



# Civil Resolution Tribunal

Date Issued: December 18, 2023

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Zhang v. The Owners, Strata Plan EPS4634*, 2023 BCCRT 1109

BETWEEN:

FEI YING ZHANG

**APPLICANT**

AND:

The Owners, Strata Plan EPS4634

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. Fei Ying Zhang owns a strata lot in the strata corporation, The Owners, Strata Plan EPS4634 (strata). In June 2022, water leaked in Mrs. Zhang's strata lot. The strata hired contractors to respond. Eventually the contractors determined that the leak came from a wine cooler in the strata lot. The strata charged Mrs. Zhang \$2,575.52

for a contractor's invoice. Mrs. Zhang says she should not have to pay the chargeback for various reasons. Primarily, she says the strata's contractors did unnecessary work because they failed to realize the leak came from the wine cooler. Mrs. Zhang is represented by her property manager, Coloumb Wang.

2. The strata says I should dismiss the claim. It says its contractors followed industry standards and Mrs. Zhang is required to pay the chargeback. A council member represents the strata.
3. As I explain below, I find Mrs. Zhang is required to pay the chargeback, and I dismiss her claim.

## **JURISDICTION AND PROCEDURE**

4. 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 parties that will likely continue after the CRT process has ended.
5. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, 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.
6. 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**

7. The issues in this dispute are:
  - a. Did the strata's bylaws authorize the strata to impose the chargeback?

- b. Is there any valid reason Mrs. Zhang should not have to pay some or all of the \$2,575.52 chargeback?

## **EVIDENCE AND ANALYSIS**

8. As the applicant in this civil proceeding, Mrs. Zhang 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.
9. The strata was created in 2018 and includes 164 strata lots. Mrs. Zhang purchased strata lot 162 (unit 2105) in May 2022.
10. The facts are largely undisputed. Mrs. Zhang was not living in unit 2105 on June 4, 2022, when her property manager, Coloumb Wang, discovered water pooling on the living room floor. Mr. Wang mopped up the water, but a small amount of water continued to seep out from the kitchen island toward the living room. Mr. Wang informed Mrs. Zhang about the leak and called the strata emergency line. The strata manager called Elafon Mechanical Ltd. Elafon sent a plumber the same day.
11. Elafon's invoice includes June 4, 2022 notes from "AE". The parties refer to AE as a plumber, which I accept. AE said that when they arrived at unit 2105, there was water pooling on the living room side of the kitchen island. They checked the kitchen sink, cabinet, and dishwasher. They thought the leak might have come from heating or cooling pipes under the floor, so they turned the water off.
12. Based on AE's findings, the strata manager contacted Avenue Restoration Services Ltd. That evening, Avenue set up drying equipment in unit 2105 with Mrs. Zhang and Mr. Wang present. According to Avenue's invoice, its technicians checked for moisture, established the affected areas, and set up drying equipment. Avenue was to return June 7 to monitor the drying progress. Avenue's report said it was possible that strata lots below unit 2105 were affected.

13. On June 8, a different Elafon employee, BB, visited unit 2105. According to BB's notes, everything was dry, so they turned on the water to see if any leaks returned. There was no leak, but using a thermal imaging camera and moisture meter, BB traced the water back to the kitchen island and eventually the wine cooler. BB's notes said the cooler door had been left open and the unit had iced up. Once the electricity was turned off, the ice melted, and water flowed to the living room. Some of this appears to be inference or opinion without explanation, but I find nothing turns on this. Mrs. Zhang does not dispute that the electricity in unit 2105 was shut off when the previous owner's BC Hydro account closed, and she agrees that the leak came from the wine cooler. Her issue is with the strata contractor's process to trace and remediate the leak, which I return to below.
14. On June 8, Avenue's technicians removed the drying equipment. Later, Avenue invoiced the strata \$2,575.52, which the strata charged back to Mrs. Zhang. Elafon's invoice does not indicate a charge, and there is no evidence the strata imposed a chargeback on Mrs. Zhang for Elafon's work.
15. Bylaw 1.2 requires owners to repair and maintain their strata lots. Section 72 of the *Strata Property Act* (SPA) and bylaw 2.2 require the strata to repair and maintain common property and the building's structure, such as floor joists and wall framing. In *The Owners, Strata Plan NW1990 v. Au*, 2021 BCCRT 1303, I found that this duty required the strata corporation to investigate the source of a leak and mitigate damage where there was potential for the leak to affect the building's structure. Here, I similarly find the strata's duty was engaged once it was made aware of the leak, because the leak's source and extent were both unknown.
16. Was the strata entitled to charge the emergency response costs to Mrs. Zhang? It is well established that strata corporation must have a legal basis for a debt before charging it back to an owner (see, for example, *Ho v. The Owners, Strata Plan LMS 1178*, 2018 BCCRT 245). Mrs. Zhang does not dispute the strata's authority to impose the chargeback, which is found in bylaw 4.4. Specifically, bylaw 4.4(2)(b) says an owner is responsible for any "loss or damage" to the common property or any strata lot where the cause originated in the owner's strata lot. Bylaw 4.4(1) says if an

owner is responsible for loss or damage, the owner must indemnify the strata from the expense of any necessary “maintenance, repair or replacement” work on a strata lot or common property, to the extent that the expense is not covered by the strata’s insurance. Bylaw 4.4(4) says any uninsured repair costs charged to an owner will become payable with their next monthly assessment payment. Based on these bylaws, it is not necessary for the strata to show that Mrs. Zhang was negligent or did anything to cause the leak. It is enough that the leak originated in her strata lot for the strata to be able to charge back the related expenses, so long as they fall under “maintenance, repair or replacement”.

17. I find that the work described in Avenue’s invoice, which included checking the extent of moisture, installing and removing drying equipment, and extracting water from the floor, was repair and maintenance of unit 2105 and falls under bylaw 4.4. This is consistent with the reasoning in *The Owners, Strata Plan LMS 3824 v. Kulak*, 2020 BCCRT 427. There, under similar bylaws, the CRT allowed the strata corporation to charge back the cost of things like removing baseboards and applying anti-mildew treatment as repair and maintenance expenses, but did not allow leak investigation expenses. Here, I find Avenue’s invoice was not for investigation work. Elafon did the investigation work to identify the leak’s source. As noted, the strata did not impose a chargeback on Mrs. Zhang for Elafon’s work. I find the strata’s bylaws authorized the chargeback for Avenue’s invoice.
18. Is there any reason Mrs. Zhang should not have to pay the chargeback? Mrs. Zhang argues that Elafon was unprofessional and originally reached a misleading conclusion about the leak’s source. In essence, she argues that Elafon was negligent in failing to immediately identify the wine cooler as the leak’s source. She says this meant unnecessary expenses were incurred because Avenue and the strata believed the leak was more significant than it was.
19. Although she does not explicitly say so, I find Mrs. Zhang argues that the strata breached a duty to act reasonably when responding to the water leak. Strata corporations have a general duty to act in the owners’ best interests (see SPA section 3). I find this general duty extends to a duty to act reasonably when selecting

contractors, authorizing their work, and reviewing their invoices, because the strata is spending the owners' money. Here, the strata was aware that Mrs. Zhang might be liable for the contractor's invoice under its chargeback bylaw. Owners like Mrs. Zhang who are subject to chargeback bylaws are in a precarious position. They do not select the contractor, so they have no opportunity to shop around or negotiate better prices. And because they are not a party to the contract, they generally have no right to direct the contractor's work or challenge invoices. For these reasons, I find the strata, knowing that Mrs. Zhang could be liable under its bylaws, had an obligation to act reasonably in selecting contractors, authorizing their work, and reviewing their invoices.

20. For the following reasons, I find that the strata acted reasonably. First, the leak was active when Mr. Wang called the strata's emergency line. Water continued to seep out from under the kitchen island after Mr. Wang mopped up. Given the active leak, it was appropriate for the strata to call a plumber to confirm the leak's source. Second, Elaфон initially believed the leak's most likely source was the heating and cooling pipes under the floor, with potential to damage floor joists and strata lots below. This informed the strata manager's decision to retain Avenue to minimize the leak's spread using drying equipment. I find this was a reasonable course of action in the circumstances.
21. Mrs. Zhang says she and Mr. Wang asked AE if the leak could have come from the wine cooler and AE strongly disagreed. She says if AE had correctly identified the wine cooler as the leak's source, the strata would not have had to call Avenue and incur drying expenses. I disagree. The water on the living room floor had been pooling for an unknown period before Mr. Wang discovered it. There was moisture in the floor. On that basis, extracting the water and drying the floor was a reasonable, if not necessary, step to take.
22. Even if Avenue's work only happened as a result of Elaфон's error, that does not make the strata responsible. The strata is not an insurer and is entitled to rely on its contractors' advice. A strata corporation is also generally not liable for a contractor's negligence if the strata corporation acted reasonably (see *Slosar v. The Owners*,

*Strata Plan KAS 2846*, 2021 BCSC 1174). Although Mrs. Zhang calls Elaфон and Avenue unprofessional, there is no evidence that the plumbers and technicians who attended were not qualified to do the work. I find the strata acted reasonably in hiring Elaфон and Avenue to investigate the leak and dry unit 2105.

23. Mrs. Zhang argues that Elaфон's plumber's error in thinking the leak came from heating and cooling pipes misled her into believing that the strata would pay for the repairs. She says nobody advised her about the estimated cost at any point in time, which I accept. Mrs. Zhang says that once it became apparent that the leak came from the wine cooler, Avenue's invoice for the work became a private issue between Mrs. Zhang and Avenue. She says the strata therefore should not have paid Avenue's invoice, depriving her of the right to negotiate a price reduction. I disagree. The strata hired Avenue and had to pay Avenue's reasonable invoice under the terms of its contract. It was not an option for the strata to decline to pay Avenue's invoice and tell Avenue to negotiate payment with Mrs. Zhang.
24. As for Avenue's invoice, I find nothing glaring that should have caused the strata to make further inquiries before paying the invoice. Mrs. Zhang does not allege that Avenue misstated its workers' hours or the equipment involved. There is no evidence that the rates are not industry standard rates. I find the strata acted reasonably by paying the invoice. This does not mean that a strata corporation will always act reasonably by paying a contractor's invoice without question knowing the cost will be charged back to an owner. Strata corporations must reasonably oversee contractors' work and review their invoices regardless of its right to charge back the expense.
25. In summary, I find the strata had authority for the emergency repair chargeback. Mrs. Zhang has not proven that the strata acted unreasonably in hiring, directing, or paying Elaфон and Avenue. So, I find Mrs. Zhang is responsible for the \$2,575.52 chargeback, and I dismiss her claim.

## **CRT FEES AND EXPENSES**

26. Based on the CRTA and the CRT's rules, as Mrs. Zhang was unsuccessful I find she is not entitled to any reimbursement. The strata did not pay CRT fees.
27. The strata claims \$100 for 2.5 hours of its council member's time spent on this dispute as well as telephone access and internet costs. CRT rule 9.5(5) says that the CRT will not order compensation for time spent on a dispute except in extraordinary circumstances. I acknowledge that being involved in a CRT dispute can be time consuming, but I find there are no extraordinary circumstances here that would justify departing from the general rule. As for the telephone and internet costs, the strata provided no separate accounting or documentation of these expenses. I dismiss this claim.
28. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Mrs. Zhang.

## **ORDER**

29. I dismiss Mrs. Zhang's claims, the strata's claim for dispute-related expenses, and this dispute.

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Micah Carmody, Tribunal Member