary limit of \$5,000 for small claims disputes. She concluded that even if the value of the dispute was \$5,000 or less, the CRT's small claims jurisdiction would require a separate dispute and separate decision, given the different avenues for appeal set out in the CRTA. The Vice Chair ultimately refused to resolve the dispute.
22. Although not binding, I find the same considerations in *Turenne* apply to this dispute. Under CRTA section 121(1)(e), the CRT has jurisdiction over an action or threatened action by a strata corporation in relation to an owner or tenant. It is undisputed that Mr. Cruickshank is neither of these. CRTA sections 121(1)(a) and (d) provide the CRT jurisdiction over the interpretation or application of strata bylaws and money owing under the bylaws. However, the strata's bylaws do not

make Mr. Cruickshank liable for damage to the gate. As noted above, bylaw 41(2) only makes Ms. Germain liable for any damage caused by Mr. Cruickshank.

23. Based on the evidence and submissions, I find that the strata's claim against Mr. Cruickshank is a claim for damages arising from negligence. The CRT has jurisdiction over damages claims under CRTA section 118. However, as noted in *Turenne*, the CRT's jurisdiction over such claims is limited to \$5,000 under CRTA section 118(1) and the *Civil Resolution Tribunal Small Claims Regulation*. The strata claims \$10,754.01, which is well above this amount. I find this claim is therefore outside the CRT's small claims jurisdiction. Even if the strata's claim was below the CRT's \$5,000 monetary limit, the strata would still need to file a separate application for dispute resolution for Mr. Cruickshank and obtain a separate decision from the CRT. As stated in *Turenne*, this is because the CRTA provides different avenues of post-decision review for small claims and strata disputes.
24. In summary, I refuse to resolve the strata's claim against Mr. Cruickshank under CRTA section 10(1) as outside the CRT's jurisdiction.

Issue #2. Is Ms. Germain liable for gate repairs, and if so, what is the appropriate remedy?

25. Bylaw 41(2) says a strata lot owner is deemed responsible for any loss or damage to common property, limited common property, common assets, or any other loss or damage where the cause of any such loss or damage is the result of an act, omission, negligence or carelessness of the owner or the owner's visitors or invitees, and to the extent that the loss is not fully paid from the proceeds of an insurance policy.
26. It is undisputed that the strata is obligated to maintain the access gate. Based on the evidence and submissions, I find it is a common asset and any damage to the gate would result in a "loss" to the strata under bylaw 41(2). It is also undisputed that no claim for the gate has been made with the strata's insurer.

27. Bylaw 41(2) uses the phrase “responsible for”. As stated in *Yang v. Re/Max Commercial Realty Associates (482258 BC Ltd.)*, 2016 BCSC 2147 at paragraph 139, the term “responsible” is not the same meaning as liable in negligence. In *Yang*, the court considered SPA section 158(2), which says a strata corporation can sue an owner to recover an insurance deductible if the owner is “responsible for” the loss or damage giving rise to the claim. The court noted this expands a strata corporation’s ability to pursue an owner for repayment beyond circumstances where the owner is at fault.
28. In *Ansari v. The Owners, Strata Plan LMS 75*, 2020 BCCRT 651, a CRT member considered a similar bylaw to the one at issue. The bylaw stated that an owner was responsible for damage caused by occupants, tenants or visitors to their strata lot. The tribunal member concluded that the owner was therefore responsible for fire damage caused by a guest, from the “act” of discarding a cigarette. The decision in *Ansari* is not binding but provides guidance for this dispute.
29. Given the above, I find that bylaw 41(2) does not require the strata to show any negligence by Ms. Germain or Mr. Cruickshank. The strata need only show that an act of Ms. Germain’s visitor or invitee caused its loss. There is no dispute that Mr. Cruickshank was Ms. Germain’s guest and that he drove his boat trailer into the gate. I therefore find that Mr. Cruickshank was Ms. Germain’s visitor or invitee and his “act” of driving caused the strata loss under bylaw 41(2). Ms. Germain is liable for the strata’s loss.

Amount of the Loss

30. The next matter is the extent of the loss. The respondents submit that, as a starting point, Mr. Cruickshank only damaged one side of the gate, so they should only be responsible for half of the repairs. However, AA’s invoice shows it repaired both gate sections and gate operators. The respondents argue this goes beyond any damage caused by Mr. Cruickshank. The respondents also argue that AA significantly overcharged for the gate operators.

31. While I acknowledge these submissions, bylaw 41(2) determines what Ms. Germain is liable for. Bylaw 41(2) deems her responsible for any loss or damage to the gate, or any other loss or damage that is the result of Mr. Cruickshank's act. The evidence shows the gate did not work after the boat trailer collision. The strata was forced to hire AA, and AA commenced repairs on both gate sections and both gate operators. The emails between AA and the strata show that, at the time of the repairs, AA believed Mr. Cruickshank had damaged both sides of the gate. I find the strata paid for the repairs believing AA's invoice was for the damage caused by Mr. Cruickshank. I find that, under the bylaws, the strata's loss is not what AA could have reasonably charged for the repairs. Instead, I find that the strata's loss is what it actually paid for repairs. This equals \$10,754.01, as shown in the November 23, 2018 invoice.
32. The respondents also argue that if they pay the full value for the gate repairs, this would put the strata in a better position than if the damage had not occurred. This is known in tort law as betterment. I do not find that betterment applies as the strata's claim against Ms. Germain is based on the bylaws rather than tort law. The bylaws do not provide for any discount to account for betterment.
33. In summary, I find that Ms. Germain must reimburse the strata \$10,754.01 as reimbursement for November 23, 2018 invoice.

CRT FEES, EXPENSES AND INTEREST

34. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule.
35. I have refused to resolve the strata's claim against Mr. Cruickshank. I find that the strata is the successful party against Ms. Germain only. As the strata has proven the entirety of its claim against her, I find it appropriate to order Ms. Germain to pay

the strata \$225 as reimbursement for CRT fees. The strata did not claim any dispute-related expenses, so I do not award them to any party.

36. The *Court Order Interest Act* (COIA) applies to the CRT. The strata is entitled to pre-judgement interest on the \$10,754.01 from November 23, 2018 (the date of the invoice) to the date of this decision. This equals \$333.04.
37. The strata must comply with section 189.4 of the *Strata Property Act*, which includes not charging dispute-related expenses against Ms. Germain.

ORDERS

38. Within 14 days of the date of this order, I order Ms. Germain to pay the strata a total of \$11,312.05, broken down as follows:
 - a. \$10,754.01 as reimbursement for gate repairs,
 - b. \$333.04 in pre-judgment interest under the COIA, and
 - c. \$225.00 in CRT fees.
39. The strata is entitled to post-judgment interest, as applicable.
40. I refuse to resolve the strata's claims against Mr. Cruickshank under CRTA section 10(1) as outside the CRT's jurisdiction.
41. Under sections 57 and 58 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia. The order can also be enforced by the Provincial Court of British Columbia if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

