



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Huang v. The Owners, Strata Plan EPS1279*, 2024 BCCRT 849

BETWEEN:

GUOYU HUANG

APPLICANT

AND:

The Owners, Strata Plan EPS1279

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey

INTRODUCTION

1. This strata property dispute is about changes to common property pipes within a strata lot.
2. The applicant, Guoyu Huang, owns strata lot 11 (SL11) in the respondent strata corporation, The Owners, Strata Plan EPS1279 (strata). Ms. Huang is self-represented. The strata is represented by a strata council member.

3. In May 2021, the strata's plumbing contractor attended SL11 to complete plumbing work. The work involved accessing 2 vertical drain lines (pipes) located inside an interior wall to install cleanouts. The drain lines are located next to each other, and the work required cutting an access hole in the living room drywall to expose the pipes. When the work was completed in October 2021 the strata allegedly refused to repair the drywall. Ms. Huang permitted the strata's plumbing contractor further access to SL11 in March 2022. She says the plumbing contractor had to drain the same pipes through her bathroom, allegedly on an emergency basis. Ms Huang claims the strata altered the use and appearance of SL11 without authority and caused her to lose enjoyment of SL11 between May and October 2021, while the work was being done. She also says she had to clean and sanitize SL11 after the March 2022 work. She says the strata's actions were contrary to the *Strata Property Act* (SPA). Ms. Huang seeks orders that the strata:
 - a. Restore SL11 to the condition it was in when the strata's plumber first attended in May 2021, which she values at \$30,000.00,
 - b. Stop using SL11 to access and clean the building pipes, which she values at \$30,000.00, and
 - c. Pay her damages of \$30,000.00 for her loss of enjoyment of SL11 during the 5 months of construction when she had to protect her living room furniture, endure missing drywall and sewer noises from the exposed pipes, and clean and sanitize SL11 following the March 2022 "emergency" work.
4. Ms. Huang also claims the strata has not provided her with records and documents she requested about the strata's plumbing maintenance and repair. She asks for an order that the strata provide her with the requested documents and places a value of \$500.00 on her claim.
5. The strata denies it acted improperly. It essentially says it acted on the advice of its professionals to install sewer pipe cleanouts in the living room of SL11 and that Ms. Huang must allow both the alteration and routine sewer cleanouts, which it performs on a regular basis. As for Ms. Huang's record and document request, the strata says

it has provided Ms. Huang with all records and documents she is entitled to have under the SPA. I infer the strata asks that Ms. Huang's claims be dismissed.

6. As explained below, I find the strata may continue to use the pipe cleanouts it installed in SL11 but must take steps to protect SL11 from damage and odour when doing so. I also order the strata to repair the living room wall in SL11 and pay Ms. Huang damages of \$500.00 plus interest. I dismiss Ms. Huang's remaining claims.

JURISDICTION AND PROCEDURE

7. 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.
8. 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. I find 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 am satisfied an oral hearing is not necessary in the interests of justice. I therefore decided to hear this dispute through written submissions.
9. 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.

ISSUES

10. The issues in this dispute are:

- a. Did the strata fail to provide Ms. Huang with records and documents she is entitled to receive?
- b. Did the strata act contrary to the SPA when it installed pipe cleanouts in SL11?
- c. Must the strata complete repairs to the living room wall in SL11?
- d. Must the strata stop using the cleanouts it installed on the pipes?
- e. Is Ms. Huang entitled to damages and if so, what amount?

BACKGROUND, EVIDENCE AND ANALYSIS

11. As applicant in a civil proceeding such as this, Ms. Huang must prove her claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' submissions and evidence but refer only to information I find relevant to explain my decision.
12. The strata was created in April 2013 and operates under the SPA. It contains 245 strata lots, which are located in a 37-storey high rise and a separate 2-storey building. SL11 is located on the second level of the high rise above a common property amenity area or lobby.
13. The strata registered a complete new set of bylaws with the Land Title Office on October 5, 2015 which repealed and replaced all previous bylaws except for the pet bylaw. I find these are the bylaws applicable to this dispute. Subsequent bylaw amendments are not relevant. I address relevant bylaws below as necessary.

Did the strata fail to provide Ms. Huang with records and documents she is entitled to receive?

14. The law about providing records and documents under the SPA is well-established. SPA sections 35 and 36 relate to document disclosure and refer to the *Strata Property Regulation* (regulation). Put broadly, SPA section 35 and regulation section 4.1 set out what documents and records the strata must prepare and retain, and the length

of time the strata must retain them. SPA section 36 and regulation section 4.2 address what documents can be requested, who can request them, and how much a strata corporation may charge to provide copies. The courts have found that a strata corporation is only required to provide access to or copies of records and documents that are listed in SPA section 35. It is not required to disclose or provide copies any other records or documents. See *The Owners, Strata Plan NWS 1018 v. Hamilton*, 2019 BCSC 863 at paragraph 3.

15. The requirements of the strata under SPA sections 35 and 36 are not discretionary, and the strata must provide copies of requested documents within 2 weeks if copies are requested.
16. On March 21, 2022, Ms. Huang emailed her request for copies of specific documents about maintenance of the building pipes to the strata manager. The strata submits it provided Ms. Huang with all the requested documents she was entitled to receive under SPA sections 35 and 36. Ms. Huang does not dispute this and says only that the strata did not provide any of her requested documents until May 2024, after she had started these proceedings. While I agree with Ms. Huang that the over 2-year delay to provide the documents was a breach of the SPA, the only remedy she seeks is that the strata provide her with the documents. I do not consider her \$500.00 valuation to be for damages. Therefore, I find Ms. Huang has received the documents she requested, and I dismiss her claim.

Did the strata act contrary to the SPA when it installed the pipe cleanouts in SL11?

17. Ms. Huang's main argument is that the strata altered the use and appearance of SL11 without authority. She relies in part on SPA section 71. However, a plain reading of section 71 clearly shows that provision only applies to significant changes in the use or appearance of common property or land that is a common asset. So, I find it does not apply to changes to the use or appearance of a strata lot.
18. There is no dispute, and I find, the pipes located in the living room wall of SL11 are common property as defined under SPA section 1(1) because they are intended to be used by other strata lots. I say this because, according to the plumbing information

and invoices in evidence, the pipes service the kitchens of several strata lots located above SL11. There is also no dispute the vertical pipes are connected to horizontal pipes below SL11 in the ceiling space of the building lobby.

19. To the extent Ms. Huang argues the installation of the cleanouts on the pipes was a significant change to the common property pipes, I disagree. The courts have determined a number of factors to consider when considering whether a change is significant. See *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333 at paragraph 19. I summarize the factors as follows:

- a. A change would be more significant based on its visibility or non-visibility to residents and its visibility or non-visibility towards the general public;
 - b. Whether the change to common property affects the use or enjoyment of the unit or number of units or an existing benefit of all unit or units.
 - c. Is there a direct interference or disruption as a result of the change to use?
 - d. Does the change impact on the marketability or value of the unit?
 - e. The number of units in the building may be significant along with the general use, such as whether it is commercial, residential or mixed-use;
 - f. Considerations should be given as to how the strata corporation has governed itself in the past and what it has followed.
20. Based on these factors and the photograph in evidence that shows the installed cleanouts on the pipes, I find the cleanouts are not a significant change to the pipes.
21. I have also considered the strata's responsibly to repair and maintain the common property pipes under SPA section 72 and bylaw 9(b). A strata corporation's standard of care when fulfilling it repair and maintenance obligations is reasonableness. See for example, *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113, at paragraph 69.
22. Further, as noted in *Weir v. Strata Plan NW 17*, 2010 BCSC 784, a strata corporation may have several reasonable options available to undertake necessary repairs and

maintenance. The fact that one of the options may be a more cautious approach or even turn out in hindsight to be the less wise or preferable course of action will not give the court (or CRT) a basis for overturning a strata council's decision regarding the repair option selected, as long as the option selected is reasonable one. *Weir* also confirmed that, in assessing what is "reasonable", a strata corporation may consider the available financial resources of the owners to undertake the necessary work.

23. While not directly on point, I find *Weir* provides helpful guidance in this dispute. Here, the evidence proves the strata suffered from backups caused by horizontal sections of the pipes located below SL11 in the ceiling above the building lobby which is undisputedly about 20 feet high. The strata submits that due to several years of leaks caused by blockages in the horizontal sections of the pipes, its plumbing contractor recommended installing cleanouts on the pipes in SL11 and other second level strata lots with similar plumbing designs. According to the strata, this recommendation was made to reduce the cost of repairing and maintaining the blockages because of their frequency and the cost of accessing cleanouts in the lobby ceiling pipes with scaffolding or scissor lifts which sometimes damaged the lobby marble floors. I accept the strata's assertion and find the installation of the cleanouts in SL11 likely allow for less costly access for the maintenance of the horizontal parts of the pipes. A written statement from the strata's current plumbing contractor supports this. While I accept Ms. Huang's submission that the strata was able to clear blockages using the lobby ceiling cleanouts, I find it was reasonable for the strata to seek a less costly way of maintaining its common property pipes. I also find it was reasonable for the strata to rely on its plumbing contractor to complete the cleanout installation rather than an engineer as Ms. Huang suggested. In any event, the plumbing contractor's written statement suggests it consulted with an engineer about the installation.
24. Finally, I note the strata is responsible for managing and maintaining its common property for the benefit of the owners. The reasonableness test requires balancing competing interests, such as those of the individual unit owner in having the repair completed, against those of the remaining owners in controlling the budget. See *Wier*. I find the strata's actions here effectively meet its responsibilities for long term repair and maintenance pipe expenses to the benefit of the strata owners.

25. For these reasons, I find the strata did not act contrary to the SPA when it installed the pipe cleanouts in SL11.

Must the strata stop using the cleanouts it installed on the pipes?

26. I acknowledge that accessing SL11 to clean the pipes is an inconvenience to Ms. Huang or any other occupant of SL11. However, given my finding that the strata did not breach the SPA or bylaws when it installed the cleanouts, I find the strata may continue to use the cleanouts as reasonably necessary. Historical invoices suggest the pipes were cleaned about once per year between October 2019 and March 2022, so I expect the cleanouts will be used on a similar schedule. Given Ms. Huang's submissions of odour in the unit and that fluid spilled into the wall cavity and on to SL11's floor in March 2022, I also find it is reasonable for the strata to take appropriate steps to protect SL11 from odour and damage that might occur when the cleanouts are used, and I so order.

27. Ms. Huang submits that it the plumbing design on the building is common and that more blockages occur in the horizontal pipes than the vertical pipes. She says cleaning the vertical pipes is inefficient and contradicts best plumbing practices. She also says that the original pipe design should be maintained. Ms. Huang provided a screenshot from the International Code Council (ICC) about cleanouts required on horizontal pipes. I do not agree the content of the screenshot addresses best practices, nor do I consider the screen shot expert evidence. As I have mentioned, the cleanouts were installed as a less costly way of cleaning the horizontal pipes. The fact they may be redundant to the existing horizontal pipe cleanouts does not assist Ms. Huang.

28. Expert evidence is generally required where the subject matter is technical or beyond common understanding, which I find would include maintaining the original pipe design and alleged best plumbing practices about the use of the cleanouts. See, for example, *Bergen v. Guliker*, 2015 BCCA 283. Ms. Huang did not provide expert evidence. As a result, I do not accept Ms. Huang's assertions that the original pipe design is superior nor the use of the cleanouts in SL11 is inefficient or contrary to best plumbing practices.

29. There is no evidence the cleanouts, when not being used, have any negative impact on Ms. Huang's health. I have already found that the strata must address spills and odours when the cleanouts are being used so, with proper advance notice from the strata, Ms. Huang can also take steps to mitigate any potential concerns, which might include vacating SL11 when the cleanouts are used.
30. The parties are aware of the strata's obligation to provide 48 hours advance written notice, except in an emergency, under bylaw 7 in order to inspect, repair or maintain the common property pipes through the newly installed cleanouts. Therefore, I need not address this issue further.

Must the strata complete repairs to the living room wall in SL11?

31. Interior repairs to a strata lot are generally the responsibility of the strata lot owner under a strata corporation's bylaws. One exception is when a strata corporation intentionally damages part of a strata lot during its investigation or repair of things it is responsible for, such as the common pipes here. In these circumstances, the CRT has consistently found the strata corporation is responsible for repairing the part of the strata lot it intentionally damages. See for example, my decisions in *Newson v. The Owners, Strata Plan VAS 2888*, 2023 BCCRT 653, and *Juhala v. The Owners, Strata Plan NW 2089*, 2022 BCCRT 1208.
32. I agree with this approach and adopt it here. I find the strata must repair the living room wall in SL11 at its expense. Specifically, the strata must repair the living room wall including replacing the drywall, installing access panels for the cleanouts, and painting the wall to match the existing wall colour. In one of the invoices, the strata's plumber noted the new cleanouts extend past the drywall, so the strata must reasonably address the interior wall repair taking into account discussions with Ms. Huang about options available to fully enclose the cleanouts inside the wall. The strata will have 90 days from the date of this decision to complete the wall repairs.

Is Ms. Huang entitled to damages and if so, what amount?

33. I do not consider Ms. Huang's \$30,000 valuations for the strata to restore SL11 or stop using the cleanouts it installed in SL11 to be claims for damages. Rather, I find

they are Ms. Huang's estimates of repair costs. Her only damage claim is for \$30,000.00 for the loss enjoyment of SL11. She claims that during the 5 months of construction between May and October 2021 she had to protect her living room furniture and endure missing drywall and sewer noises from the exposed pipes. She also claims she had to clean and sanitize SL11 following the March 2022 "emergency" work.

34. I will first address the strata's March 2022 use of the cleanouts. In order to be entitled to damages, Ms. Huang must prove the strata did something negligent to cause the work. There is no evidence that suggests it did, so I dismiss that part of Ms. Huang's claim as unproven.
35. I turn now to Ms. Huang's claim about the exposed pipes. In submissions, Ms. Huang says she intended on renting out SL11 and that its condition prevented her from doing so. I infer the existing condition she refers to is the unrepaired living room wall. I find this is the basis of Ms. Huang's \$30,000.00 claim as she says she has lost rent of \$3,000.00 per month for a 10-month period from June 2022 until March 2023. I have found the strata acted reasonably when it installed the pipe cleanouts, which were completed in October 2021, so Ms. Huang is not entitled to damages during the installation. It was not until January 2022 that Ms. Huang requested living room wall repairs. She said the strata rejected her request, which the strata does not dispute.
36. After the March 2022 emergency work, Ms. Huang says she again requested the strata repair her living room wall. She then requested a council hearing in April 2022 to ask the strata to repair the wall among other things. She says, and the strata does not dispute, that in August 2022, the strata offered to install a panel in the wall to cover the cleanouts, but she declined. Ms. Haung says she followed up with the strata 4 times between September 2022 and March 2023 but that the strata "continued to defend [its] actions".
37. There is very little evidence before me about the parties' communications, especially after March 2022. In particular, there is no evidence about Ms. Huang's attempts to rent out SL11 or details of how the strata intended repair the living room wall with a panel.

38. Despite the lack of evidence, I accept Huang's argument that the unfinished condition of the living room wall has been stressful and emotionally upsetting to her. I also accept that her requests to refinish the wall have largely been unsuccessful for at least 1 year. While Ms. Huang initially declined the installation of a panel in her living room wall, I find it was not reasonable for the strata to leave the wall unfinished and the pipes exposed for such a lengthy period of time. As a result, I find that Ms. Huang has suffered loss of enjoyment of SL11 since at least March 2022 for which the strata must take some responsibility.
39. The CRT has awarded damages for loss of use and enjoyment of strata property in several contexts, often involving ongoing noise or odour nuisance. For example, in *Chen v. The Owners, Strata Plan NW 2265*, 2017 BCCRT 113, an owner was awarded \$4,000.00 for loss of enjoyment of her strata lot for 2½ years of unreasonable hot tub noise.
40. Examples of awards for loss of use and enjoyment in other contexts include *Hestvik v. The Owners, Strata Plan EPS7152*, 2022 BCCRT 1066, where an owner was awarded \$2,000.00 for loss of use of their backyard for one year due to a drainage problem. In *De Beyer v. Yang*, 2019 BCCRT 1021, the CRT awarded \$1,000.00 for an owner's loss of use and enjoyment of their strata lot from 2 relatively minor water escape incidents that each took slightly longer than 2 months to repair. In *Lee v. The Owners, Strata Plan EPS2809*, 2023 BCCRT 338, I awarded an owner \$1,000.00 due to the strata corporation abandoning its investigation into the cause of a gas smell for about 9 months. Finally, in *Bahmutsky v. Petkau*, 2020 BCCRT 244, a CRT vice chair awarded an owner \$1,000.00 for a strata corporation's failure to enforce its smoking bylaws for 16 months.
41. I find Ms. Huang's loss of enjoyment of her strata lot has been less significant than the losses experienced in *Chen* and *Hestvik* noted above. I find her loss is more similar to the other CRT decisions I mentioned. While the strata now says it will repair the wall, the wall has remained unrepaired for at least 2 years. Bearing in mind that Ms. Huang initially declined the strata's offer to install a panel, I find that \$500.00 is appropriate compensation for Ms. Huang's loss of enjoyment of SL11 from March 2022 until the strata completes the repairs. I order the strata to pay Ms. Huang this

amount within 30 days of the decision.

Summary

42. The strata may continue to use the cleanouts as reasonably necessary. When using the cleanouts in SL11, the strata must take steps to protect it from damage or odour that might occur.
43. Within 90 days of this decision, at its expense the strata must repair the living room wall in SL11 as set out above.
44. Within 30 days of this decision, the strata must pay \$500.00 to Ms. Huang for its delay in repairing the living room wall in SL11.

CRT FEES, EXPENSES, AND INTEREST

45. Under CRTA section 49 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 find Ms. Huang was partially successful. She paid \$225.00 in CRT fees, so I order the strata to pay her ½ of that amount, or \$112.50 within 30 days of the date of this decision.
46. Neither party claimed dispute-related expenses, so I order none.
47. The *Court Order Interest Act* (COIA) applies to the CRT. I find Ms. Huang is entitled to pre-judgement interest on the \$500.00 in damages from March 31, 2021, the date I find the pipe cleanout installation was completed to the date of this decision. This equals \$45.46.
48. Under SPA section 189.4, the strata may not charge any dispute-related expenses against Ms. Huang.

DECISION AND ORDER

49. I order that the strata,

- a. Within 30 days of the date of this decision, pay Ms. Huang a total of \$657.96, broken down as follows:
 - i. \$112.50 for CRT fees,
 - ii. \$500.00 for damages, and
 - iii. \$45.46 for pre-judgement interest under the COIA.
- b. Discuss with Ms. Huang options for her living room wall repair and within 90 days of the date of this decision, repair the living room wall of SL11 to include replacing the drywall and installing access panels to fully enclose the cleanouts in the wall, and painting the wall to match the existing wall colour bearing mind Ms. Huang's preferred options.
- c. May continue to use the cleanouts it installed in SL11 as reasonably necessary. When using the cleanouts, the strata must take steps to protect SL11 from damage or odour that might occur.

50. I dismiss Ms. Huang's remaining claims.

51. Ms. Huang is entitled to post-judgement interest under the COIA, as applicable.

52. 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 \$35,000.00. Once filed, a CRT order has the same force and effect as an order of the court in which it is filed.

J. Garth Cambrey, Tribunal Member