



Civil Resolution Tribunal

Date Issued: July 26, 2022

File: ST-2022-000345

Type: Strata

Civil Resolution Tribunal

Indexed as: *Xie v. The Owners, Strata Plan BCS4425*, 2022 BCCRT 850

B E T W E E N :

SHANGWEI XIE

APPLICANT

A N D :

The Owners, Strata Plan BCS4425

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about who should pay for emergency water leak mitigation. The applicant, Shangwei Xie, owns a strata lot 18 (SL18) in the respondent strata corporation, The Owners, Strata Plan BCS4425 (strata). Mr. Xie says the strata unjustifiably charged his strata lot account for the mitigation work. He seeks reimbursement of \$1,993.66 he paid in connection with the charges.

2. The strata disagrees and says its bylaws permit the chargeback.
3. Mr. Xie represents himself. A strata council member represents the strata.
4. For the reasons that follow, I dismiss Mr. Xie's claim.

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.

ISSUE

9. The issue is whether the strata was entitled to charge back the mitigation costs at issue, and if not, what remedy is appropriate.

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Mr. Xie as the applicant must prove his claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. I begin with the undisputed background. The strata registered a complete set of bylaws in the Land Title Office in December 2017. There are some subsequent amendments, but I find them not relevant to this dispute. Bylaw 9(4) is key, so I quote it below:

9(4) An owner shall indemnify and save harmless the strata corporation from the expense of any maintenance, repair or replacement rendered necessary to the common property, limited common property, common assets or to any strata lot arising from any damage or incident for which the owner is responsible or occurring or originating in the owner's strata lot, whether or not such incident is caused or contributed to by the owner's act, omission, negligence or carelessness or by that of another person, but only to the extent that such expense is not reimbursed from the proceeds received by operation of any insurance policy. In such circumstances, the strata's insurance deductible will be charged to the owner. [Emphasis mine.]

12. I turn to the chronology. On May 1, 2021, Mr. Xie reported a water leak in SL18. The strata requested a contractor, C&C Electrical Mechanical (C&C), to attend. As noted in C&C's May 2021 invoice, its worker entered SL18 and found the garburator was causing the leak. C&C cleaned up the site and left. It charged \$486.15 for the work. This is 1 of 2 charged-back invoices at issue.

13. Water leaked from SL18's garburator into strata lot 12 (SL12) located directly below. The strata hired a restoration company, Incredible Restorations, to prevent further water damage. As shown in its June 23, 2021 invoices, Incredible Restorations charged \$1,507.51 to limit water damage. It completed tasks including running dehumidifiers and applying an antimicrobial solution. This is the second charged-back invoice at issue.
14. In a July 16, 2021 letter, the strata said it would charge back the 2 invoices to SL18's account. It also said it would charge back a third invoice from Incredible Restorations for \$1,998.15. This invoice was for replacing and painting the ceiling drywall in SL12. Mr. Xie disagreed in a July 2021 email. The strata ultimately decided in an August 19, 2021 letter to only charge back the invoices of \$456.15 and \$1,507.51 to SL18's account. Mr. Xie requested a hearing which the strata held on December 16, 2021. Ultimately, the strata refused to reverse the charges.

Is the strata entitled to charge back the mitigation costs at issue?

15. For the strata to charge back repair costs to a strata lot account, 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 at paragraphs 40 to 41.
16. I find that bylaw 9(4) satisfies this requirement as it creates a debt by its wording. Bylaw 9(4) also requires that the sources of the leak originate from SL18. However, it does not require Mr. Xie to be negligent or otherwise blameworthy. As it is undisputed that SL18's garburator was the source of the leak, I find this requirement satisfied as well.
17. Bylaw 9(4) also refers to insurance proceeds. There is no indication that any insurer paid anything in connection with the damage or that the amount at issue exceeds any applicable insurance deductible. So, I find this inapplicable.
18. Bylaw 9(4) also allows the strata to recover the costs of repairing common property, limited common property, common assets, or any strata lot. The first invoice was for work inside SL18 and the second was to dry out the floor vertically separating SL18

and SL12. Given this, and the strata plan in evidence, I find the repairs at issue would have fallen within the categories of property listed in bylaw 9(4).

19. I find the only question that remains is whether the costs of maintenance and repair were “rendered necessary” by the leak. I find the work in both invoices met this standard. As noted earlier, Incredible Restorations charged for running dehumidifiers and applying an antimicrobial solution. I find this work was likely necessary given that the water damage was severe enough to require repairs to SL12’s ceiling. Mr. Xie also does not dispute the necessity of the repairs.
20. Mr. Xie relies on the wording of bylaw 2(1). Bylaw 2(1) says that an owner must repair and maintain the owner’s strata lot, except for repair and maintenance that is the responsibility of the strata corporation under the bylaws. While I acknowledge this wording, I find that bylaw 9(4) expressly allows the strata to charge the amounts at issue. In any event, the strata did not charge Mr. Xie for repairs affecting only SL12. As noted above, the strata did not charge back Incredible Restoration’s invoice for ceiling drywall replacement and painting in SL12.
21. For all those reasons, I find the strata properly charged back the 2 invoices to SL18’s account. Given this, I dismiss Mr. Xie’s claim.

CRT FEES AND EXPENSES

22. 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 dismiss Mr. Xie’s claims for reimbursement. The parties did not claim for any specific dispute-related expenses, so I order none.
23. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owner Mr. Xie.

ORDER

24. I dismiss Mr. Xie's claims and this dispute.

David Jiang, Tribunal Member