



Civil Resolution Tribunal

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File: ST-2022-002348

Type: Strata

Civil Resolution Tribunal

Indexed as: *Skands v. The Owners, Strata Plan BCS 3260*, 2022 BCCRT 1265

B E T W E E N :

CORY SKANDS

APPLICANT

A N D :

The Owners, Strata Plan BCS 3260

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. The applicant, Cory Skands, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan BCS 3260 (strata). Mr. Skands says that the strata was negligent in failing to clear snow and ice from the ramp to the strata's underground parking garage, which caused his vehicle to slip down the ramp while the entry gate was coming down. The gate closed on Mr. Skands' vehicle, damaging his windshield

and the gate. Mr. Skands claims \$4,629.04 in unspecified damages, as discussed below. He also says the strata made a claim with the Insurance Corporation of British Columbia (ICBC) about the incident without his knowledge, and he asks for an order that the strata contact ICBC to take responsibility for the incident.

2. The strata says that its contractor had recently removed the snow and ice from the ramp, and so it was in good condition and reasonably safe. The strata submits that Mr. Skands is responsible for the incident because he unsuccessfully tried to make it through the gate on the previous vehicle's fob signal.
3. Mr. Skands is self-represented. The strata is represented by a strata council member and its strata property manager.

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.

ISSUES

8. The issues in this dispute are:
 - a. Did the strata negligently fail to ensure the ramp was free of snow and ice?
 - b. Did Mr. Skands negligently fail to take reasonable care coming down the ramp?
 - c. Is Mr. Skands entitled to the claimed \$4,629.04 in damages?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant Mr. Skands must prove his claims on a balance of probabilities (meaning “more likely than not”). I have read all of the parties’ evidence and submissions, but I refer only to what I find is necessary to explain my decision.
10. The strata plan in evidence shows a parking level under the strata building, with a ramp that descends from street level to the parking level. The ramp is designated as common property on the strata plan. The photographic and video evidence shows the ramp is uncovered and there is a motorized entry gate at the bottom of the ramp. It is undisputed that residents control the gate with key fobs.
11. The strata filed a complete set of bylaws with the Land Title Office (LTO) on July 31, 2017, which replaced all previous bylaws. However, I find that the strata filed only the odd numbered pages of the bylaws, which I find was likely done in error. Under sections 120(1) and 128(2) of the *Strata Property Act* (SPA), bylaws have no effect until they are filed with the LTO. While the strata filed various amendments after 2017, which I find are not relevant to this dispute, there is no indication that the strata has fixed its July 31, 2017 filing error. However, nothing turns on the error in this dispute.

12. Bylaw 8 appears to have been filed in the LTO its entirety. It sets out the strata's responsibility to repair and maintain common assets and common property that is not designated as limited common property. This same obligation is set out in section 72 of the SPA.
13. So, under the SPA and the strata's bylaws, I find the strata was responsible for the repair and maintenance of the common property ramp leading to the parking garage. I note it is also undisputed that the gate is the strata's responsibility. Given the definition of common property and common asset under section 1 of the SPA, and that the garage entry gate is not identified on the strata plan, I find the gate is the strata's common asset.
14. Mr. Skands says that he was returning home from work at about 1:00 pm on December 31, 2021. He says the gate started to close when he was about halfway down the ramp, so he applied his brakes, but his vehicle began to slide on ice and snow. At the same time, he says that he tried to locate his key fob to stop the gate from closing, but he was unable to before the gate closed onto his front windshield.
15. The parties each provided a video of the incident taken from the strata's surveillance camera. The camera was positioned inside the garage with a direct view of the gate and the bottom of the ramp. The video shows the gate in the closed position, it then rolls up to the open position, and a vehicle drives into the garage. The gate remains open for about 15 seconds and another vehicle comes into view proceeding down the ramp. It is undisputed that the second vehicle is Mr. Skands'. Just as Mr. Skands' vehicle starts to enter the garage, the video shows the gate lowering and contact his vehicle's windshield. His vehicle comes to a stop at the time of impact, and the gate then starts moving back up. It is undisputed that both Mr. Skands' windshield and the gate were damaged.
16. Mr. Skands relies on the principles of negligence. He says the strata had a duty to keep the ramp reasonably clear and accessible so drivers could safely stop to either use the intercom or bring out their key fob to open the gate.

17. In order to succeed in a negligence claim, Mr. Skands must prove: 1) the strata owed him a duty of care, 2) the strata breached the standard of care, 3) Mr. Skands sustained a loss, and 4) the loss was caused by the strata's negligence. See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3.
18. The strata's obligation to repair and maintain common property is measured by the test of what is reasonable in all the circumstances. The standard is not one of perfection. See *Weir v. The Owners, Strata Plan NW 17*, 2010 BCSC 784. So, a strata corporation will not be found negligent unless it has been unreasonable in its approach to repairing and maintaining common property.
19. Here, the strata undisputedly hired a contractor, SSL, for snow and ice removal on common property, including the ramp to the parking garage. A strata corporation may generally rely on professional contractors' advice. See *Wright v. The Owners, Strata Plan #205*, 1996 Can LII 2460 (BCSC) at paragraph 30. In other words, I find that the strata can meet its obligation to keep the ramp reasonably clear of snow and ice by hiring a qualified contractor.
20. The strata provided an August 4, 2021 letter from SSL's owner, GV. From the letter's contents, I find it was intended to be dated August 4, 2022. GV's letter stated that SSL cleared snow and salted the walkways and ramp to the underground parking garage at 1:45 pm on December 30, 2021. It also stated that SSL returned on December 31, 2021 to add another layer of salt to the areas that needed it.
21. An August 4, 2022 email from an SSL employee advised the strata that SSL completed the ramp salting on December 31, 2021 at approximately 11:45 am. This is consistent with an August 25, 2022 email statement from a strata council member's spouse, JH, who stated she observed SSL re-salt the ramp in the late morning or early afternoon on December 31, 2021, before the incident involving Mr. Skands.
22. Mr. Skands does not specifically dispute that SSL attended on December 30 and 31, 2021 to remove snow and salt the ramp. Based on the strata's evidence from SSL and JH, I am satisfied that SSL did so.

23. Mr. Skands argues that there was some slush, snow, and ice, and “little to no salt” on the ramp. However, a strata corporation is not generally liable for the actions of its independent contractors. So, I find it is not necessary for me to decide whether SSL was negligent in performing its snow and ice removal duties.
24. I find the strata reasonably contracted with SSL for snow removal and salting of the strata’s common areas. Given SSL attended after a snowfall to clear and salt the ramp and returned on the morning of the incident to re-salt, I find the strata reasonably ensured SSL fulfilled its contractual obligations.
25. For these reasons, I find Mr. Skands has not established that the strata breached the applicable standard of care, and so, I find the strata was not negligent.
26. I note that even if Mr. Skands had shown the strata breached the standard of care, I would not have found in Mr. Skands’ favour. This is because I find he has not proven that the alleged breach caused his damage. I find the photographic evidence shows only limited slushy snow at the top of the ramp that appears to have been tracked in from the unplowed street, and a small patch of ice in the middle of the bottom third of the ramp. I find the conditions shown in the photos and video do not appear sufficient to have caused Mr. Skands to start slipping from about halfway down the ramp, as he claims. I also find that even if Mr. Skands drove onto the icy patch near the bottom, it was only large enough for one wheel to contact it at any given time, and so it would not likely cause him to be unable to stop.
27. Further, I find salt is visible down the length of the ramp, and there is no evidence that any other vehicles, including the one that entered the garage immediately before Mr. Skands, had trouble with slipping on the ramp. Overall, I am not satisfied that Mr. Skands was unable to stop on the ramp due to snow and ice. Rather, I find the strata’s submission that Mr. Skands unsuccessfully tried to get through the gate before it closed is the more likely scenario.
28. Finally, I also note that Mr. Skands did not explain how he arrived at the claimed \$4,629.04. The parties’ email evidence shows Mr. Skands advised the strata that his vehicle repairs would be approximately \$1,300, and the strata advised Mr. Skands on

January 24, 2022 that it was charging his strata account \$3,019.56 plus GST for the gate repairs. However, Mr. Skands provided no supporting documentation, such as an estimate for his vehicle repairs or confirmation that the strata charged his strata lot account for the gate repairs. So, I would have dismissed Mr. Skands' claims for a failure to prove his damages.

29. As noted above, Mr. Skands also sought an order for the strata to contact ICBC and admit its responsibility for the gate and vehicle damage. Again, Mr. Skands provided no supporting evidence about any ICBC claim. In any event, as I have found the strata was not negligent, I decline to make this order.

30. For all the above reasons, I dismiss Mr. Skands' claims.

CRT FEES AND EXPENSES

31. 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. As Mr. Skands was unsuccessful, I find he is not entitled to reimbursement of his paid CRT fees. The strata did not pay fees and neither party claims dispute-related expenses, so I make no order.

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

ORDER

33. I dismiss Mr. Skands' claims, and this dispute.

Kristin Gardner, Tribunal Member