



Civil Resolution Tribunal

Date Issued: December 1, 2020

File: ST-2020-004321

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan ABC XXX v. Z.O.K.*, 2020 BCCRT 1359

BETWEEN:

The Owners, Strata Plan ABC XXX

APPLICANT

AND:

Z.O.K.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The respondent, ZOK, owns a strata lot in the applicant strata corporation, The Owners, Strata Plan ABC XXX (strata). The strata says that a water leak originated

in ZOK's strata lot, causing damage to the strata lot below. The strata claims \$5,000, which is the deductible the strata paid to its insurer for the repairs.

2. The strata also asks for an order that ZOK pay a \$200 bylaw violation fine. The strata says that ZOK breached the strata's bylaws by threatening and harassing another owner.
3. ZOK asks that I dismiss both claims.
4. The strata council president, CH, represents the strata. ZOK represents himself.
5. In the published version of this decision I have anonymized the parties' identities due to the sensitive nature of the allegations against ZOK and because these reasons include a discussion of ZOK's mental health issues.

JURISDICTION AND PROCEDURE

6. 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.
7. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In general, the CRT holds hearings entirely in writing. I considered whether it was necessary to have an oral hearing to accommodate ZOK. He requested special accommodations for participating in the CRT process because he has mental health issues, difficulty writing, and difficulty using a computer.
8. CRT staff usually communicates with parties by email to make sure that they understand how to upload evidence and submissions during the adjudication process. To accommodate ZOK, CRT staff also telephoned him and confirmed that he had received the CRT's emails and a copy of the strata's evidence and submissions. ZOK

told CRT staff that he did not wish to respond to the strata's submissions or provide any evidence. Based on these efforts by CRT staff, I am satisfied an oral hearing is not required because the CRT adequately accommodated ZOK.

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 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 CRT considers appropriate.

ISSUES

11. The strata initially asked for orders that ZOK pay 2 bylaw violation fines. In its submissions, the strata withdrew one of those claims because it says that ZOK paid the fine. I therefore find that the strata's claim about this first fine, which was imposed on November 21, 2018, is not before me.
12. The remaining issues in this dispute are:
 - a. Is ZOK responsible to pay the strata's deductible?
 - b. Does ZOK have to pay the remaining fine, which was imposed on April 23, 2020?

BACKGROUND

13. In a civil claim such as this, the strata as the applicant must prove its case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
14. The strata consists of 38 apartment-style strata lots in a low-rise building. ZOK's strata lot is on the second floor.

15. The strata filed a consolidated set of bylaws with the Land Title Office on September 27, 2017. I find that these are the bylaws applicable to this dispute.

EVIDENCE AND ANALYSIS

The Insurance Deductible

16. On September 21, 2018, the resident of the strata lot directly below ZOK's strata lot reported a water leak from their ceiling. The same day, the resident and CH attended ZOK's strata lot and observed water flowing from underneath his kitchen sink onto the floor. They called a plumber and a restoration contractor, Griffen Restoration Services (Griffen).
17. Griffen provided a written report of its findings on September 26, 2018. According to Griffen's report, the plumber fixed a failed water line and valve in ZOK's kitchen. Griffen reported that water had come through the kitchen ceiling and spread around the strata lot, including the dining room, living room and hallway. Griffen's preliminary opinion was that the closets, hallways, dining room, living room and kitchen would all need new flooring and drywall, and that the kitchen would need new cabinets. Griffen told the strata that the damage would exceed the strata's \$5,000 deductible.
18. There is no evidence directly from the plumber who attended ZOK's strata lot. I accept Griffen's evidence that the leak was from a failed water line and valve underneath ZOK's kitchen sink. ZOK does not dispute this.
19. On October 3, 2018, the strata's property manager emailed ZOK to tell him that the strata would bill him for the deductible.
20. In this dispute, ZOK alleges that the water damage is a "complete fabrication" and that the \$5,000 was used to fund renovations. However, I find that ZOK acknowledged that the water originated from his kitchen sink in a July 23, 2019 letter in which he mentioned paying the plumber to fix the leak. I therefore find that the damage claim was not a fabrication.

21. I find that the leak in ZOK's strata lot caused more damage than the strata's \$5,000 deductible. I rely primarily on the Griffen report, which sets out in detail the damage that the leak caused.
22. Section 158(1) of the *Strata Property Act* (SPA) says that a strata corporation's insurance deductible is a common expense to be shared by all owners. However, section 158(2) of the SPA says that a strata corporation may sue an owner to recover a deductible "if the owner is responsible for the loss or damage that gave rise to the claim".
23. The strata does not have a bylaw authorizing it to sue owners for recovery of a deductible. However, section 158(2) does not say that a strata corporation must have such a bylaw. Notably, other provisions of the SPA that authorize a strata corporation to do something require a bylaw. For example, section 28(3) allows a strata corporation to prohibit people in arrears from being on a strata council, but only if it has a bylaw to that effect.
24. Therefore, I agree with the CRT member in *The Owners, Strata Plan VIS 6634 v. Brown*, 2017 BCCRT 86, that section 158(2) provides a standalone right for a strata to sue an owner and does not require a strata corporation to have a bylaw as a "pre-condition" to doing so. See also *The Owners, Strata Plan BCS 4008 v. Yu*, 2019 BCCRT 373.
25. In order to succeed under section 158(2), the strata needs to prove that ZOK was "responsible" for the damage. The strata does not need to prove that ZOK was negligent or breached his obligation to repair and maintain his strata lot: see *Wawanesa Mutual Ins. Co. v. Kieran*, 2007 BCSC 727, at paragraph 15.
26. Was ZOK responsible for the damage? I find that it is not enough for the strata to show that the water originated in ZOK's strata lot. Rather, it depends on whether he was responsible under the SPA and the bylaws for repairing and maintaining the valve and line that failed.

27. Section 1(1) of the SPA defines “common property”, in part, as the pipes within a strata lot if they are capable of being and intended to be used in connection with the enjoyment of another strata lot or the common property.
28. I find that the pipe and valve that failed, which again were under ZOK’s kitchen sink, are not common property. I find that they only exist to service ZOK’s kitchen sink and are not used in connection with any other strata lot or common property. So, the pipe and valve are part of ZOK’s strata lot.
29. Bylaw 3(1) says that ZOK must repair and maintain his strata lot except for repair and maintenance that the strata is responsible for under the bylaws. Nothing in the bylaws makes the strata responsible for repairing or maintaining pipes or plumbing fixtures that are part of a strata lot. I find that the bylaws make ZOK responsible for the failed pipe and valve.
30. As mentioned above, the strata does not need to prove that ZOK failed to properly repair and maintain the pipe and valve. Because they were his responsibility, I find that section 158(2) of the SPA applies. The strata may recover the deductible from ZOK even though there is no evidence he did anything wrong.
31. For these reasons, I find that ZOK must reimburse the strata for the \$5,000 insurance deductible.

The Fine

32. The circumstances that led the strata to impose the fine at issue in this dispute are unclear, based on the evidence before me. In the strata’s Dispute Notice, the strata says that the fine relates to an incident on May 6, 2019. The strata says that an owner complained to the property manager that ZOK yelled a threat at them, which included a racial slur. ZOK says in his Dispute Response that he was misheard.
33. In its submissions, the strata says that the fine was for “unspeakable and homophobic slurs” that led to a fine being levied by letter dated April 23, 2020. The property manager’s April 23, 2020 letter refers to an incident on April 19, 2020. It does not mention the alleged May 6, 2019 incident.

34. I find that I do not need to resolve this discrepancy, or decide whether ZOK made any racist, homophobic or other slurs. This is because I find that the strata did not comply with section 135 of the SPA before imposing the fine. I note that neither party raised section 135 in their submissions. However, section 135 is a mandatory and strict provision. I find that the property manager's April 23, 2020 letter speaks for itself regarding whether the strata complied with section 135. Therefore, I find that there would be no purpose in receiving submissions about the issue.
35. Section 135 of the SPA says that the strata must not impose a fine unless it has received a complaint and given the owner a reasonable opportunity to answer the complaint, including a hearing if requested.
36. In the property manager's April 23, 2020 letter, they said that the strata had fined ZOK \$200 for breaching the bylaws by yelling slurs at another resident. The property manager demanded payment of the fine by May 14, 2020.
37. The property manager went on to say that under section 135 of the SPA, ZOK could answer the complaint, including a hearing if requested. The property manager said that if ZOK did not respond, the strata might impose a fine.
38. ZOK responded to the strata's letter. ZOK's response is not entirely clear. He did not deny yelling at another resident but seems to suggest that the incident was the other resident's fault. ZOK's response is not dated. There is no evidence that the strata responded.
39. The property manager's letter is internally inconsistent. It said that the strata might impose a fine if ZOK did not respond to the letter, but also that the strata had already imposed the fine.
40. The strata must strictly comply with section 135 of the SPA *before* it imposes a fine: *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449. As the Court of Appeal said in *The Owners, Strata Plan NW 307 v. Desaulniers*, 2019 BCCA 343, the strata has "no leeway" in following section 135.

41. I find that the property manager's letter does not meet the procedural requirements in section 135 of the SPA. The strata imposed the fine before it gave ZOK an opportunity to respond.
42. If a strata corporation breaches the procedural requirements of section 135 of the SPA, it may "cure" the defects: *Cheung v. Strata Plan VR 1902*, 2004 BCSC 1750. In *Cheung*, the strata corporation did not initially follow section 135 before imposing a fine. However, the strata corporation reversed the fine and restarted the process following the proper procedures. The court found that this was acceptable and upheld the fines.
43. I find that the parts of the property manager's letter that refer to section 135 do not cure the defect. In *Cheung*, the court relied on the fact that the strata corporation had reversed the fines before restarting the section 135 process. Here, the strata's offer came at the same time as it demanded payment of the fine.
44. I find that this dispute is not the same as *S.M. v. The Owners, Strata Plan ABC*, 2017 BCCRT 23, or *Lum v. Section 1 of the Owners, Strata Plan LMS 921*, 2019 BCCRT 1207. In those 2 disputes, the strata corporations sent letters imposing fines but explicitly held off demanding payment from the owner to give the owner an opportunity to respond. The CRT members found that this procedure provided a reasonable opportunity to respond to the complaint. Put another way, the CRT members did not consider these fines "imposed" within the meaning of section 135.
45. In this dispute, the strata demanded payment within 14 days of receiving the April 23 letter. I find that it is unreasonable to offer a hearing in the same letter as demanding payment of the fine. I also find that the language used in the April 23 letter clearly shows that the fine was imposed before giving ZOK an opportunity to respond.
46. I note that another CRT member reached the same conclusion on similar facts in *The Owners, Strata Plan 1769 v. Dagenais*, 2020 BCCRT 957.
47. I therefore find that the strata did not comply with section 135 of the SPA before imposing the fine. I dismiss the strata's claim.

TRIBUNAL FEES, EXPENSES AND INTEREST

48. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. While the strata only succeeded on 1 of its 2 claims, I find that it was substantially successful because it was successful on the significantly larger claim. So, I find the strata is entitled to reimbursement of its \$225 in CRT fees. The strata did not claim any dispute-related expenses.
49. The *Court Order Interest Act* applies to the CRT. The strata is entitled to pre-judgement interest on the deductible. The date that the strata paid the deductible is not in evidence. I find that the appropriate date to award interest from is January 21, 2019, the date of the strata's payment demand to ZOK, to the date of this decision. This equals \$57.78.
50. The strata must comply with the provisions in section 189.4 of the SPA, which includes not charging dispute-related expenses against ZOK.

DECISION AND ORDERS

51. I order that within 30 days of the date of this order, ZOK pay the strata a total of \$5,282.78, broken down as follows:
- a. \$5,000 for the deductible,
 - b. \$57.78 in prejudgment interest, and
 - c. \$225 in CRT fees.
52. I dismiss the strata's claim for payment of the April 23, 2020 fine.
53. The strata is also entitled to post judgement interest, as applicable.

54. 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.

Eric Regehr, Tribunal Member