



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan EPS6655 v. Shen*, 2022 BCCRT 1049

BETWEEN:

The Owners, Strata Plan EPS6655

APPLICANT

AND:

ZHICHENG SHEN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute about who is responsible to pay an insurance deductible.

2. The applicant, The Owners, Strata Plan EPS 6655 (strata) is a strata corporation existing under the *Strata Property Act* (SPA). The respondent, Zhicheng Shen, also known as James Shen, owns strata lot 65 (SL65) in the strata.
3. The strata says Mr. Shen must reimburse it \$100,000 for an insurance deductible the strata paid under its insurance policy because the insurance claim was caused by water leaking from Mr. Shen's refrigerator.
4. Mr. Shen says he is not responsible for the insurance deductible because the refrigerator was under warranty from the strata's owner developer, and he had not yet moved into SL65. I infer Mr. Shen seeks dismissal of the strata's claims.
5. The strata is represented by a strata council member. Mr. Shen is self-represented.
6. As explained below, I find in favour of the strata.

JURISDICTION AND PROCEDURE

7. 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.
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. 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.
9. 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.

10. Under section 123 of the CRTA and the CRT rules, 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.

Preliminary Decision

11. On May 4, 2022, a CRT member considered whether the CRT should refuse to resolve the claims in this dispute under section 11(1)(a)(i) of the CRTA, which gives the CRT discretion to refuse to resolve a claim if it would be more appropriate for another legally binding process. Mr. Shen claimed that the BC Supreme Court would be a more appropriate forum for this dispute because of the large dollar amount in dispute and that the CRT's strata property jurisdiction does not allow him to file a third-party claim against the owner developer, the refrigerator's manufacturer, or the refrigerator's installer.
12. The CRT member found this dispute should continue because the claims fall squarely under the CRT's strata property jurisdiction. This was because there is no limit on the amount of a claim under the CRT's strata property jurisdiction, the dispute is not complex, the dispute is strictly between the parties, and Mr. Shen could pursue court actions against other parties if he is found to be liable for the insurance deductible. Although not binding on me, I agree with the preliminary decision and will decide this dispute on its merits.

ISSUE

13. The issue in this dispute is whether Mr. Shen must reimburse the strata \$100,000 for the insurance deductible.

BACKGROUND, EVIDENCE AND ANALYSIS

14. In a civil proceeding such as this, the strata, as applicant, must prove its claims on a balance of probabilities, meaning more likely than not. I have reviewed all the

submissions and evidence provided by the parties, but refer only to information I find relevant to explain my decision.

15. The strata was created on July 7, 2020 under the *Strata Property Act* (SPA). It includes 118 strata lots located in a single 29-storey building. The strata plan shows building levels 2 through 5 are made up of 2 separate air space parcels that are not part of the strata.
16. At the time the strata was created, the strata's owner developer amended the Standard Bylaws under the SPA. Therefore, I find the strata's bylaws are the Standard Bylaws plus the bylaw amendments filed in July 2020. However, I find the amended bylaws are not relevant to this dispute. I find the relevant bylaws are Standard Bylaws 2(1) and 3(2), which state [my emphasis]:

2(1) 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 these bylaws.

3(2) An owner, tenant, occupant or visitor must not cause damage, other than reasonable wear and tear, to the common property, common assets or those parts of a strata lot which the strata corporation must repair and maintain under these bylaws or insure under section 149 of the Act.

17. While bylaw 8 sets out what parts of a strata lot the strata must repair and maintain, none of the listed items apply to this dispute.
18. Bylaw 3(2) refers to SPA section 149. Under section 149(1)(d), the strata must insure fixtures built or installed on a strata lot, if the fixtures are built or installed by the owner developer as part of the original construction of the strata lot. Fixtures are defined under *Strata Property Regulation* (regulation) 9.1 to mean:

"items attached to a building, including floor and wall coverings ... but does not include, if they can be removed without damage to the building, refrigerators ... or other items.

19. Based on these bylaws and Spa section 149, I find the strata must insure the floor and wall coverings in SL65 but not the refrigerator.
20. Mr. Shen purchased SL65 new from the owner developer in September 2020. On April 3, 2021, it is undisputed that the refrigerator in SL65 leaked. This is confirmed by an email from the strata's plumber who attended SL 65 on that date which states, in part:

found that the freezer door had water dripping from the bottom seal. It took me a bit of work but I managed to get it open, it was definitely not installed properly. I found the freezer full of ice and water. Looks like the ice maker was making ice and it was melting then leaking out due to the improper seal. I have shut off the water to the suite and powered down the fridge.
21. It is also confirmed by a June 22, 2021 letter report from CEP Forensic Engineers (CEP) to the strata's insurance adjuster. Harvey West, a professional engineer with CEP, confirmed he witnessed a refrigerator repair by the manufacturer's technician on June 21, 2021. He stated that the apparent cause of the water loss was failure of a previously replaced component of the refrigerator's ice maker. Based on the overall evidence and submissions, I find the ice maker components were previously replaced by the refrigerator's manufacturer as a result of Mr. Shen's complaint the refrigerator was not making ice. This is undisputed and aligns with Mr. Shen's emails in evidence. I note it does not appear the CEP letter report was provided to Mr. Shen until November 2021.
22. At the time of the leak, Mr. Shen had not yet moved into SL65, so the strata lot was vacant. The leak caused significant water damage to other strata lots and the common property, so the strata's insurance policy was triggered subject to a \$100,000 deductible, which the strata paid.

SPA section 133

23. There is no dispute about what the strata's insurance covered. The only issue is who is responsible to pay the insurance deductible. Mr. Shen's position is that he is not responsible because the refrigerator was under warranty with the owner developer

and SL65 was vacant. The strata says Mr. Shen breached bylaws 2(1) and 3(2) noted above and that it is therefore able to charge the insurance deductible to Mr. Shen under SPA section 133, which states:

133 (1) The strata corporation may do what is reasonably necessary to remedy a contravention of its bylaws or rules, including

(a) doing work on or to a strata lot, the common property or common assets, and,

(b) removing objects from the common property or common assets.

(2) The strata corporation may require that the reasonable costs of remedying the contravention be paid by the person who may be fined for the contravention under section 130.

24. Under SPA section 135(1), before requiring a person to pay the costs of remedying a bylaw contravention under section 133, a strata corporation must first give the person notice that it intends recover the costs and reasonable opportunity to respond to the complaint. Under section 135(2), a strata corporation must also give the person notice of its decision as soon as feasible.
25. The strata also relies on SPA section 158, which I discuss below. I will first consider the strata's argument under SPA section 133 because, as noted below, that was the thrust of the strata's correspondence provided to Mr. Shen.
26. Mr. Shen does not dispute he purchased the refrigerator as part of SL65. Based on the SPA and bylaws, I find the refrigerator is not the strata's responsibility. It is not common property or a common asset and, as I have mentioned, it does not form part of the strata lot which the strata is responsible to repair and maintain under bylaw 8. Further, the refrigerator is not a fixture the strata must insure under SPA section 149 as noted above. Therefore, I find the refrigerator is Mr. Shen's property. It follows that he is responsible for its repair and maintenance under bylaw 2(1). It does not matter that there may have been a warranty in place. As the tribunal member in the

preliminary decision noted, nothing in this decision restricts Mr. Shen from pursuing a claim against the warranty provider or appliance manufacturer.

27. I turn now to whether Mr. Shen contravened the strata's bylaws.
28. I have found that Mr. Shen is responsible for repair and maintenance to his refrigerator. However, I do not find that he contravened bylaw 2(1) as I find his refrigerator is not part of SL65. I say this because the refrigerator does not meet the definition of strata lot set out SPA section 1(1). That section defines strata lot as "a lot shown on a strata plan". I do not consider personal property, such as a refrigerator, to be part of a strata lot. However, I do find that Mr. Shen contravened bylaw 3(2) by failing to properly repair and maintain his refrigerator and causing significant water damage to common property and strata lots in the strata.
29. The next question is whether the amount of the insurance deductible is a reasonable cost of remedying the bylaw contravention under section 133 as the strata suggests. In *Nadeau v. The Owners, Strata Plan VIS 6635*, 2022 BCCRT 511, I considered the meaning of "reasonable cost" established by the courts in the context of actual legal fees charged to remedy a bylaw contravention. I noted the court's decision in *The Owners, Strata Plan NWS3075 v. Stevens*, 2018 BCSC 1784 provided helpful guidance. In that case, Justice Flemming stated at paragraph 90, "to be recoverable the actual costs claimed must fall within the scope of the "reasonable costs of remedying the contravention".
30. I understand the strata's argument to be that if not for Mr. Shen's refrigerator leak, that strata would not have been required to pay the insurance deductible. I agree and Mr. Shen does not dispute this. The strata is obligated to carry property insurance under SPA section 149(1) and must pay an insurance deductible under SPA section 158(1) as a common expense. Given this statutory obligation, it would be unreasonable for the strata not to allow the insurance claim and pay the deductible. Therefore, I find that the actual amount of the insurance deductible of \$100,000 falls within the reasonable costs of remedying the contravention as stated in *Stevens* and required under SPA section 133.

31. The next question is whether the strata followed the procedural requirements of SPA section 135 when it charged the deductible to Mr. Shen. I find that it did.
32. The correspondence in evidence shows the strata's manager wrote to Mr. Shen on May 13, 2021 confirming the water damage was expected to exceed the \$100,000 deductible and that he would be responsible for damages up to that amount. The letter stated bylaws 2(1), 2(2), about limited common property, which I find does not apply here, and 3(2) might apply and requested a response from Mr. Shen by May 27, 2021. The letter also stated that Mr. Shen may be fined or charged the cost to remedy the bylaw contraventions under SPA section 129, which permits remedying a contravention under section 133.
33. On May 25, 2021, Mr. Shen responded to the strata manager's letter through the manager's online platform. He acknowledged receipt of what I infer is the May 13, 2021 letter saying he had forwarded it to the owner developer, who was investigating the leak. He also advised that he had not "moved in nor lived a single day in the unit" and asked the strata to contact his lawyer if it had "further enquiries or wanted to pursue the issue further".
34. On June 10, 2022, the strata manager again wrote to Mr. Shen and enclosed a copy of the strata's invoice to the strata from On Side Restoration (On Side) for the \$100,000 insurance deductible. The letter advised that \$100,000 had been "charged back to your account". The letter cited the same bylaws as contained in the May 13, 2021 letter and requested payment by July 1, 2021. Mr. Shen did not pay the deductible by the strata's deadline.
35. On September 7, 2021, the strata's lawyer wrote to Mr. Shen to "formally withdraw" the May 13 and June 10, 2021 letters written by the strata manager. The lawyer's letter states the purpose of withdrawing the earlier letters was to "cure any possible irregularities as contemplated in *Cheung v. Strata Plan VR 1902*, 2004 BCSC 1750", which I discuss below. The letter went on to bring a potential breach of bylaws 2(1), 2(2) and 3(2) noted above, to Mr. Shen's attention because of a complaint about his refrigerator freezer leaking and causing the strata to be responsible for the \$100,000 deductible. The letter also stated if Mr. Shen did not respond to the complaint within

14 days the strata would treat his May 25, 2021 response as a response to the complaint in the September 7, 2021 letter, and make a decision on whether a breach of the bylaws had occurred, citing SPA section 135. The letter concluded by stating the strata's decision may include charging the costs of remedying the bylaw contravention to Mr. Shen, but did not expressly refer to SPA section 133.

36. An undated letter from Mr. Shen to the strata's lawyer was provided into evidence, which I find is a response to the strata lawyer's September 7, 2021 letter. In the letter, Mr. Shen reiterates his earlier comments that he had not moved into or lived in SL65, and that the owner developer should be responsible for the damage because the refrigerator was under warranty. He also stated that he had not received a "formal report on the cause of the leak", which he expected to receive from the owner developer, manufacturer, or strata. Mr. Shen stated he would not address the complaint further until he received a report.
37. The strata lawyer wrote to Mr. Shen again on November 5, 2021 and acknowledged receipt of the undated letter. The letter also advised that the strata had considered Mr. Shen's response and determined he was in breach of bylaws 2(1), 2(2) and 3(2) and found he was responsible for costs of remedying the breach, which it found was the \$100,000 cost of the insurance deductible. The strata also noted it relied on SPA section 158(2), which permits the strata to recover the deductible from an owner if the owner is responsible for the loss or damage that gave rise to the claim. The strata wrote that it considered the letter to be notice of its decision of the bylaw breach under SPA section 135 and demand for payment by December 1, 2021 following SPA section 112. Copies of invoices from 2 restoration firms totaling the \$100,000 deductible and the letter report from CEP were attached to the letter. There is no response from Mr. Shen to the strata's November 5, 2021 letter in evidence.
38. In *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449, the BC Court of Appeal said that SPA section 135 must be strictly followed. While *Terry* dealt with bylaw fines, rather than costs for remedying a bylaw contravention, the requirements are the same for both types of charges. Therefore, I find the analysis in *Terry* applies equally to charging an owner reasonable costs to remedy a bylaw contravention.

39. As noted earlier, the strata lawyer's September 7, 2021 letter relies on *Cheung* to correct any procedural irregularities under section 135. In *Cheung*, the court found at paragraph 27, that:

Although s. 135 was not initially complied with the irregularity was rectified prior to the imposition of the fines in question.

40. As with *Terry*, *Cheung* was also about bylaw fines, but again, I find it applies equally to costs to remedy a bylaw contravention as the procedure is the same. Therefore, I find any procedural issues concerning the strata's May 13 and June 10, 2021 letters were rectified by the strata's September 7, 2021 letter, which I find met the requirements of section 135(1). Although the exact date the strata decided to charge the deductible to Mr. Shen is not in evidence, I find the strata's November 5, 2021 letter complied with SPA section 135(2).

41. For these reasons, I find Mr. Shen is responsible under SPA section 133 to reimburse the strata \$100,000 for the insurance deductible the strata paid as a result of the refrigerator leak in SL65.

42. In case I am wrong, I have also considered the strata's alternate argument that Mr. Shen is responsible to reimburse the strata's insurance deductible under SPA section 158.

SPA section 158

43. SPA section 158(1) says that payment of an insurance deductible under a strata corporation's insurance is a common expense of the strata corporation. Section 158(2) says a strata corporation can recover an insurance deductible from an owner if the owner is responsible for the loss or damage that gave rise to the claim.

44. The strata argues that the courts finding in *The Owners, Strata Plan LMS 2835 v. Mari*, 2007 BCSC 740 that the SPA's use of the term "responsible for" in section 158(2) confirms the legislation is clear and no finding of negligence is required (See *Mari* at paragraph 12). I agree.

45. It is worth noting there are court and CRT decisions about how bylaws affect SPA section 158(2), such as importing a negligence standard. See for example *Strata Plan LMS 2446 v. Morrison*, 2011 BCPC 519 and *The Owners, Strata Plan BCS 1589 v. Nacht et al*, 2017 BCCRT 88 upheld by the B.C. Supreme Court on appeal in 2019 BCSC 1785 (*Nacht*). However, unlike *Morrison* and *Nacht*, the strata does not have a bylaw that imports negligence. In other words, an owner does not need to be negligent in order for the strata to be entitled to charge them with an insurance deductible. It is sufficient to find an owner responsible for the cause of the damage in order for the owner to be responsible as was found in *Mari*. This is my finding here, so it follows that Mr. Shen is responsible to reimburse the strata \$100,000 for the insurance deductible and I make that order.

CRT FEES, EXPENSES AND INTEREST

46. 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. Here, the strata paid \$225.00 in CRT fees but claimed no dispute-related expenses. Therefore, I order Mr. Shen to reimburse the strata \$225.00 for CRT fees.

47. The *Court Order Interest Act* (COIA) applies to the CRT. The strata is entitled to pre-judgement interest under the COIA from the date the \$100,000.00 insurance deductible was due, to the date of this decision. In its November 5, 2021 letter to Mr. Shen, the strata demanded Mr. Shen pay the insurance deductible by December 1, 2021. I find this is an appropriate due date to use and calculate pre-judgement interest to be \$1,107.26.

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

ORDERS

49. I order that, within 90 days of the date of this order, Mr. Shen must reimburse the strata \$101,332.26, broken down as follows:

- a. \$100,000.00 for the insurance deductible,
- b. \$1,107.26 for pre-judgement interest under the COIA, and
- c. \$225.00 for CRT fees.

50. The strata is also entitled to post-judgement interest under the COIA, as applicable.

51. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia. Under section 58 of the CRTA, the order can also be enforced by the Provincial Court of British Columbia 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.

J. Garth Cambrey, Vice Chair