



Civil Resolution Tribunal

Date Issued: May 16, 2022

File: ST-2021-005086

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan NW 1934 v. Sun*, 2022 BCCRT 580

BETWEEN:

The Owners, Strata Plan NW 1934

APPLICANT

AND:

WEIDONG SUN

RESPONDENT

AND:

The Owners, Strata Plan NW 1934

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. The respondent, Weidong Sun, owns strata lot 94 (SL94) in the applicant strata corporation, The Owners, Strata Plan NW 1934 (strata). The strata says Mr. Sun installed and used a washing machine in SL94, contrary to its bylaws. The strata says the washing machine's water lines leaked and caused water damage to SL94, another strata lot, and the strata's common property. The strata says it paid \$3,711.05 for emergency repairs to common property, and says Mr. Sun is required to reimburse this cost under bylaw 41. The strata asks for an order that Mr. Sun pay the \$3,711.05 chargeback for emergency repairs.
2. Mr. Sun says he is not responsible for the repair costs. He says he did not install a washing machine in SL94, the water leak did not originate from SL94, and the strata did not repair anything in SL94. In his counterclaim, Mr. Sun alleges that the strata improperly charged back \$3,711.05 to his strata lot account for the repair costs, and asks for an order the strata remove the chargeback.
3. The strata is represented by a strata council member. Mr. Sun is self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. 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. In some respects, both parties in this dispute call into question the credibility, or truthfulness, of the other. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal

demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

6. 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.
7. 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

8. The issues in this dispute are:
 - a. Do the strata's bylaws require Mr. Sun to pay for the emergency repairs?
 - b. Must the strata reverse the \$3,711.05 charged back to Mr. Sun's strata lot account?

EVIDENCE AND ANALYSIS

9. In a civil proceeding such as this one, the strata, as the applicant, must prove its claims on a balance of probabilities (meaning more likely than not). Mr. Sun must prove his counterclaim to the same standard. I have read all the parties' submissions and evidence, but I only refer to what I find relevant to provide context for my decision.

10. The strata consists of 197 strata lots in an apartment-style building. As noted, Mr. Sun owns SL94, which is on the second floor.

Do the strata's bylaws require Mr. Sun to pay for the emergency repairs?

11. The strata filed a complete set of bylaws in the Land Title Office (LTO) on February 10, 2020, which repealed and replaced all previous bylaws.

12. The strata also filed amendments to bylaw 41 in the LTO on March 9, 2021. However, I find the March 9, 2021 amendments to bylaw 41 are not applicable to this dispute because they were not filed in the LTO until after the repairs were completed. I find only the February 10, 2020 bylaws are relevant to this dispute, including bylaw 41 as it existed on February 10, 2020, which I will discuss further below.

13. The strata says that a resident reported water running into the strata lot below SL94 on January 11, 2021. The strata says its on-site building manager investigated the leak, and hired Ridgeback Contracting Ltd. (Ridgeback) to repair water damage to the strata building's hallway walls. The strata submitted a February 16, 2021 Ridgeback invoice totalling \$3,711.05.

14. The strata sent a letter to Mr. Sun on May 11, 2021, and charged the \$3,711.05 invoice to Mr. Sun's strata lot account. The parties agree that the invoice was for common property repairs only. In the letter, the strata said Mr. Sun was responsible for the repair costs under bylaw 41 because the damage was caused by a leak from a washing machine in his strata lot. Mr. Sun has not paid the chargeback.

15. Under section 3 of the *Strata Property Act* (SPA), the strata is responsible for managing and maintaining the strata's common property and assets, for the benefit of the owners. The strata must repair and maintain common property under bylaw 11 and SPA section 72. For a strata to charge repair costs to a strata lot account without the owner's agreement, it must have the authority to do so under a valid and enforceable bylaw that creates the debt. See *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512 and the non-binding but persuasive reasoning in *Rintoul et al v. The Owners*, Strata Plan KAS 2428, 2019 BCCRT 1007.

16. The strata says Mr. Sun installed and used a washing machine in SL94, contrary to bylaw 4.5. Bylaw 4.5 prohibits washers and dryers in a strata lot. The strata says this caused the water damage to the strata's common property. The strata says as a result, Mr. Sun is responsible to pay the \$3,711.05 charge back under bylaw 41. Mr. Sun did not specifically address bylaw 41 in his submissions.

17. The key portions of bylaw 41, which I have paraphrased, say:

- a. 41.1 – If an owner is responsible for any loss or damage to a strata lot, common property, limited common property, or common assets, that owner must indemnify the strata corporation from the expense of any repairs necessary, but only to the extent that such expense is not reimbursed from the strata's insurance policy proceeds.
- b. 41.2 – for clarity and without limiting the generality of the word “responsible”, an owner is responsible for:
 - i. 41.2.b. any loss or damage caused to the common property, limited common property, common assets or to any strata lot, where the cause of such damage originated within the owner's strata lot, including anything arising from any of the following:
 1. 41.2.b.iv – washing machine,
 2. 41.2.b.vi – dedicated plumbing related pipes and fixtures, that solely service a strata lot and that do not form part of the common property,
 3. 41.2.b.ix – anything introduced into the strata lot by a resident or visitor, and
 4. 41.2.b.x – any alterations or additions to the strata lot made by the owner or by prior owners of the strata lot.

18. It is undisputed that the repair costs are less than the strata's insurance deductible. I find the strata's summary of insurance coverage in evidence confirms this.

19. I find bylaw 41 allows the strata to require Mr. Sun to reimburse the strata for common property repairs required when the cause of the damage originated in Mr. Sun's strata lot, including anything arising from a washing machine and related pipes. So, the question is whether the cause of the water damage originated in Mr. Sun's strata lot.
20. The strata submitted two statements in support of its position that the water damage originated from Mr. Sun's strata lot, one from its on-site building manager, DS, and one from Larry Smith.

Building manager

21. As noted, the strata says its on-site building manager, DS, initially investigated the water leak. The strata submitted a September 18, 2021 statement from DS in evidence. In it, DS said the following:
 - a. They attended at the other strata lot and observed water dripping from the kitchen ceiling.
 - b. They went upstairs to SL94 to investigate further. Inside SL94, they observed a washing machine in the kitchen where the dishwasher was supposed to be. DS said dishwashers are standard in the strata lots.
 - c. They looked under SL94's kitchen sink and saw different water line connections than what would be there for a dishwasher. DS said the connections were not installed correctly and were the leak's source.
 - d. They felt around under the sink, and it felt damp. DS said in their opinion, Mr. Sun had used the washing machine and that was the leak's cause. They advised Mr. Sun that washing machines were prohibited and asked him to remove it. DS says when asked, Mr. Sun denied using the washing machine recently.
 - e. They advised the strata manager about the leak, and they agreed to hire Ridgeback to complete repairs. Ridgeback attended a few days later, cut into the hallway walls outside SL94 and the strata lot below, dried out the walls, and completed repairs.

22. DS attended SL94 to investigate water leaking into the strata lot below. Although DS, as the strata building manager, is not entirely neutral, I find there is no reason for DS to be untruthful in their observations inside SL94, including their observations of the washing machine's location. As noted, washing machines are prohibited under the strata's bylaws. I find this makes it more likely that Mr. Sun would deny using a washing machine and contradict DS's observations. Given the above, I accept DS's observations inside SL94 and prefer DS's evidence over Mr. Sun's evidence. In particular, I accept that DS observed a washing machine installed in SL94's kitchen and a damp kitchen sink cabinet when they attended to investigate the leak's source. However, I place little weight on DS's opinions that the connections were not installed correctly and caused the leak because I find DS is not qualified to provide expert evidence on washing machine installations.

Larry Smith

23. The strata also submitted an October 10, 2021 statement from Larry Smith, Ridgeback's owner. They said Ridgeback provides all types of building maintenance and repair services, particularly for leak remediation and prevention. Larry Smith said they have performed leak remediation and repair work for 40 years. In their statement, Larry Smith said the following:

- a. They attended the other strata lot and found water running into the kitchen from the ceiling. They went upstairs to SL94 to inspect whether there was water ingress into SL94 as well. While in SL94, they observed a washing machine in the living room, unplugged. A photograph in evidence also shows a washing machine in a living room. Mr. Sun does not dispute that this photo was taken in his living room, and I find that it was.
- b. Under SL94's kitchen sink, they saw drains and waterlines to the sink, and a set of hoses, wrapped up in plastic bags. They said the hoses were wet and appeared to have recently been used. They said the dishwasher line and the drain line had been bypassed and were feeding water through the hoses.

- c. They observed a dishwasher in the kitchen, but it did not appear to be hooked up and was being used for storage. They saw items in cardboard boxes inside. I find photographs in evidence confirm this. One shows long thick black hoses wrapped in plastic bags and another shows a dishwasher containing items in cardboard boxes, new sponges in original packaging, items in plastic packaging, among other things. Mr. Sun also says he never used the dishwasher, so I accept that it was being used for storage.
 - d. They measured the moisture levels in the kitchen wall, and the moisture readings were 99% at the floor level, and 17% close to the ceiling. Two photographs in evidence confirm these moisture readings. They said the readings indicated that the wall was almost 100% saturated with moisture at the floor level outside SL94, which indicated that the water entered SL94 at or near floor-level, rather than from a higher ingress point, such as a leak from the strata lot above SL94. Based on these readings, they determined it was unnecessary to investigate the strata lot above SL94.
 - e. They determined the water leaking into the strata lot below was coming from the hoses under SL94's kitchen sink. They were advised by DS that the washing machine had been in the kitchen, in the same location where Larry Smith observed the uninstalled dishwasher, when DS initially attended SL94. Larry Smith said based on what they observed, it was more than likely that the leak was due to the improperly installed washing machine that had been moved from the kitchen into the living room.
24. As noted above, I accept and find DS's evidence that they observed a washing machine installed in SL94's kitchen persuasive. I find the fact that DS also reported this to Larry Smith at the time, and the fact that there was an uninstalled washing machine in SL94's living room when Larry Smith later attended SL94 further support DS's statement. Taken together, I find DS and Larry Smith's evidence establishes that a washing machine was installed in SL94's kitchen at the time of the leak, and was then moved into SL94's living room. I also find that Larry Smith, as Ridgeback's owner, is a neutral party to this dispute. I find there is no reason for Larry Smith the

be untruthful in what they observed in SL94. Given this, I place significant weight on Larry Smith's observations in SL94. I also find Larry Smith is qualified to provide expert opinion evidence on the leak's source. I accept their opinion that the leak originated from the hoses under SL94's kitchen sink.

Mr. Sun's position

25. Mr. Sun says the leak originated from the wall under his kitchen sink and it worsened on rainy days. Mr. Sun provided two photographs in evidence that show what appears to be water damage on the back of a cabinet under a sink. Mr. Sun says they show leaking from the wall. I disagree. I find it is undisputed that there was water damage inside Mr. Sun's kitchen sink cabinet. However, I place little weight on his submission that the water damage originated in the wall behind the kitchen sink cabinet. The evidence does not show that Mr. Sun ever reported a wall leak to the strata. Absent any other explanation, I find Mr. Sun's failure to report this alleged wall leak to the strata or raise it prior to this dispute suggests that it did not occur as Mr. Sun now alleges. Mr. Sun does not explain why the wall would be leaking, and why that leaking would be worse on rainy days. The evidence does not show that there is any prior or ongoing leak behind Mr. Sun's kitchen sink cabinet. I find Mr. Sun has not reasonably explained or provided evidence to indicate the water leak originated from the wall behind his kitchen sink cabinet, rather than from his washing machine or water lines. I also note that Mr. Sun did not provide any expert evidence on the leak's cause.
26. As noted, Mr. Sun denies that he never installed or used the washing machine, and says that he did not cause the leak. In his submissions, he says the water valve at the end of the hose connections was always closed and water could not run out of it. However, I find Mr. Sun did not address the strata's submission that Mr. Sun moved the washing machine from the kitchen to the living room after the leak. Mr. Sun also did not explain why large black hoses were installed under his kitchen sink, why they were wet and wrapped in plastic bags, or why there was an uninstalled washing machine in his living room when Larry Smith came to investigate the leak. Although he says the washing machine was there before he owned SL94, the evidence indicates he has owned SL94 since 2015. Mr. Sun has not provided any reason why

he kept a washing machine in SL94 since 2015, in particular given his assertion that he never used it. Given the available evidence, and in particular DS's evidence that they observed the washing machine installed in SL94's kitchen when they investigated the leak, I find it likely that Mr. Sun used the washing machine.

27. Mr. Sun also says the strata has not completed any repairs in SL94. The strata does not dispute this. However, in this dispute I find the strata only seeks to recover common property repair costs. I also note that under SPA section 2 and bylaw 3, Mr. Sun is responsible to repair and maintain his strata lot. So, I find nothing in this dispute turns on SL94's repairs.
28. I find the strata has proved that it is more likely than not that Mr. Sun's washing machine's water lines leaked and caused water damage to the strata's common property hallway and walls. In saying this, I place particular weight on DS's observation of the washing machine in SL94's kitchen, and Larry Smith's observations of the water lines in SL94's kitchen and opinion on the leak's cause, as detailed above. I find the available evidence shows that the leak originated from SL94's washing machine's water lines.
29. I make no finding about whether Mr. Sun negligently installed the washing machine or water lines. I find it does not matter how the leak from the water lines occurred, because I find bylaw 41 entitles the strata to recover the repair costs when the leak originated from Mr. Sun's strata lot, regardless of whether Mr. Sun was negligent.
30. Mr. Sun did not dispute the repairs listed on Ridgeback's invoice and there is no indication that the charges are unreasonable. Given all the above, I find that Mr. Sun is responsible to pay \$3,711.05 for the repair costs under bylaw 41.

Mr. Sun's counterclaim

31. As noted, Mr. Sun says the strata was not entitled to charge back the \$3,711.05 to his strata lot account, and asks for an order that the strata remove the chargeback. I have already found that Mr. Sun is responsible to pay for the \$3,711.05 paid by the strata for common property repairs under bylaw 41.1. Given this, I find the strata was

entitled to charge back the \$3,711.05 in repair costs to Mr. Sun's strata lot account, and I dismiss Mr. Sun's counterclaim.

CRT FEES, EXPENSES AND INTEREST

32. 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. The strata was successful in its claim. I therefore order Mr. Sun to reimburse the strata for \$225 in CRT fees. As Mr. Sun was unsuccessful in his counterclaim, I find he is not entitled to any fee reimbursement. Neither party claimed any dispute-related expenses and so I award none.
33. The *Court Order Interest Act* (COIA) applies to the CRT. The strata is entitled to prejudgment interest on the \$3,711.05 from February 16, 2021, the date of Ridgeback's invoice to the date of this decision. This equals \$20.76.
34. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Sun.

ORDERS

35. Within 30 days of the date of this order, I order Mr. Sun to pay the strata a total of \$3,956.81, broken down as follows:
- a. \$3,711.05 for emergency repairs,
 - b. \$20.76 in COIA prejudgment interest, and
 - c. \$225 in CRT fees.
36. The strata is also entitled to postjudgment interest under the COIA.
37. I dismiss Mr. Sun's counterclaim.

38. 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.

Leah Volkens, Tribunal Member