



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan BCS2427 v. Barliga*, 2024 BCCRT 340

B E T W E E N :

The Owners, Strata Plan BCS2427

APPLICANT

A N D :

ROZALIA BARLIGA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This dispute is about a chargeback for water damage repair costs, and associated legal and administrative expenses.
2. Rozalia Barliga owns a strata lot in the strata corporation, The Owners, Strata Plan BCS2427 (strata). The strata says Ms. Barliga failed to pay a \$9,612.40 chargeback

to her strata lot account. The chargeback was for expenses the strata incurred to repair water damage to another strata lot caused by a leak originating in Ms. Barliga's strata lot. The strata claims \$9,612.40 for the chargeback, as well as \$52.50 for a demand letter and \$1,543.20 for legal expenses it incurred before starting this dispute (pre-Civil Resolution Tribunal (CRT) expenses). The strata also claims \$5,706.83 for legal and administrative expenses related to this dispute (CRT expenses).

3. Ms. Barliga admits she owes \$9,612.40 for the chargeback. In an earlier decision, *Barliga v. The Owners, Strata Plan BCS 2427*, 2022 BCCRT 1166 (*Barliga 2022*), the CRT member dismissed Ms. Barliga's claim to have the chargeback reversed. However, Ms. Barliga says if the strata had counterclaimed for the chargeback in *Barliga 2022*, the CRT would have ordered her to pay it. She argues this would have negated the need for the strata to start this new, separate dispute, and incur unreasonable legal expenses. So, Ms. Barliga asks me to dismiss the strata's claims for all legal and administrative expenses.
4. A strata council member represents the strata. Ms. Barliga is self-represented.

JURISDICTION AND PROCEDURE

5. 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)*. 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 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. Here, I find I am properly able to assess and weigh the documentary evidence and submissions before me, without an oral hearing.

7. CRTA section 42 says the CRT may accept as evidence information it considers relevant, necessary, and appropriate, even where the information would not be admissible in court.
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.

ISSUES

9. The issues in this dispute are:
 - a. Must Ms. Barliga pay \$9,612.40 for the chargeback?
 - b. Must Ms. Barliga pay the claimed pre-CRT expenses?
 - c. Must Ms. Barliga pay the claimed CRT expenses?

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, the strata must prove its claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence but refer only to information I find necessary to explain my decision.
11. The strata was created in 2007 under the *Strata Property Act* (SPA). In April 2009, the strata repealed and replaced its bylaws. There have been several bylaw amendments since then, which I address as necessary below.

Background and liability for the chargeback

12. In July 2021, water from Ms. Barliga's bathtub overflowed and leaked into another strata lot, causing damage. The strata charged back the water damage repair expenses to Ms. Barliga's strata lot account. Ms. Barliga disputed the chargeback in *Barliga 2022*. The CRT member dismissed her claim on the basis that the strata was entitled to charge back the repair expenses under its bylaws.

13. The strata did not counterclaim for the chargeback's payment. Ms. Barliga has undisputedly still not paid the chargeback, so the strata claims \$9,612.40. Based on the CRT member's decision in *Barliga 2022* and the fact that Ms. Barliga admits she owes this amount, I find Ms. Barliga must pay the strata \$9,612.40 for the chargeback. I order her to do so.

Claim for pre-CRT expenses

14. The strata claims \$1,543.20 for legal expenses and \$52.50 for a demand letter it incurred trying to collect the chargeback before starting this dispute. Ms. Barliga says the strata had the opportunity to counterclaim for the chargeback's payment and any dispute-related expenses in *Barliga 2022* but did not take it. So, she says any issues involving the chargeback are barred by *res judicata*.

15. There are 2 types of *res judicata*: issue estoppel and cause of action estoppel. I find cause of action estoppel is relevant here. Cause of action estoppel prevents parties from pursuing matters that were or should have been raised in a previous proceeding (see *Erschbamer v. Wallster*, 2013 BCCA 76, at paragraph 12).

16. The test for cause of action estoppel has 4 parts:

- a. A court (or tribunal) of competent jurisdiction made a final decision.
- b. The parties in the 2 legal proceedings are the same.
- c. The cause of action in the prior proceeding is not separate and distinct.
- d. The basis for the cause of action was argued in the prior proceeding or could have been if the parties had exercised reasonable diligence (see *Cliffs Over Maple Bay (Re)*, 2011 BCCA 180, at paragraph 28).

17. In *Barliga 2022*, the CRT made a final decision, and the cause of action in the prior dispute is not separate and distinct from the cause of action in this dispute. The parties are largely the same, except the strata has not named the second applicant in *Barliga 2022* here.

18. However, I find the basis for the cause of action in this dispute was not and could not have been argued in *Barliga 2022*, for the most part. This is because the issue in that dispute was whether the strata must reverse the chargeback. The CRT member found the strata was not obliged to do so, and neither party disputes that here. Instead, the main issue is whether the strata is entitled to legal and other expenses it incurred trying to collect the chargeback. The evidence shows the \$52.50 for the demand letter dates from January 2022 (before *Barliga 2022*), and the \$1,543.20 for legal expenses post-dates *Barliga 2022* and pre-dates this dispute. So, the strata could not have claimed the \$1,543.20 in *Barliga 2022*, and I find it is not barred by *res judicata*. I dismiss the strata's claim for \$52.50 for the January 2022 demand letter because it should have claimed this as a dispute-related expense in *Barliga 2022*.

19. It is undisputed the strata is entitled to the \$9,612.40 under bylaw 4(1), which requires a responsible owner to indemnify the strata for expenses to repair another strata lot to the extent the damage is not covered by the strata's insurance. The strata says under bylaw 33(3), Ms. Barliga must also pay \$1,543.20 for its legal expenses to enforce compliance with bylaw 4(1). Bylaw 33(3) says:

Where any act or omission by an owner, tenant or occupant or his or her employee, agent or visitor **violates the Bylaws** resulting in the strata corporation being required to expend any sum of money, the owner shall be required to pay forthwith upon demand any expenditure, including and not limiting the generality of the foregoing, any and all costs of legal proceedings whether initiated pursuant to Division 10 of the Act or otherwise, including costs as between solicitor and client on a full indemnity basis. (my bold emphasis)

20. I find Ms. Barliga violated bylaw 4(1) by not paying the \$9,612.40 chargeback, despite repeated demands to do so. So, I find bylaw 33(3) authorizes the strata to recover the legal expenses it incurred trying to enforce compliance with bylaw 4(1).

21. Ms. Barliga says even if the strata's bylaws authorize recovery of these legal expenses, the strata did not follow SPA section 135 to try and collect them. Section 135 sets out procedural requirements that must be met before demanding a person

repay the strata's costs of remedying a bylaw contravention, which can include legal expenses (see *The Owners, Strata Plan KAS 2428 v. Baettig*, 2017 BCCA 377, *The Owners, Strata Plan VIS 1437 v. Abolins*, 2018 BCSC 2422, and *The Owners, Strata Plan NWS3075 v. Stevens*, 2018 BCSC 1784).

22. The strata says section 135 does not apply because it was not trying to recover legal expenses under SPA section 133. Section 133(2) allows a strata corporation to require a person responsible for a contravention of its bylaws or rules to pay "reasonable costs" of remedying the contravention once it has complied with section 135. The strata says instead, it was claiming these expenses based on extraordinary circumstances created by the existence of its bylaw.
23. So, is the strata entitled to \$1,543.20 for legal expenses under bylaw 33(3) without complying with section 135, as it would have to do if it were claiming those expenses under section 133(2)? For the following reasons, I find it is not.
24. In enacting bylaw 33(3), the strata deliberately sought to place the burden of expenses arising from bylaw contraventions, including legal expenses, on the responsible owner. The strata has not referred to, and I am not aware of, any legal precedents that say a strata corporation does not have to comply with section 135 where it seeks to recover legal expenses as a cost of remedying a contravention under a bylaw, rather than under section 133(2). And, there is nothing in the SPA that limits the applicability of the section 135 procedural requirements to those reasonable costs of remedying a bylaw contravention pursued under section 133(2). Given this, I find to the extent bylaw 33(3) purports to bypass the section 135 procedural requirements, it risks being unenforceable for contravening the SPA, under section 121(1)(a). So, I find the strata must comply with the section 135 requirements for bylaw 33(3) to be enforceable. To be clear, I make this finding because bylaw 33(3) is explicitly about expenses incurred due to bylaw breaches. This is what makes it subject to the bylaw enforcement scheme requirements of section 135.
25. So, I find section 135 applies to any reasonable costs of remedying a bylaw contravention, whether they are recoverable under bylaw 33(3) or under section

133(2). The CRT has previously ordered reimbursement of legal expenses where recovery of those expenses was specifically authorized under a strata corporation's bylaws (see, for example, *The Owners, Strata Plan VR 293 v. Bains*, 2019 BCCRT 504, *The Owners, Strata Plan KAS 1201 v. Neilson*, 2021 BCCRT 667, and *The Owners, Strata Plan BCS2438 v. Graham*, 2022 BCCRT 904). But, none of these non-binding decisions directly address section 135's applicability where a strata corporation's bylaws authorize recovery of legal expenses incurred to remedy a bylaw contravention.

26. Here, I find the strata failed to comply with section 135. Although it undisputedly received a complaint about Ms. Barliga's contravention of bylaw 4(1) and sent her particulars in a November 28, 2022 letter from its legal counsel, that letter did not allow Ms. Barliga a chance to respond, including by hearing. The section 135 procedural requirements are strict, with no leeway (see *The Owners, Strata Plan NW 307 v. Desaulniers*, 2019 BCCA 343). So, I find the strata is not entitled to \$1,543.20 for legal expenses under bylaw 33(3) or SPA section 133(2).

27. In May 2023 after starting this dispute, the strata wrote tried to recover the expenses from Ms. Barliga under a different bylaw, bylaw 1(6). While the strata offered Ms. Barliga the chance to request a hearing, it did not make a written decision as section 135(2) requires, presumably as it was waiting for the decision in this dispute. So, I find the strata is not entitled to the claimed \$1,543.20 under bylaw 1(6) either. In any case, the strata did not rely on bylaw 1(6) in this dispute.

28. Based on the above, I dismiss the strata's claim for \$1,543.20 for pre-CRT legal expenses.

Claim for CRT expenses

29. Next, the strata claims \$5,706.83 for legal and administrative expenses related to this dispute. I note that in submissions, the strata specifies \$4,289.78 for legal expenses incurred after starting this dispute and \$2,625.00 for "additional strata management fees", which total \$6,914.78. The strata does not explain the discrepancy, but it does not matter given my conclusions below.

30. First, the legal expenses. CRT rule 9.5(3) says the CRT will not order one party to pay another party fees a lawyer charged in the tribunal dispute process, except in extraordinary circumstances. Rule 9.5(4) says in making this determination, the CRT may consider:
- a. The complexity of the dispute.
 - b. The degree of involvement by the representative.
 - c. Whether a party or representative's conduct has caused unnecessary delay or expense.
 - d. Any other factors the CRT considers appropriate.
31. In some disputes, CRT members have found the existence of a bylaw permitting reimbursement of legal expenses may constitute an "extraordinary circumstance" for the purpose of rule 9.5(3) (see, for example, *Graham*, at paragraph 71, and *The Owners, Strata Plan LMS 2269 v. Tilley*, 2022 BCCRT 318, at paragraph 27). In others, CRT members have found that even where there was a bylaw allowing the strata to recover legal expenses for contraventions, the dispute was not so complex as to give rise to "extraordinary circumstances" (see, for example, *Hallman v. The Owners, Strata Plan KAS 1821*, 2022 BCCRT 1036, at paragraph 76, and *Section 2 of The Owners, Strata Plan BCS 4327*, and *The Owners, Strata Plan 4327*, 2023 BCCRT 903, at paragraph 40).
32. In *Hallman*, the CRT member put considerable weight on the CRT's mandate in CRTA section 2(2) to provide dispute resolution services in a manner that is accessible, speedy, economical, informal, and flexible, and CRTA section 20. That section says that unless otherwise provided in the CRTA, the parties in a CRT dispute are to represent themselves. This was noted in *Stevens* at paragraph 91, where the court also said the CRT is meant "to offer simple and inexpensive access to dispute resolutions and the adjudication of legal disputes."
33. Here, I find despite the existence of bylaw 33(3), this dispute did not present "extraordinary circumstances" under CRT rule 9.5(3), for 4 reasons. First, the dispute

was not particularly complex, and the strata was not represented by legal counsel. Second, the parties' submissions were relatively short, and there was not a significant amount of evidence. The strata's legal invoices and letter from counsel describing their work did not suggest an especially high degree of involvement. Third, there is no evidence Ms. Barliga's conduct during this dispute caused unnecessary delay or expense. Fourth, I find that had the strata opted to counterclaim in *Barliga 2022*, it would have avoided the expense of this proceeding. For these reasons, bearing in mind the CRT's mandate, and taking account of bylaw 33(3) as a factor, I dismiss the strata's claim for CRT legal expenses.

34. Next, the \$2,625.00 for strata management fees. CRT rule 9.5(2)(c) says the CRT can order reimbursement of reasonable expenses and charges it considers directly relate to the conduct of its process. The strata's fee amendment agreement with its strata management company sets out a \$100 hourly rate for litigation support, including CRT disputes. A May 9, 2023 invoice in evidence shows a charge of \$2,500 plus tax for 25 hours of support. However, the invoice specifies 15 of those hours were for *Barliga 2022*, so I find the strata is not entitled to reimbursement for them. That leaves \$1,000 plus tax for the 10 hours the invoice shows were spent on this dispute. Ms. Barliga does not specifically challenge the reasonableness of the strata management fees for this dispute, and I find nothing obviously unreasonable about them. So, I order her to reimburse the strata \$1,050 for the strata management fees.

CRT FEES, EXPENSES, AND INTEREST

35. 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 see no reason in this case not to follow that general rule. Since the strata was largely successful in this dispute, I order Ms. Barliga to reimburse the strata \$225 for its paid CRT fees. The strata did not claim any dispute-related expenses other than those I have addressed above.
36. The *Court Order Interest Act* (COIA) applies to the CRT. The strata is entitled to prejudgment interest on the \$9,612.40 chargeback, from November 28, 2022 when

the strata demanded its payment, to the date of this decision. This equals \$602.78. COIA section 2(c) says there is no interest on costs, so I order no interest on the \$1,050 award for the strata's CRT expenses.

37. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Barliga.

ORDERS

38. I order that within 30 days of this decision, Ms. Barliga pay the strata a total of \$11,490.18, broken down as follows:

- a. \$9,612.40 for the chargeback,
- b. \$602.78 in prejudgment interest under the COIA,
- c. \$1,050 for legal and administrative expenses related to this dispute, and
- d. \$225 in CRT fees.

39. The strata is entitled to post-judgment interest under the COIA, as applicable.

40. I dismiss the balance of the strata's claims.

This is a validated decision and order. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, 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.

Megan Stewart, Tribunal Member