



Civil Resolution Tribunal

Date Issued: June 16, 2021

File: ST-2020-002265

Type: Strata

Civil Resolution Tribunal

Indexed as: *Choi v. The Owners, Strata Plan VR 315*, 2021 BCCRT 664

BETWEEN:

PUI HING CHOI

APPLICANT

AND:

The Owners, Strata Plan VR 315

RESPONDENT

AND:

PUI HING CHOI

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. The applicant and respondent by counterclaim, Ping Hing Choi, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan VR 315 (strata). Miss Choi says the strata was negligent in breaking and failing to repair her tiled bathtub wall and in failing to repair and maintain the underground parking garage ceiling, which she says leaked on and damaged her vehicle. Miss Choi claims \$4,000 for the bathroom tiles \$8,000 for vehicle damage and asks the strata to fix the parkade ceiling.
2. Ms. Choi alleges the strata has acted significantly unfairly toward her by refusing her request for a storage locker, removing her from the July 2018 annual general meeting (AGM), failing to warn her that it would break her bathtub tiles, and delaying in repair her bathroom leak. Ms. Choi claims \$15,000 for mental distress, dishonour, psychological and emotional damage.
3. Ms. Choi also claims the strata levied fines totalling over \$15,000 against her without any warning or written notice. She asks that the fines be cancelled.
4. The strata says it made reasonable efforts to fix or replace Ms. Choi's bathroom tiles, but Ms. Choi refused. It says it has now fixed the parkade ceiling and disputes any damage to Miss Choi's vehicle. The strata says Ms. Choi's claimed damages are excessive and that her claims are out of time under the *Limitation Act*. The strata denies treating Ms. Choi unfairly, says she has not proven any mental distress and says \$15,000 is excessive.
5. The strata says it correctly fined Miss Choi for unpaid strata fees and special levy contributions, under its bylaws and resolutions passed by the owners. The strata counterclaims \$9,544 for unpaid fines levied since October 31, 2015.
6. Miss Choi disputes the validity of the fines and says the strata is out of time to make their counterclaim for unpaid fines.
7. Ms. Choi is self-represented. The strata is represented by AM, a strata council member.

8. As explained below I find the strata was not negligent in failing to complete Miss Choi's bathtub tile repair. I find Miss Choi's claim for vehicle damage is out of time. I find the strata acted significantly unfairly in removing Miss Choi from the July 18, 2018 AGM and award Miss Choi \$100 in damages. I also find the strata must cancel \$650 of Miss Choi's fines, but find Miss Choi must pay the strata \$8,575.76 in fines, less her \$100 award, for a total of \$8,475.76.

JURISDICTION AND PROCEDURE

9. 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.
10. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. In some respects, this dispute amounts to a "she said, they said" scenario, as the strata calls into question the credibility of Miss Choi. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of personal demeanour in a courtroom or tribunal proceeding. In *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the court recognized that oral hearings are not necessarily required where credibility is in issue. Further, bearing in mind the tribunal's mandate, which includes proportionality and a speedy resolution of disputes, I find that I am properly able to assess and weigh the evidence before me without an oral hearing.
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

Late Evidence

12. Miss Choi submitted most of her evidence after the filing deadline. The strata does not object to the evidence Miss Choi filed 1 day late, on February 18, 2021, because Miss Choi had technical difficulties. However, the strata objects to the multiple pieces of evidence Miss Choi filed after February 18, 2021, saying it is unexplainably late and is unreliable. I find the strata had the opportunity to, and did, respond to Miss Choi's late evidence as the submission process was ongoing. I further find I can address the strata's reliability concerns in weighing the evidence that I find relevant to this dispute. I find the strata is not prejudiced by the lateness of the evidence and so I accept it, keeping in mind the CRT's mandate, which includes flexibility.
13. Miss Choi submitted further late evidence on April 9, 2021 after submissions were closed. As the CRT sent the later evidence to the strata, which responded, I find it was not prejudiced by the further late evidence. As above, I find I can address the strata's concerns about reliability by weighing the evidence. I accept Miss Choi's further late evidence.
14. I do not accept Ms. Choi's further late evidence submitted on April 13, 2021 because it is unrelated to the strata's response to Miss Choi's late evidence. Further, I find it procedurally unfair for Ms. Choi to submit further late evidence when the strata has not had the opportunity to review it and respond. In any event, as explained below, I dismiss Miss Choi's claim for a storage locker, so I find the April 13, 2021 evidence about storage costs not relevant.

Request for Record Inspection

15. In her submissions Miss Choi asks the CRT to suspend this dispute and order the strata to have its financial records inspected by a professional accountant. She specifically does not want an audit. Miss Choi provided no evidence supporting her allegation of embezzlement. Miss Choi did not request a record inspection as a remedy in her Dispute Notice and I find such an investigation is not necessary for me to decide the issues that are properly before me in this dispute. So, I decline to

suspend this dispute or order an accounting inspection of the strata's financial records.

ISSUES

16. The issues in this dispute are:

- a. Is Miss Choi's bathtub tile claim out of time and, if not, is the strata negligent for failing to complete the repair? If so, what is an appropriate remedy?
- b. Is Miss Choi's vehicle damage claim out of time and, if not, is the strata responsible for the vehicle damage? If so, what is an appropriate remedy?
- c. Did the strata act significantly unfairly by:
 - i. Disregarding Miss Choi's storage locker request,
 - ii. Removing Miss Choi from the July 18, 2018 AGM,
 - iii. Not warning Miss Choi that her bathtub tiles would be broken, or
 - iv. Delaying in fixing her bathroom leak?
- d. If the strata acted significantly unfairly, what is an appropriate remedy?
- e. Must the strata cancel any of Miss Choi's fines?
- f. Must Miss Choi pay any of the outstanding fines and, if so, how much?

EVIDENCE AND ANALYSIS

17. In a civil claim such as this one the applicant, Miss Choi, must prove her claims on a balance of probabilities. The strata has the same burden of proving its counterclaim. I have reviewed the submissions provided by both parties and weighed the evidence, but for the late evidence I refused to accept as mentioned above. I refer only to that evidence relevant to the issues in this dispute.

18. The strata was created in 1976. It has 21 residential strata lots in a 3-storey building. Miss Choi purchased strata lot 18 (SL 18) in 1990. Miss Choi previously acted as

strata manager for the building. Her husband, G, previously maintained the strata's common property. Since 2006 the strata has been managed by a professional strata manager. None of this is disputed.

19. In 2015 the strata filed a claim in BC Small Claims Court against Miss Choi for unpaid strata fees, fines and special levy contributions. Miss Choi counterclaimed for reimbursement of expenses she says she incurred while acting as property manager. G filed a related claim for labour and wages he said the strata owed him for maintenance and repairs. The court dismissed G's claim and Miss Choi's counterclaim and ordered Miss Choi to pay the strata \$23,642.87, which I will discuss in greater detail below (*The Owners, Strata Plan 315 v. Choi*, Vancouver Registry 1553723, July 26, 2018).
20. The strata's bylaws are the Standard Schedule of Bylaws set out as Appendix B to the SPA, plus various amendments the strata filed in the Land Title Office. I will set out the applicable bylaws in my analysis below.

Bathroom Tiles

21. At the June 2013 annual general meeting (AGM), the owners approved a special resolution to replace the water pipes in the strata building and pay for it with a special levy. The project began in the spring of 2018. It required access to the strata's water pipes behind bathroom and kitchen walls in some, but not all of the strata lots. SL 18 was one of those strata lots. During the re-piping project, the plumbing company contractor (CP) broke, or failed to replace, an area of square tiles on the bathroom wall behind Ms. Choi's bathtub faucet. Ms. Choi's bathroom tiles are pink. Other strata lots have white bathroom tiles. None of this is disputed.
22. It is undisputed that neither CP nor the strata have replaced Miss Choi's broken or missing bathtub tiles. Miss Choi says CP promised to replace the tiles with an exact match but failed to find matching tile. The strata says Miss Choi rejected both CP's and the strata's reasonable attempts to replace the tile. It also says Miss Choi filed her claim out of time under the *Limitation Act* (LA).

The Limitation Act

23. Section 6 of the LA sets out a basic limitation period of 2 years, after the claim is “discovered”. Section 8 of the LA explains that a claim is discovered on the first day the person knew, or reasonably ought to know, that the loss occurred, that it was caused or contributed to by an act or omission of the person against whom the claim may be made, and that a court or tribunal proceeding would be an appropriate means to remedy the loss.
24. Section 13.1 of the CRTA says that the 2-year limitation period for a claim stops running when an applicant asks the CRT to resolve the claim. Here, Miss Choi applied for dispute resolution on March 11, 2020, although the Dispute Notice was not issued until September 1, 2020. So, I find Miss Choi’s claims will only be out of time if they were discovered, or discoverable, by March 11, 2018, which is 2 years prior to her application for dispute resolution.
25. In her Dispute Notice Ms. Choi says she became aware of the claim for her bathroom tiles in March and April 2018. Neither party says exactly when the CP plumber broke Ms. Choi’s bathtub tiles or when CP allegedly failed to exactly match Miss Choi’s tiles.
26. The strata provided a February 21, 2018 re-piping schedule showing March 1, 2018 as the first date CP planned to enter Miss Choi’s suite. The schedule specifically says it is only a guide. In an undated notice to the owners, CP said it would do only suite inspections during the first week of the project, and no work. So, I find the March 1, 2018 scheduled access date to SL 18 is likely not the date Miss Choi’s tiles were damaged, nor the date she rejected CP’s proposed replacement tiles.
27. As the strata relies on the limitation defence, they have the burden to prove it (see *Borek v. Dr. Derek Stirling Hopkins*, 2020 BCSC 304). Absent any specific evidence about the date on which CP broke and failed to replace, Miss Choi’s tiles, I find the strata has failed to meet its burden. I find Miss Choi’s bathroom tile claim is not out of time.

Bathtub Tile Negligence

28. In her submissions, Miss Choi says the strata's decision to carry out the re-piping work was illegal because the strata refused to count several proxies Miss Choi and G held opposing the project at the 2013 AGM.
29. I agree with the strata that the validity of the 2013 re-piping project resolution was previously addressed in the July 26, 2018 court decision. There the court considered Miss Choi's arguments that she should not have to pay her share of the special levy because the resolution was invalidated by the spoiled proxies. The court found Miss Choi must pay her 2013 special levy contributions and specifically addressed Miss Choi's argument about the 5 spoiled proxies in her decision by pointing out that there was no evidence from the owners of those proxies about their voting instructions. Although the court did not expressly find the 2013 special resolution valid, I infer it did so because it rejected Miss Choi's argument and found she must pay the special levy. Contrary to Miss Choi's arguments, the judge did not find she had no jurisdiction to address Miss Choi's proxy argument in the July 26, 2018 decision.
30. The legal principle of *res judicata*, meaning already decided, applies here. I find Miss Choi is estopped, or barred, from arguing that the 2013 special levy resolution was invalidly passed, because it has already been decided in another final court decision between the same parties (see *Tuokko v. Skulstad*, 2016 BCSC 2200).
31. In her submissions Miss Choi says that CP disconnected her insuite laundry hoses, lost her drainplug and ripped off her bathroom baseboard. Miss Choi did not raise these issues in her Dispute Notice and so I find it would be procedurally unfair to allow her to raise them at first instance in her submissions, after the strata had already submitted its evidence. I decline to consider these issues in this dispute.
32. I now turn to consider whether the strata is responsible for Miss Choi's incomplete bathtub tile repair.
33. Based on Miss Choi's photo, I find 25 pink tiles missing from the area around her bathtub faucet, leaving an area of patched drywall with large gaps and no caulking or sealant. I find CP's work incomplete and obviously below professional standards, given the lack of tile or any other water-resistant finish on the wall. I find the strata

knew that CP did not completely repair Miss Choi's bathtub wall, because CP emailed the strata about it on April 11, 2018.

34. Miss Choi says CP should have avoided breaking her tiles by accessing the water pipes through her neighbour's suite, instead of through her suite. The strata says CP chose where and how to access the strata's water pipes. A strata corporation is entitled to rely on the advice of professional contractors and will not be found negligent so long as the strata acted reasonably in the circumstances (see *Wright v. The Owners, Strata Plan #205*, 1996 CanLII 2460 (BCSC)). I find it irrelevant that the neighbour's tiles are white, and potentially easier to replace, than Miss Choi's pink tiles. I find the strata acted reasonably in the circumstances in relying on CP's decision on how best to access the water pipes to replace them.
35. Miss Choi says the CP plumber promised her that CP would replace any broken bathroom tiles with exactly the same tile, before Miss Choi allowed him into her suite. Miss Choi provided a typed document which I infer is a joint statement with G. The document recounts a conversation between Miss Choi and one of CP's plumbers, word for word, in which the plumber told Miss Choi that CP had her exact tiles in stock. I give the statement no weight and find the recollection unreliable, because it is unclear whether Miss Choi or G recalls the conversation, how they remember it so clearly but cannot remember the plumber's name, and whether they participated in the conversation, overheard it, or were told about it.
36. In contrast, the strata says CP only agreed to provide its best match of tile, not the exact same pink tile. This is supported by CP's May 17, 2017 scope of work in which CP agrees to repair ceramic tile affected by the plumbing work and will use the "best possible match" if new tiles are used for repairs. This is also supported by CP's April 11, 2018 email in which CP says it "sourced the best possible match" for Miss Choi's tiles, but Miss Choi rejected the replacement tile.
37. It is undisputed that CP proposed patching Miss Choi's bathtub wall with tiles that were not an exact match to the original pink. However, I find CP did not agree to, nor was it required to, replace Miss Choi's broken bathtub tiles with an exact match. I find

it was required to provide its best match and fix the damage it did to Miss Choi's bathtub wall while replacing the pipe. Miss Choi has provided no evidence, such as photographs, to prove that CP's proposed match was not the "best possible match" it agreed to provide.

38. On balance, I find Miss Choi has failed to prove CP was negligent in fixing her broken bathtub tiles. As noted above, I find CP offered a 'best match' to patch the tiles. I find CP proposed an alternate solution of retiling the entire bathtub surround with new, white tiles, which Miss Choi declined. I further find Miss Choi has failed to prove the strata acted unreasonably in relying on CP's efforts to repair or replace Miss Choi's broken pink tiles in 2018. I dismiss Miss Choi's \$4,000 claim for bathroom tile replacement.

Garage Leak and Vehicle Damage

Limitation Period

39. Miss Choi says she stored her 1999 Toyota Tacoma in the strata's underground parking lot, stall number 18. She says a long crack above her parking stall leaked abrasive fluid and white powder onto the vehicle's hood, grill and bumper, damaging the vehicle. Miss Choi says she parked the vehicle with the front facing the wall. She says she backed the vehicle away from the wall on September 7, 2018 to make room for moving items out of the parkade and discovered the damage to the front of her vehicle. She says that, after she saw the damage, she parked her vehicle the other way, with the nose facing out from the wall.
40. The strata argues Miss Choi discovered the vehicle damage earlier, based on a January 6, 2013 date stamp on 1 of several vehicle photos submitted by Miss Choi. Miss Choi also submitted 2 photos date stamped November 26, 2020, 2 photos with no date, and 1 photo with the date stamp obviously whited out. All the photos show similar white streaks and powder covering the front bumper, front hood and roof of Miss Choi's vehicle.

41. Miss Choi says the January 6, 2013 date stamp is wrong, that G bought the camera at a thrift store and did not know how to change the date, and that she took the photos after the CRT facilitation ended. For the following reasons, I do not accept Miss Choi's explanation.
42. First, Miss Choi provided several written statements from G but none of them addressed the camera. So, I find Miss Choi's statement is unproven. Second, I find the November 26, 2020 date stamp on the other photos is identical in colour and font to the January 16, 2013 date stamp, so was likely from the same camera, inferring the date stamp was changed. This is inconsistent with G not knowing how to change the date stamp. Miss Choi did not explain how or why the date stamp changed. Third, the January 6, 2013 photo shows the vehicle's front right wheel removed and laying on the floor under the vehicle with the vehicle facing the wall. I find Miss Choi could not have backed her vehicle away from the wall and then turned it around to park it in a different direction on September 7, 2018 because the front right wheel was off the vehicle. Miss Choi described in detail moving the vehicle, finding the damage, feeling helpless, then turning the vehicle around and facing its nose away from the wall. If Miss Choi had stopped to put the wheel back on the vehicle on September 7, 2018 before moving it, I expect she would have included that detail in her narrative. I find it more likely that the photos were taken on different dates.
43. It is undisputed that Miss Choi did not tell the strata about the vehicle damage on September 7, 2018. She provided no explanation why she did not report either the leaking roof, or the vehicle damage, at the time she allegedly discovered it.
44. Miss Choi says the strata required all owners to move their belongings out of the parkade by that date. So, I find it likely there would have been other owners in the parkade around the time Miss Choi allegedly discovered the vehicle damage, yet she provides no evidence from any other owner about the alleged discovery on September 7, 2018.
45. On balance, I find it more likely than not that the photo date stamped January 6, 2013 was taken on January 6, 2013. I further find the damage apparent in that photo is the

same, or very similar to, the vehicle damage in Miss Choi's other photos. I find it likely that Miss Choi discovered the vehicle damage by January 6, 2013. So, I find Miss Choi's vehicle damage claim is out of time.

Negligence and Vehicle Damage

46. Even if Miss Choi's claim was not out of time, I would have found she failed to prove that the leaking garage roof caused any vehicle damage. While Miss Choi's photos show white streaks, white powder, and brown hazy areas on the front and top of the vehicle, they also show a very dirty vehicle. So, it is difficult to see if the vehicle's finish has been damaged. Further, none of the 3 repair estimates provided by Miss Choi describe any vehicle damage, such as paint corrosion. Each estimate lists removing, refinishing, and replacing various body parts but does not explain why the work is needed. Miss Choi provided no expert evidence observing damage or the cause of that damage, which I find is required in this case. She says a body shop told her the ceiling dripped corrosive water onto her vehicle, but I find that does not meet the CRT rules for expert evidence and I find I cannot rely on such a second-hand statement from an unknown source. Overall, I would have found Miss Choi failed to prove any garage roof leak caused any damage to her vehicle, even if she had filed her claim on time.

47. I dismiss Miss Choi's \$8,000 claim for vehicle repair costs.

Significant Unfairness

48. Miss Choi claims the strata acted significantly unfairly toward her by disregarding her request for a storage locker, by arbitrarily removing her and G from the July 2018 AGM, by failing to warn her that her bathtub tiles could be broken during the re-piping project, and by unreasonably delaying in fixing her bathroom leak in 2020.

49. Section 123(2) of the CRTA gives the CRT the power to make an order directed at the strata, if the order is necessary to prevent or remedy a significantly unfair action, decision or exercise of voting rights. Significantly unfair conduct must be more than mere prejudice or trifling unfairness (see *Dollan v. The Owners, Strata Plan BCS*

1589, 2012 BCCA 44). Significantly unfair means conduct that is oppressive or unfairly prejudicial. “Oppressive” is conduct that is burdensome, harsh, wrongful, lacking fair dealing or done in bad faith, while “prejudicial” means conduct that is just and equitable (see *Reid v. Strata Plan LMS 2503*, 2001 BCSC 1578, affirmed in 2003 BCCA 126). In considering an owner’s reasonable expectations the courts have applied the following test from *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44:

- a. What was the applicants’ expectation?
- b. Was the expectation objectively reasonable?
- c. Did the strata violate that expectation with a significantly unfair action or decision?

50. In *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342, the BC Court of Appeal confirmed that the reasonable expectations of an owner may also be relevant to determining whether the strata’s actions were significantly unfair. I will address each of Miss Choi’s allegations of significant unfairness in turn.

Storage Locker

51. According to the July 18, 2018 AGM minutes, the owners unanimously approved a resolution to build storage lockers in the strata’s common property sprinkler room, to be rented to owners. According to the contractor’s invoice, the lockers were completed on August 16, 2019. The strata says 5 new lockers were built, in addition to the 8 lockers that already existed. It is clear from the evidence there are not enough lockers for each owner.

52. Miss Choi says she asked the strata manager for a locker in a letter sometime in 2016 or 2017 but the property manager said he had no lockers available. Miss Choi did not provide a copy of the letter, or the manager’s response. In any event, as noted above, any claim Miss Choi makes about actions or decisions prior to March 11, 2018 are out of time. So, I will not consider Miss Choi’s 2016 or 2017 storage locker request.

53. Miss Choi says she “clearly stated” she wanted a locker at the July 18, 2018 AGM, as a condition to her vote approving the locker project and special levy. The strata denies Miss Choi asked for a locker. I place no weight on Miss Choi and G’s joint statement about the issue, which is undated and unsigned, because it is unclear who wrote it. There is nothing else supporting Miss Choi’s alleged request for a storage locker in July 2018. There is no indication Miss Choi ever followed up with the strata on her alleged request, including in her March 10, 2020 letter to the strata addressing her bathtub tiles, vehicle damage, and bathroom leak. I would expect Miss Choi to follow up with the strata directly if she believed the strata failed to respond to her request.
54. On balance, I find Miss Choi’s expectation that the strata provide her with a storage locker is not objectively reasonable, given she made no written request and did not follow up on her alleged verbal request 2 years earlier. Further, in its submissions, the strata says there are lockers available to rent to Miss Choi, as there are to any other owner. So, I find the strata did not act significantly unfairly to Miss Choi by failing to give her a locker or disregarding her request.

July 18, 2018 AGM

55. The parties agree that the strata’s property manager asked both G and Miss Choi to leave the July 18, 2018 AGM. It is undisputed Miss Choi left the meeting before the strata council nominations and voting ended, which was the last item on the agenda. I find Miss Choi had an objectively reasonable expectation to attend the entire meeting and cast her vote for strata council, as an owner with voting entitlement under the SPA.
56. G is not a party to this dispute. I find Miss Choi has no standing to claim the strata acted significantly unfairly toward G.
57. I disagree with Miss Choi that removing her from the meeting was illegal because it was not recorded in the AGM minutes. Not everything that happens at a strata meeting must be recorded. The purpose of strata meeting minutes is to inform owners of decisions made and money spent on their behalf. The minutes do not need to detail

the discussions leading to those decisions (*Kayne v. Strata Plan LMS 2374*, 2007 BCSC 1610).

58. The strata says it removed both G and Miss Choi from the AGM for being disruptive, after multiple warnings. I find the February 10, 2021 strata manager's statement unpersuasive as it only describes G's behaviour at the meeting and why he was removed, twice. Emailed statements from other strata council members to AM describe G's behaviour and confirm that Miss Choi was asked to leave, but do not describe Miss Choi's behaviour at the meeting or explain why she was asked to leave. I find this significant because AM asked the council members if they recalled anything about Miss Choi's behaviour at the AGM. Given the strata's lack of evidence and Miss Choi's denial of being disruptive, I find the strata was not justified in asking Miss Choi to leave the AGM and that doing so was significantly unfair to Miss Choi. I will consider Miss Choi's claim for damages below.

Bathtub Tiles

59. Miss Choi says she did not expect her bathroom tiles would be broken during the 2018 re-piping project and says the strata failed to warn her that would happen. For the following reasons I find Miss Choi's expectation that her tiles would not be broken was objectively unreasonable.
60. First, in an undated notice that the strata says was distributed to all residents, CP explained they would cut holes in the strata lot walls during re-piping and would repair any bathtub tiles "affected by the plumbing installation". Miss Choi says she received nothing about the project except a 'sales sheet', which I infer is CP's plumbing fixture order form. Based on the forms submitted by the strata, I find the strata distributed the notice, the project schedule, and the order forms together in a package to the residents. So, I find it likely Miss Choi did receive the notice. It is unclear how Miss Choi expected CP to cut a hole in her wall to access the water pipe behind the faucet without removing, and possibly breaking, the tiles around the bathtub faucet.
61. Second, based on a meeting notice, I find CP held a February 21, 2018 information meeting about the re-piping project which, I infer, included an explanation of the work

to be done. Miss Choi admits she did not attend the February 21, 2018 meeting so I find Miss Choi is responsible for not informing herself of the re-piping project details, including whether her bathroom tiles would be broken.

62. Miss Choi also says CP misrepresented that it would be able to match her bathtub tile in order to gain entry into her suite. As noted above, I find Miss Choi has not proven that claim. So, I find the strata did not act significantly unfairly by failing to warn her, or misrepresenting, the nature of the re-piping project work.

Delay in Repairing Bathroom leak

63. Miss Choi reported a leak coming from the bottom of her bathroom wall by her bathtub in her March 10, 2020 hearing request letter. She asked the strata to provide 1-week notice of entry and pay all repair expenses. The strata held the hearing as requested and, on April 10, 2020 agreed to pay the repair costs, if within the strata's duty of care. I find the strata's delay in agreeing to investigate the water leak is not unreasonable, given Miss Choi's hearing request.
64. I find the strata first hired a contractor to investigate the leak on May 6, 2020, based on the strata's email. I do not accept that the strata could not find a plumber to fix Miss Choi's leak because of the COVID-19 pandemic, because it provided no supporting evidence, such as emails or telephone messages with plumbers refusing the work.
65. The email also says the contractor contacted Miss Choi on May 8, 2020, which Miss Choi does not dispute. Miss Choi says, and the strata does not dispute, that the plumber investigated the leak on May 15, 2020 but did not fix it until July 15, 2020. The strata says this is because Miss Choi did not allow access to her suite, but the strata provided no supporting evidence. Miss Choi says the strata manager refused to authorize the repair, based on what the plumber told her on May 29, 2020. While that may explain a 2-week delay, it does not explain the further 6-week delay between May 29, 2020 and July 15, 2020. In other words, I find Miss Choi has not proven the strata caused the delay between May 29, 2020 and July 15, 2020.

66. Overall, I find the strata delayed 1 month in hiring a contractor and at least 2 weeks in approving the repair. While I find the delay is unreasonable given water was leaking from Miss Choi's bathroom wall, I do not find it was oppressive, burdensome, or lacking good faith. There is no indication how long other owners had to wait for repairs around the same time, which might show whether the strata treated Miss Choi any differently. On balance, I find the strata was not responsible for the entirety of the delay and I find the strata's portion of the delay was not significantly unfair to Miss Choi.

Remedy

67. In summary, I find the strata acted significantly unfairly in asking Miss Choi to leave the July 18, 2018 AGM before the meeting was finished. I dismiss Miss Choi's remaining claims of significant unfairness.

68. Miss Choi seeks \$15,000 for mental distress, anxiety, psychological and emotional damage, and dishonour, due to the strata's significant unfairness. As discussed in *Eggberry v. Horn et al*, 2018 BCCRT 224, damages for mental distress may only be awarded where there is evidence of independent harm. While prior CRT decisions are not binding, I agree with and adopt the reasoning here. As Miss Choi has provided no evidence of any psychological or emotional damage, I find she is not entitled to any damages for mental distress.

69. I note that compensation has been awarded to remedy significantly unfair strata actions in other CRT cases (see, for example, *LeTexier v. The Owners, Strata Plan LMS 284*, 2019 BCCRT 940, *Lozjanin v. The Owners, Strata Plan BCS 3577*, 2019 BCCRT 481, and *Renaud v. The Owners, Strata Plan 38*, 2020 BCCRT 38). In those cases, the strata behaviours at issue were repetitive or ongoing issues which I find is different than the strata's single instance of removing Miss Choi from the AGM here. However, I find Miss Choi is entitled to some compensation for the strata's significantly unfair action in removing her from the July 18, 2018 AGM. On a judgment basis, I order the strata to pay Miss Choi \$100.

Statements of Account and Fines

70. Miss Choi claims the strata fined her over \$15,000 between November 2015 and July 2018, without warning or explanation. I infer Miss Choi refers to the strata's January 13, 2020 aged overdue receivables report, in arguing that she should not have to pay the following amounts:
- a. \$5,452.50 "balance forward" from 2010,
 - b. \$401.08 for lien costs from February to May, 2013,
 - c. \$9,900 total in special levy fines between November 2015 and July 2018,
 - d. \$50 fine in January 2020, and
 - e. 2 x \$10 fines in February and March 2019.
71. Based on the strata's 2018 and 2019 statements of account issued to Miss Choi, I find part of the \$5,452.50 balance forward is for fines levied between 2007 and 2010, although the remaining charges are described only with a number and name beside the charge. The strata has not explained what the charges are. However, as the applicant, Miss Choi is required to prove that the charges are invalid or should be removed from her account.
72. Miss Choi says the strata is out of time to collect the balance forward amount, because it is more than 2 years old. In *The Owners, Strata Plan KAS 3549 v. 0738039 B.C. Ltd*, 2015 BCSC 2273 (affirmed in 2016 BCCA 370), the court found the former LA did not apply to fines, because a fine is a penalty and is not a "claim to remedy an injury, loss or damage" as described in the former LA. I find the same reasoning applies to the current LA, as it defines a claim using the exact same language. I find the LA does not apply to strata fines and so the strata is not out of time to pursue payment of the fines.
73. I disagree with Miss Choi that the strata's various levies and fines are invalid because the strata failed to register them in the Land Titles Office. There is no such filing requirement under the SPA.

74. Miss Choi has provided no other explanation why the balance forward amount should be removed from her statement of account, other than not understanding what it is for. I find Miss Choi has failed to prove the balance forward amount is out of time or otherwise invalid and so I decline to order the strata to remove the amount from Miss Choi's strata lot account.
75. The strata filed a lien against Miss Choi's property in 2013, although neither party provided a copy of the lien certificate. Section 118 of the SPA authorizes the strata to add reasonable costs of registering the lien to the amount owing which. Miss Choi offers no explanation why the strata's \$401.80 lien costs should be removed from her account and so I decline to order the strata to do so. To be clear, I make no finding about whether the strata can enforce payment of the balance forward or the lien costs, as the strata has not counterclaimed for these amounts. Rather, I find Miss Choi has failed to prove those amounts should be removed from her strata lot account.
76. I will address the rest of Miss Choi's fine claim with the strata's counterclaim.
77. In its Dispute Notice the strata counterclaimed for \$9,455 but claimed \$9,544 in its submissions, saying the Dispute Notice amount was a mathematical error. I agree with the strata's calculations below and accept the strata's counterclaim for \$9,544 as I find Miss Choi had notice of the specific fine amounts the strata claimed for. The strata counterclaims \$9,544 for:
- a. \$300 fine per month, from October 31, 2015 to August 31, 2018 for unpaid 2013 re-piping special levy contributions equalling \$10,500 less \$1,025.24 paid by Miss Choi
 - b. 2 x \$10 fines on February 3 and 6, 2019 for unpaid 2018 storage locker special levy contributions, and
 - c. \$50 fine on February 29, 2020 for failing to pay strata fees.
78. Based on the June 10, 2013 AGM minutes, I find the resolution said that re-piping special levy contributions were to be paid in 12 equal installments between August 1, 2014 and July 1, 2015. It also said that a fine of \$50 per month, per installment, would

be levied against any strata lot that had not paid the special levy on each due date. As noted above, the validity of the 2013 resolution was confirmed in the July 26, 2018 Small Claims court decision. I agree with the strata that the court also impliedly approved the fine structure established by the resolution as the court allowed the strata's claim for fines up to October 1, 2015. So, I find Miss Choi is barred from raising the validity of the fine structure in the resolution and the CRT cannot consider it either, under the doctrine of *res judicata*.

79. Based on the strata's accounts receivable report, and the July 26, 2018 court decision, I find Miss Choi failed to pay \$3,888.04, which is 6 installments of her 2013 special levy contributions, on time.
80. Miss Choi says the strata did not comply with section 135 of the SPA and warn her before imposing the special levy fines. Section 135 of the SPA says a strata cannot impose a fine for a bylaw contravention before it has first received a complaint, given the owner written particulars about the complaint, and provided an opportunity to respond, including a hearing if requested. It is undisputed that the strata did not warn Miss Choi before assessing each monthly special levy fine for \$300. However, I agree with the strata that section 135 only applies if the fine is levied for contravening a bylaw which I find is not the case here. So, I find the strata was not required to follow section 135 procedures for the 2013 special levy fines.
81. From the strata's account ledger I find the strata continued to fine Miss Choi \$300 between October 31, 2015 and September 16, 2018, when she paid the outstanding \$3,888.04. I find the July 26, 2018 court order included the outstanding 2013 special levy amount and so the strata was no longer entitled to charge fines for non-payment as of the date of the court order. This is because a court order attracts post-judgment interest and provides court enforcement proceedings which I find means the strata cannot continue to use its own enforcement tools, such as fines. So, I find the strata is only entitled to \$300 per month for 2013 special levy fines from October 31, 2015 to June 30, 2018, which equals \$9,600.

82. The strata's ledger shows Miss Choi paid the strata \$1,025.54 on July 23, 2018 which the strata applied to Miss Choi's accumulated 2013 special levy fines. Based on the fact that the amount is exactly 4 months' worth of strata fees, I agree with Miss Choi that the payment was likely intended for strata fees and that Miss Choi did not authorize the strata to apply the \$1,025.24 payment to the 2013 special levy fines, which Miss Choi clearly disputed. However, Miss Choi does not ask that the strata reallocate the payment to her strata fees or request any other remedy, so I decline to make any order about the \$1,025.24 payment. I find it reduces Miss Choi's fine amount to \$8,575.76.
83. Miss Choi also argues that the strata has acted significantly unfairly in continuing to fine her for not paying her 2013 special levy contributions. Although Miss Choi says the strata fined no other owner for unpaid special levy contributions, she has provided no supporting evidence, such as witness statements from other owners. So, I find Miss Choi has not proved that the strata fined only her for failing to pay 2013 special levy contributions.
84. I agree with Miss Choi that the total amount of fines owed is higher than her undisputed \$5,961.24 total 2013 special levy contribution. However, the fine is intended to encourage owners to pay their share of a necessary common property improvement cost and to discourage non-payment. Given the scope of the project, and the need for contributions to fund the project, I find the total fines levied against Miss Choi is not significantly unfair.
85. I turn now to the remaining fines.
86. Based on the strata's ledger, I find it charged Miss Choi a \$10 fine on February 3 and again on February 6, 2019 for failing to pay her 2018 storage locker special levy contribution. The July 18, 2018 AGM minutes show unanimous approval of a \$5,000 special levy, due on February 1, 2019, to be assessed according to unit entitlement. The resolution said any strata lot who did not pay the special levy in full would be subject to a \$10 fine per month. The fine structure is similar to the 2013 special levy resolution, which I found had already been accepted by the Small Claims court.

However, the 2018 resolution has not previously been decided on by any court, so I find I have the jurisdiction to consider whether the resolution's fine structure is valid under the SPA.

87. Section 108 of the SPA governs special levies. Subsection 3 specifies what must be included in a special levy resolution. Subsection 4.1 says a strata may, by bylaw or resolution approving a special levy, establish a rate of interest to be applied to unpaid or late special levy contributions. There is no such provision about establishing fines for unpaid special levy contributions. So, I find SPA section 108 does not authorize the strata to establish a fine for unpaid special levy contributions as part of the special levy resolution.
88. I also find the strata has no bylaw which allows it to fine Miss Choi for not paying her special levy contribution on time. Bylaw 1 relates only to payment of strata fees, not special levy contributions and the strata has no other applicable bylaws about late or non-payments. So, I find the strata's 2 \$10 fines for non-payment of 2018 special levy contributions are invalid and must be removed from Miss Choi's strata lot account.
89. I find the strata is not entitled to the \$50 fine it charged on February 29, 2020 for Miss Choi's late strata fee payment.
90. The fine was imposed under bylaw 1, which requires owners to pay their strata fees on the first of the month the fees are due. I find section 135 does apply to bylaw fines. I disagree with the strata that it provided Miss Choi notice of the fine as monthly account statements are not, by themselves, sufficient to meet the section 135 procedural requirements (see *Terry v. Strata Plan Nw 309*, 2016 BCCA 449). I find the statements did not provide Miss Choi with an opportunity to respond to the bylaw contravention complaint before the strata imposed the fine. So, I find the \$50 fine invalid.
91. In summary, I find the strata must pay Miss Choi \$100 on a judgment basis, for removing her from the July 18, 2018 AGM. I further find Miss Choi owes the strata \$8,575.76 for 2013 special levy fines. So, I find Miss Choi must pay the strata a net amount of \$8,475.76.

CRT FEES, EXPENSES AND INTEREST

92. 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. I find Miss Choi was mostly unsuccessful in her claims and the strata was mostly successful in its counterclaim. So, I order Miss Choi to reimburse the strata \$225 in CRT fees. The strata did not claim any dispute-related expenses. I dismiss Miss Choi's claim for dispute-related expenses as she was substantially unsuccessful in her claims.
93. The *Court Order Interest Act* (COIA) applies to the CRT. The strata is entitled to pre-judgement interest on the \$8,485.76 in fines from June 30, 2018, the date of the last fine, to the date of this decision. This equals \$346.52.
94. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Miss Choi.

ORDERS

95. Within 7 days of the date of this order the strata must remove the following fines from Miss Choi's strata lot account:
- a. \$10 on February 3, 2019,
 - b. \$10 on February 6, 2019, and
 - c. \$50 on February 29, 2020.
96. Within 60 days of the date of this order I order Miss Choi to pay the strata a total of \$9,057.08, broken down as follows:
- a. \$8,475.76 in fines from October 31, 2015 to February 29, 2020,
 - b. \$346.32 in court order interest, and
 - c. \$225 in CRT fees.

97. The strata is also entitled to post-judgment interest under the COIA.

98. I dismiss the remainder of Miss Choi's claims.

99. 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.

Sherelle Goodwin, Tribunal Member