



# Civil Resolution Tribunal

Date Issued: June 18, 2024

Files: ST-2022-010186  
and ST-CC-2023-011420

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 463 v. Chan*, 2024 BCCRT 570

B E T W E E N :

The Owners, Strata Plan LMS 463

**APPLICANT**

A N D :

YUK CHAN and XUE MEI HUANG

**RESPONDENTS**

A N D :

The Owners, Strata Plan LMS 463

**RESPONDENT BY COUNTERCLAIM**

---

## REASONS FOR DECISION

---

Tribunal Member:

Micah Carmody

## INTRODUCTION

1. The strata corporation, The Owners, Strata Plan LMS 463 (strata), operates as a mall. Yuk Chan and Xue Mei Huang (owners) own strata lot 42 in the strata. They operate a retail business in the strata lot.
2. In dispute ST-2022-010186, the strata sought payment of \$8,100 in bylaw contravention fines imposed between 2018 and 2022. The strata imposed the fines because it said the owners were not open for business during the operating hours set out in the strata's bylaws. The owners generally denied contravening the bylaws. All parties had submitted their arguments and evidence when the owners paid the fines, along with other amounts the strata said they owed. The strata then asked to withdraw the dispute, but the owners opposed that request. The owners said they paid the fines because the strata refused to provide documents they needed for a bank loan.
3. In an October 23, 2023 preliminary decision, a CRT vice chair gave the owners 21 days to file a counterclaim. That counterclaim is ST-CC-2023-011420. In it, the owners ask the strata to repay them the \$11,737.03 they paid the strata. As I explain below, some of this amount was not for bylaw contravention fines. The disputed bylaw fines total \$8,650. So, the issues in this dispute are whether the owners can dispute the bylaw fines they paid, and if so, whether the strata complied with the *Strata Property Act* (SPA) and its bylaws when imposing the fines.
4. A strata council member represents the strata. The owners are represented by a family member who is not a lawyer.

## JURISDICTION AND PROCEDURE

5. 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.

6. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconference, 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.
7. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court.
8. Although only Yuk Chan was listed as an applicant in the Dispute Notice for the counterclaim, it is clear from his submissions that he intended to bring the counterclaim on behalf of both owners. So, I order the Dispute Notice in ST-CC-2022-011420 amended to show that both owners are applicants in the counterclaim.
9. The owners submitted some text messages with their lawyer that were not in English. As the CRT's rules require evidence to be submitted in English or with an English translation, I have not considered any non-English evidence.

## **ISSUES**

10. The issues in this dispute are:
  - a. Can the owners dispute the bylaw contravention fines they have paid?
  - b. If so, did the strata comply with the SPA and its bylaws when imposing the fines, and should any fines be cancelled?

## **EVIDENCE AND ANALYSIS**

11. As the applicants in the counterclaim, the owners must prove their claims on a balance of probabilities, meaning more likely than not. That means they must first establish that the law allows them to dispute the bylaw fines they paid. If they are successful there, they must also prove that strata imposed the fines contrary to the SPA or its bylaws. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

12. In July 2023, the owners wanted to purchase another strata lot in the mall. To do so, they needed a loan. To secure the loan, they needed to provide their bank with certain documents. One of those documents was the Form B information certificate, which the strata must provide under SPA section 59.
13. On the Form B, the strata said that the owners owed the strata \$11,737.03. On July 28, the owners instructed their lawyer to pay the strata that amount. According to a July 6, 2023 letter from the strata, the owners owed \$3,087.03 in strata fees, a “promotions fund”, GST and late fees. The \$8,650 balance was bylaw contravention fines. So, I find the owners paid \$8,650 in bylaw fines when they paid the \$11,737.03 balance. As the owners do not dispute the other charges here, I find that at most they can recover \$8,650.
14. A party that pays a sum they are not otherwise obligated to pay because of a “practical compulsion” may be able to recover that money under the doctrine of “money had and received” (see *Barafield Realty Ltd. v. Just Energy (B.C.) Limited Partnership*, 2016 BCSC 1303). A practical compulsion is a situation short of “duress” where payment is a reasonable option to meet a demand for payment. The party paying under practical compulsion is not required to pursue other options that are time-consuming and impractical (see *Barafield*, at paragraph 11).
15. The owners say they paid the fines under a practical compulsion to secure financing for the purchase of another strata lot. They say they were under significant external pressure and were compelled to prioritize immediate financial needs over disputing fines, at the risk of losing out on a “substantial investment.”
16. The strata says the owners had options. Specifically, SPA section 114 allows owners to pay disputed money into court, or to the strata in trust, if a court proceeding or a CRT dispute has been started. If owners pay money to the strata under this provision, the strata holds the money and any interest in trust for the owners until the dispute is resolved. I agree with the strata that the respondents could have paid the \$8,650 in bylaw fines to the strata in trust, to avoid having the amount listed on the Form B. They did not do so. Rather, they undisputedly paid the amount in full.

17. The owners argue that the strata's lack of communication misled them into believing that they were required to pay the fines. To the extent that the owners argue that the strata had an obligation to inform them earlier about their payment options, I disagree. SPA sections 59 and 114 are clear that amounts paid in trust will not be listed on the form B. The owners had a lawyer assisting them in the process. They say the lawyer told them on July 21, 2023 that the lending date was set for July 28, 2023. They do not say why their lawyer waited until July 28, 2023 to ask for the Form B. In any event, they had the Form B before they made the payment, and the Form B advised of the option of paying under SPA section 114. I find the owners reasonably should have been aware of the option of paying the strata in trust.
18. The owners argue that there were potential barriers and complexities involved in paying the amounts to the strata in trust, such as navigating legal procedures and possibly incurring additional costs. They also say the strata holds significantly more power than they do. However, the owners were already defending the strata's claim for payment of bylaw contravention fines. The work of starting a CRT proceeding had already been done for them. All they had to do was pay the bylaw fines to the strata in trust. So, I do not agree that this option would have been time-consuming or impractical or would have incurred additional costs. Overall, I find the owners have not established a practical compulsion for paying the bylaw fines as they did.
19. Although the owners did not specifically raise it, I considered whether the more general doctrine of unjust enrichment assists them, but I find it does not. Unjust enrichment requires the absence of a "juristic reason" for one party's enrichment and the other party's corresponding deprivation. I find the bylaw fines, in the context of the strata's bylaws and the owners' failure to ever dispute the fines when they were imposed, provided a juristic reason for the payment.
20. It follows that the owners are not entitled to recover the \$8,650 bylaw fine payment, and I dismiss their claim.
21. In the event that my conclusion above is wrong, I consider below whether the strata complied with the SPA and its bylaws when imposing the fines.

### ***Bylaw contravention fines***

22. First, I reject the strata's argument that the *Limitation Act* prevents the owners from disputing these fines. It is well established that fines are not "claims" under the *Limitation Act* and therefore are not subject to limitation periods. CRT decisions have found the same is true of requests to reverse fines (see *Johnson v. The Owners, Strata Plan LMS 1685*, 2024 BCCRT 042, at paragraph 80). I agree with that reasoning and adopt it here.
23. The bylaw at issue is bylaw 2.8.11, which requires owners to "operate business" between 11 am and 7 pm, seven days per week, with exceptions for statutory holidays (mall hours bylaw). The owners do not dispute that this bylaw required them to have their doors open to the public.
24. In *The Owners, Strata Plan LMS 3289 v. Sze Hang Holding Inc.*, 2016 BCSC 32 at paragraph 208, the court said that under the SPA, owners are obligated to either rectify a bylaw contravention or challenge the bylaw violation notice. This means that if an owner wishes to dispute an alleged bylaw contravention they must do so when the strata provides notice of the complaint. There is no evidence that the owners have ever disputed an alleged bylaw contravention or asked for a hearing.
25. In any event, the evidence the owners submitted to argue that they did not contravene the bylaws is inadequate. Much of it consists of receipts that only show the owners' business made a sale in the late afternoon on the same day of an alleged bylaw contravention. An afternoon sale does not disprove that the business failed to open at 11 am that morning. The video surveillance evidence is also not compelling as most of it is from well after 11 am. The owners have failed to establish that they did not contravene the bylaws.
26. That said, the strata must comply with SPA section 135's procedural requirements before imposing bylaw contravention fines. The strata says it is not in dispute that the strata imposed fines in compliance with SPA section 135. I disagree. While the owners did not refer specifically to SPA section 135, they said in the Dispute Notice that the strata imposed the fines unfairly. This was enough for the strata to understand

that compliance with SPA section 135 was at issue in this dispute. Compliance with SPA section 135 is mandatory.

27. Section 135(1) says that a strata corporation cannot fine an owner unless it has first received a complaint, given the owner written details of the complaint, and given the owner a reasonable opportunity to respond to the complaint, including by holding a hearing if the owner requests one. Section 135(2) requires the strata to notify the owner in writing of its decision to impose a fine as soon as feasible.
28. These procedural requirements are strict, with no leeway. If the strata does not perfectly comply with section 135, any resulting fines are invalid (see *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449).
29. From January 2018 to May 2019, the strata issued “violation tickets” for each alleged contravention. Those tickets cited the mall hours bylaw and stated the date and time when the alleged contravention occurred. The strata also issued monthly invoices calculating the total fine amounts owed, as bylaw 2.8.11 gave owners a number of mall hours bylaw contraventions without penalty each month. The invoices and the tickets said the fines were payable immediately. They did not say that owners could dispute the fines or request a hearing. So, I find the strata did not comply with SPA section 135 from January 2018 to May 2019, because it imposed bylaw fines without giving owners the opportunity to respond to the underlying complaints.
30. In June 2019, the strata revised its violation tickets to include a reference to SPA section 135 and the opportunity to dispute the alleged contravention in writing or by requesting a hearing. Although the violation tickets did not warn the owners explicitly that the strata would impose a fine, they did say that the strata would enforce its bylaws. Together with the monthly invoices, which indicated the amount the strata intended to impose as a fine, I find the strata met its obligations under SPA section 135 and *Terry*.
31. So, if I had found that the owners could challenge the bylaw contravention fines, I would find the fines valid after June 2019. I would have ordered the strata to reimburse the owners \$2,450 for the January 2018 to May 2019 fines.

## **CRT FEES AND EXPENSES**

32. Based on the CRTA and the CRT's rules, as the owners were unsuccessful, I find they are not entitled to any reimbursement of CRT fees. The strata paid \$225 in CRT fees. I order the owners to reimburse the strata's CRT fees, because the strata would have been substantially successful in its claim that it sought to withdraw when the owners paid the bylaw fines. Neither party claims dispute-related expenses.
33. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against the owners.

## **ORDERS**

34. Within 14 days of the date of this order, I order the owners to pay the strata \$225 in CRT fees.
35. The strata is entitled to post-judgment interest, as applicable.
36. I dismiss the strata's claim and the owners' counterclaim.
37. This is a validated decision and order. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under CRTA section 58, 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.

---

Micah Carmody, Tribunal Member