



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan NW 1886 v. Abdulvalikholqi*, 2020 BCCRT 904

B E T W E E N :

The Owners, Strata Plan NW 1886

APPLICANT

A N D :

AHMAD SIYAR ABDULVALI KHOLQI also known as AHMADSIYAR
ABDULVALIKHOLQI

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. The respondent owns strata lot 6 (SL6) in the respondent strata corporation, The Owners, Strata Plan NW 1886 (strata).

2. In its dispute application, the strata named the respondent as “Ahmad Siyar Abdulvali Kholqi also known as Ahmadsiyar Abdulvalikholqi.” Land title documents confirming ownership of SL6 name the respondent as “Ahmadsiyar Abdulvalikholqi.” As he has not provided contrary information, I will refer to the respondent as Mr. Abdulvalikholqi in this decision.
3. The strata says that around August 2019, its contractor found baby wipes and diapers that had been flushed down a toilet and become lodged in the sump. The strata says these items came from SL6, Mr. Abdulvalikholqi’s strata lot, contrary to strata bylaws. The strata seeks payment of \$25,486.04 for the cost of repairing the pipes and drains, plus an order that Mr. Abdulvalikholqi and the occupants of SL6 not flush anything other than toilet paper.
4. Mr. Abdulvalikholqi denies that he or his wife flushed the items, and says someone in the strata building “set him up.” He admits that he has a baby, but says he has been a plumber for 7 years, knows how the building’s pipes work, and would not flush such items.
5. The strata is represented by a strata council member in this dispute. Mr. Abdulvalikholqi is self-represented.
6. For the reasons set out below, I find that Mr. Abdulvalikholqi is not liable for the cost of the plumbing repairs. I dismiss the strata’s claim.

JURISDICTION AND PROCEDURE

7. 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.

8. The CRT 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 demeanour 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. Further, bearing in mind the CRT’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 CRT’s process and found that oral hearings are not necessarily required where credibility is in issue.
9. 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.
10. 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.

ISSUE

11. The issues in this dispute are as follows:
 - a. Did the strata follow the procedure required under *Strata Property Act (SPA)* section 135 in imposing chargebacks on Mr. Abdulvalikholqi?
 - b. Is Mr. Abdulvalikholqi otherwise required to pay for the plumbing repairs?

- c. Should I order Mr. Abdulvalikholqi not to flush anything other than toilet paper and human waste?

BACKGROUND FACTS

12. I have read all the evidence provided but refer only to evidence I find relevant to provide context for my decision.
13. The strata was created in 1982, and consists of 27 residential strata lots in a 3-storey building. There is also a basement-level parkade.
14. The strata repealed and replaced its previous bylaws in February 2002, except for 1 bylaw about rentals which is not relevant to this decision. The strata also filed amendments to its bylaws at the Land Title Office in March 2005 and March 2009, which are also not relevant to this decision.
15. The evidence shows that on August 11, 2019, Mr. Abdulvalikholqi notified the strata that there was a pool of water and a bad smell in the basement parkade. He texted some photos, and asked that someone investigate.
16. The strata hired a plumbing contractor, Across Town Plumbing and Heating Ltd. (ATPH) to investigate. ATPH's invoices show it attended the strata on 5 days in August 2019 and 1 day in September 2019. ATPH's invoices show the following:
 - 1 sump drainage line was blocked. ATPH, or its subcontractor, used a "big sewer machine" to pull out "wet wipes and debris", and later used a "bigger sewer machine" and "kept pulling out wet wipes and debris."
 - It was necessary to hydro-flush 3 drain lines.
 - Removed over 1000 gallons of water.
 - The invoice entry for August 30, 2019 states as follows:

Used the large sewer machine... Pulled back a massive amount of baby wipes the worst I've ever seen. We spent hours trying to get the wipes off

the line. Still need to come back to clear stubborn blockage of baby wipes/diapers etc.

17. ATPH's invoices show that it returned to the strata on 4 days in October 2019, 2 days in November 2019, and 1 day in December 2019. During these visits STPH continued to snake the drain, attempting to clear it, and pulled out more "wipes".
18. As stated previously, Mr. Abdulvalikholqi denies that the items came from SL6. Rather, he suggests that someone in the building entered the parkade, opened a manhole cover, and threw in the items in order to "set him up". He says he does not exactly know what happened, but that is the only possible explanation. He also says that it is impossible to flush a diaper down his toilet, as it would block the toilet before it entered the pipes or drains.

REASONS AND ANALYSIS

Did the strata follow the required procedure in imposing chargebacks on Mr. Abdulvalikholqi?

19. In a civil proceeding like this one, the applicant strata must prove its claims on a balance of probabilities.
20. The strata says it imposed the \$25,486.04 chargeback on SL6 because of a bylaw breach. SPA section 129 says that to enforce a bylaw, a strata corporation may "remedy a contravention." Section 133(1) says the strata may do what is reasonably necessary to remedy a contravention of its bylaws, including doing work on common property, or removing objects from common property or common assets. Section 133(2) says the strata may require that the reasonable cost of remedying the bylaw contravention be paid by the person who may be fined for the contravention.
21. SPA section 135 says that before requiring a person to pay the costs of remedying a contravention, the strata must give the owner written particulars of the complaint and an opportunity to answer the complaint.

22. I accept that the pipes, drains, and sump described in ATPH's invoices are common property or common assets. However, I find the strata did not follow the procedure required under SPA section 135 before imposing the chargeback on Mr. Abdulvalikholqi.
23. The strata provided 4 letters to Mr. Abdulvalikholqi in evidence. While it is possible the strata sent him more letters, these were not provided in evidence. I find that the strata's 4 letters do not set out sufficient particulars of the complaint.
24. In *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449, the BC Court of Appeal said that SPA section 135 must be strictly followed. While *Terry* dealt with bylaw fines, rather than imposed costs for remedying a contravention, the section 135 requirements are the same for both types of charges. Therefore, I find the analysis applies equally to bylaw remediation costs as to bylaw fines.
25. In particular, I find the strata's 4 letters to Mr. Abdulvalikholqi to not meet the section 135 requirements, as explained in *Terry*, because none of the letters mention which bylaw Mr. Abdulvalikholqi or his wife were alleged to have breached. In fact, none of the letters actually say that a bylaw had been breached, mention the word "bylaw", or say that the plumbing costs were being charged to SL6 because of a bylaw breach. Rather, the letters just included the text of section 135, and say that Mr. Abdulvalikholqi was being charged because items were not permitted to be disposed of down the toilet.
26. The strata submits that it was not necessary to mention any specific bylaw. I do not agree. In *Terry*, the Court of Appeal specifically considered what constituted sufficient particulars for the purpose of section 135. In paragraph 28, the Court said:
- ...an owner or tenant who may be subject to a fine must be given notice that the strata corporation is contemplating the imposition of a fine for the alleged contravention of **an identified bylaw or rule**, and particulars sufficient to call to the attention of the owner or tenant the contravention at issue (my emphasis added).

27. The strata provided a recording of the December 3, 2019 council hearing about the sewage costs. There is also mention of any specific bylaw in that recording.
28. *Terry* is a binding precedent, and I am required to follow it. I also agree with that reasoning. Without knowing what bylaw has allegedly been breached, an owner cannot have a reasonable opportunity to respond to a complaint about a bylaw breach.
29. Since the strata's correspondence does not set out an alleged contravention of any identified bylaw or rule, I find the strata did not meet the section 135 requirements in imposing the chargebacks. Therefore, I dismiss the strata's claim for payment, and its claim for an order about how Mr. Abdulvalikholqi may use the SL6 plumbing.
30. In *Cheung v. The Owners, Strata Plan VR1902*, 2004 BCSC 1750, the BC Supreme Court said that a strata can "cure" a breach of SPA section 135 and re-impose a bylaw contravention penalty by revoking the fine or charge, and then following the section 135 procedure before re-imposing it. That process does not apply here, as the strata has not revoked the chargeback. However, for the reasons set out below I find that Mr. Abdulvalikholqi is not liable for a bylaw breach in any event.

Must Mr. Abdulvalikholqi pay for the plumbing repairs?

31. In its CRT submissions, the strata now says Mr. Abdulvalikholqi or his wife breached bylaw 4.2. Bylaw 4.2 says, in part, that a resident or visitor must not cause damage, other than reasonable wear and tear, to common property or common assets.
32. First, the strata charged Mr. Abdulvalikholqi \$5,000 for an insurance deductible. This forms part of the \$25,486.05 balance shown on the SL6 account ledger and the strata's claimed amount in this dispute. However, the strata provided no evidence of any insurance claim, or any evidence establishing that it paid a deductible. I therefore dismiss the strata's claim for repayment of an insurance deductible.

33. The strata's remaining claim is for \$20,486.04 for ATPH's invoices. ATPH's total invoices from August to December 2019 total \$22,036.12. In its submissions the strata says ATPH's invoices totalled \$25,486.04, but this is not correct.
34. I cannot tell from the strata's evidence and submissions how it arrived at the sum of \$20,495.04 to charge back to SL6. However, I find it is not necessary to determine that, as I find the strata has not established that Mr. Abdulvalikholqi is liable for the repairs.
35. As previously stated, the strata bears the burden of proving its claims in this dispute. The strata's claim is that Mr. Abdulvalikholqi or his wife breached bylaw 4.2 by causing damage to the sewage system. This means the strata must prove that it is more likely than not that the sewer blockage originated from Mr. Abdulvalikholqi's strata lot. Legally, there is no particular onus on Mr. Abdulvalikholqi to prove the blockage came from somewhere else.
36. I find the strata has not met the burden of proof in this dispute. While the parties agree that Mr. Abdulvalikholqi's baby was the only baby living in the strata at the relevant time, I find that in itself is not sufficient to prove that the blockage materials came from SL6.
37. The only evidence against Mr. Abdulvalikholqi is that ATPH described the primary blockage materials as "baby wipes and diapers". However, this does not prove that they came from SL6. First, it is possible that another strata resident had an infant guest, or did babysitting. Second, it is possible that the debris described as baby wipes and diapers were actually wipes and diapers used on an adult, or for another purpose such as cleaning. Given the decayed state of the debris shown in the photos provided by the strata, I find there is no conclusive evidence establishing that the wipes were baby wipes, rather than makeup remover wipes, cleaning wipes, or adult care wipes. I note that there were no photos in evidence showing an identifiable diaper of any kind. Although I accept the evidence from ATPH that the sewer blockage debris included diapers, I find there is no compelling evidence that they were infant rather than adult diapers, or that they came from SL6.

38. I place significant weight on the fact that ATPH's invoices, and the December 4, 2019 letter from ATPH's owner describing the work and cause of the blockage, do not identify any connection with SL6, or with any particular strata lot. The December 4, 2019 letter confirms that the blockage was made up of "sanitary wipes and diapers", there is no discussion about the source of these items.
39. The strata submits that the items must have come from the first floor, since otherwise the blockage would have occurred higher up in the building's pipes. I find there is no evidence to support that assertion. While the strata attributes that opinion to the written statement of council member DO, her statement does not mention that opinion. Also, there is no evidence that DO has expertise in plumbing. No opinion about the likely source of the blockage is mentioned in ATPH's documents, and there is no other expert evidence before me. Therefore, I find it is speculative and unproven. Also, the strata plan shows there are 9 strata lots on the first floor. For the reasons discussed above, the fact that a baby lived in one of these 9 strata lots does not prove that the blockage items came from that strata lot.
40. There is no evidence, such as plumbing schematics, showing that the blockage was more likely to have come from SL6 rather than any of the other 26 strata lots. The sump and drains in question serve all the strata lots, and there is no particular link with SL6 other than the fact that Mr. Abdulvalikhholqi had a baby. For the reasons set out above, I find that link alone is speculative, and insufficient to prove that the blockage was caused by any resident of or visitor to SL6.
41. The strata property manager, JS, said in his written statement that ATPH's owner told him it would have taken about 1 year, plus or minus 2 months from December 2019, for the blockage to reach the point it did. The strata submits that since Mr. Abdulvalikhholqi's baby was 11 months old in December 2019, this is evidence that the blockage came from SL6. I am not persuaded by this argument because it is based on hearsay. In his written statement and invoices, the ATPH owner did not specifically say how long it would have taken for the blockage to develop. Rather, in his December 4, 2019 letter, he said the building's sump would take no more than a year to be full.

42. Even if I accepted that the blockage developed over a one year period in 2019, I find that does not prove that it is more likely than not that it originated from SL6. Again, there are other possible sources of diapers and wipes, such as from a visiting baby or an adult.

43. For all of these reasons, I dismiss the strata's claims.

CRT FEES AND EXPENSES

44. The strata was unsuccessful in this dispute. In accordance with the CRTA and the CRT rules I find it is not entitled to reimbursement of CRT fees. Neither party claimed dispute-related expenses, so I order none.

45. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to Mr. Abdulvalikholqi. I note that Mr. Abdulvalikholqi is not exempt from paying his proportionate share for the plumbing repairs.

ORDER

46. I dismiss the strata's claims and this dispute.

Kate Campbell, Vice Chair