



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Agar v. The Owners, Strata Plan BCS 3495*, 2023 BCCRT 973

B E T W E E N :

ABDUL AGAR and Muhammad Agar

APPLICANTS

A N D :

The Owners, Strata Plan BCS 3495

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about towing and impound fees. The applicant, Abdul Agar, owns strata lot 392 (SL392) in the respondent strata corporation, The Owners, Strata Plan BCS 3495 (strata). The other applicant, Muhammad Agar, is a family member that resides at SL392 and owns the car at issue.

2. The applicants say that the strata's strata manager unreasonably towed their family car without any notice. They say the strata is liable for the strata manager's actions and claim reimbursement of \$4,825.74.
3. The strata says the applicants parked the car in breach of bylaw 7.4(3), which requires vehicles parked in the strata's parking stalls to be licensed and insured. It says the car's storage insurance had expired at the time. It says the building manager provided notice by putting a towing notice on the car's windshield, and reasonably towed it some time after that. The strata also says that in any event, the building manager and not the strata manager is responsible for towing the car, and the building manager is not its agent.
4. Muhammad Agar represents the applicants. A strata council member represents the strata.
5. For the reasons that follow, I dismiss the applicants' claim.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.

8. 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.
9. 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

10. The issues in this dispute are as follows:
 - a. Did the building manager act on behalf of the strata?
 - b. If so, was the strata entitled to tow the applicants' car?
 - c. Did the strata act in a significantly unfair manner?

BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
12. The strata plan shows the strata includes several high-rise buildings. SL392 is in a tower labelled phase 2. The building also has several indoor floors labelled as common property parking. These floors are the ground floor, second floor, and an underground level called P1. A strata manager's email identifies the applicants' assigned parking stall, which I find is on common property. Nothing turns on its exact location.
13. The strata's bylaws are registered in the Land Title Office. Bylaw 7.4(3) says an owner, tenant or occupant of a residential strata lot must use parking stalls only for the parking of licensed and insured motor vehicles, trailers, motorcycles, or bicycles,

and not for the parking of any other type of vehicle or the storage of any other item, unless otherwise approve in writing by the strata council [my emphasis].

14. The applicants say they had to travel due to a family emergency. Travel documents show that the applicants booked an international flight departing on November 10, 2021. They booked a return flight for January 31, 2022. The applicants extended their stay and returned from their destination on May 9, 2022.
15. Muhammad Agar provided a written statement. He says the following, which I accept as accurate. Prior to departing, he told the “building manager” in person that the applicants would be gone for some time. He provided both his contract information and the contract information for Abdul Agar. He also purchased car storage insurance.
16. It is undisputed that the building manager was a third-party company known as FSBS, and that the strata terminated its contract with FSBS at the end of February 2022. The documents before me also show that the strata separately used a company to act as a strata manager, BP.
17. It is also undisputed that the car’s storage insurance policy expired on February 1, 2022, while the applicants were still away. Muhammad Agar says, and I accept, that it slipped his mind as he was dealing with a family emergency at the time.
18. There are several documents in evidence from a towing company, BT. BT’s email and a photo show that FSBS called BT. FSBS asked BT to tow the car, which was in the common property parkade. Before towing the car, BT placed a tow notice on the windshield. The strata says this occurred on February 8, 2023. I find this date is likely a typo and that this likely occurred around February 8, 2022. BT then towed Muhammad Agar’s car from the strata’s parking lot on the morning of February 28, 2022. BT’s documents say it did so for unauthorized parking.
19. BT held the vehicle for 74 days until releasing it on May 12, 2022. BT issued a towing and storage invoice for \$4,825.74. The applicants paid it on the release date of May 12, 2022.

20. The applicants requested a hearing with the strata council that it held on June 6, 2022. The strata did not reimburse the applicants.

Issue #1. Did the building manager act on behalf of the strata?

21. The strata says that the building manager at the time, FSBS, acted without authority to tow the applicants' vehicle. The applicants disagree and say that the strata delegated their bylaw enforcement powers to FSBS.
22. The applicants provided a copy of a notice of arbitration in an ongoing dispute between the strata and FSBS. The notice says that FSBS provided building maintenance, caretaking, and manager services. I find this is likely accurate given that both parties called FSBS the "building manager".
23. Based on the sparse evidence before me, I find it likely that the strata provided FSBS authority to tow vehicles in the common property parkade. I say this because I find this would be consistent with FSBS' description of being the strata's "building manager", and FSBS' caretaking services. Further, Muhammad Agar notes in his statement that FSBS had a physical office within the strata's building. I find this was likely to facilitate FSBS' services, which would include managing the parkade areas.
24. The strata provided as evidence a copy of a December 2020 contract between the strata and BT. It said that BT agreed to provide the strata towing and patrol services. It listed as contacts a strata council member and the strata manager at the time, FSR. The strata says that, as FSBS was not listed as a contact, the strata is not responsible for the towing. While I acknowledge the contract, I put little weight on it here because the correspondence shows it was out of date. Specifically, FSR was not the current strata manager.
25. I note that, ultimately, little turns on this issue for the reasons discussed below.

Issue #2. Was the strata entitled to tow the applicants' car?

26. SPA section 133(1)(b) says a strata corporation may do what is reasonably necessary to remedy a contravention of its bylaws or rules, including removing objects from common property.
27. I find it clear that the applicants breached bylaw 7.4(3). As noted above, they allowed their car's insurance to lapse while it was on the strata's common property parking stall. There is no suggestion that the strata or FSBS ever provided the applicants permission to allow the insurance to lapse.
28. I find that under SPA section 133(1)(b), the strata could reasonably remove the car from the common property. This includes allowing its agent to call a tow truck company to remove the car. I say this in part because I find it obvious that an uninsured vehicle on common property would present a risk to the strata. I find this reasoning consistent with section 192 of the *Motor Vehicle Act* (MVA), which generally allows vehicles left on private property to be towed by the occupier at the vehicle owner's expense. I do not find the use of a tow truck to be particularly unusual, extraordinary, or beyond the bounds of what is objectively reasonable.
29. I acknowledge that the applicants were absent from the country at the time and dealing with a family emergency. However, I find this did not remove the applicants' responsibility for the car. I find the applicants, acting reasonably, should have taken steps to renew the insurance during their absence. I say this in part because the applicants were 1) absent for a considerable period of time, and 2) had considered the issue of storage insurance and obtained it before departing.
30. The applicants say that the strata failed to provide appropriate notice under SPA section 135. SPA section 135(1) says a strata corporation must not fine a person or require a person to pay the costs to remedy a bylaw contravention unless the strata has received a complaint and given the owner or tenant the written particulars and a reasonable opportunity to answer the complaint.

31. In the nonbinding decision of *Moulson v. The Owners, Strata Plan LMS 2243*, 2021 BCCRT 579, the CRT considered whether the strata should reimburse the applicant for a towing fee. The CRT held that the requirements of SPA section 135 did not apply. This was because the applicant voluntarily paid the towing fees directly to the towing company.
32. I agree with the reasoning in *Moulson*. Here, the strata did not fine the applicants or charge any fees for towing or storing the car. Instead, the applicants paid the towing fees directly to BT. I acknowledge that, from the perspective of the applicants, paying BT as opposed to the strata may appear to be a distinction without a difference. Ultimately, I find that under the wording of SPA section 135(1), the strata itself did not “require a person” to pay the cost of remedying the bylaw contravention. It was BT that required payment in order to release the car.
33. The applicants allege that the strata was negligent. To prove negligence, the applicants must show the following: (a) the strata owes a duty of care, (b) the strata failed to meet the standard of care, (c) it was reasonably foreseeable that the strata’s failure to meet that standard could cause the applicants’ damages, and (d) the failure caused the claimed damages.
34. I find the strata owed the applicants a duty of care for their car while it was on common property. However, given that the applicants parked their vehicle in breach of the bylaws, I find the strata did not breach the standard of care by having it towed.
35. The applicants also say there were some irregularities with the manner in which the strata calls annual general meetings (AGMs). They also say they wish to address the towing fees publicly at an AGM. I find these arguments irrelevant, particularly because the applicants did not ask for any remedies about AGMs.

Issue #3. Did the strata act in a significantly unfair manner?

36. The applicants also say that towing the car was significantly unfair, essentially because the strata did not contact them first before doing so. The CRT has jurisdiction

to determine claims of significant unfairness. See *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164 (*Watson*).

37. In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126 the court interpreted a significantly unfair action as one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, or done in bad faith. In *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342, the court confirmed that where a strata corporation exercises discretionary authority an owner's reasonable expectations can form part of the significant unfairness inquiry. I find the applicants' expectations are relevant here as the strata had some discretion in how to remedy the bylaw contravention, as discussed below.
38. In *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, the BC Court of Appeal established a reasonable expectations test, restated in *Watson* at paragraph 28 as follows:
- a. What is or was the expectation of the affected owner or tenant?
 - b. Was that expectation on the part of the owner or tenant objectively reasonable?
 - c. If so, was that expectation violated by an action that was significantly unfair?
39. I find the applicants expected the strata to contact them first before towing the car. I find this expectation was objectively reasonable given that they provided their contact information to FSBS.
40. That said, I find the strata did not act in a significantly unfair manner. The applicants' breach of the bylaws was wholly within their control. It was their responsibility to insure their car, and not the strata's. There is no indication the applicants took any steps to monitor their car or strata lot while they were away. BT placed a towing notice on the car and towed it 20 days later. I find this gave the applicants ample time to renew their insurance from the time it expired. I find this was the case, even if they did not see the towing notice, because the applicants should have turned their mind to renewing the insurance in any event.

41. For all those reasons, I find the strata did not act in a significantly unfair manner. I dismiss this claim.

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. I dismiss the applicants' claim for reimbursement of \$225 in CRT fees. The parties did not claim any specific dispute-related expenses.

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

ORDER

44. I dismiss the applicants' claims and this dispute.

David Jiang, Tribunal Member