



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Simpson v. The Owners, Strata Plan BCS 3591*, 2024 BCCRT 314

B E T W E E N :

JESSICA SIMPSON

APPLICANT

A N D :

The Owners, Strata Plan BCS 3591

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr, Vice Chair

INTRODUCTION

1. Jessica Simpson owns a strata lot in the strata corporation, The Owners, Strata Plan BCS 3591. She alleges that the strata failed to maintain its fire alarm system, leaving her without a functioning in-unit alarm for over 2.5 years. The alarm was not working when she started this Civil Resolution Tribunal (CRT) dispute, but it is now. She initially asked for an order that the strata fix the alarm in her strata lot, although this

order is no longer necessary. She also asks for \$5,000 in compensation for the increased risk to her safety. She is self-represented.

2. The strata denies that there was anything wrong with the alarm system or that it acted unreasonably. It asks me to dismiss Ms. Simpson's claims. It also wants her to reimburse its legal costs. A council member represents the strata.

JURISDICTION AND PROCEDURE

3. These are the CRT's formal written reasons. 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 dispute parties that will likely continue after the CRT's process has ended.
4. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I have considered the potential benefits of an oral hearing. Here, I am properly able to assess and weigh the documentary evidence and submissions before me. So, the CRT's mandate to provide proportional and speedy dispute resolution outweighs any potential benefit of an oral hearing. I find that an oral hearing is not necessary in the interests of justice. I therefore decided to hear this dispute through written submissions.
5. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.

ISSUES

6. The issues in this dispute are:
 - a. Is Ms. Simpson entitled to compensation for an increased risk to her safety?
 - b. Is the strata entitled to reimbursement of its legal fees?

BACKGROUND AND EVIDENCE

7. In a civil claim such as this, Ms. Simpson as the applicant must prove her claims on a balance of probabilities. This means more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
8. The strata consists of 112 residential strata lots in a four-storey building.
9. The parties do not dispute most of the facts. Ms. Simpson first asked the strata for a strobe-and-horn unit in August 2020. She said she could not hear the standard fire alarm because she has a hearing impairment.
10. In October 2020, the strata installed a new alarm, but it did not work. The strata replaced it in December 2020. The new one did not work either.
11. Then, nothing happened for two years. During this time, the strata says it assumed the alarm worked for two reasons. First, it passed annual fire inspections. Second, Ms. Simpson did not say anything about it even though she and the strata were corresponding regularly about other ongoing issues. In any event, it later became clear that the alarm was not working properly.
12. Ms. Simpson started this CRT dispute in December 2022. In May 2023, Ms. Simpson contacted a fire protection company. In June, the company sent two electricians to inspect the alarm. They concluded that the fire alarm system's circuit setting was incompatible with a strobe alarm. In September, the strata hired the fire protection company to make the necessary changes to the circuitry. In October, Ms. Simpson confirmed that the alarm was working properly.

ANALYSIS

Ms. Simpson's Claimed Remedies

13. As noted above, Ms. Simpson asks for two orders. The first is for the strata to fix the alarm. Since the alarm has been fixed, this claim is moot. Ms. Simpson does not suggest otherwise in her submissions. I dismiss it on that basis.
14. The second is for \$5,000 in compensation. She says the lack of a functioning alarm in her strata lot for 2.5 years created an unacceptable risk. She says the strata breached both a fiduciary duty and statutory duty by failing to provide her with a functioning alarm in a timely manner.
15. I will first address the fiduciary duty claim. In short, I find that the strata did not owe Ms. Simpson a fiduciary duty as she alleges. In general, a person owes another person a fiduciary duty when they have agreed to act in that person's best interests above their own best interests. No court case or *Strata Property Act* (SPA) provision says that a strata corporation owes its owners a fiduciary duty. Instead, SPA section 31 sets out a duty that strata council members must act honestly and in good faith with a view to the best interests of the strata. This is essentially a fiduciary duty. However, numerous BC Supreme Court decisions have confirmed that council members owe this duty to the strata, and not to individual owners. This means Ms. Simpson cannot claim against the strata or any council member for breaching section 31.¹
16. The strata does have a statutory duty that may apply to this situation. SPA section 72 requires the strata to repair and maintain common property and common assets. There are many court and CRT cases that confirm the standard the strata must meet in fulfilling this obligation is reasonableness. In effect, to prove that a strata corporation has breached section 72, an owner must prove that the strata was negligent. If an owner can prove this, they may be entitled to compensation to remedy the strata's negligence.²

¹ See, for example, *The Owners, Strata Plan LMS 3259 v. Sze Hang Holdings Inc.*, 2016 BCSC 32, at paragraph 267.

² See *John Campbell Law Corp. v. Owners, Strata Plan 1350*, 2001 BCSC 1342.

17. The strata has never admitted it is responsible for the alarm under SPA section 72. In early 2023, the strata's lawyer described the strata's decision to repair the alarm as a "gesture of good faith". Whether the strata is responsible depends on whether the in-unit alarm is common property or a common asset under SPA section 1. For the purposes of this dispute, I do not need to decide who was legally responsible for the fire alarm. I also do not need to decide whether the strata was negligent.
18. This because even if I assume that the strata was responsible for the in-unit fire alarm and even if its failure to repair it was negligent, Ms. Simpson still would not be entitled to compensation because her claim is for an increased risk of injury. I acknowledge Ms. Simpson's argument that fire alarms are essential safety features and that she would have been in grave danger if there had been a fire. This may be true, but the law is clear that a person is not entitled to compensation for an increased risk of something bad happening if that risk never materializes. The law only compensates for actual harm, not hypothetical or possible harm.³
19. Luckily, there was no fire in the building during the time the fire alarm did not work. This means Ms. Simpson has suffered no compensable loss because there was no harm done. For this reason alone, I dismiss her compensation claim.

TRIBUNAL FEES AND EXPENSES

20. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Ms. Simpson was unsuccessful, so I dismiss her claim for CRT fees. She did not claim dispute-related expenses.
21. The strata asks for an order that Ms. Simpson reimburse its legal fees. I note that the strata did not initially claim any dispute-related expenses in its Dispute Response. The strata says this was an oversight. The CRT asked for submissions about amending the Dispute Response to include a claim for legal fees. I will not address those submissions because my conclusion, explained below, is that the strata is not

³ See *1688782 Ontario Inc. v. Maple Leaf Foods Inc.*, 2020 SCC 35, at paragraph 44.

entitled to reimbursement for its legal fees. So, there is no prejudice to Ms. Simpson in allowing the claim to proceed.

22. CRT rule 9.5(3) says that the CRT will only order reimbursement of legal fees in strata property claims in extraordinary circumstances. The strata acknowledges this, but says Ms. Simpson's conduct during the CRT's process was high-handed and improper, which makes this dispute extraordinary. In response, Ms. Simpson emphasizes the CRT's mandate to promote access to justice, which would be undermined by making her pay the strata's legal fees.
23. The strata does not say what Ms. Simpson did during the CRT process that was high-handed or improper. There is nothing in the evidence before me to suggest any such conduct. Instead, the strata relies on CRT rule 9.5(4)(d), which grants the CRT broad discretion to consider any factor it considers appropriate when deciding whether to order reimbursement of legal fees. The CRT has applied the law of special costs when considering whether a party's conduct justifies reimbursing the other party's legal fees. The court awards special costs when a person's litigation conduct is reprehensible.⁴
24. The strata relies on Ms. Simpson's litigation history. The strata says that Ms. Simpson started seven CRT disputes against the strata between December 8, 2022, when she started this dispute, and March 21, 2023. She ultimately withdrew five of them. The seventh is ongoing.
25. Ms. Simpson has also brought two other CRT disputes against the strata that resulted in adjudicated decisions.⁵ She achieved very limited success in one, and no success in the other. The strata points out that Ms. Simpson has brought other legal claims against several people other than the strata over the years, arguing that she persistently brings legal claims for any "perceived slights". In a defamation case she brought against Rebel News, the court described her as a "prolific litigant".⁶ However,

⁴ See *Garcia v. Crestbrook Forest Industries Ltd. No. 2*, 1994 CanLII 2570 (BC CA).

⁵ *Simpson v. The Owners, Strata Plan BCS 3591*, 2022 BCCRT 317, and *Simpson v. The Owners, Strata Plan BCS 3591*, 2022 BCCRT 661

⁶ *Simpson v. Rebel News Network Ltd.*, 2022 BCSC 1160.

I do not consider Ms. Simpson's non-strata litigation history relevant to the strata's claim for legal fees. I note that in her case against Rebel News, which she lost, the court made no costs award. Her litigation history appears to have played no role in the court's decision on costs.

26. That said, I generally agree with the strata that repeatedly bringing frivolous or pointless litigation against the same party may demonstrate a pattern of reprehensible behaviour even if the person's conduct during the CRT's process was not itself reprehensible.⁷ However, bringing a claim that lacks merit is not, on its own, reprehensible unless it was obviously doomed to fail.⁸
27. Here, I am not convinced that Ms. Simpson's past CRT disputes against the strata show a pattern of vexatious or reprehensible behaviour. First, I do not know why Ms. Simpson withdrew five of her CRT disputes. Neither party explained what happened. On its own, starting and withdrawing a claim is not strong evidence of vexatious conduct.
28. As for the two past decisions, I recognize that some of the claims related to relatively minor issues. I agree with the strata that Ms. Simpson appears quick to start legal proceedings and that some of the issues she raised likely did not justify CRT involvement. Still, the claims were about strata issues, and on balance, I do not consider them frivolous. I also acknowledge that Ms. Simpson was mostly unsuccessful. However, the CRT should be slow to draw conclusions about a self-represented party's intentions just because they bring a claim that lacks merit.
29. Even if the two previous decisions were so clearly unmeritorious that they showed a pattern of frivolous or vexatious conduct, I would not conclude that this dispute is a continuation of that pattern. When Ms. Simpson started this dispute, there was a clear issue with her fire alarm. The strata's correspondence with her about who was responsible for fixing it had been inconsistent, and it was not clearly unreasonable for Ms. Simpson to expect the strata to fix it. The strata ultimately did fix the problem,

⁷ See *Young v. Borzoni et al*, 2007 BCCA 16.

⁸ See *XY, LLC v. Canadian Topires Selection Inc.*, 2015 BCSC 1616.

which may or may not have happened without Ms. Simpson starting this dispute. So, I find that Ms. Simpson's claim that the strata fix the fire alarm had at least some merit when she started this dispute.

30. The strata points out that the repair claim was clearly moot by the time the CRT's adjudication process started but Ms. Simpson proceeded anyway. That is true, but her submissions were not about getting the alarm fixed. She did not formally withdraw the claim, but implicitly she accepted that there was no need for a repair order. Instead, she argued that the delay was negligent. That was relevant to her compensation claim. I explained above that the law prevents compensation for a risk of harm, but this is not something a self-represented litigant should be punished for not knowing. I accept that Ms. Simpson brought the claim in good faith.
31. The strata's other main argument is that Ms. Simpson's litigation history suggests that she is motivated by financial gain. However, most civil legal proceedings are ultimately about money. There is nothing unusual about Ms. Simpson's claim in this regard. Also, when she started this dispute, a non-monetary order that the strata fix the alarm was a central claim. I am aware that the BC Human Rights Tribunal has criticized Ms. Simpson's conduct of certain human rights claims as "extortionate", but that was a very different context.⁹ I do not see evidence of similar conduct here.
32. I acknowledge that the strata council member who represented the strata has had to spend considerable time dealing with Ms. Simpson's various CRT disputes. I am sure this was stressful and time-consuming. I also acknowledge that the other owners have paid considerable legal fees to defend claims that were either abandoned or dismissed. Still, I am not convinced that this is an extraordinary circumstance that justifies departing from the usual rule that one party will not have to pay another party's legal fees.
33. With all that said, my reasoning is not binding on any other tribunal member. This means if another tribunal member adjudicates a dispute between Ms. Simpson and

⁹ *Yaniv v. Various Waxing Salons (No. 2)*, 2019 BCHRT 222.

the strata, they may draw different conclusions from Ms. Simpson's litigation history and order Ms. Simpson to reimburse the strata's legal fees in that dispute.

34. The strata must comply with the provisions in section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Simpson.

DECISION AND ORDERS

35. I dismiss Ms. Simpson's claims, the strata's claim for reimbursement of its legal fees, and this dispute.

Eric Regehr, Vice Chair