



Civil Resolution Tribunal

Date Issued: January 6, 2021

File: ST-2020-005218

Type: Strata

Civil Resolution Tribunal

Indexed as: *Cheng v. Zhao*, 2021 BCCRT 8

BETWEEN:

MEI CHENG

APPLICANT

AND:

HAIYAN ZHAO

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about water damage repairs in a strata corporation.
2. The applicant, Mei Cheng, and the respondent, Haiyan Zhao, both own strata lots in a strata corporation, The Owners, Strata Plan EPS2833 (strata). Ms. Zhao owns

strata lot 12 (SL12), and Ms. Cheng owns SL6. The strata plan shows that SL6 is located directly underneath SL12, on the floor below.

3. In an agreed statement of facts, the parties agree there were 2 water leaks, on July 23, 2019 and July 31, 2019. Ms. Cheng says that on both occasions, water leaked from the SL12 bathroom into the guest bathroom of SL6. Ms. Cheng says the leaks are Ms. Zhao's responsibility. She requests an order that Ms. Zhao pay \$1,125.89 for an initial ceiling repair, and \$1,123.69 for a second ceiling repair after an access hole was cut to repair the SL12 plumbing.
4. Ms. Zhao says she had an agreement with Ms. Cheng to pay \$2,054.43 for emergency restoration expenses following the leak, plus further repairs facilitated by the strata. Ms. Zhao says she is not responsible to pay more. Ms. Zhao says she never agreed to pay for Ms. Cheng's outside contractor, hired without the strata's approval. Ms. Zhao also says the invoices provided by Ms. Cheng are possibly inauthentic, and that some of the claimed work was not done.
5. Ms. Cheng is represented in this dispute by her daughter, CW. Ms. Zhao is represented by her son-in-law, JT. The strata is not a party to this dispute.

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 legal principles. 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 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.

8. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Both parties in this dispute question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note that in *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
9. 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.

ISSUES

10. The issues in this dispute are:
 - a. Must Ms. Zhao pay Ms. Cheng \$1,125.89 for ceiling repairs arising from the water leaks?
 - b. Must Ms. Zhao pay Ms. Cheng \$1,123.69 for further ceiling repairs following the April 2020 plumbing repairs?

EVIDENCE AND ANALYSIS

11. I have read all the evidence and submissions provided but refer only to that which I find relevant to provide context for my decision. In a civil proceeding like this one, the applicant, Ms. Cheng, must prove her claims on a balance of probabilities.
12. As noted above, the parties agree that leaks occurred on July 23, 2019 and July 31, 2019. Ms. Cheng says, and Ms. Zhao does not dispute, that these leaks damaged the ceiling of her strata lot, SL6. The evidence also shows that sometime in April

2020, a plumber cut a hole in the SL6 bathroom ceiling in order to access and repair SL12's plumbing.

Must Ms. Zhao pay Ms. Cheng \$1,125.89 for ceiling repairs arising from the water leaks?

13. The correspondence in evidence shows that Ms. Cheng's daughter, CW, reported the leak to the strata on July 23, 2019. The strata called a restoration company, On Side Restoration (On Side). On Side removed wet drywall from the SL6 ceiling and placed drying equipment in SL6.
14. CW reported the second leak to the strata on August 1, 2019. The strata again called On Side to do emergency remediation.
15. An October 4, 2019 invoice from On Side shows that it billed the strata \$1,125.89 for repairs, including 8 hours of time for a drywaller on September 30, 2019. On Side's invoice says the repaired damage was due to a "water leak from unit above."
16. The evidence before me shows that the strata initially charged back On Side's \$1,125.89 invoice to Ms. Zhao. For reasons that are not explained in the evidence, the strata later charged back that invoice to Ms. Cheng. The parties do not dispute that the chargeback was ultimately applied to Ms. Cheng's strata lot account, and text messages in evidence show that Ms. Cheng paid it on August 1, 2020. I therefore accept that as accurate.
17. Generally, there are 3 circumstances where a strata lot owner may be liable to compensate another owner for damage repair costs:
 - a. Where it is required under the strata's bylaws.
 - b. Where the respondent owner was negligent.
 - c. Under the law of nuisance.
18. Also, in this case Ms. Cheng says Ms. Zhao is responsible to pay for leak damage based on a signed agreement. I will consider each of these circumstances in turn.

Strata Bylaws

19. The strata's bylaws are those filed at the Land Title Office (LTO) in April 2017, plus some subsequent amendments. I find there is no strata bylaw that makes Ms. Zhao liable to pay Ms. Cheng for leak damage.
20. The strata's bylaws do not address damage or repair expenses between owners. Bylaw 43(2) says an owner will indemnify and save harmless the strata for damage in certain circumstances, but that only applies to the strata, and not to Ms. Cheng. I therefore find that bylaw 43(2) is not determinative of this dispute.
21. A recently added bylaw, bylaw 52(a), contains similar language to bylaw 43(2), and allows the strata to charge back water leak costs to an owner. I find bylaw 52(a) does not apply to the initial water damage from July 2019, because it was not filed at the LTO until September 25, 2019. Section 120(1) of the *Strata Property Act* (SPA) provides that bylaw amendments do not take effect until filed at the LTO. Also, none of the strata bylaws, including bylaw 52(a), contain provisions governing who must pay to repair the access hole cut in the SL6 ceiling in April 2020.
22. Bylaw 43(3) recommends that owners carry adequate home insurance, but does not require it. Ms. Cheng says she did not have insurance, so did not make a claim.
23. For these reasons, I find Ms. Zhao is not responsible to pay Ms. Cheng for any repairs under the strata's bylaws.

Negligence

24. I find that Ms. Cheng has not proved that Ms. Zhao was negligent.
25. In order to establish negligence, Ms. Cheng must prove that Ms. Zhao owed her a duty of care, that Ms. Zhao breached the standard of care, and that the SL6 damage was caused by Ms. Zhao's breach of the standard of care (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).

26. I accept that as a neighbour and fellow strata lot owner, Ms. Zhao owed Ms. Cheng a duty of care. The applicable standard of care is reasonableness (see *Burris v. Stone et al*, 2019 BCCRT 886 at paragraph 28).
27. I find the evidence before me does not establish that Ms. Zhao breached the standard of care by acting unreasonably in the circumstances. Specifically, there is no conclusive evidence before me about what caused the July 2019 leaks. Ms. Zhao does not dispute that the leaks came from SL12, and the correspondence in evidence confirms that some plumbing in SL12 plumbing was later repaired. However, there is no evidence before me explaining what repairs were performed. There is discussion in the correspondence from the strata's building manager that the leak came from the SL12 bathtub. However, there is no evidence, such as a report from a plumber or other contractor, confirming the reason for the leak, or its specific source. While On Side's documents say the leak was "from unit above", they do not say precisely where the leak came from, such as the bathtub or sink. They also do not identify any particular fault in the plumbing, such as a leaking pipe or valve.
28. I find the fact that the leak came from the SL12 bathroom is not, in itself, sufficient to establish negligence. The standard of care expected of the respondent is not perfection. The standard of reasonableness is based on what would be expected of an ordinary, reasonable, and prudent person in similar circumstances. The evidence before me does not indicate that Ms. Zhao, or another occupant of SL12, acted in an extraordinary, unreasonable, or imprudent way.
29. For these reasons, I find the evidence before me does not establish that Ms. Zhao was negligent.

Nuisance

30. Strata bylaw 3(1) says, in part, that resident or visitor must not use a strata lot in a way that causes a nuisance or hazard to another person, or unreasonably interferes with their right to use and enjoy their strata lot. Bylaw 3(1) codifies the legal principle of nuisance, which is when a person unreasonably interferes with the use or enjoyment of another person's property: see *Zale et al v. Hodgins*, 2019 BCCRT 466.

31. In *Theberge v. Zittlau*, 2000 BCPC 225, the BC Provincial Court said the fact that person did not know about a potential nuisance is a valid excuse, unless the person ought to have discovered it by reasonable care. The court referred to *Kraps v. Paradise Canyon Holdings Ltd.* [1998] B.C.J. No. 79 (BCCA) in stating that liability in nuisance relies on actual or constructive knowledge of the hazardous condition, and the occupier's lack of reasonable care in responding to it. In other words, an owner is not responsible for escaping water that they did not know of and could not reasonably be expected to know of.
32. I find that this principle from *Theberge* and *Kraps* applies here. There is no evidence confirming that Ms. Zhao or JT were aware of the leak from the SL6 bathroom until after the second leak occurred on July 31, 2019. There is also no evidence that there was a plumbing problem they ought to have discovered by exercising reasonable care before the leaks occurred.
33. I therefore find Ms. Zhao is not liable in nuisance.

Agreement Between the Parties

34. On March 24, 2020, the strata emailed CW and said SL12 was ready to complete plumbing repairs requested by the strata, which required a plumber to enter SL6 and cut an access hole in the bathroom ceiling. The strata said it would schedule the plumber for the plumbing repairs, and would then schedule a drywaller to repair the ceiling.
35. In response, CW asked the strata to have Ms. Zhao sign an attached guarantee letter about who would pay to repair the ceiling. The strata then sent CW part of an email from JT, Ms. Zhao's son-in-law. JT wrote that if the repair had to be done from the floor below, the cost would be covered by SL12's insurance, and SL6 would not have to pay for anything.
36. The evidence shows that Ms. Zhao signed the guarantee letter on March 31, 2020. The letter says the following:

- Ms. Zhao would take 100% responsibility for repairing the plumbing problem in the SL12 guest washroom. This would require access to SL6, and would require the ceiling to be cut open.
37. The cost for repairing, including but not limited to cutting up the drywall on the SL6 ceiling, repairing the plumbing, drying up, sealing up the ceiling, and “fully repaired etc.” would be 100% covered by Ms. Zhao.
38. The evidence shows that after some delays, the plumbing was repaired in April 2020.
39. I find the March 31, 2020 guarantee letter does not make Ms. Zhao liable to pay for the cost of any repairs that were performed before she signed the letter. The terms of the letter are specific, and do not include any expenses from first set of repairs in 2019.
40. For these reasons, I find Ms. Zhao is not liable to pay the claimed \$1,125.89 for the first set of ceiling repairs. I dismiss this claim.
41. Since the strata is not a party to this dispute, I make no finding about whether the strata was entitled to charge back \$1,125.89 for the first set of ceiling repairs to Ms. Cheng. It is open to Ms. Cheng to file a new CRT dispute on that issue, if the applicable limitation period has not expired.

Must Ms. Zhao pay Ms. Cheng \$1,123.69 for further ceiling repairs following the April 2020 plumbing repairs?

42. JT, on behalf of Ms. Zhao has numerous submissions about why Ms. Zhao should not have to pay for the further ceiling repairs. These include:
- The work was not actually performed, and the June 14, 2020 invoice Ms. Cheng provided from VQ Renovation & Construction (VQ) for \$1,123.69 may be fraudulent.
 - VQ’s invoiced amount is too high since there was only 1 ceiling hole to patch, and the plumber already put in an access door.

- Ms. Zhao was “tricked” into signing the guarantee letter.
 - The guarantee letter was revoked because CW “dishonoured the conditions.”
 - Ms. Zhao only agreed to pay for work performed by the strata’s chosen contractor, which was not VQ.
43. CW says there was no agreement between the parties that the strata must choose the contractor. In an email to JT, CW also said VQ’s invoice was reasonable because re-painting the entire ceiling was necessary to avoid a visible patch.
44. I agree that there is nothing in the March 31, 2020 guarantee letter, or associated correspondence from the time the agreement was made, that says the strata must choose the contractor. I also find there is no evidence that Ms. Zhao was tricked into signing it. I find it was not open to Ms. Zhao, or JT, to revoke or “void” the guarantee letter once it was signed. Ms. Zhao and JT asked Ms. Cheng to permit their plumber to enter SL6 and cut into the ceiling to repair SL12’s plumbing, and Ms. Cheng agreed to this on the condition that Ms. Zhao pay to repair the ceiling. I find it was not reasonable for Ms. Zhao to revoke her agreement to pay to repair the hole but also allow her plumber to cut into the SL6 ceiling.
45. While JT says the plumber installed an access door in the SL6 ceiling, there is no evidence of that before me. JT did not explain how he knew this, or provide a statement or invoice from the plumber to confirm it. I therefore do not accept this assertion, and do not find it would reduce the cost of repairing the SL6 ceiling.
46. While JT says VQ’s invoice may be fraudulent, the party asserting fraud must prove it, and I find he has not done so. I find JT’s assertion on this point is speculative. I also find that \$1,123.69 is not an unreasonable amount to repair a ceiling, and agree that repainting the entire ceiling was likely necessary to prevent a visible patch. In making this finding, I note that there is nothing in the guarantee letter limiting the cost of ceiling repairs. Rather, the letter says Ms. Zhao will be 100% responsible for any amount.

47. I agree that it is unclear from the evidence whether the final ceiling repairs were completed or not. CW described VQ's invoice as an estimate, which I find suggests the work has not yet been performed. However, given the correspondence indicating Ms. Zhao would refuse to pay, I find it was reasonable for Ms. Cheng to wait before incurring the repair cost.
48. On balance, based on the guarantee letter and the fact that JT and Ms. Zhao knowingly let their plumber cut a hole in the SL6 ceiling, I find Ms. Zhao must pay Ms. Cheng \$1,123.69 for repairs.
49. The *Court Order Interest Act* (COIA) applies to CRT disputes, and says prejudgment interest is payable on any pecuniary (monetary) judgment. I therefore find Ms. Zhao must pay Ms. Cheng prejudgment interest on the \$1,123.69 from June 14, 2020, which is the date of VQ's invoice. This equals \$3.65.

CRT FEES AND EXPENSES

50. Ms. Cheng was partially successful in this dispute. In accordance with the CRTA and the CRT's rules I find she is entitled to reimbursement of half her CRT fees, which equals \$112.50. Neither party claimed dispute-related expenses, so none are ordered.

ORDERS

51. I order that within 30 days of this decision, Ms. Zhao must pay Ms. Cheng \$1,239.84, broken down as follows:
- a. \$1,123.69 for ceiling repairs,
 - b. \$3.65 in prejudgment interest under the COIA, and
 - c. \$112.50 for CRT fees.
52. Ms. Cheng is entitled to postjudgment interest under the COIA, as applicable.

53. 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.

Kate Campbell, Vice Chair