Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Xu v. The Owners, Strata Plan BCS 2012*, 2022 BCCRT 1319

B E T W E E N :

YING DONG XU and TIEN HUA

APPLICANTS

A N D :

The Owners, Strata Plan BCS 2012

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Micah Carmody

INTRODUCTION

1. The applicants, Ying Dong Xu and Tien Hua, own strata lot 3 (unit 103) in the respondent strata corporation, The Owners, Strata Plan BCS 2012 (strata). In July 2019, the strata's contractor traced a water leak in the parkade back to unit 103's shower. In October 2019, the strata imposed a $1,682.21 chargeback on the

applicants' strata lot account for the leak investigation and repair costs. The applicants disputed the chargeback and refused to pay it. They say the leak was not from unit 103 and the contractor overcharged the strata.

2. In November 2021, the strata informed the applicants and the applicants' bank that it would start a CRT claim if the applicants did not pay the outstanding debt on their account, which was primarily the leak chargeback. The bank paid the balance on the applicants' behalf and required the applicants to reimburse the bank. The applicants say the strata misled their bank about the nature of the alleged debt and unfairly collected it. They ask for an order that the strata remove the leak chargeback from their account. The applicants also want the strata to pay them $1,724.21, which includes the $1,682.21 leak chargeback and a related $42 title search chargeback the strata imposed. The applicants are represented by Ms. Xu.

3. The strata says the chargeback was validly imposed under its bylaws after its contractors confirmed the parkade leak was from the applicants' shower. The strata acknowledges that it was out of time under the *Limitation Act* to recover the chargeback from the applicants in November 2021. However, the strata says it is not responsible for educating banks on the *Limitation Act* or the *Strata Property Act* (SPA). The strata says the applicants' dispute is with their bank, not the strata. The strata is represented by a strata council member.

4. As I explain below, I find the strata has been significantly unfair to the applicants and I order it to reimburse them $1,724.21 for the 2 chargebacks.

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. Based on the evidence and submissions provided, I am satisfied that I can fairly decide this dispute without an oral hearing.

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 the parties and witnesses questions of 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.

9. The applicants amended the Dispute Notice to remove a claim about a $100 bylaw contravention fine that their bank paid on their behalf, so I have not considered that claim here. The dispute proceeded with 2 related claims. In one claim, the applicants ask the strata to reimburse them $1,724.21 for the chargebacks. In the other, they ask the strata to remove the larger chargeback from their strata lot account. I agree with the strata that claim to remove the chargeback from their account is moot because the chargeback was cleared when the applicants' bank paid it. So, I dismiss that claim.

ISSUES

10. The issues in this dispute are:

    a. Were the chargebacks validly imposed?

    b. Was the strata's retention of the applicants' bank's payment significantly unfair to the applicants?

c. What remedy, if any, is appropriate?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities, meaning more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

Background

12. The strata was created in 2006 and includes 205 strata lots in a single tower with 3 levels of parking. The leak occurred in level P1, which is below the ground floor strata lots, including unit 103. The applicants do not live in unit 103. They rent it to a tenant, ML.

13. In July 2019, the strata became aware of a leak into the ceiling of level P1. The strata's plumbing contractor, Total Energy Systems Ltd. (TES), investigated on July 16, 2019. According to TES's invoice, the leak was not active when the technician arrived. The technician checked "a few suites" before determining that the leak was likely from unit 103, but nobody was home. The technician returned the next day when ML was home.

14. TES's invoice said that on July 17, two TES technicians attended unit 103 and tested to replicate the leak in P1. By testing the toilet, tub and shower TES determined that the source of the leak was unit 103's shower. Specifically, a handheld shower hose that ML installed was leaking, and water was getting behind the tile wall through the diverter cover plate. The technicians removed the handheld showerhead and replaced it with the original showerhead. They reinstalled finishing trim around the shower diverter and applied silicone sealant in various areas in the shower. The leak into P1 did not return. TES invoiced the strata $1,682.21.

15. On October 2, 2019, the strata manager wrote the applicants asking them to pay $1,682.21 for the TES invoice to "clear this charge" against their strata lot. The letter did not refer to any bylaw authorizing the chargeback. The applicants disputed the

chargeback in an October 11, 2019 email. The strata manager said the strata council would review the email at the next council meeting. There is no evidence the strata discussed this issue with the applicants again until 2 years later.

16. On November 29, 2021, the strata wrote to the applicants advising that they had an outstanding balance of $1,824.21. The strata said if it did not receive payment within 21 days, it would start a CRT claim. Section 112 of the SPA requires strata corporations to send such a letter before starting a CRT claim to collect money. Attached to the letter was a 6-page statement of account showing charges and payments from October 1, 2019 to December 1, 2021. All the strata fees were paid. The balance comprised the TES chargeback, a $100 bylaw infraction fine for improper garbage disposal that the applicants do not dispute, and a $42 "title search for CRT warning letter". The strata says the title search was incurred while preparing to start a CRT claim to collect the TES chargeback and bylaw fine.

17. The strata provided a copy of this letter and statement of account to the applicants' bank, the Bank of Montreal (BMO). BMO is shown on title as the registered owner of a mortgage on unit 103.

18. On January 27, 2022, BMO paid the strata $1,824.21 despite the applicants' protests, discussed below. On March 1, 2022, under threat of foreclosure, the applicants reimbursed BMO $1,824.21.

19. At the applicants' request, on February 25, 2022, the strata held a hearing about the chargebacks. As documented in the strata's March 1 and 10, 2022 letters, the strata maintained its position that the chargebacks were authorized by the strata's bylaws and the strata was entitled to accept BMO's payment to clear the charges.

Was the TES chargeback authorized by the bylaws?

20. A strata corporation is generally responsible for common property maintenance and repairs under the SPA. The strata's bylaw 8 confirms this duty. It also makes the strata responsible to repair a strata lot, but that duty is restricted to the building's

structure, exterior and certain external components. Otherwise, the strata's bylaw 2 makes owners responsible to repair and maintain their strata lots.

21. For a strata corporation to charge repair costs back to owners, it must have a valid bylaw permitting it to do so (see *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512 and *Rintoul et al v. The Owners, Strata Plan KAS 2428*, 2019 BCCRT 1007).

22. The strata relies on bylaw 44 for the chargebacks. Bylaw 44 became part of the strata's bylaws in 2013 and was in force until the strata repealed and replaced its bylaws in March 2022.

23. Bylaw 44(1) says an owner will indemnify and save harmless the strata from the expense of any maintenance, repair or replacement rendered necessary to the common property as a consequence of the actions of the owner, tenant or occupant or their guests, servants, agents and invitees, to the extent the expense is not met by the strata's insurance proceeds. Bylaw 44(4) says such expenses are chargeable to the owner. Bylaw 44(5) entitles the strata to recover its costs incurred to collect such expenses.

24. It is undisputed that water was leaking from overhead pipes into the common property parkade. However, there is no evidence of damage to common property. Since bylaw 44(1) only requires owners to indemnify the strata for "maintenance, repair or replacement" to common property and not a strata lot, the first question is whether the TES invoice indicates any maintenance, repair or replacement of common property. I find it does not. There is no evidence of repairs made in the parkade. The repairs were made to unit 103's shower. There is no suggestion or evidence that the repaired parts of the shower were common property and not part of unit 103.

25. I acknowledge the evidence that water was leaking onto another owner's car and the strata had a responsibility to investigate the leak. However, bylaw 44(1) does not make owners responsible for investigation costs.

26. If a strata corporation proceeds with repairs in a strata lot that are the owner's responsibility under the bylaws, as they are here, the strata is responsible for paying

for those repairs unless the owner agrees to pay for them (see, for example, the non-binding but persuasive decision *Huang v. The Owners, Strata Plan EPS1910*, 2019 BCCRT 1072). There is no evidence that the applicants or their tenant agreed to pay for the TES repairs here.

27. Given the above, I conclude that the strata was responsible for the TES invoice and the chargeback was not authorized. As a result, I do not need to address the applicants' argument that TES charged excessive amounts for its work.

28. As the TES chargeback was not authorized, it follows that I find the $42 chargeback for the title search to enforce payment of the TES chargeback was also not authorized under bylaw 44(5).

Was the strata's retention of the BMO payment significantly unfair to the applicants?

29. The strata questions whether the applicants have the right to ask the strata for reimbursement given that BMO, not the applicants, paid the strata to clear the chargeback. However, I find the applicants have standing to seek a remedy for the strata's actions and decisions. It is undisputed that BMO paid the strata to clear the applicants' strata lot account on the applicants' behalf. It is also undisputed that the applicants had to reimburse BMO or risk foreclosure. The applicants argue that the strata misled BMO about the nature of the alleged debt and then accepted and retained payment of the invalidly imposed chargebacks when it knew the claim for the chargebacks was out of time. Although the applicants do not use these words, I find they allege that the strata treated them in a significantly unfair way.

30. SPA section 164 sets out the BC Supreme Court's authority to remedy significantly unfair actions and decisions. The CRT has jurisdiction over significantly unfair actions and decisions under CRTA section 123(2), which has the same legal test as cases under SPA section 164 (see *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164). Namely, significantly unfair conduct is conduct that is 1) oppressive in that it is burdensome, harsh, wrongful, lacking in probity or fair dealing, or done in

bad faith, or 2) unfairly prejudicial in that it is unjust or inequitable (see *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173 at paragraph 88).

31. As I explain below, I find the strata's acceptance and retention of BMO's payment for the chargebacks was significantly unfair to the applicants.

32. First, as I determined above, the chargebacks were not authorized by the strata's bylaws. The strata had no legal authority to impose the TES chargeback or the related title search chargeback.

33. Second, as I will explain, the strata was out of time to pursue a CRT claim for payment of the TES chargeback when it wrote to the applicants and BMO in November 2021 advising that it was starting a CRT claim. The *Limitation Act* sets out limitation periods, which are specific time limits for pursuing claims. If the time limit expires, the right to bring the claim disappears, and the claim must be dismissed. Section 6 of the *Limitation Act* says that for claims arising after June 1, 2013, the basic limitation period is 2 years. This means a claim may not be started more than 2 years after the day on which it is discovered. A claim is "discovered" when the person knew or reasonably should have known they had a claim against another person and a court or tribunal proceeding was an appropriate remedy.

34. In *Mason v. The Owners, Strata Plan Strata Plan 200*, 2022 BCCRT 951, a CRT vice chair found that an owner's request to reverse a chargeback was a claim because the chargeback was a liability or debt on the owner's account, and therefore essentially a debt or damage claim. In making that finding, she reasoned that if the strata corporation had filed a claim seeking payment of the chargeback, it would also be a debt claim subject to the 2-year limitation period. I agree with that reasoning and apply it here. I find the strata had 2 years from, at the latest, October 11, 2019, when the applicants advised that they disputed the chargeback. This means that by November 29, 2021, when the strata advised the applicants and BMO that it intended to start a CRT claim for the chargeback, the strata was already out of time to do so.

35. If the strata did not know its claim was out of time under the *Limitation Act* when the strata manager wrote to BMO on November 29, it certainly knew it when the

applicants raised the limitation period issue in February 2022 correspondence. Yet the strata refused to reimburse the applicants for the chargebacks.

36. Third, it is clear that BMO misunderstood the nature of the debt the strata was claiming. The applicants argue that the strata misled BMO, in particular by referring in its November 29, 2021 letter to title search fees as "lien administration" fees. It is apparent from BMO's correspondence with the applicants that it failed to distinguish between outstanding strata fees and chargebacks. BMO also believed that the strata had registered a lien on title for unit 103. This is apparent from its February 16, 2022 letter stating that it had "paid condo fees as your condo corporation placed a lien & were in the position of selling the property."

37. It is undisputed that the strata never took any steps to register a certificate of lien. SPA section 116(1) allows a strata corporation to register a lien against a strata lot for certain unpaid debts, such as strata fees and special levies. Neither a chargeback of repair costs nor bylaw contravention fines are lienable under section 116 or other provisions of the SPA. Despite the applicants' repeated attempts to explain this to BMO – their evidence includes documentation of meetings and letters exchanged with 15 BMO employees – they were unsuccessful. The strata took advantage of BMO's misunderstanding by accepting and retaining the payment.

38. I find it does not matter whether the strata's correspondence was misleading as the applicants allege. What matters is that BMO's payment was based on a misunderstanding of the nature of the alleged debt. BMO's error does not excuse the strata's refusal to reimburse the applicants after they explained in February and March 2022 correspondence that BMO misunderstood the nature of the strata's claim and that they objected to the payment.

39. I conclude that the strata's conduct since November 29, 2021 was significantly unfair. The strata first asserted entitlement to a disputed and financially significant chargeback without a bylaw. I find this conduct was oppressive because it was wrongful in that it lacked a legal foundation. The strata then retained payment after being made aware that its CRT claim for the TES chargeback was out of time and

that BMO paid it under a misunderstanding of the nature of the alleged debt. I find this conduct was unfairly prejudicial in that it was unjust for the strata to snap at BMO's error and retain the chargeback payments it was never entitled to.

40. In the circumstances, I find the appropriate remedy for the strata's significantly unfair conduct is for the strata to repay the $1,682.21 TES chargeback and the $42 title search. I order the strata to pay the applicants $1,724.21.

41. The *Court Order Interest Act* (COIA) applies to the CRT. I find the applicants are entitled to prejudgment interest on the $1,724.21 from March 1, 2022, when they paid their bank, to the date of this decision. This equals $15.44.

CRT FEES AND EXPENSES

42. 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 the applicants were successful, I order the strata to reimburse them for $225 in CRT fees. Neither party claimed any dispute-related expenses.

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

ORDERS

44. Within 30 days of the date of this order, I order the strata to pay the applicants a total of $1,964.65, broken down as follows:

    a. $1,724.21 in debt,

    b. $15.44 in pre-judgment interest under the COIA, and

    c. $225.00 in CRT fees.

45. The applicants are also entitled to post-judgment interest, as applicable.

46. 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.

Micah Carmody, Tribunal Member