



# Civil Resolution Tribunal

Date Issued: June 23, 2023

File: ST-2022-002553

Type: Strata

Civil Resolution Tribunal

Indexed as: *Ho v. The Owners, Strata Plan EPS 4743, 2023 BCCRT 527*

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

CAROL THUY HO

**APPLICANT**

**A N D :**

The Owners, Strata Plan EPS 4743

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Sarah Orr

## **INTRODUCTION**

1. This strata dispute is about reimbursement of bylaw fines and a chargeback. The applicant, Carol Thuy Ho, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan EPS 4743 (strata).

2. On November 27, 2019, Ms. Ho paid the strata \$3,372.50 for various bylaw fines imposed and a chargeback issued between April and September 2019. She says the strata was not authorized to impose those fines and the chargeback, so she claims reimbursement of the \$3,372.50.
3. The strata says Ms. Ho's claims are out of time, but that all fines and the chargeback Ms. Ho paid were based on proven bylaw infractions and late payments. The strata says it does not owe Ms. Ho anything.
4. Ms. Ho is self-represented in this dispute. The strata is represented by a council member.

## **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. 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.
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 questions of the parties and witnesses 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.

## **ISSUES**

9. The issues in this dispute are:
  - a. Are any of Ms. Ho's claims out of time?
  - b. If not, is she entitled to reimbursement of the bylaw fines or the chargeback?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, as the applicant Ms. Ho must prove her claims on a balance of probabilities (meaning more likely than not). I have read all the parties' evidence and submissions but refer only to what I find relevant to provide context for my decision.
11. The strata was created in 2018 under the *Strata Property Act* (SPA). It is a single high-rise building with 348 strata lots. In 2018, the strata filed a full set of bylaws with the Land Title Office (LTO). The strata has since filed various bylaw amendments with the LTO.
12. Between April 9, 2019, and September 12, 2019, the strata undisputedly charged Ms. Ho \$600 for 3 smoking bylaw fines, \$2,200 for 11 short-term rental bylaw fines, \$100 for 2 late payment bylaw fines, and a \$472.50 charge back for lien and title search service fees, for a total of \$3,372.50. Ms. Ho undisputedly paid the strata \$3,372.50 for these fines and charges on November 27, 2019. In May 2022, Ms. Ho informed the strata that she wished to dispute the fines and the charge back. The strata held a hearing for Ms. Ho on June 15, 2022. On June 17, 2022, the strata informed Ms. Ho that it would not reimburse her for the fines or the charge back.

### ***Are any of Ms. Ho's claims out of time?***

13. Section 13 of the CRTA says the *Limitation Act* applies to the CRT. The *Limitation Act* creates a 2-year limitation period for most claims. A claim is defined in the *Limitation Act* as a claim to remedy an injury, loss or damage that occurred as a result of an act or omission. The BC Supreme Court and previous CRT decisions have found that bylaw fines are not subject to the *Limitation Act* because they are penalties rather than claims to remedy an injury, loss, or damage (see *The Owners, Strata Plan KAS 3549 v. 0738039 B.C. Ltd.*, 2015 BCSC (affirmed 2016 BCCA 370), *Bright Smile Enterprises Ltd. v. The Owners, Strata Plan LMS 1490*, 2019 BCCRT 752). However, in this case Ms. Ho has already paid the bylaw fines and the chargeback, and so I find her claim is to recover a loss for an amount she paid but now says she should not have been required to pay. So, I find her claims in this dispute fall within the definition of “claim” in the *Limitation Act* and are subject to a 2-year limitation period.
14. Under section 8 of the *Limitation Act*, the limitation period starts running when a person discovers their claim. A party discovers a claim when they know or reasonably should know that another person or entity caused them to incur a loss, and that a legal proceeding would be an appropriate way to remedy the loss. Ms. Ho submitted her Dispute Notice to the CRT on October 14, 2022. This means any claims she discovered before October 14, 2020, are out of time and must be dismissed even if they would have otherwise been successful.
15. As noted, Ms. Ho undisputedly paid all the bylaw fines and the chargeback on November 27, 2019. The strata says all of Ms. Ho's claims are out of time.
16. Ms. Ho acknowledges that her claims are outside the limitation period. She says the charges were automatically withdrawn from her bank account when she transferred the strata lot to her daughter and she was overseas at the time, so she was unaware of the payment. However, Ms. Ho provided no evidence that the \$3,372.50 payment was automatically withdrawn from her bank account. I find travelling overseas is not a valid reason not to have known about a payment undisputedly made from her bank account. There is no evidence before me that Ms. Ho transferred the strata lot to her daughter, but I find nothing turns on this, because Ms. Ho undisputedly owned the

strata lot in 2019 when the bylaw fines and chargeback were imposed and paid. I find that Ms. Ho reasonably should have discovered her claim on the day the money left her bank account, regardless of how that happened.

17. Ms. Ho says she returned to Canada in 2020 right before the COVID-19 pandemic, so these charges were not her priority. I find this is an acknowledgement that she was aware of the subject payment by the spring of 2020 at the latest.
18. Ms. Ho also says the COVID-19 pandemic impacted her ability to start her claim, but she did not provide any further explanation. I note that the CRT operated as normal during the pandemic because it is an online tribunal. The *COVID-19 Related Measures Act* gave the CRT discretion to waive or suspend limitation periods, but that authority expired 90 days after the end of the COVID-19 state of emergency. The state of emergency ended on June 30, 2021, so I find that the CRT's power to waive a limitation period expired at the end of September 2021. Because Ms. Ho applied for dispute resolution on October 14, 2022, I find that the CRT has no authority to waive or extend the limitation period.
19. I find Ms. Ho's claims are out of time and I dismiss them on that basis. So, I find it is unnecessary to assess the merits of her claims.

## **CRT FEES AND EXPENSES**

20. 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. Since Ms. Ho was unsuccessful, I find she is not entitled to reimbursement of her CRT fees. The strata did not pay any CRT fees. Neither party claimed any dispute-related expenses.
21. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Ho.

## **ORDER**

22. I dismiss Ms. Ho's claims and this dispute.

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Sarah Orr, Tribunal Member