



Civil Resolution Tribunal

Date Issued: October 20, 2021

File: ST-2021-002181

Type: Strata

Civil Resolution Tribunal

Indexed as: *Zhu v. The Owners, Strata Plan EPS3046*, 2021 BCCRT 1108

BETWEEN:

XIAOLU ZHU

APPLICANT

AND:

The Owners, Strata Plan EPS3046

RESPONDENT

AND:

XIAOLU ZHU

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about responsibility for water damage repairs. The applicant, and respondent by counterclaim, Xiaolu Zhu, owns strata lot 25 in the strata corporation The Owners, Strata Plan EPS3046 (strata). The strata is the respondent and applicant by counterclaim. The common property roof in Ms. Zhu's building leaked, and water damaged her strata lot and the adjacent limited common property garage that she has exclusive use of. The strata repaired the leak, and paid for other steps to address the damage. The strata charged the cost of those other steps to Ms. Zhu.
2. Ms. Zhu denies owing anything for the strata's repairs to her strata lot, and seeks an order that the strata remove a \$4,768.05 charge back for them from her strata lot account. She also says that the strata's negligence contributed to the leak, and claims \$10,500 for further water damage repairs to her strata lot and the garage.
3. The strata says that the value of the repairs and damage was less than its insurance deductible. The strata says its bylaws allow it to charge back such strata lot repair costs. It also says that it was not negligent, and is not responsible for further repairs to Ms. Zhu's strata lot, so it owes nothing. The strata counterclaims \$5,341.05 for payment of the water damage restoration costs charged to Ms. Zhu's strata lot account plus dispute-related expenses, without further breakdown.
4. Ms. Zhu is self-represented in this dispute. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

5. 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). CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.

6. 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.
7. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even where the information would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Under CRTA section 123, 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

9. The issues in this dispute are:
 - a. Must the strata pay Ms. Zhu \$10,500 for water damage repairs to her strata lot and the garage she has exclusive use of?
 - b. Was the strata permitted to charge back emergency mitigation costs to Ms. Zhu's strata lot account, and does Ms. Zhu owe anything to the strata?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Ms. Zhu must prove her claims on a balance of probabilities. The strata must prove its counterclaim to the same standard. I have read and weighed the parties' evidence and submissions, but I refer only to that which I find necessary to explain my decision.
11. The strata was formed in 2015 under the *Strata Property Act* (SPA). It consists of 28 multi-level townhouse strata lots in 12 buildings. The strata plan shows that Ms. Zhu's

strata lot 25, known as unit 13, has three levels. It features a common property (CP) roof, plus 2 limited common property (LCP) patios and an LCP garage for her exclusive use. There is 1 other strata lot in Ms. Zhu's building. The strata repealed and replaced all of its bylaws in an October 3, 2019 amendment filed at the Land Title Office, which I find are the bylaws applicable to this dispute. The strata later amended its bylaws on August 7, 2020, but that amendment is not relevant to this dispute.

12. The undisputed evidence is that in December 2020 there was water leak in the CP roof above strata lot 25. The leak resulted from inadequate step flashing above the soffit line in combination with tree debris on the roof. The strata paid to have extra step flashing installed and to remove the debris, although it had already had the roof gutters cleaned multiple times in 2020. Water from the leak entered Ms. Zhu's strata lot and the LCP garage, causing water damage. Photos in evidence show water marks and light mildew on walls, ceilings, and in other areas.
13. Ms. Zhu authorized water leak inspections and repairs by the strata and by the strata's developer. It is undisputed that the cost of this work and of other water leak damage totalled less than the strata's insurance deductible, so the strata did not make an insurance claim, and there was no coverage available under the developer's building warranty. The inspections and repairs were billed to the strata, which undisputedly paid those bills.
14. The strata agrees that Ms. Zhu is not responsible for causing the water leak and related damage. However, the strata says that its bylaws allow it to charge back emergency repair costs to Ms. Zhu, and that she is responsible for strata lot repairs.

Must the strata pay for water damage repairs to Ms. Zhu's strata lot and the garage?

15. Ms. Zhu submitted a water damage repair invoice for her strata lot dated March 11, 2021 from JPC Services Inc. (JPC). The invoice listed 10 different tasks performed by JPC, including mold control, installing new insulation and drywall, painting, carpet and baseboard replacement, and cleanup. The invoice said that the work took place in the garage, bedroom, and a closet, including on the walls, ceilings, and floors. I

find this is consistent with the water damage photos in evidence. I find that the invoiced work was performed on strata lot 25 and the LCP garage. JPC charged a total of \$10,500 for all the work. There was no breakdown of the price or hours spent on each task, or any indication of how much work related to strata lot 25 and how much to the LCP garage. Ms. Zhu claims \$10,500 because the leak originated on CP, which the strata is responsible for maintaining and repairing.

16. SPA section 72 says that the strata must repair and maintain CP. It also says that the strata may, by bylaw, make an owner responsible for the repair and maintenance of LCP that the owner has a right to use. Section 72(3) says that the strata may also, by bylaw, take responsibility for the repair and maintenance of specified portions of a strata lot.
17. Bylaws 2(1) and 2(2) say that an owner must repair and maintain the owner's strata lot, and LCP that the owner has the use of, except for repair and maintenance that is the strata's responsibility.
18. Bylaw 13 says that, except for owner alterations that are not relevant here, the strata must repair and maintain CP that has not been designated as LCP. The strata must also repair and maintain certain portions of LCP and strata lots as set out in bylaw 13, including the structure and exterior of buildings, among others.
19. On the evidence and submissions before me, I find that the strata lot 25 water damage at issue is limited to interior features that the strata is not required to repair and maintain under bylaw 13(1)(d). Turning to the LCP garage, bylaw 13(1)(c) says, in part, that the strata's LCP repair and maintenance responsibility is restricted to the structure of a building (including that of a garage) and other items not relevant to this dispute, as well as:

“except with respect to garages, repair and maintenance that in the ordinary course of events occurs less often than once a year”.
20. Given that bylaw 13(1)(c) is an exhaustive list of LCP that the strata is responsible for, I interpret “except with respect to garages” to mean that the strata is not

responsible for any garage repair and maintenance that ordinarily occurs less often than once per year, such as the water damage at issue here. I find that nothing else in the bylaws or SPA makes the strata responsible for LCP garage repair and maintenance, except for parts of a garage that form the structure of a building or are one of the other features listed in bylaw 13(1)(c)(ii), none of which were damaged in this case.

21. In summary, I find that under the strata's bylaws and the SPA, the strata is not responsible for repairing and maintaining the portions of strata lot 25 and the LCP garage that were damaged by water from the roof leak. The only other ways the strata could be responsible for the water damage to strata lot 25 and the LCP garage would be if there was a separate agreement to repair such damage, if the damage was caused by the strata's negligent repair or maintenance, or if the damage was covered under a strata insurance claim. This is true regardless of whether the leak originated on CP or another area that the strata is responsible for maintaining and repairing.
22. Ms. Zhu does not say that the strata agreed to pay for the JPC repairs. However, Ms. Zhu says the strata was negligent in cleaning the roof gutters, which contributed to the roof leak.
23. To prove the strata was negligent in maintaining the CP roof gutters and removing roof debris, Ms. Zhu must prove that (a) the strata owed her a duty of care, (b) the strata failed to meet a reasonable standard of care, (c) Ms. Zhu sustained damage, and (d) the strata's failure actually caused the claimed damage (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
24. Given that the SPA and bylaws make the strata responsible for repairing and maintaining non-LCP CP such as the roof and gutters, I find that the strata owed Ms. Zhu a duty of care to maintain working gutters and remove drainage-affecting debris.
25. What is the applicable standard of care for maintaining the roof gutters? In *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784, the court indicated that courts should be cautious before interfering with the manner in which the strata decides to carry out its duty to repair and maintain CP. The court said that the strata may consider the

cost and impact to owners of different solutions, and may select among “good, better or best” solutions without breaching its repair and maintenance duties. *Oldaker v. The Owners, Strata Plan VR 1008*, 2007 BCSC 669 at paragraph 54 confirms that strata corporations are held to a standard of reasonableness in their repair and maintenance obligations. I find that the strata was required to reasonably maintain the roof gutters.

26. It is undisputed that the strata hired White Diamond Construction (WDC) to clean the roof gutters multiple times in the months leading up to the roof leak, as detailed in cleaning reports dated July 3, 2020, October 7, 2020, and November 18, 2020. Photos taken by WDC’s gutter vacuum system before and after each cleaning show that all debris was removed from the gutters. Ms. Zhu says that a roof area near the leak was not cleaned, because cleaning that area required WDC workers to go onto the roof and to use special equipment. However, I find the evidence does not show that the strata was aware of a possible debris buildup before the leak was reported on December 21, 2020. Further, according to the strata’s January 8, 2021 roof issue update to owners, the strata’s roofer said that even with gutter clogs, the leak would not have occurred if the step flashing had been higher, which was a design defect that the roofer remedied. Ms. Zhu does not directly disagree with that statement, which I find is consistent with a January 4, 2021 Accountable Roofing Services Ltd. invoice that said extra step flashing was installed “to ensure no further issues.”
27. Ms. Zhu submitted a sound recording of a portion of a January 13, 2021 special general meeting that discussed the roof leak into strata lot 25. The strata said that the fact that the water damage originated on CP did not make the strata responsible for damage to Ms. Zhu’s strata lot unless it was caused by the strata’s negligence, or was covered by a strata insurance claim. Given that the strata did not agree to pay for Ms. Zhu’s strata lot repairs, I find that statement was correct. The strata also said that the roof leak was primarily caused by a design problem with the eaves and soffits, which was not discoverable upon casual inspection. The strata indicated that it was following up with the gutter cleaners to ensure they cleaned the upper roof valleys as well as the gutters, since it appeared that the upper valleys may not have always been cleaned.

28. However, I find that nothing in this meeting excerpt, or in the other evidence, indicates that the strata knew or should have known that debris was potentially accumulating in upper roof valleys before the December 21, 2020 roof leak was reported. I also find that before December 21, 2020, the strata did not reasonably know about the non-obvious roof design flaw, or that it could cause a leak when gutters or other areas of the roof became clogged with debris.
29. Paragraph 54 of *Oldaker* says that if those hired by the strata fail to carry out their work effectively, the strata cannot be held responsible as long as they acted reasonably in the circumstances. I find that engaging WDC to clean the gutters 3 times in the 6 months leading up to the discovery of the roof leak was reasonable in the circumstances. I find that the evidence does not show that the strata had any significant reason to suspect that WDC's gutter cleaning work was insufficient to keep the roof free of debris, or that it could have contributed to a roof leak, before the roof actually leaked into strata lot 25.
30. So, I find that the strata met the applicable standard of care in the circumstances, including by taking reasonable and timely steps to diagnose and repair the leak's cause after it was discovered, at the strata's expense. So, I find that the strata was not negligent. I find there is no basis for requiring the strata to pay the \$10,500 water damage repair bill for Ms. Zhu's strata lot and LCP garage. I dismiss that claim.

Is Ms. Zhu responsible for the cost of emergency water leak repairs?

31. The strata charged a January 22, 2021 On Side Restoration (OSR) invoice for \$4,768.05 to Ms. Zhu's strata lot account. The invoice was for work done at Ms. Zhu's strata lot. Ms. Zhu requests an order that this charge be removed from her strata lot account.
32. The strata counterclaims for an order that Ms. Zhu pay it \$5,341.05 for the invoice plus unspecified "strata dispute-related expenses." I infer that these alleged expenses total \$573. The strata submitted a March 17, 2021 legal fee invoice, but under CRT rule 9.5(3)(b), the CRT does not normally order reimbursement of lawyer fees except in extraordinary circumstances. I find there are no extraordinary circumstances here.

Further, none of the legal fee invoice amounts equal \$573. I dismiss the strata's counterclaim for \$573 in expenses.

33. The strata says that bylaw 39, which is about insurance and property damage, allowed it to charge the \$4,768.05 OSR invoice amount to Ms. Zhu.
34. Bylaw 39(2)(b) says that when no claim is made against the strata's insurance for the costs of repairing physical damage to CP, LCP, or portions of a strata lot that the strata is required to repair, an owner must pay those repair costs to the strata when either (i) the owner, tenant, occupant, visitor, or invitee of the strata lot is responsible for the cause of the damage, or (ii) the source of the damage originated in the owner's strata lot (other than from CP within the strata lot).
35. As noted, neither Ms. Zhu nor any tenant, occupant, visitor, or invitee of her strata lot are responsible for the roof leak. The roof leak water damage originated on CP, and not in Ms. Zhu's strata lot. So, I find that bylaw 39(2)(b) does not make Ms. Zhu responsible for the costs of roof leak water damage to CP, or the parts of LCP and her strata lot that the strata must repair and maintain under the bylaws.
36. Bylaw 39(3)(a) says that where the strata incurs costs for emergency work or emergency steps taken to limit damage to a strata lot or CP, the strata can charge those costs to the owner of the strata lot to which those steps or work relate. A key question in this dispute is whether the strata can charge any emergency remediation costs to Ms. Zhu as "the owner of the strata lot to which those steps or work relate" under bylaw 39(3)(a).
37. Ms. Zhu says, essentially, that the remediation work the strata paid for was related to the CP roof leak, so is the strata's responsibility. The strata disagrees, and says that the work was for damage to Ms. Zhu's strata lot, which Ms. Zhu is responsible for.
38. Given that the strata relies on bylaw 39(3)(a) for the \$4,768.05 charge, I find the evidence must show that the invoiced work was performed "on an emergency basis," that the work related to Ms. Zhu's strata lot as opposed to CP roof repairs, and that it was for the purpose of limiting damage to her strata lot.

39. The parties' submissions do not specify what work OSR performed. The strata says the OSR work involved demolition related to the water leak, and strata correspondence in evidence says that drying or mitigation costs were estimated to be \$4,800. The OSR invoice is titled "Emergency Invoice", but I find nothing else about the invoice suggests it is any different than a normal invoice. The parties refer to the unspecified OSR work as "emergency" or "urgent" work. However, I find this is merely consistent with the OSR invoice's title, as none of the evidence before me proves that the unspecified OSR work was needed on an emergency basis.
40. In particular, the OSR invoice only says that the work was for damage due to "Asbestos/Mold" and was "as per estimate." However, nothing else before me suggests that asbestos was present, and there is no estimate in evidence, despite a December 31, 2020 strata email in evidence that says a file named "Emergency Mitigation Estimate.pdf" was attached. The attachment is not in evidence. The strata does not explain why it failed to submit the OSR estimate, despite it being a pivotal part of the OSR invoice that is at issue in this dispute. I find the evidence provides no further helpful information about what OSR's work was.
41. Without knowing what work was performed, or why, I find the evidence fails to show that the unspecified OSR work was required on an emergency basis. I also cannot determine to what extent the work was performed in Ms. Zhu's strata lot or the LCP garage, rather than in a CP roof space or elsewhere. Further, I cannot determine whether the work was for the purpose of limiting additional damage to the strata lot or to CP, rather than simply repairing existing water damage. Given that the strata says Accountable Roofing Services Ltd. repaired the roof leak, and that the gutters and roof valleys were cleaned soon after the leak was reported, it is unclear what further OSR emergency work in Ms. Zhu's strata lot was needed to limit further damage.
42. I find the submitted evidence fails to prove that the OSR invoice was for work that was required on an emergency basis, or that the work was for the purpose of limiting further damage to Ms. Zhu's strata lot or common property. So, I find the strata was not entitled to charge the unspecified OSR work to Ms. Zhu's strata lot account under

bylaw 39(3)(a). Absent further detail about OSR's work, I find the evidence demonstrates no other basis for charging it to Ms. Zhu. I allow Ms. Zhu's claim, and order the strata to remove the \$4,768.05 charge from Ms. Zhu's strata lot account. I dismiss the strata's counterclaim for that amount.

CRT FEES AND EXPENSES

43. 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 Ms. Zhu was partly successful in her claims, so I find she is entitled to reimbursement of half the CRT fees she paid, which equals \$112.50. Ms. Zhu claimed no CRT dispute-related expenses. The strata was unsuccessful in its counterclaim, so I find it is not entitled to any reimbursements, including its claim for \$573 in dispute-related expenses.

44. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Zhu.

ORDERS

45. Within 30 days of the date of this decision:

- a. I order the strata to cancel the \$4,768.05 repair charge on Ms. Zhu's strata lot account, and
- b. I order the strata to pay Ms. Zhu \$112.50 in CRT fees.

46. Ms. Zhu is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

47. I dismiss Ms. Zhu's claim for \$10,500 in repair costs. I dismiss the strata's counterclaim.

48. 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.

Chad McCarthy, Tribunal Member