



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Wang v. The Owners, Strata Plan LMS2211*, 2023 BCCRT 1104

B E T W E E N :

CHEN WANG and DA ZHANG

APPLICANTS

A N D :

The Owners, Strata Plan LMS2211

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Christopher C. Rivers

INTRODUCTION

1. This dispute is about a strata corporation's chargeback for damage to a common property door.
2. Chen Wang owns a strata lot in strata corporation The Owners, Strata Plan LMS2211. While visiting Mr. Wang, his guest, Da Zhang, tried to open the door out of the

amenities room. The door's upper glass window broke, requiring the strata to repair the damage. The strata issued a chargeback to Mr. Wang for \$1,799.39, which was the invoiced cost of the short-term and permanent repairs to the door.

3. The applicants say the strata did not display signs explaining how the door worked, failed to properly maintain the door, and charged too much for its repair. They say the strata should reconsider and withdraw the chargeback, which I find is a request for an order that the strata reverse the chargeback.
4. The strata says it applied the chargeback in accordance with its bylaws and the *Strata Property Act* (SPA) and that the repair costs were reasonable. The strata did not file a counterclaim for payment of the chargeback.
5. The applicants are self-represented. The strata is represented by the strata council president.

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.

ISSUE

10. The issue in this dispute is whether the strata must reverse the \$1,799.39 chargeback.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities, which 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 was created in November 1995 under the *Condominium Act*. It continues to exist under the SPA. It consists of two buildings. Building A is a 20-floor residential tower with a common property amenities room on the ground floor and 202 strata lots. Building B is not relevant to this dispute.
13. The strata filed a complete set of new bylaws with the Land Title Office on April 22, 2002. Since then, it has filed several amendments, none of which apply to this dispute.
14. On July 20, 2022, Mr. Zhang visited Mr. Wang. Mr. Wang let Mr. Zhang and his two children into the amenities room from the lobby hallway.
15. Security camera video shows the lobby hallway and the amenities room door's wall-mounted electronic fob reader. The door to the amenities room cannot be seen in the video, as it is just off screen, blocked by a protruding wall. One can clearly hear the

door opening and closing throughout the video. Photos show that to unlock and open the door from inside the amenities room, one must press a button mounted on the wall, immediately beside the door.

16. To gain access to the amenities room, Mr. Wang pressed a key fob to a fob reader on the wall. This unlocked the door's magnetic locks. Mr. Zhang and his children went inside.
17. Mr. Zhang's children left the room after around 30 seconds and the door closed. The children then tried to re-open the door. Mr. Wang let them back in using his key fob. They soon exited again. A few minutes later, the camera recorded a loud bang, and then Mr. Zhang came on screen from the amenities room door. Although I can not see it in the video, I find it clear this is when the glass broke.
18. Mr. Wang and the children gathered around Mr. Zhang, then everyone looked at the door area before walking down the hallway and out of screen. No one returned to the amenities room door.
19. The strata says, and I accept, that it received a complaint about the broken amenities room door from a 3rd party. The strata contacted Accurate Glass Ltd. to provide both temporary and permanent repairs. Accurate Glass charged \$379.50 plus GST for the temporary repair and \$1,334.20 plus GST for the permanent repair. This totals \$1,799.39.

Strata Property Act - Section 135

20. The strata depends upon section 133 of the SPA to charge back the invoice to Mr. Wang. Under that section, the strata may require a person to pay the cost of remedying a contravention of a bylaw. To do so, the strata must comply with the procedural requirements of section 135 of the SPA. This requires the strata to have received a complaint of the contravention, given the owner the particulars of the complaint, and given them a chance to respond.
21. So, I must determine whether (a) the applicants contravened a bylaw and (b) whether the strata complied with its' obligations under section 135 of the SPA.

Did the applicants contravene a bylaw?

22. On August 4, 2022, the strata sent Mr. Wang written notice of their intent to pursue a chargeback for the broken glass. The letter referenced bylaws 4.2, 4.3, and 4.4. I find bylaws 4.2 and 4.3 apply to these circumstances.
23. Bylaw 4.2 reads, in part, that a resident or visitor must not cause damage, other than reasonable wear and tear, to the common property of the strata. Bylaw 4.3 makes an owner responsible for damage caused by their visitors.
24. For the following reasons, I find Mr. Zhang contravened bylaw 4.2 and Mr. Wang is responsible under bylaw 4.3.
25. Mr. Zhang was undisputedly Mr. Wang's guest and a visitor to the strata. So, if Mr. Zhang caused damage, Mr. Wang was responsible for it under bylaw 4.3.
26. It is undisputed Mr. Zhang's attempt to open the amenities room door caused the glass to break. The applicants say that Mr. Zhang "just pulled the doorknob" and the glass shattered. The applicants do not say whether Mr. Zhang pushed the magnetic lock button before trying to open the door. They also make arguments that there was no sign directing attention to the button and that the door opens "very different from normal doors." Given those arguments, I find Mr. Zhang did not press the button before trying to open the door. This meant the locks remained engaged.
27. When a party fails to provide relevant evidence without sufficient explanation, an adjudicator is entitled to draw an adverse inference. An adverse inference is where an adjudicator assumes a party failed to provide relevant evidence because the missing evidence would not support their case. If Mr. Zhang pressed the button, I expect he would have said so in his submissions. Since he does not, I make an adverse inference that Mr. Zhang did not press the button before trying to open the door. This meant the magnetic locks remained engaged.
28. The applicants argue that the lower pane of glass did not break and that documents about safety glass show it can withstand "400 ft-lb impact tests." The applicants also

argue the sealant was old and no longer able to hold the glass properly. The strata says the style of glass may crack when a “strong twisting force” is applied.

29. However, I find all of these arguments about how glass would break in certain circumstances and the age of the sealant are matters outside of ordinary knowledge and so require expert evidence. See: *Bergen v. Guliker*, 2015 BCCA 283. Neither party provided expert evidence.
30. To the extent the applicants argue that the glass broke because of reasonable wear and tear, I disagree. I find Mr. Zhang’s attempt to open the door without disengaging the magnetic locks goes beyond reasonable wear and tear. When the glass broke, Mr. Zhang contravened bylaw 4.2, and Mr. Wang became responsible for the damage under bylaw 4.3.

Did the strata comply with its obligations under section 135 of the SPA?

31. On October 25, 2022, the strata sent Mr. Wang a further letter, enclosing the Accurate Glass invoice. The letter advised the strata would charge the invoice to Mr. Wang’s unit, pending his response under section 135 of the SPA.
32. As noted above, section 135 entitles Mr. Wang to respond to a complaint. Mr. Wang requested a hearing but did not attend. On November 28, 2022, the strata advised Mr. Wang it had added a chargeback for the invoice to his account. The parties then held another hearing, which Mr. Wang did attend. The strata upheld the chargeback.
33. Mr. Wang argues that the strata did not initially tell him the amount of the chargeback. I find he is arguing the strata did not meet its notice obligations regarding particulars under section 135 of the SPA. While the October 25, 2022 letter does not contain the chargeback amount in its body text, the invoice was enclosed. Even in the event the invoice was not attached, I find Mr. Wang had clear notice of the chargeback amount in the November 28, 2022 letter. He was also given a second opportunity to attend a hearing. He did and was able to present his position. So, I find the strata has complied with the notice requirements of section 135 of the SPA.

Did the strata meet its obligations in maintaining and repairing common property?

34. The applicants argue the strata did not maintain the door and the age of the glass sealant meant it could no longer hold the glass properly. They also argue that the glazier hired by the strata overcharged for the repairs.
35. Under SPA section 72 and bylaw 11, the strata must repair and maintain common property and common assets. The standard that a strata corporation must meet in performing that duty is reasonableness. Generally, a strata corporation may rely on professional contractors' advice in completing repairs and maintenance. See: *Wright v. The Owners, Strata Plan #205*, 1996 CanLII 2460 (BC SC), at paragraph 30.
36. The applicants did not provide evidence showing the strata failed to maintain the door properly. They cite a 2014 depreciation report to support an argument that the amenities room required work, as the report shows projected expenditures on the amenities room over \$26,000. However, the report does not say anything about the door specifically and the strata says these costs are in relation to a fire in the amenity room. So, I find the depreciation report does not prove the strata failed to maintain the door.
37. As for the applicant's submission the strata overcharged them, I find the strata acted reasonably by calling Accurate Glass to attend both on an emergency basis and for permanent repairs. The applicants have not argued Accurate Glass is not a professional contractor, so I find it is.
38. The applicants provided a variety of quotes from other contractors to replace a 22' by 30' pane of 6mm clear wire glass, all between \$400 and \$600. Accurate Glass charged \$1,334.20 for Protect3 brand fire-rated wire glass. None of the applicants' quotes specify if the glass quoted is fire-rated, and none comment on Accurate Glass's invoice. So, I find the applicants have not proven Accurate Glass's invoice was unreasonable or that the strata acted unreasonably.

39. There is no dispute the strata paid Accurate Glass's invoice, so I find the strata was entitled to charge back the expense to Mr. Wang under bylaw 4.3 and I dismiss the applicants' claim for the chargeback to be reversed.
40. 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 unsuccessful, I find they are not entitled to reimbursement of their paid CRT fees. The strata did not pay any fees and neither party claimed any dispute-related expenses.
41. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owner Mr. Wang.

ORDERS

42. I dismiss the applicants' claims, and this dispute.

Christopher C. Rivers, Tribunal Member