



# Civil Resolution Tribunal

Date Issued: November 9, 2020

File: ST-2019-007667

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 2461 v. Luo*, 2020 BCCRT 1264

**BETWEEN:**

The Owners, Strata Plan LMS 2461

**APPLICANT**

**AND:**

LI HENG LUO, PUI CHING LI, EDNA WONG, GAY YUEN WAI CHAN,  
WEI JING YAO, YONG GANG WEI, and TSUI LEUNG WONG

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Kate Campbell, Vice Chair

## **INTRODUCTION**

1. This dispute is about alleged bylaw infractions in a strata corporation.

2. The applicant, The Owners, Strata Plan LMS 2461 (strata), is a strata corporation, operating under the *Strata Property Act* (SPA). The respondents, Li Heng Luo, Pui Ching Li, Edna Wong (also known as Ed Wong), Gay Yuen Wai Chan, Wei Jing Yao, Yong Gang Wei, and Tsui Leung Wong own or co-own strata lots in the strata.
3. The strata says that since 2017, the owners have engaged in harassing and nuisance behaviour, contrary to the strata's bylaws. Specifically, the strata says Edna Wong has repeatedly sent harassing and defamatory emails to the strata's property manager and other owners, on his own behalf and on behalf of the other respondents. The strata also says Edna Wong has physically confronted and yelled at strata council members, the property manager, and the strata's lawyer. The strata says Edna Wong has recorded council and general meetings without consent, and has posted the recordings to YouTube with defamatory captions.
4. The strata says this conduct is contrary to the bylaws. It seeks payment of bylaw contravention fines from each of the respondents, plus the following additional remedies:
  - An order that the respondents' emails and internet posts accusing council members and the property manager of fraud and theft constitute a nuisance, contrary to the bylaws.
  - An order that the respondents must not circulate emails to owners suggesting that council members or the property manager have engaged in criminal conduct, including fraud or theft.
  - An order that the respondents may not make detrimental false statements about the council members or property manager, in written material circulated to owners or posted online.
  - An order that the respondents may not video record council or general meetings, or post them online without the strata's consent.

- An order that Edna Wong remove all videos and comments he has posted to YouTube about strata council or general meetings.
  - An order that Edna Wong must not interfere with the registration process at general meetings.
  - Reimbursement of legal fees.
5. The respondents deny the strata's claims. They say the strata has not met SPA requirements in imposing the bylaw fines, there is no bylaw or other provision prohibiting videotaping, posting video recordings to the internet, or observing general meeting registrations. They deny the defamation allegations, and say that defamation claims are outside the jurisdiction of the Civil Resolution Tribunal (CRT).
  6. The strata is represented by a lawyer, Paul Mendes. The respondents are self-represented.

## **JURISDICTION AND PROCEDURE**

7. These are the CRT's formal written reasons. 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 in writing, by telephone, videoconference, 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.
9. Some of the documents provided by the parties contain text that is not in English. I have placed no weight on those words or passages. However, I accept and rely on any translations provided by the parties, as no party objected to these.

10. 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.
11. 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.

## **PRELIMINARY ISSUES**

### ***Declaratory Order***

12. The strata requests an order that the respondents' emails and internet posts accusing council members and the property manager of fraud and theft constitute a nuisance, contrary to the bylaws. This would be a declaratory order, which the CRT does not have jurisdiction to make. See the non-binding but relevant decision in *Fisher v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379 at paragraphs 62 to 69. So, I decline to grant this remedy. However, I have made findings about whether the respondents breached the bylaws and are liable to pay bylaw fines, as discussed below.

### ***Defamation***

13. The strata requests an order that the respondents may not make detrimental false statements about the council members or property manager, in written material circulated to owners. The strata also requests an order that the respondents not circulate emails to owners suggesting that council members or the property manager have engaged in criminal conduct, including fraud or theft.
14. I refuse to resolve these 2 claims, for the following reasons.
15. First, the CRT does not have jurisdiction over libel or slander claims: see *NCAH BC Holdings Ltd. v. The Owners, Strata Plan EPS 1231*, 2018 BCCRT 137 and *Pritchard v. The Owners, Strata Plan VIS3743*, 2017 BCCRT 69. While prior CRT decisions

are not binding on me, I find the reasoning in these decisions persuasive, and rely on them. Specifically, claims of libel and slander are barred from the CRT's small claims jurisdiction under CRTA section 119(a). They also do not fit within the CRT's strata property jurisdiction, as set out in CRTA section 121(1), as they are not claims "in respect of the *Strata Property Act*". Thus, the CRT does not have jurisdiction over these claims.

16. Second, the CRT generally does not make prospective orders, or orders about future events: see *Jaud v. The Owners, Strata Plan KAS 1436*, 2020 BCCRT 165.
17. For these reasons, I refuse to resolve the strata's claim for an order restraining the respondents from making or circulating false or detrimental statements.

### ***Authorization for Dispute***

18. The respondents say the strata's claims should be dismissed because it did not obtain a  $\frac{3}{4}$  vote of the ownership authorizing the dispute, as required under SPA section 171(2).
19. SPA section 171(2) says that before a strata corporation may **sue** as a representative of all owners, the **suit** must be authorized by a resolution passed by a  $\frac{3}{4}$  vote of the ownership at an annual or special general meeting (my emphasis added). As explained in *The Owners, Strata Plan NW 177 v. Martin*, 2020 BCCRT 285 at paragraphs 74 to 76, this  $\frac{3}{4}$  vote requirement applies to court proceedings, but not to tribunal disputes. This is because "sue" is defined in SPA section 1(1) as "the act of bringing any kind of court proceeding". "Suit" is defined as "any kind of court proceeding". Since the tribunal is not a court, I find a tribunal claim is not a "kind of court proceeding", and is therefore not a "suit". Since SPA section 171(2) only applies to "suing" and "suits", as defined in section 1(1), I conclude that  $\frac{3}{4}$  vote authorization is not required for a tribunal proceeding.
20. Also, SPA section 189.4 supports the conclusion that section 171(2) does not apply to CRT proceedings. Section 189.4 specifies that some specific provisions about

court proceedings apply to CRT disputes, but section 171(2) and the 3/4 vote authorization requirements is not included in these.

21. I therefore find a 3/4 vote was not necessary for the strata to file this dispute.

### ***Legal Representation***

22. The respondents object to the strata being represented by a lawyer, Mr. Mendes. They argue that Mr. Mendes is prejudiced against them, and that allowing the strata to be represented by a lawyer was significantly unfair.

23. I do not agree. Mr. Mendes is a qualified lawyer in BC, and as the strata's paid advocate he is not required to be neutral. I also find it was reasonable for the CRT to allow legal representation, given the seriousness of the alleged conduct in dispute. Finally, it was open to the respondents to request permission to be represented by a lawyer in this dispute. I remain neutral, and am not swayed in favour of either party because one is represented and another is not. For these reasons, I find there was no breach of procedural fairness arising from the strata's legal representation.

### ***Counterclaim***

24. In their submissions, the respondents assert they are making counterclaims, or that they are going to file a counterclaim against the strata. However, they did not file a counterclaim form, and did not pay a fee to file a counterclaim. For that reason, and based on the CRT rule 3.2, I have not considered any counterclaim. Some of the respondents filed a separate dispute, ST-2020-009948, about a special levy. I have decided that dispute in a separate decision, as the issue is distinct, and the parties are not identical.

## **ISSUES**

25. The issues in this dispute are:

- a. Must the respondents pay bylaw violation fines?

- b. Should the CRT order the respondents not to video record council or general meetings, or post them online without the strata's consent?
- c. Should the CRT order Edna Wong to remove all videos and comments he has posted to YouTube about strata council or general meetings?
- d. Should the CRT order Edna Wong not to interfere with the registration process at general meetings?
- e. Is the strata entitled to reimbursement of legal fees?

## **EVIDENCE AND ANALYSIS**

26. I have read all the evidence provided but refer only to evidence I find relevant to provide context for my decision. In a civil proceeding like this one, the applicant strata must prove its claims on a balance of probabilities.
27. The strata repealed and replaced all of its bylaws by filing new bylaws at the Land Title Office in June 2018. I find these are the bylaws applicable to this dispute.

### ***Must the respondents pay bylaw violation fines?***

28. The strata submits Edna Wong violated strata bylaws in 3 ways:
- a. By emailing all owners, on behalf of the respondents, alleging the council and property manager engaged in fraud and theft.
  - b. By engaging in abusive and disruptive conduct and council and general meetings, including making baseless allegations against the council.
  - c. By posting videos on YouTube which include disparaging and derogatory remarks about the council, the property manager, and the strata's lawyer.
29. The strata submits that the other respondents, besides Edna Wong, violated strata bylaws by "participating" in Edna Wong's "email harassment". The strata seeks payment of the following fines:

- Edna Wong - \$5,100
- Tsui Leung Wong - \$1,200
- Pui Ching Li - \$1,000
- Li Heng Luo - \$1,000
- Gay Yuen Wai Chan - \$1,000
- Wei Jing Yao and Yong Gang Wei (together) - \$1,000

30. In this dispute, the strata submits the respondents have all breached 2 strata bylaws. The relevant parts of these bylaws are as follows:

3(1) – an owner must not use a strata lot, the common property or common assets in a way that causes a nuisance or hazard to another person, or unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets, or another strata lot.

13(1) – Every owner, tenant or occupant of a strata lot and every employee, contractor or agent of the strata corporation is entitled to use and enjoy the strata lots and common property (including limited common property) free from harassment or abuse of any kind, (whether in person, over the telephone or in writing) which includes but is not limited to:

(a) verbal abuse or threats of any kind,

(b) physical abuse which includes but is not limited to unwelcome touching or threats of unwelcome touching,

(c) or unwelcome remarks, jokes, slurs, or taunting about a person's race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender or age.



31. I find that none of the respondents are liable to pay any bylaw violation fines. My reasons follow.
32. First, the strata has fined the respondents other than Edna Wong for emails that Edna Wong allegedly sent on their behalf. While I agree that the emails in question say they were sent on behalf of these individuals, only Edna Wong actually sent the emails, and there is no evidence before me indicating that any of the other respondents instructed him to do so, or wrote the content of the emails. I find the strata cannot legitimately impose a bylaw violation fine on owners who did not take any action (in this case, sending an email). Edna Wong's assertion that he was acting on their behalf is not sufficient to establish that the other respondents breached any bylaw.
33. Second, I find that none of the respondents, including Edna Wong, violated bylaw 3(1). As stated above, bylaw 3(1) says an owner must not **use a strata lot, the common property or common assets** in a way that causes a nuisance or hazard to another person, or unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets, or another strata lot (my bold emphasis added). I find that writing and sending emails is not using a strata lot, common property, or common assets. There is no evidence about where the emails were written or sent from, and even if there was, I find that would be an overly broad interpretation of the bylaw. Strata bylaw 3(1) repeats Standard Bylaw 3(1) from the SPA. I find the purpose of that bylaw is to prohibit conduct such as making noise, noxious odours, unrepaired leaks, or safety hazards. The act of writing emails does not constitute a nuisance or hazard. In this case, the strata seeks to limit the content of Edna Wong's emails through this nuisance bylaw, but I find it does not apply, as it not a use of a strata lot, common property, or a common asset.
34. I find the same reasoning applies to the YouTube videos and comments Edna Wong posted.
35. As for Edna Wong's conduct at council and general meetings, the strata says this was a nuisance and unreasonable interference with the rights of other persons,

including the council, the strata manager, and the strata corporation's lawyer to use and enjoy strata lots and the common property.

36. In *Liu v. The Owners, Strata Plan NW 2269*, 2020 BCCRT 291, a CRT vice chair considered another case where a strata had fined an owner for breach of a nuisance bylaw based on her conduct at a general meeting. As in this case, the strata corporation said that the general meeting had occurred in a common property clubhouse, and the owner's allegedly disruptive conduct during the meeting unreasonably interfered with the rights of others to use and enjoy the clubhouse. Based on the evidence, the vice chair concluded the owner had not breached the bylaw. He noted in paragraph 66 that differences of opinion are to be expected during strata meetings:

Every owner has a democratic right to attend the strata's AGM to exercise their vote.... It is to be expected that during discussion at an AGM, owners may have different opinions and voice their concerns in different ways. Owners may repeat their concerns if they believe they have not been heard, or even say things they may regret later. However, I do not find that any of these things, in the circumstances of this dispute, could be considered to unreasonably interfere with the rights of other persons to use and enjoy the common property during the AGM.

37. I agree with that reasoning, and apply it here. I find it would be unreasonable for a strata corporation to hold its meetings on common property, or in a strata lot, and then rely on a nuisance bylaw to govern how participants must conduct themselves during that meeting. It is clear from the evidence that Edna Wong has highly contentious relationships with the strata council members and others. However, I find that bylaw protections against nuisance and interference with use of and enjoyment of a strata lot or common property cannot reasonably be used to sanction owners for their conduct during meetings.
38. I note that it is open to a strata corporation to enact bylaws governing meeting procedures and conduct.

39. The strata also submits that the respondents are liable to pay bylaw fines because they breached bylaw 13(1), which as explained above prohibits harassment. The strata admits that its bylaw notice letters did not mention bylaw 13(1), and having reviewed the correspondence, I agree.
40. SPA section 135 says that before imposing a bylaw violation fine, the strata must give the owner written particulars of the complaint and an opportunity to answer the complaint. 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.
41. The strata submits that it was not necessary to mention bylaw 13(1) in its notice documents, as the respondents are deemed to be aware of it. 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).
42. In this case, the strata's correspondence only mentioned bylaw 3(1). I have found the respondents did not breach that bylaw, so they cannot be fined for its breach. Since the strata did not warn the respondents of any alleged breach of bylaw 13(1), I find they cannot be fined for that, based on the reasoning in *Terry*. *Terry* is a binding precedent, and I am required to follow it.
43. For these reasons, I find the respondents are not responsible to pay any bylaw violation fines. I dismiss this claim.

### ***Recording Meetings***

44. The strata seeks an order that the respondents may not video record council or general meetings without the strata's consent.

45. There is no bylaw or SPA provision that prohibits recording meetings. However, the strata must comply with the *Personal Information and Protection of Privacy Act* (PIPA). PIPA governs, among other things, video recordings.
46. PIPA prohibits strata corporations from placing video cameras on common property unless the strata has bylaws allowing the video camera and residents are notified. I find that the strata does not have bylaws allowing video cameras on common property. This includes the common property meeting room, where the evidence suggests most general and council meetings are held.
47. Although the respondents are not personally subject to PIPA, I find that video recording meeting participants without their consent, or posting such videos on the internet, would violate strata bylaw 13(1), which prohibits “harassment...of any kind”. Specifically, I find that making or posting these recordings without the consent of the majority of those present would constitute harassment contrary to the strata’s bylaws.
48. The respondents submit the CRT does not have jurisdiction to consider harassment claims. That is true of harassment arising under SPA section 31: *Tsang v. The Owners, Strata Plan BCS 4236*, 2020 BCCRT 1141. However, in this case the strata has a harassment bylaw. The CRT does have jurisdiction to interpret and apply strata bylaws. I therefore find I have jurisdiction to consider and apply bylaw 13(1).
49. The respondents say that online posts are protected by freedom of expression. I agree with the strata that freedom of expression does not apply in this case, as the strata is not subject to the *Charter of Rights and Freedoms*.
50. Under CRTA sections 123(1)(a) and (b), I have the authority to order a party to do something or refrain from doing something. Under this authority, I therefore order that the respondents must not video record any strata council meeting or general meeting, or post such recordings on the internet, without the strata’s consent.
51. For the same reasons, I order Edna Wong to immediately remove all videos of strata council or general meetings he has posted to YouTube or other websites, along with any associated comments he has posted about these recordings.

## ***Meeting Registration***

52. The strata requests an order that Edna Wong not interfere with the general meeting registration process. I find this request is vague and unspecific. I also find the strata has not provided sufficient particulars about the alleged interference to justify an order. I therefore dismiss this claim.
53. Again, I note that it is open to the strata to enact further bylaws about meeting procedures.

## ***Legal Fees***

54. The strata seeks reimbursement of \$11,023.13 in legal fees. I deny this claim, for the following reasons.
55. CRT rule 9.4(1) says a successful party will usually be entitled to reimbursement of dispute-related expenses. In this dispute, the strata was only partially successful in its claims. Also, CRT rule 9.4(3) says that except in extraordinary circumstances, the CRT will not order one party to pay another party's legal fees in a strata property dispute. I find the circumstances of this dispute are not extraordinary. Although the relationship between some of the parties is contentious, the parties have strongly held positions, and there was a significant amount of evidence, I find this dispute is not different in size or complexity from the typical strata property dispute decided by the CRT.
56. The strata says it is entitled to reimbursement of legal fees under SPA section 133, which permits a strata corporation to require a person who may be fined for a bylaw violation pay the reasonable costs of remedying that violation. As explained above, I found that none of the respondents could be fined for a bylaw violation. Also, the same notice requirements for a bylaw fine apply to a reimbursement under SPA section 133, and I have found those notice requirements were not met. I therefore find the strata is not entitled to reimbursement of legal fees under section 133.
57. Finally, the strata says it is entitled to reimbursement on a basis analogous to special costs, as discussed in *Parfitt et al v. The Owners, Strata Plan VR 416 et al*, 2019

BCCRT 330. In *Parfitt*, I found that the CRT's authority to order reimbursement of legal fees in extraordinary circumstances is similar to an award of special costs under the BC Supreme Court Rules.

58. As discussed in cases such as *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352, special costs are an unusual order, only made in exceptional circumstances, intended to chastise a party for reprehensible, scandalous or outrageous conduct. In *Garcia v. Crestbrook Forest Industries Ltd.*, [1994] B.C.J. No. 2486 (BCCA), the BC Court of Appeal said that special costs should be ordered against a party when their conduct in the litigation was reprehensible, meaning deserving of reproof or blame.
59. In this case, the strata says Edna Wong's conduct was reprehensible because upon learning of this CRT dispute, he verbally abused strata council president EC at a public location. This allegation is set out in a November 1, 2019 letter from the strata's lawyer. However, I place no weight on that evidence because it is hearsay. While the CRT may accept hearsay evidence, I find no reasonable basis to do so here. Instead, I place substantial weight on EC's February 7, 2020 statement. In that statement, EC says Edna Wong "harassed and insulted me many times in the common areas of the strata and in public places. He even escalated his hostile action to assault me by slapping my face."
60. I find that EC's statement does not establish the dates or particulars of these alleged incidents. For that reason, I am unable to find that the alleged actions were conduct in this litigation. I find EC's statement does not prove the strata's assertion that Edna Wong verbally abused EC upon learning of this dispute. So, I find that a special costs type award is not established here.
61. For these reasons, I find the strata is not entitled to reimbursement of legal fees. I dismiss this dispute.

## **CRT FEES AND EXPENSES**

62. The strata was partially successful in this dispute. In accordance with the CRTA and the CRT's rules, I find the strata is entitled to reimbursement of half its tribunal fees, which equals \$112.50. I find that since the majority of the strata's claims were against Edna Wong, it is appropriate to order him to pay this amount. Apart from the legal fees discussed above, neither party claimed dispute-related expenses, so none are ordered.
63. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to the respondents.

## **ORDERS**

64. I order the following:
- a. Within 30 days of this decision, Edna Wong must reimburse the strata \$112.50 for CRT fees.
  - b. Effective immediately, the respondents must not video record any strata council meeting or general meeting, or post such recordings on the internet, without the strata's consent.
  - c. Edna Wong must immediately remove all videos of strata council or general meetings he has posted to YouTube or other websites, along with any associated comments he has posted about these recordings.
65. The strata is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
66. I refuse to resolve the strata's claim for an order restraining the respondents from making or circulating false or detrimental statements. The strata's remaining claims are dismissed.
67. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the

order can be enforced through the British Columbia Provincial Court 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.

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Kate Campbell, Vice Chair