



Civil Resolution Tribunal

Date Issued: April 6, 2022

File: ST-2021-005995

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan NWS 2922 v. Guszowaty*, 2022 BCCRT 385

B E T W E E N :

The Owners, Strata Plan NWS 2922

APPLICANT

A N D :

JAMES GUSZOWATY and GINA MARIE GUSZOWATY

RESPONDENTS

A N D :

The Owners, Strata Plan NWS 2922

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This dispute is about the alteration of common property.
2. The respondents, James Guszowaty and Gina Marie Guszowaty, own strata lot 6 (SL6) in the applicant strata corporation, The Owners, Strata Plan NWS 2922 (strata).
3. The strata says the Guszowatys altered common property (CP) by installing a gas line through an exterior wall without the strata's written approval as required under the bylaws. It alleges the installation damaged the CP, which cost \$6,825.00 to repair. The strata says the Guszowatys agreed to reimburse this expense and paid a total of \$4,834.46. It seeks the \$1,990.54 repair cost balance.
4. The Guszowatys deny the claim and say their contractor spoke with the acting strata council president "DU" at the time and DU told their contractor he had "no issues with the gas line running up the exterior wall" and so the plumber installed it through the exterior wall.
5. Mr. Guszowaty filed a counterclaim against the strata. He says the strata must take responsibility for the acting president's actions and "reimburse all monies paid and still owed", plus pay for the gas line install. He seeks a total payment of \$9437.61.
6. The strata denies Mr. Guszowaty's counterclaim and says it does not owe him anything.
7. The Guszowatys are represented by Mr. Guszowaty. The strata is represented by the strata council president.

JURISDICTION AND PROCEDURE

8. 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.

9. 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.
10. 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.
11. 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

12. The issues in this dispute are:

- a. Must the Guszowatys pay the strata the \$1,990.54 outstanding balance for the CP repairs?
- b. Alternatively, must the strata reimburse Mr. Guszowaty the amounts he paid for the CP repairs and to install the gas line?

EVIDENCE AND ANALYSIS

13. In a civil claim such as this one, the applicant strata must prove its claim on a balance of probabilities. Mr. Guszowaty has the same burden on the counterclaim.

14. I have reviewed all the submissions provided by both parties, but only refer to the evidence and argument necessary to explain my decision.

Background

15. The strata was created in 1989 under the *Condominium Act*, and continues to exist under the *Strata Property Act* (SPA). The strata plan filed in the LTO shows the strata is made up of 12 strata lots in a three-floor building. The Guszowatys' SL6 is on the second floor.

16. As set out in SPA section 3, the strata is responsible for the managing and maintaining the CP for the benefit of the owners. Under section 4, the strata's powers and duties are performed through its council.

17. The strata filed a complete set of bylaw amendments on December 28, 2001, plus amendments in subsequent years. I find bylaw 8 "Alterations/Renovations to Strata Lot or Common Property" filed in the LTO on May 4, 2011 is relevant to this dispute.

- Bylaw 8.1 requires an owner to have the strata's written approval before making an alteration to a strata lot that involves the building's exterior, piping, heating, and certain other parts not relevant to this dispute.
- Bylaw 8.2 says the strata must not unreasonably withhold its approval under bylaw 8.1 but may require as a condition of its approval that the owner agree, in writing, to take responsibility for any expenses relating to the alterations, and to indemnify and hold harmless the strata for any future costs for repairs or maintenance in connection with a strata lot alteration.
- Bylaw 8.3 requires an owner's strata lot alteration application to be in writing and include detailed plans and a written description of the intended alteration.
- Bylaw 8.4 requires an owner to have the strata's written approval before altering decks, balconies, CP, or common assets.

- Bylaw 8.5 says the strata may require as a condition of its approval that the owner “agree, in writing, to take responsibility for any present and future expenses relating to the alteration to the Strata Council” (as written). I note this bylaw was amended in 2018 but I find nothing turns on the amendment for this particular dispute.

Gas Line Approval and Installation

18. In 2017, the Guszowatys were renovating SL6, which included installing a gas range in their kitchen. The strata approved the Guszowatys’ SL6 renovation as set out in the signed work scope form. The parties also signed a September 21, 2017 “Assumption of Liability Agreement” (Agreement) for the SL6 alteration as contemplated by bylaw 8.2. Based on these documents, I find the strata’s written approval was for the Guszowatys to alter the interior of SL6 under bylaw 8.1. I discuss the relevant Agreement clauses in my analysis below.
19. It is undisputed that all strata lots had a gas line within them to run the furnace, water tank and fireplace. Mr. Guszowaty says one way to get gas to his kitchen range was to run a gas line up from their boiler through the ceiling inside SL6. He says the “less evasive way was to run the line from the exterior gas meter up the wall and into our kitchen by drilling a hole in the wall” (as written). I find he likely means less “invasive” for his own strata lot.
20. The parties agree that the Guszowatys’ contractor “H” from Hilltop Plumbing & Heating (Hilltop) installed their new gas line externally through the building’s exterior stucco wall on December 11, 2017. The exterior stucco wall is undisputedly part of the CP (CP wall). I find this exterior gas line installation was an alteration to CP and required the strata’s written approval under bylaw 8.4.
21. The signed work scope is organized by room and only indicates a new gas line in the kitchen. It does not mention any exterior CP alteration and says nothing about running a gas line externally. Given the existing internal line, I find the strata’s written approval was for the Guszowatys to run a new internal gas line to their SL6 kitchen. I find the Guszowatys did not have written approval for the exterior installed gas line.

22. In any event, the Guszowatys do not dispute the lack of written approval. They say the acting president, DU, told their contractor, H, an approval letter was not required, and DU essentially gave verbal permission for the exterior installation.

23. There is no statement from DU, who the strata says no longer resides in the strata building. However, the parties each submitted a copy of the same statement from H about their conversation on December 11, 2017. I accept H's unrefuted statement. The relevant parts are:

- H arrived at the job site on December 11, 2017 to go over the scope of work for the gas line.
- H called Mr. Guszowaty and asked if he had an approval letter for the gas line and Mr. Guszowaty told H he had gone over the "wants and needs of their renovation" with council.
- He asked Mr. Guszowaty again if he had an approval letter and Mr. Guszowaty said he would call DU just to confirm and call him back.
- DU called H directly and said he was "in charge of the strata and that he had no issues with the gas line being on the outside wall of the building, his only request was that it runs upwards in line with the gutter on the side of the building, but other than that he had no concerns".

24. I find it unlikely that DU, who was a council member, expressly told H the Guszowatys they did not need an approval letter for the CP alteration. First, H did not state that DU told him it was not required. Second, not requiring written approval would be inconsistent with the bylaws and the formality of the council's process for the SL6 alterations (requiring a signed work scope form and the Agreement). However, I find H likely interpreted from the phone call that the Guszowatys did not require any further approval for the exterior gas line because H performed the exterior installation after the phone calls.

25. The strata says DU had been away and mistakenly believed the Guszowatys already had the required approval. It says when the other council members saw the external gas line they told DU that the Guszowatys only had permission to run the gas line

within SL6 and not externally. I find the strata's assertion is somewhat supported by a letter DU sent Mr. Guszowaty on December 14, 2017. In that letter, DU wrote that Mr. Guszowaty had wrongly told him earlier in the week that the council had approved the exterior gas line when council had never done so and there was no record of the approval. In the letter, DU told Mr. Guszowaty that he must remove the exterior gas line and repair the CP wall.

26. Mr. Guszowaty does not comment on DU's letter in his submissions. However, he says he would not have jeopardized one of the most important parts of the renovation by going behind the strata's back to install the external gas line. I infer he might dispute misinforming DU about the approval but he does not say so explicitly. In any event, nothing turns on this and the parties' further correspondence suggests it was a misunderstanding.
27. After receipt of DU's letter, Mr. Guszowaty emailed the council and asked for retroactive approval to run the gas line up the external wall because DU had "verbally agreed" to it. Mr. Guszowaty explained that he would ensure the external line blended in and "repair the exterior wall back to the original state". He said keeping the external gas line would be the most cost-effective option for him to move forward without adding extra expenses.
28. On December 27, 2017, the council denied the Guszowatys' request for the exterior gas line and required the Guszowatys to remove the exterior gas line and pay to repair the CP wall damage. The council's email stated that if they still wished to run the gas line internally as per the council's approval, they were free to proceed.
29. The Guszowatys undisputedly removed the external gas line after the strata denied their request for retroactive approval. This left a hole in the CP wall's stucco (building envelope) that required repairs.
30. I address the reasonableness of the council's decision when discussing Mr. Guszowaty's counterclaim below. However, I find one council member's phone discussion with the Guszowatys' contractor did not meet the requirement of bylaw 8.4. I find the Guszowatys required the strata's written approval to alter the CP wall by

installing the external gas line under bylaw 8.4. I find the Guszowatys acted contrary to the bylaws by making the alteration without that written approval.

31. I find the Guszowatys also acted contrary to clause 3 of the Agreement, which stated that the alternations would be done “in accordance with the design or plans submitted by [the Guszowatys] and approved by the strata council or its duly authorized representatives”. As mentioned, the signed work scope did not include approval to install the gas line externally or alter the CP. It was limited to internal SL6 alterations.

32. Clause 9 of the Agreement states that the Guszowatys agreed to pay the cost of removing the alterations if they were in violation of any bylaw. I find the Guszowatys acted contrary to bylaw 8.4 by altering CP to install the external gas line without written approval. So, I find they were responsible to remove the gas line at their own cost under clause 9 of the Agreement.

33. I note the parties made submissions about whether the exterior gas line altered the appearance of the CP. If the gas line was a significant change in the appearance of the CP, it would have required the ownership’s approval by a $\frac{3}{4}$ vote at a general meeting as set out under SPA section 71(a). I find no need to decide if the exterior line was a significant change in appearance because this matter was not raised in 2017 or 2018 and the exterior gas line was removed.

Must the Guszowatys pay the strata the \$1,990.54 outstanding balance for the CP repairs?

34. The CP wall repairs were completed by late 2018 and the strata billed the Guszowatys a total of \$6,825.00, \$2,362.50 for “stucco cladding repair design and field reviews” and \$4,462.50 for the repairs to the “compromised” exterior wall.

35. As shown in the parties’ correspondence, the Guszowatys agreed to pay for the \$6,825.00 debt in installments by monthly postdated cheques. They paid a total of \$4,834.46 and then put a stop payment on their cheques. The outstanding balance is \$1,990.54. These facts are not disputed.

36. Mr. Guszowaty says that the strata hired a big company for a small job and this equals “big bucks”. He says that because the strata was “not footing the bill the sky was the limit with no consideration for us”. However, Mr. Guszowaty provided no evidence, such as an expert opinion, that the job should have cost any less. Also, the parties’ correspondence shows the council did consider the Guszowatys in hiring a contractor. Specifically, after a hearing about their concerns, the council obtained quotes from 3 companies, 2 of which Mr. Guszowaty had proposed. As shown in the parties’ correspondence, the council hired a company with expertise in building envelopes that they decided was the best price for service. I find nothing improper about this decision.

37. Under clause 6 of the Agreement, the Guszowatys agreed to indemnify the strata for any and all loss, expenses, costs and damages to the CP arising out of, or resulting from, or sustained by reasons of their strata lot alterations. I find the stucco cladding and CP wall damage arose from the Guszowatys’ SL6 alterations. So, I find they were responsible to indemnify the strata for the \$6,825.00 in expenses as they relate to the repairs. The signed work scope also stipulated that the Guszowatys would be responsible for any damage to CP that was related to their SL6 alteration. Based on these 2 clauses, I find the Guszowatys assumed liability for the CP damage and they must pay the strata the outstanding \$1,990.54 repair expenses.

38. I now discuss Mr. Guszowaty’s counterclaim, which I dismiss.

Counterclaim

39. Mr. Guszowaty says DU’s “lack of judgement” in making a decision “on his own” caused them the loss. He says DU should have told H to put the job on hold until DU spoke with the council. His position is that the strata should take responsibility for its acting president’s actions at the time and reimburse what he paid for the repairs and for the gas line.

40. I find DU expressing his lack of concern over the exterior gas line and his preference about its placement to H is not equivalent to the strata’s permission, written or otherwise, to install it. I find Mr. Guszowaty knew or reasonably should have known it was his responsibility under the bylaws to ensure he had written approval before

altering the CP wall by installing the external gas line. I find Mr. Guszowaty should have told his contractor to stop work until he received the strata's approval in writing. Instead, Mr. Guszowaty proceeded based on phone conversations. I find it is Mr. Guszowaty and not the strata who is responsible for this decision.

41. Mr. Guszowaty had an alternative option to install gas to the kitchen through the interior of SL6. This option was already approved and only the Guszowatys benefited from the new gas line. Given the council's duty to manage the CP, and the installed gas line pierced a hole through the building envelope, I find the council's decision to deny the Guszowatys' retroactive request was reasonable. I also find council's decision to repair the CP wall damage and charge the Guszowatys was consistent with the SPA, the bylaws and the terms of the Agreement.

42. In light of the bylaws and clauses 6 and 9 of the Agreement, I find the strata is not liable for the repairs or the gas line. I dismiss Mr. Guszowaty's counterclaim.

CRT FEES, EXPENSES AND INTEREST

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 therefore order the Guszowatys to reimburse the strata for CRT fees of \$225. The strata did not claim any dispute-related expenses. I dismiss Mr. Guszowaty's claim for CRT fees.

44. The *Court Order Interest Act* (COIA) applies to the CRT. The strata is entitled to prejudgment interest on the \$1,990.54 debt from August 3, 2021, the debt due date as set out in the Dispute Notice, to the date of this decision. The interest equals \$6.06.

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

ORDERS

46. I order that within 30 days of this decision that the Guszowatys pay the strata a total of \$2,221.60, broken down as follows:

- a. \$1,990.54 in debt,
- b. \$6.06 in prejudgment interest under the COIA, and
- c. \$225 in CRT fees.

47. The strata is entitled to post-judgment interest, as applicable.

48. I dismiss Mr. Guszowaty's counterclaims.

Trisha Apland, Tribunal Member