



# Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 216 v. A. K. Hoy Holdings Ltd.*,

2022 BCCRT 1161

**B E T W E E N :**

The Owners, Strata Plan LMS 216

**APPLICANT**

**A N D :**

A. K. HOY HOLDINGS LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Richard McAndrew

## INTRODUCTION

1. This dispute is about fire damage repairs to a strata corporation parking garage. The respondent corporation, A. K. Hoy Holdings Ltd. (A.K. Hoy), owns strata lot 1 (SL1) in the applicant strata corporation, The Owners, Strata Plan LMS 216 (strata). A non-party business operates at SL1. The strata claims that CH, an employee of the

business operating at SL1, drove a vehicle into the strata's parking garage and this vehicle caught on fire. The strata claims reimbursement of \$6,876.88 from A.K. Hoy in expenses to repair the parking garage's fire and smoke damage.

2. A.K. Hoy denies the strata's claim and says that it is not responsible for the fire damage repairs because CH was not negligent. A.K. Hoy also argues that the repair expenses were excessive.
3. A.K. Hoy is represented by a corporate director. The strata is represented by a strata council member.

## **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. 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.
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.

## **ISSUE**

8. The issue in this dispute is whether A.K. Hoy is responsible for the strata's parking garage's fire damage repairs.

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, as the applicant the strata must prove its claim on a balance of probabilities (meaning more likely than not). I have reviewed all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
10. The strata was created in 1991 and consists of 40 commercial and residential strata lots in a multilevel building. The strata's underground parking garage has 4 floors.
11. The strata filed a complete set of bylaws with the Land Title Office (LTO) on November 28, 2019 which repealed and replaced all previous bylaws. The strata has also filed further bylaw amendments at the LTO which are not relevant to this dispute. I discuss the relevant bylaws in my reasons below.
12. As noted, a non-party business operates in SL1. Though the parties did not provide any evidence or submissions about the legal relationship between this business and A.K. Hoy, I infer and find that this business is A.K. Hoy's tenant or occupant. I find that nothing turns on which it is because the relevant strata bylaw 36(8) applies equally to both A.K. Hoy's tenants and occupants as I discuss below.
13. A.K. Hoy says that CH, an employee of the business at SL1, drove a vehicle into the strata's parking garage on June 19, 2020. A.K. Hoy says CH's vehicle was making a popping noise while they entered the garage and smoke came from CH's vehicle after

they parked. The vehicle then burst into flames and the fire department ultimately extinguished the fire.

14. A.K. Hoy says that CH parked the vehicle in the business' assigned parking space when the fire occurred. In contrast, the strata says the vehicle was parked in the loading bay area. Based on the photographs provided, I find that CH parked their vehicle in the loading area on the parking garage's 1st floor. Since the strata plan designates this area as common property, I find that the vehicle fire occurred on common property as defined in SPA section 1(1).

### ***Responsibility for fire damage remediation***

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 10 and SPA section 72.
16. 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.
17. The strata argues that A.K. Hoy is responsible for the fire damage repairs under multiple bylaws, including the following provisions of bylaw 3:
  - a) Bylaw 3(1)(a) says an owner or their visitor must not use the common property in a way that causes a nuisance or hazard for others.
  - b) Bylaw 3(3) says an owner or their visitor must not damage the common property, other than reasonable wear and tear.
  - c) Bylaw 3(9)(h) say an owner or occupant must not do anything that will increase the risk of fire or the rate of insurance on the building.

- d) Bylaw 3(9)(j) says an owner or occupant must not allow a strata lot to become a safety or fire hazard, unsanitary or a source of odour.
  - e) Bylaw 3(9)(s) says an owner or occupant must not allow their vehicles to leak fuels or other liquids or other substances on community property.
18. Though bylaw 3 prohibits owners from damaging the common property, there is nothing in bylaw 3 that specifically allows for a chargeback. SPA section 133(2) allows the strata corporation to charge an owner for reasonable costs of remedying a bylaw contravention. However, SPA section 135 says that before requiring an owner to pay the costs of remedying a bylaw contravention, the strata must give written notice of the particulars of the complaint and a reasonable opportunity to answer it.
19. Here, there is no evidence before me indicating that the strata met the SPA section 135 notice requirements by giving A.K. Hoy particulars of the complaint and an opportunity to answer it before the strata imposed the chargeback. So, I find the strata cannot impose any chargeback on the applicant under bylaw 3 or SPA section 133.
20. The strata also claims reimbursement of the fire damage repair expense under bylaw 36:
- a) Strata bylaw 36(6) says that an owner or their tenant, occupant or visitor must not damage common property, other than reasonable wear and tear.
  - b) Bylaw 36(7) says an owner is responsible for any such loss caused by its visitors.
  - c) Bylaw 36(8) says that, if owners are responsible for losses or damage to common property, the owner must indemnify and save harmless the strata from any necessary repair to the extent such expense is not reimbursed from the strata's insurance. Without limiting the generality of the word "responsible", owners are responsible for their act and omission, as well as those of the strata lot's and the owner's tenants, occupants, visitors, agents, contractors, employees or pets.

21. As discussed above, I find that the business operating in SL1 was A.K. Hoy's tenant or occupant. Further, I find that the business was responsible for CH's conduct within the scope of their employment. Since I infer that CH parked their vehicle in the parking garage for work-related purposes, I find that CH was acting as A.K. Hoy's tenant, occupant or visitor within the scope of bylaw 36(8) when the incident occurred. As such, A.K. Hoy must reimburse the strata's fire remediation expenses under bylaw 36(8) if the strata proves that CH's actions caused the fire damage. In contrast, A.K. Hoy argues that it does not owe the strata reimbursement for the fire damage remediation because CH was not negligent. However, I find that proof of negligence is not required under bylaw 36(8) for the following reasons.
22. The meaning of the term "responsible for" was considered in the non-binding CRT decision of *Coleman v. The Owners, Strata Plan LMS 2706*, 2022 BCCRT 1092. In *Coleman*, a vice chair noted that the courts have interpreted the term "responsible for" in the context of SPA section 158(2) and found this term did not require proof of fault or negligence (see, *Yang v. Re/Max Commercial Realty Associates (482258 BC Ltd.)*, 2016 BCSC 2147 (CanLII), relying on *Wawanesa Mutual Ins. Co. v. Keiran*, 2007 BCSC 727 (CanLII), *The Owners of Strata Plan LMS 2835 v. Mari*, 2007 BCSC 740).
23. In *Strata Plan LMS 2446 v. Morrison*, 2011 BCPC 519, the BC Provincial Court held that strata corporation bylaws could impose a higher liability standard than provided in SPA section 158(2) by requiring proof of negligence, recklessness or carelessness. However, I find that bylaw 38(8) does not include any provisions that increase the liability standard from "responsible for" to negligent. Rather, bylaw 38(8) only says that owners are responsible for acts and omissions, which I find does not impose a higher liability standard.
24. The above decisions refer to interpretations of SPA section 158(2) which is not in issue here because there was no insurance deductible. However, the vice chair in *Coleman* found that the above reasoning relating to the meaning of the term "responsible for" applied even when SPA section 158(2) was not in issue. Though the

vice chair's decision in *Coleman* is non-binding, I find their reasoning to be persuasive and I apply it here.

25. Based on the above, I find that the strata only needs to prove that the fire damage resulted from CH's conduct, not that CH's conduct was negligent. Here, it is undisputed that CH drove their vehicle into the parking garage and CH's vehicle caught on fire there. Based on this, I find that CH's actions caused the fire damage, regardless of whether or not they acted negligently. Further, as discussed above, I find that CH was acting as A.K. Hoy's tenant or occupant within the scope of bylaw 36(8) when the fire occurred. So, I find that A.K. Hoy is responsible for the fire repair damages resulting from CH's conduct under bylaw 36(8). Based on this finding and following *Ward*, I find it unnecessary to determine whether A.K. Hoy is also responsible for the fire repairs under the other bylaws cited by the strata.

### ***Reimbursement amount***

26. The strata says it hired Circle Restoration to remediate the fire damage. Circle Restoration issued a July 9, 2020 invoice for \$6,876.88 for cleanup and repairs. Circle Restoration's invoice says it provided 20 hours of cleaning services on multiple dates between June 23 to June 29, 2020, 5 HEPA air scrubbers for 4 days, it operated a water extractor and it provided \$1,139.69 in materials.
27. The strata says it has paid Circle Restoration's invoice. The strata sent A.K. Hoy an April 7, 2021 letter demanding reimbursement of these remediation expenses. The strata's letter included a copy of Circle Restoration's invoice. It is undisputed that A.K. Hoy has not reimbursed the strata.
28. A.K. Hoy argues that the strata's remediation expenses are excessive. A.K. Hoy says that the fire was small and promptly extinguished by the fire department. Further, A.K. Hoy says that the fire department determined that there were no air borne toxins and that the building was safe for entry. In support, A.K. Hoy provided a March 11, 2022 fire department report describing the incident as involving "a small fire limited to engine compartment no damage to structure." However, the fire department report makes no statements about the absence of toxins.

29. A.K. Hoy argues that the fire department used a Tiger detector to assess the air quality, which A.K. Hoy says would have detected toxic gas or chemicals if present. Though the fire department report does say that the fire department used a Tiger detector which did not detect any accelerants, the report does not say whether or not the Tiger detector found toxins. In the absence of expert evidence explaining the use of a Tiger detector, I do not give A.K. Hoy's explanation of its use any weight as this is outside of the knowledge or expertise of an ordinary person (see *Bergen v. Guliker*, 2015 BCCA 283 at paragraph 119). Based on the above, I find that A.K. Hoy has not established that the parking garage was free of toxins after the fire.
30. A.K. Hoy also argues that the strata has not provided evidence showing that the entire parking garage needed remediation or that HEPA air filters were needed on each level of the garage. However, the strata provided a photograph which appears to show a large amount of smoke coming from the building while the fire department attended. Based on this photograph, and absent a report that no toxins existed, I find that it was reasonable for the strata to clean the air in all 4 floors of the parking garage.
31. Further, PV, a strata lot owner, sent the strata a June 21, 2020 email complaining about black toxic dust in the parking garage, resulting from the fire. PV wrote that this substance went all the way down to the 4th floor of the parking garage. PV's email included multiple photographs which appear to show substantial quantities of black debris in various locations the parking garage's floor. Based on PV's email description and photographs of the debris, I find that a substantial amount of cleaning was needed in the parking garage.
32. In considering the above, I find that has not proven Circle Restoration's invoice was unreasonable. So, I find that A.K. Hoy must pay the strata \$6,876.88 to reimburse its fire damage remediation expense under bylaw 36(8).



## **CRT FEES, EXPENSES AND INTEREST**

33. 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 A.K. Hoy to reimburse the strata \$225 in CRT fees. Neither party claimed any dispute-related expenses and so I award none.
34. The *Court Order Interest Act* (COIA) applies to the CRT. The strata is entitled to prejudgment interest on the \$6,876.88 owed for reimbursement of Circle Restoration's repair costs from April 7, 2021, the date the strata requested reimbursement of Circle Restoration's invoice to the date of this decision. This totals \$74.96.
35. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against A.K. Hoy.

## **ORDERS**

36. Within 30 days of the date of this order, I order A.K. Hoy to pay the strata a total of \$7,176.84, broken down as follows:
  - a. \$6,876.88 for emergency repairs,
  - b. \$74.96 in COIA prejudgment interest, and
  - c. \$225.00 in CRT fees.
37. The strata is also entitled to postjudgment interest under the COIA. 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.

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Richard McAndrew, Tribunal Member