Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Yoo v. The Owners, Strata Plan BCS 1293*, 2021 BCCRT 1332

B E T W E E N :

JONG HYUK YOO and JOO HYUN LEE

APPLICANTS

A N D :

The Owners, Strata Plan BCS 1293, AI REE KIM, RODRIGO ALVARES CAMELO, and KATIA CAMELO

RESPONDENTS

REASONS FOR SUMMARY DECISION

Tribunal Member: Trisha Apland

INTRODUCTION

1. This is a summary decision of the Civil Resolution Tribunal (CRT) refusing to resolve a strata property dispute.

2. The applicants, Jong Hyuk Yoo and Joo Hyun Lee, own a strata lot on the first floor of the respondent strata corporation, The Owners, Strata Plan BCS 1293 (strata). The respondents, Ai Ree Kim, Rodrigo Alvares Camelo, and Katia Camelo, (collectively "the respondent owners") own the strata lots on floors directly above the applicants' strata lot. The applicants say that water supply lines failed in the respondent owners' strata lots and caused flooding, which damaged the applicants' strata lot.

3. In the Dispute Notice, the applicants claim $288,613.93 in damages against all respondents without particularizing their claims. In argument, the applicants allege the Camelos and the strata are liable for $13,189.89 in "physical damages" from 2 floods in 2018. They allege Ms. Kim and the strata are liable for $25,424.04 in "physical damages" from a 2019 flood. The applicants also allege the floods diminished their strata lot's value and seek $250,000.00 in additional damages from all respondents. The applicants refer to and rely on the *Negligence Act* to seek an apportionment of damages on joint and several liability bases.

4. The strata says it is not responsible for the repair and maintenance of the respondent owners' water supply lines under the *Strata Property Act* (SPA) or the bylaws. It says it is not a correctly named party to this dispute and denies that it is responsible for the claimed damages.

5. Each of the respondent owners deny they are responsible for the applicants' flooding and alleged damages and loss, which they say are not proven.

6. The parties are represented by legal counsel. The applicants are represented by Michael P. Katzalay, Ms. Kim is represented by Dana C. Russell, the Camelos are represented by Dominic Wan, and the strata is represented by Anil Aggarwal.

JURISDICTION AND PROCEDURE

7. Under the *Civil Resolution Tribunal Act* (CRTA), 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.

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. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing was not necessary in the interests of justice and fairness and nor was it requested. This hearing was done by written submissions.

9. Section 121 of the CRTA sets out the CRT's jurisdiction over strata property disputes, which I reproduce below.

10. Under CRTA section 10, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are within and some that are outside the CRT's jurisdiction may be amended to remove those issues.

11. Under CRTA section 11, the CRT has discretion to refuse to resolve a claim including where the claim or dispute would be more appropriate for another legally binding process.

Proceeding History and Assignment

12. On March 13, 2020, the applicants say they filed a Notice of Civil Claim with the BC Supreme Court (BCSC) over this matter. They say that in June 2020 the strata took the position that this dispute belonged before the CRT and the parties agreed to stay the BCSC proceeding and bring the matter before the CRT instead. These facts are not disputed but I note the BCSC pleadings are not before me.

13. On July 14, 2020, the applicants applied to the CRT for dispute resolution and the CRT issued the Dispute Notice on July 27, 2020, which was amended on January 26, 2021. The dispute went through the CRT case management process and was later assigned to me for adjudication.

14. When I was assigned the dispute, I reviewed the initiating documents and the parties' submissions and identified a potential jurisdictional issue. In particular, the applicants did not set out the legal basis under the SPA for their damages claims and it appeared that their claims were based on the common law of negligence. None of the parties raised this potential jurisdictional issue.

15. Prior CRT decisions are inconsistent about the scope of the CRT's strata property jurisdiction over tort claims. (A tort is a legal wrong under common law.) Acknowledging this, I decided fairness required me to return to the parties for submissions before deciding this matter: *Dhanji v. The owners, Strata Plan LMS 2472,* 2021 BCSC 284. In my request for submissions, I drew the parties' attention to some earlier, non-binding CRT decisions that involved tort claims, including my own. I invited the parties to make submissions about whether the CRT has jurisdiction to resolve the applicants' claims in this dispute. I have since received and reviewed the parties' submissions.

16. All the parties say that the applicants' claims against the strata and respondent owners are claims "in respect of" the SPA over the use or enjoyment of a strata lot and fall within the CRT's strata property jurisdiction as I discuss further below.

17. The applicants additionally argue that this jurisdictional question should not be decided by a CRT member. The applicants disagree with earlier decisions by the CRT vice chairs refusing jurisdiction where tort claims are involved. They assert that "the dynamics of seniority within the offices of the CRT may impact a tribunal member's decision-making independence". Their stated position is that a CRT member would explicitly or implicitly defer to the more senior vice chairs' decisions. They say this important jurisdictional question should instead be decided by a CRT member more senior to the vice chairs, the CRT chair.

18. The CRT chair, vice chairs and members are each independent decision makers appointed for a fixed term by the Lieutenant Governor in Council. The CRTA does not specify that the chair must render decisions on certain issues or disputes. If, as the applicants suggest, the chair must decide this issue because of its importance, this would suggest the chair's decision should hold special weight. However, CRT members are required to make their decisions independently and no prior CRT decision is binding on a member's future decision, including those decisions made by the chair or the vice chairs. This is because unlike courts, tribunals are not bound by the doctrine of precedent called *stare decisis*: see *Weber v. Ontario Hydro, 1995 CanLII 108* (SCC) at paragraph 14. I also find the applicants' concern that a CRT member would abrogate their independence and defer to the vice chairs is unfounded.

19. CRTA section 80 says the CRT chair is responsible for assigning this dispute and the chair assigned this dispute to me. Having been assigned this dispute, the CRTA grants me the authority to decide whether this assigned dispute falls within the CRT's jurisdiction and whether to resolve it.

20. Having reviewed the initiating documents, all the parties' submissions and relevant court and CRT cases, I have refused to resolve this dispute. My reasons follow.

ISSUES

21. The issues in this summary decision are:

    a. Do the applicants' claims fall within the CRT's strata property jurisdiction?

    b. If the CRT has only has jurisdiction to resolve the applicants' claims against the strata, should I resolve them or refuse to resolve the whole dispute?

ANALYSIS

22. As mentioned, the parties argue that the CRT should resolve this dispute because they say it falls within the CRT's jurisdiction over claims "in respect of" the SPA over the use and enjoyment of a strata lot. They also say the CRT should resolve this dispute because it issued the Dispute Notice, the parties went through the CRT process, the jurisdictional issue was not raised earlier, and the parties all agree to the CRT resolving the claims. They say it would be inconsistent with the CRT's mandate of accessible, speedy, economical, informal, and flexible dispute resolution to refuse to resolve this dispute now and restart the process in the BCSC.

23. The Camelos also say the CRT's mandate is to apply the principles of law and fairness and if it were to decline to resolve the claims the parties would have to re-litigate the claims in a different forum after the applicants have already reviewed the expert reports and arguments in this dispute. They say this would create a prejudice to them in the subsequent proceeding.

24. The CRTA's mandate in section 2 applies only "in relation to matters that are within its authority" to resolve. The CRT is not a court and it derives its jurisdiction entirely from statute. So, I cannot resolve a claim that exceeds the CRT's authority even if it would be more efficient to do so, or the parties agree the CRT should decide it, or for any other reason argued by the parties.

25. Under CRTA section 6(2) the decision to issue a Dispute Notice does not preclude the CRT from later refusing to resolve a claim under sections 10 or 11.

Statutory Interpretation

26. The modern approach to statutory interpretation is explained in *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 at para. 26 quoting Driedger's Construction of Statutes (2nd ed. 1983 at p. 87):

> ... the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament [or the legislature].

27. Section 8 of the *Interpretation Act* says every enactment in BC must be "construed as being remedial, and must be given such fair, large and liberal construction as best ensures the attainment of its objectives".

28. CRTA section 121 sets out the scope of the claims within the CRT's jurisdiction over strata property claims:

> **121** (1) Except as otherwise provided in section 113 *[restricted authority of tribunal]* or in this Division, the tribunal has jurisdiction over a claim, in respect of the *Strata Property Act*, concerning one or more of the following:
>
> (a) the interpretation or application of the *Strata Property Act* or a regulation, bylaw or rule under that Act;
>
> (b) the common property or common assets of a strata corporation;
>
> (c) the use or enjoyment of a strata lot;
>
> (d) money owing, including money owing as a fine, under the *Strata Property Act* or a regulation, bylaw or rule under that Act;
>
> (e) an action or threatened action by a strata corporation, including the council, in relation to an owner or tenant;
>
> (f) a decision of a strata corporation, including the council, in relation to an owner or tenant;
>
> (g) the exercise of voting rights by a person who holds 50% or more of the votes, including proxies, at an annual or special general meeting.

29. CRTA section 122 lists claims that are specifically outside the CRT's jurisdiction and may be dealt with by the BCSC. None of those exceptions are relevant here and I agree with the applicants that CRTA section 122 does not specifically state the CRT is precluded from determining negligence or nuisance claims in the context of a strata property claim. However, the claim must still be "in respect of" the SPA to fall within the CRT's strata property jurisdiction at all.

30. I find the statutory interpretation question before me is to decide what the legislature meant by claims "in respect of the SPA". This question has not been judicially considered.

31. The Supreme Court of Canada (SCC) interpreted the phrase "in respect of" in *Sarvanis v. Canada*, 2002 SCC 28. The SCC held that the phrase "in respect of" is one with the widest possible scope. However, it is not a phrase of infinite reach, and when interpreting the phrase, consideration must be given to the wider context in which the words are found: *Sarvanis* at paragraphs 22 and 24.

32. In the non-binding decision, *Alameer v. Zhang*, 2021 BCCRT 435, a CRT vice chair decided a claim that was brought solely between strata lot owners in negligence was not "in respect of" the SPA. The vice chair held at paragraph 19 that a claim "in respect of the" SPA is one that could only proceed by relying on the SPA. He concluded that claims involving 2 strata lot owners seldom depend on the SPA because they have an independent basis in tort. He held that an owner may have an obligation to the corporation under the bylaws, and may at the same time be liable to another owner in tort based on the same conduct. However, he concluded the tort claim is not in respect of the SPA simply because the owner has a parallel duty under the bylaws.

33. As the parties point out, *Alameer* is factually different from this dispute as it was a dispute entirely between strata lot owners. In this dispute, the strata is named along with the respondent owners. However, I agree with the vice chair's conclusions about tort claims falling outside the CRT's jurisdiction as I discuss in more detail below.

34. The strata argues that "this is truly a claim between the disputing owners" and says the strata has zero liability for the alleged losses. However, the strata says the applicants' strategy of naming the strata as a respondent caused the claim to be in respect of the SPA. I find that naming the strata as a respondent is not necessarily enough. There needs to be a sufficient connection between the applicants' claims and the SPA to be claims "in respect of" the SPA to fall within the CRTs strata property jurisdiction.

35. In the non-binding decision, *Ryan-Glenlon v. Section 1 of The Owners, Strata Plan LMS 2532*, 2021 BCCRT 871, the CRT member considered whether an owner's claim against the strata was "in respect of" the SPA. The owner's contract to sell her strata lot collapsed and she blamed the strata because it delayed giving the buyer written confirmation of prior renovations. She claimed $200,000 in damages. The strata argued the claim was a tort claim outside the CRT's strata property jurisdiction. The CRT member agreed that a tort claim, such as inducing breach of contract, was outside the CRT's jurisdiction over strata property disputes. However, he concluded that the same situation could give rise to multiple legal claims. The owner's claim could have been brought as a tort claim or a claim under the SPA, for a breach of the strata's SPA obligations. He concluded the claim was therefore "in respect of" the SPA and resolved the claim that the strata allegedly breached its obligations under the SPA.

36. I agree with the CRT member's reasoning that the same set of facts could give rise to alternative legal claims. If the same facts give rise to both an independent tort claim and a claim in respect of the SPA for a matter listed under 121(1), the CRT would have jurisdiction to resolve the claim under its strata property jurisdiction.

37. The vice chair in *Alameer* stated that the BC Court of Appeal (BCCA), in *The Owners, Strata Plan NW 2575 v. Booth*, 2020 BCCA 153, suggested that it may be problematic for the CRT to address tort disputes under its strata property jurisdiction that exceed the CRT's small claims $5,000 threshold. Madam Justice Saunders commented at paragraph 8:

> It is important to note, in light of the nature of the claim, that this appeal does not address the constitutional or statutory jurisdiction of the [CRT] to exclusively, or at all, entertain a claim in tort, at least to this scale which is in excess of the [CRT's] small claims limit.

38. As some of the parties point out, the *Booth* decision was not about the CRT's jurisdiction and Madam Justice Saunders' "obiter" comment was made in passing and is not binding. I agree with these points. However, I read Madam Justice Saunders' comment as a general caution in deciding how far a claim, "in respect of" the SPA is meant to reach.

39. Circling back to the modern approach to statutory interpretation, I have considered the words "in respect of" within the overall scheme of the CRTA, the role of the CRT and the legislature's intention.

40. The CRT is an online administrative tribunal with special expertise over certain types of disputes and a mandate that includes informal, efficient, and low-cost dispute resolution. As a statutory tribunal, the CRT has no inherent, substantive jurisdiction. It only has the substantive jurisdiction that the legislature grants it. The CRTA grants the CRT four areas of jurisdiction: small claims disputes to a $5,000 monetary limit, certain motor vehicle accident claims, certain cooperative associations and societies claims, and certain strata property claims.

41. The CRT has specialized expertise over strata property disputes and its decision is final and binding on the parties, except the decision may be judicially reviewed: see CRTA Part 5.1 and sections 116(2) and 121(2). There is no monetary limit for a strata property claim.

42. By contrast, CRTA section 118 gives the CRT jurisdiction to resolve a claim based in tort so long as it falls within the $5,000 limit. A party who disagrees with a CRT's small claims decision may file a notice of objection under CRTA section 56.1, which effectively nullifies the CRT decision.

43. Under the CRT's motor vehicle injury (MVI) jurisdiction, the CRT has a monetary cap of $50,000 in its authority to resolve a tort claim for personal injury and property damage claims. I note that the BCSC held the tort aspect of the CRT's jurisdiction over MVI claims unconstitutional for reasons that go beyond the scope of the issues here: *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General),* 2021 BCSC 348. That BCSC decision is under appeal.

44. So, the legislature gave the CRT express jurisdiction over tort claims under its small claims jurisdiction with a clear monetary cap. The CRTA also imposed a monetary limit over tort claims for personal injury and property damage claims under the CRT's MVI jurisdiction. Given the limitations in these other areas and the CRT's lack of substantive inherent jurisdiction, I find the legislature would have been more explicit if it meant to extend the CRT's jurisdiction over tort claims of any monetary value because they involve the use or enjoyment of a strata lot. Also, considering the CRT has specialized expertise over strata property claims, I find the legislature's intention for the words "in respect of" is that the legal basis for the claim is grounded in the SPA. In other words, I find the legal basis entitling a person to a remedy must arise from the SPA to be a claim "in respect of" the SPA and the legal basis cannot solely be at common law, in tort.

45. I turn to assess the applicants' claims.

Do the applicants' claims fall within the CRT's strata property jurisdiction?

46. The applicants did not refer to any sections of the SPA or the bylaws in the Dispute Notice or in their written submission arguing the merits of their claims. The applicants allege that the respondent owners knew or ought to have known of the potential for their water lines to fail because the strata had posted a notice in the strata building in October 2016 advising all owners to replace water lines. The applicants say the respondent owners "apparently took no steps to effect repairs" and are "primarily liable" for their alleged damages.

47. As against the strata, the applicants allege the strata was aware of a "serious problem" with the water lines by 2016. They allege the strata negligently failed to take immediate steps to repair the water lines in owners' strata lots. The applicants say that if the strata had set up a mandatory repair schedule requiring the repairs, the applicants' strata lot would not have flooded. The applicants also argue that the strata owed them a duty of care "having knowledge of a systemic problem, to fully notify them and ensure that repairs were rectified". They argue that the strata failed in both regards. As mentioned, they seek an apportionment of damages under the *Negligence Act.*

48. SPA section 3 says the strata corporation is responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners. SPA section 26 requires the strata council to perform the duties of the strata, including enforcing its bylaws. The Standard Bylaws apply to this strata and are a schedule to the SPA.

49. Bylaw 2 requires owners to repair and maintain their own strata lots, except for repair and maintenance that is the strata's responsibility. Standard Bylaw 3 restricts certain strata lot uses, including using a strata lot in a way that causes a nuisance or hazard to another person or unreasonably interferes with the rights of other persons to enjoy their strata lot.

50. All the parties say this dispute is about the use and enjoyment of a strata lot. The applicants also argue the strata's failure to enforce the Standard Bylaws and ensure that the respondent owners complied with the bylaws directly caused or contributed to their losses. They argue that the mere fact that one owner cannot enforce a bylaw directly against another owner does not preclude the CRT from taking those bylaws into consideration in determining whether a strata lot owner has acted in a manner contrary to the bylaws.

51. Without making any findings on the merits, if the strata breached a statutory duty, the strata may be liable for damage to an owner's strata lot: see for example *Basic v. Strata Plan LMS 0304*, 2011 BCCA 231. While the analysis is in negligence, the duty is a statutory duty imposed by the SPA. I find the applicants' claim that the strata breached its statutory duty, and is negligent, is a claim "in respect of" the SPA. I find it falls squarely within the CRT's strata property jurisdiction. I discuss my decision to refuse to resolve this claim under CRTA section 11 below.

52. I turn to the applicants' claims against the respondent owners.

53. I find no provisions in the SPA that create a statutory duty on strata lot owners with respect to other strata lot owners. Under the SPA's enforcement scheme, I find an owner's duty to comply with the bylaws is owed to the strata. If the respondent owners contravened a bylaw, this would provide a basis for the applicants to bring a complaint

to the strata. In circumstances of a breach, the strata (and not the applicants) could impose a fine, remedy a contravention, or deny an owner access to a recreational facility, after giving the owner proper notice of the complaint and a right to be heard under SPA section 135. However, a bylaw breach does not create civil liability on owners towards other owners. The applicants would have no right to recover damages from the respondent owners under the SPA or the strata's bylaws.

54. I note the bylaws in this dispute are different from the CRT decision in *Blaney v. Mayer*, 2021 BCCRT 973 where the strata's filed bylaws provided that an owner was strictly liable to other residents for "any damage" to a strata lot from specified items located in their strata lot, including for leaks. The bylaws relevant to this dispute create no similar liability nor right for an owner to claim or recover property damages or loss of property value against another owner.

55. I agree with the parties that the floods presumptively impacted the applicants' use and enjoyment of their strata lot. They also involved the respondent owners' alleged use of their strata lots. However, I find a claim between owners for negligently failing to repair a strata lot, or in nuisance for water escape, is a common law tort claim. While the strata context may inform the analysis, I find the legal basis for the applicants' damages claim for the alleged flooding arises only at common law. There is no alternative legal right created by the SPA or the strata's filed bylaws. So, I find the applicants' claims against the respondent owners are independent actions in tort and not claims "in respect of" the SPA. For these reasons, I conclude that I have no jurisdiction to consider the claims against the respondent owners under the CRT's strata property jurisdiction.

56. The applicants say the CRTA does not require that all claims be in respect of the SPA, it says only that it must be "a claim". I infer they mean that I should resolve all claims if I find that one of them is in respect of the SPA. Under CRTA section 10(2) the CRT can amend a claim to remove issues that are not within the CRT's jurisdiction. However, it cannot resolve a claim that it has no authority to decide under the CRTA. This means I cannot resolve the claims against the respondent owners simply because I concluded I have authority to resolve a claim against the strata.

Under CRTA section 10, I must refuse to resolve the applicants' claims against the respondent owners having concluded that the CRT has no jurisdiction.

Should I refuse to resolve the applicants' claims against the strata?

57. The respondent owners argue that if I decide the CRT only has jurisdiction over the applicants' claims against the strata and not the respondent owners, I should refuse to resolve the whole dispute so that it can be heard by the BCSC. Ms. Kim argues that a resolution of the claims against the strata in the CRT proceeding will not resolve the claims against the respondent owners and the strata will not avoid being drawn into future BCSC proceedings. Ms. Kim also points out that the applicants are seeking damages on joint and several bases under the *Negligence Act.* She argues that it will create unnecessary complexity and the court may have to grapple with questions of *res judicata* and issue estoppel. The Camelos similarly argue that the liability apportionment would be complex if the CRT resolved the claim against the strata only.

58. The applicants and strata do not clearly state their position on this question apart from arguing that the CRT should resolve the whole dispute. As mentioned, the strata's position on the merits is that it has zero liability and it is not a correctly named party.

59. I agree with the respondent owners that deciding the claims only against the strata would overly complicate the BCSC proceeding and be repetitive for the reasons they state. There is also a risk of different findings of fact in the 2 forums, given the evidentiary rules in the BCSC and the CRT differ. This could potentially lead to inconsistent results. Further, the applicants have already started the BCSC proceeding, which is only stayed and not dismissed. Refusing to resolve this whole dispute means the BCSC proceeding can recommence as permitted under CRTA section 16.4(b). In these circumstances, I find it would be more appropriate for the whole dispute to be heard by the BCSC, rather than hiving off the claims against the strata. For these reasons, I exercise my discretion to refuse to resolve the applicants' claims against the strata under CRTA section 11(1)(a)(i).

60. None of my conclusions should be read as an assessment on the merits of the applicants' claims against any of the respondents.

ORDER

61. I refuse to resolve the applicants' claims and this dispute under CRTA sections 10 and 11(1)(a)(i).

Trisha Apland, Tribunal Member