



# Civil Resolution Tribunal

Date Issued: February 28, 2023

File: ST-2022-003506

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VR 824 v. Malbanan, 2023 BCCRT 166*

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

The Owners, Strata Plan VR 824

**APPLICANT**

**A N D :**

ALFREDO MALBANAN and JULIETA MALBANAN

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Eric Regehr

## **INTRODUCTION**

1. Alfredo Malbanan and Julieta Malbanan own a strata lot in the strata corporation, The Owners, Strata Plan VR 824 (strata). The strata alleges that the Malbanans' tenant, CM, damaged the gate to the strata's underground parking garage. The strata says that the Malbanans are responsible for \$2,782.50 in repair costs. The strata asks for

an order that the Malbanans pay this amount. The strata is represented by its council president.

2. The Malbanans say that the gate malfunctioned and closed on CM's car while she was driving into the garage. So, they say that she did not cause the damage. The Malbanans ask me to dismiss the strata's claim. CM represents the Malbanans in this dispute.

## **JURISDICTION AND PROCEDURE**

3. 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). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.
4. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.
5. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

## **ISSUES**

6. The issues in this dispute are:
  - a. Did CM cause the gate damage?
  - b. Are the Malbanans responsible for the repair cost under the strata's bylaws?

## **BACKGROUND**

7. In a civil claim such as this, the strata as the applicant must prove its case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
8. The strata consists of 32 townhouse-style strata lots in several buildings. The strata includes a shared underground parking garage. Access to the garage is controlled by a garage door-style gate, which is undisputedly common property. The gate has a laser sensor near the ground that is intended to prevent the door from closing on items underneath the gate.
9. The strata filed a complete set of bylaws in the Land Title Office on December 9, 2003. Relevant to this dispute, bylaw 4.2 prohibits residents from damaging common property other than reasonable wear and tear. Bylaw 4.4 says, in part, that an owner must indemnify the strata for any common property repair costs caused by a tenant's "act, omission, negligence or carelessness".

## **EVIDENCE AND ANALYSIS**

10. The incident occurred on August 16, 2020. It is undisputed that while CM was entering the parking garage, her car and the gate came into contact, damaging the gate. CM's car (a station wagon) had several camping items affixed to its roof rack. It is undisputed that Overhead Door Co of Vancouver performed emergency repairs the next day. Those expenses are not at issue in this dispute. In November 2020, Overhead Door performed further repairs that cost \$2,782.50, which is what the strata claims.
11. The strata makes 2 arguments about how CM damaged the gate. The first is that CM drove under the gate while it was closing, either because she was not paying close attention or was trying to rush through the gate. CM denies that the gate was closing when she started driving underneath it. She says that the gate malfunctioned and closed on her car, which the sensor should have prevented.

12. It is undisputed that no one witnessed the incident. There is also no video footage. Neither of Overhead Door's invoices say anything about how the gate was damaged. As discussed in more detail below, the strata also did not provide any statement or report from Overhead Door, so there is no expert evidence about what caused the gate damage.
13. The strata relies on indirect evidence to prove its allegation that CM drove under the gate when it was already going down. First, the strata says that Overhead Door had serviced the gate a month before the incident, so it must have been in good working order. However, there is no evidence of what Overhead Door did as part of this service, such as an invoice or report. I therefore find that the strata has not proven that the prior service would have uncovered or prevented any problems with the gate's sensors.
14. The strata also relies on a January 5, 2021 email that a strata council member, SK, sent summarizing a conversation they had with Overhead Door's manager. According to SK, the manager said that the damage could not have occurred as CM alleged. I find that the strata wants to rely on this evidence as expert evidence because it is about technical aspects of how the gate functions. The manager's alleged statement is hearsay because SK's email is their summary of what the manager said, not the manager's own words. While the CRT has discretion to admit hearsay evidence, I find it would be inappropriate and unfair to rely on hearsay expert evidence about the central issue in dispute. I have therefore placed no weight on SK's email.
15. The strata also says that there had been no previous incidents or complaints about the gate. There is no evidence otherwise, so I accept that this is true. However, I find that the lack of previous incidents or complaints does not prove that the gate did not malfunction as CM alleges.
16. CM says that she opened the gate with her key and started driving through as usual. She says that she heard a loud bang as she passed under the gate but she did not initially know what the bang was. She says that she stopped her car after clearing the gate to make sure it closed. At that point, she saw that it was going up instead of

closing, which she found “weird”. Still, she did not yet realize that the gate had hit the top of her car. She proceeded to park.

17. Several residents heard the noise and came to the garage after the incident. Those residents noticed the gate damage. This is also when CM realized what had happened.
18. CM says that she did not initially notice any damage to her car because she did not remove the items on the roof rack. She says that a few days later, when she removed the items, she saw that the roof rack’s rear crossbar was damaged. Photos in evidence show that the rear crossbar had a significant downward bend.
19. CM argues that the location of this damage proves that the gate malfunctioned. She points out that the rear crossbar is around 10 feet from the front of her car. She says that this proves that the laser sensor failed to trigger. I agree. I find as a matter of common sense that driving 10 feet past a laser sensor should have triggered it to stop going down. It logically follows that if the sensor and gate had been functioning properly, the gate would have stopped it before it hit the top of CM’s car. Because it did not, I find that the sensor or gate likely malfunctioned. I find that the strata has not proven that CM attempted to drive under the gate while it was already closing.
20. The strata’s second argument is that CM should have stopped immediately when she heard the loud bang. The strata says that by driving through, the items on CM’s roof rack must have caught on the gate, preventing it from going up, and damaging it as she moved forward.
21. First, I find it unrealistic for the strata to expect that CM would stop immediately after hearing the noise. I find that CM, like any driver, must be afforded a reasonable reaction time when faced with an unexpected situation. In other words, some forward movement after contact was inevitable. That said, I am not persuaded that it was necessarily unreasonable for CM to continue driving after hearing the loud noise, especially since she did not know what the noise was. I also note that the impact with her car was very close to the car’s rear, so she only drove a few feet before stopping.

22. In any event, I find that the strata has not proven that CM caused any gate damage (or any additional gate damage) by driving forward after she heard the noise. I find the strata's argument on this point is speculative and unsupported by expert evidence. I also find that the photos of the gate damage do not obviously support the strata's argument that CM's forward movement was a cause of the gate damage.
23. As mentioned above, there are 2 bylaws that potentially apply to this dispute, 4.2 and 4.4. The strata does not say which bylaw it relies on. I find that both bylaws require the strata to prove that CM caused or contributed to the damage at issue. I find that the strata has not proven this. So, I find that the strata has no basis under the bylaws to charge the repair costs to the Malbanans. I therefore dismiss the strata's claim for payment.

## **TRIBUNAL FEES AND EXPENSES**

24. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. The strata was unsuccessful, so I dismiss its claim for CRT fees and dispute-related expenses. The Malbanans did not claim any dispute-related expenses.
25. The strata must comply with the provisions in section 189.4 of the SPA, which includes not charging dispute-related expenses against the Malbanans.

## **DECISION AND ORDER**

26. I dismiss the strata's claims, and this dispute.

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Eric Regehr, Tribunal Member