



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Liu v. The Owners, Strata Plan LMS 2211*, 2023 BCCRT 540

B E T W E E N :

JUN YAN LIU

APPLICANT

A N D :

The Owners, Strata Plan LMS 2211

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicant, Jun Yan Liu, owns strata lot 16 (unit 208) in the respondent strata corporation, The Owners, Strata Plan LMS 2211 (strata). On December 27, 2021, water pipes froze in a building stairwell beside unit 208. Around the same time, the applicant's son, KY, reported frozen pipes in unit 208 to the strata.

2. The strata investigated and paid for various repairs related to the frozen pipes. At issue in this dispute is a \$1,234 chargeback the strata imposed against the applicant's account for plumbing repairs in unit 208 in January 2022. The applicant says she never agreed to pay for those repairs and the strata is responsible for them. The applicant wants the strata to remove the chargeback from her account, to replace all "unsafe frozen parts" in her bathroom and to compensate her for the temporary loss of use of her tub and shower. She gave her claim a total value of \$1,500. The applicant represents herself.
3. The strata says the claim should be dismissed. It says the chargeback is "legit", the plumber completed the work entirely in the applicant's strata lot, and the strata is not responsible for any inconvenience or required to do anything further. A strata council member represents the strata.
4. As I explain below, I find the strata must reverse the chargeback but is not required to do anything further or pay the applicant anything for the loss of use of her tub and shower.

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.

ISSUE

9. The issues in this dispute are:
 - a. Was the \$1,234 chargeback authorized under the strata's bylaws, or did the applicant agree to pay the related invoice?
 - b. Is the strata required to make any further repairs to the applicant's strata lot or to pay damages for inconvenience?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant must prove her claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
11. The strata was created in 1995 and includes 238 strata lots. Unit 208 is on the second floor of a high-rise building, adjacent to a common property stairwell. Unit 208's bathroom is above a common property ventilation shaft that connects to the stairwell.
12. It is not clear whether the applicant lived in unit 208 when the pipes froze, but her son KY undisputedly did. KY provided a written statement in this dispute. KY said that on December 27, 2021, upon returning home in the evening, he found the bathroom's pipes, shower faucet, bathtub drain and "toilet parts" were frozen. He

immediately reported it to the strata's emergency phone number. The strata caretaker, MT, attended. The parties disagree about what MT did, and I return to this below. According to a weather report for December 27, 2021, local temperatures reached -14.5 degrees that day.

13. The following day, a heater was installed in unit 208's bathroom. The applicant says that evening, water started to flow again, but the shower valve could not be shut off and it allowed a near-full flow of water through the tub spout. KY reported the issue to MT, who called a plumber, A-1 Drainage Plumbing & Heating Ltd. The A-1 plumber went to unit 208 around 11pm and capped the shower and tub water lines. The plumber also found that the toilet supply line was partially frozen. The plumber opened the drywall and heated a copper pipe to restore the water flow but found that the toilet supply line shutoff valve had failed and needed to be replaced. The strata paid A-1's \$555.11 invoice and did not charge it back to the applicant. That invoice and corresponding work is not in dispute. The A-1 invoice said the shower valve and trim would need to be replaced, which would require water to the building to be shut off.
14. In early January 2022, the applicant asked the strata when it would make her toilet and shower operational. The strata manager responded that further repairs in her strata lot were the applicant's responsibility. The strata manager advised that the applicant's options were to hire her own plumber or complete an attached form agreeing to pay for repairs that the strata's plumber would provide.
15. The applicant did not agree that she was responsible for the repair costs. On January 10, 2022, the strata manager told the applicant that they were waiting on confirmation from the strata council on how to proceed.
16. On January 12 and 13, 2022, Montalbano Plumbing Services Ltd. completed repairs to the applicant's shower. Montalbano's invoice shows that the plumber replaced a shower cartridge and had to shut down the building's water supply. In total, it was 9 hours of work. The invoice does not mention work on the toilet or toilet supply line, but the applicant says the plumber repaired the toilet, so I find that Montalbano did

this. The total cost was \$1,234. The invoice is made out to the strata, care of the strata manager.

17. The next email in evidence is a January 16, 2022 email from the applicant stating that her strata lot was still not fully repaired and she hoped the strata would fix the problems soon. In a follow-up email she said the shower head was leaking from 2 joints and her drywall was still waiting for repairs.
18. In a March 23, 2022 letter, the strata advised the applicant that it was charging the Montalbano invoice to her strata lot account. The applicant disputed the chargeback but on September 6, 2022, the strata advised that the council's decision to impose the chargeback was final.

Was the chargeback authorized under the strata's bylaws, or did the applicant agree to pay the invoice?

19. To charge repair costs back to an owner, a strata corporation 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).
20. The strata's March 23, 2022 chargeback letter referred to bylaws 4.2 and 4.3. Bylaw 4.2 says a resident or visitor must not damage the common property, common assets or parts of a strata lot that the strata must repair and maintain or insure under section 149 of the *Strata Property Act* (SPA). Bylaw 4.3 says an owner is responsible for damage caused by occupants, tenants or visitors to the owner's strata lot.
21. These bylaws govern the use of property and are not directly applicable here. More applicable is bylaw 3.1, which says an owner must repair and maintain the owner's strata lot, with limited exceptions that do not apply here. However, neither bylaw 3.1 nor bylaws 4.2 and 4.3 say that owners must indemnify the strata for repairs the strata completes to a strata lot.
22. Although the strata did not refer to it in submissions, I considered bylaw 45. That bylaw, added in June 2009, says an owner will indemnify the strata from the

expense of any strata lot maintenance, repair or replacement caused by an “act, omission, negligence or carelessness” of an owner or their family, guests, and others. The courts have interpreted this phrase in similar bylaws to mean negligence (see *Strata Plan BCS 1589 v. Nacht*, 2019 BCSC 1785).

23. The strata says the pipes likely froze because of the applicant’s or KY’s negligence in letting unit 208 reach freezing temperatures. The applicant denies this allegation. However, as noted is not clear whether the applicant living in unit 208 at the time. KY’s statement does not say anything about the temperature inside unit 208 on December 27, 2021.

24. I infer that the strata relies on an email thread starting January 10, 2022, from MT. MT’s first email did not say anything about the temperature in unit 208 when MT attended on December 27, 2021. The strata manager asked MT’s supervisor, RK, for more information from MT. It is not clear why the strata manager did not ask MT for this information directly. RK then provided a more detailed statement that MT “suspected that the owner of the apartment did not close the windows while he was out of home because the apartment was about as cold as outside” (reproduced as written). I put little weight on this statement for 2 reasons. First, the statement comes from RK, not MT. It appears to be RK’s interpretation of MT’s response to RK’s request for more information. The strata does not explain why MT could not provide an emailed statement directly as they did the first time. Second, even if the statement is an accurate summary of MT’s evidence, I find it is uncertain (they “suspected” that windows were left open, and it was “about” as cold as outside). MT did not say they saw windows open or took temperature readings in unit 208 or checked whether the heat was off.

25. Ultimately, I find the strata has not shown that the applicant or KY allowed unit 208 to become so cold that it materially contributed to the frozen pipes. This is supported by the strata’s admission that on December 27, 2021, the temperature inside the stairwell ventilation shaft dropped below the freezing point. The strata also concedes that the freezing temperature resulted in “plumbing infrastructure” and a common property fire sprinkler pipe freezing. Given the location of unit 208’s

bathroom above this ventilation shaft, I find the shower pipe likely froze because of the below-freezing ventilation shaft temperatures. The strata manager confirmed this in a February 4 email in which they said “an exposed area” caused pipes to freeze and the strata later added insulation to prevent it from happening in the future. So, I find the applicant and KY were not negligent and bylaw 45 does not apply.

26. In summary, I find that the strata’s bylaws did not authorize the strata to repair the applicant’s strata lot and then charge the repair costs back to her. If a strata corporation proceeds with repairs in a strata lot that are the owner’s responsibility under the bylaws, as they are here, then the strata is responsible for paying for those repairs unless the owner agreed to pay for them (see, for example, *Huang v. The Owners, Strata Plan EPS1910*, 2019 BCCRT 1072).
27. Did the applicant agree to pay for the repairs? She says she did not, and she says nobody told her who would be responsible for the repairs or how much they would cost. As noted, the strata provided a repair authorization form, but the applicant did not complete it. The strata says the applicant kept calling the caretakers, the strata manager, and strata council, asking when her shower would be fixed. The strata says it kept responding that repairs inside an owner’s strata lot are the owner’s responsibility and the applicant should call her own plumber. I accept that the strata did these things, which is consistent with the strata manager’s emails and the evidence of the strata’s representative, council member AS. AS says they attended unit 208 on January 9, 2022, and confirmed that shower repairs were the applicant’s responsibility.
28. However, AS also says they took photos and sent them to Montalbano, the strata’s “regular plumber”. AS says Montalbano responded that it was an easy repair, and a few days later, completed the repairs. Based on this and Montalbano’s invoice billed to the strata, I find AS, on behalf of the strata, authorized Montalbano’s work. There is no evidence that the applicant agreed to pay for the work.

29. Because the strata proceeded with the unit 208 bathroom repairs without the applicant's agreement to pay for the repairs, and the strata did not have a bylaw authorizing the chargeback, I order the strata to reverse the \$1,234 chargeback.

Is the strata required to make any further repairs or pay inconvenience damages?

30. The applicant says she wants the strata to replace all "unsafe frozen parts" but does not explicitly identify those parts. I infer that they are in unit 208's bathroom and include the showerhead that she says leaks in 2 places. The applicant also claims unspecified damages for inconvenience related to the loss of use of her shower and toilet from December 27, 2021, to January 13, 2022.

31. As noted above, the strata's bylaws make the applicant responsible for repairs in her strata lot. A strata corporation is not an insurer but may be liable to pay for repairs in a strata lot where it has negligently breached its duties under the SPA, including common property repair and maintenance duties (see, for example, *Basic v. Strata Plan LMS 0304*, 2011 BCCA 23). A strata corporation may also be liable for the loss of use and enjoyment of a strata lot in the same circumstances.

32. I accept the applicant's position that the reason her pipes froze and her bathroom required repairs was freezing temperatures in the common property ventilation shaft and stairwell. I also accept that the strata had a statutory duty of care, based on the SPA and its bylaws, to repair and maintain the common property ventilation shaft and stairwell. However, the courts have said that the standard of care for a strata corporation's repair and maintenance obligations is reasonableness and not perfection. This means the strata must act reasonably in meeting these obligations (see *John Campbell Law Corp. v. Strata Plan 1350*, 2001 BCSC 1342, and *Wright v. Strata Plan #205 (Owners)*, 1996 CanLII 2460 (BC SC)). The applicant does not challenge the strata's evidence that stairwell pipes had never frozen before, and that the strata has since added insulation to prevent future freezing. There is no indication that the strata was aware of a potential issue with the ventilation shaft or the possibility of freezing pipes in the stairwell. This is not a situation where the

strata was aware of an issue and did nothing to address it. So, I find the strata acted reasonably in the circumstances.

33. Next, the applicant alleges that the caretaker MT caused the shower faucet to fail on December 27 when they turned the faucet on to reduce pressure in the frozen pipelines. KY said he watched MT turn the frozen shower faucet on and no water came out. KY said MT explained that they were doing this to reduce pressure in the pipes to protect the pipes. KY said MT did not consult any plumber or ask for KY's consent before doing this. In the emailed statement that the strata says is from MT through RK, MT said they may have touched the faucet to check the condition but did not force anything.
34. I find it unnecessary to determine whether MT turned the faucet on because even if they did, it is unproven that this action, as opposed to the pipes' freezing itself, damaged the shower valve. I find that whether turning and leaving "on" a shower faucet connected to a frozen pipe can cause the faucet or shower valve to fail is beyond an ordinary person's knowledge and requires expert evidence to prove. There is no expert evidence, such as plumber's statement about the cause of the damage, before me in this dispute. So, I find it unproven that MT caused any damage to unit 208's shower.
35. For these reasons, I dismiss the applicant's claims for further repairs and inconvenience damages.

CRT FEES AND EXPENSES

36. Under CRTA section 49 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. The applicant was partially successful, so I order the strata to reimburse her \$112.50 for half her paid CRT fees. The strata did not pay CRT fees and neither party claims dispute-related expenses.
37. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against the applicant.

ORDERS

38. I order the strata to immediately remove the \$1,234 chargeback for the Montalbano plumbing invoice from the applicant's strata lot account.
39. I order the strata to, within 30 days, pay the applicant \$112.50 for CRT fees.
40. The applicant is entitled to post-judgment interest as applicable.
41. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under CRTA section 58, 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