



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Au v. The Owners, Strata Plan EPS5639*, 2024 BCCRT 892

BETWEEN:

KA WAI AU and BIANCA MAN YAN CHUI

APPLICANTS

AND:

The Owners, Strata Plan EPS5639

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Maria Montgomery

INTRODUCTION

1. This dispute is about responsibility for repair and replacement of fan coil units (FCU) in a strata corporation.
2. The applicants, Ka Wai Au and Bianca Man Yan Chui, each own a strata lot in the respondent strata corporation, The Owners, Strata Plan EPS5639. The applicants

say the FCUs in their strata lots are common property and the strata is responsible for their repair and maintenance. The applicants seek reimbursement for repairs related to the FCUs: \$4,824.75 for Mr. Au and \$6,819.75 for Ms. Chui.

3. The strata says the FCUs are not common property as the units are located in a non-structural dropped ceiling in the strata lots. It also relies on the developer's Disclosure Statement. The strata denies responsibility for the repairs.
4. The applicants are self-represented. The strata is represented by a strata council member.

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)*. 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.
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 that I am properly able to assess and weigh the documentary evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.
7. 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.

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:
 - Is the strata responsible for the FCU repair and replacement costs?
 - Is the strata responsible for related drywall repairs?

BACKGROUND

10. The strata is a high-rise residential building with 188 strata lots. The applicants' strata lots are both on the 12th floor. The strata filed a complete set of bylaws in the Land Title Office on August 31, 2021, which repealed and replaced all its bylaws, including the Standard Bylaws under the Strata Property Act (SPA). The relevant bylaws that describe the responsibilities of the strata and strata lot owners are:
 - a. **Bylaw 3** requires that owners repair and maintain their strata lot, except for repair and maintenance that is the responsibility of the strata under the bylaws.
 - b. **Bylaw 19** requires that the strata repair and maintain common property that is not designated as limited common property. It also requires the strata to repair and maintain certain components of limited common property and strata lots, none of which apply to the FCUs.
11. The strata provided a copy of the developer's Disclosure Statement dated November 18, 2015. Page 23 of the Disclosure Statement discusses the heating and cooling system in the building. It states the following:
 - The developer intended the system to be owned and operated by Fortis BC.
 - Each strata lot will be connected to the system by an FCU within the strata lot.

- The strata lot owner will be responsible for FCU repair, maintenance, and electricity.
12. On July 12, 2022, Mr. Au reported a thermostat malfunction to the strata manager. Broadway Refrigeration & Air Conditioning Ltd. attended on July 15, 2022, and identified malfunctions in the FCUs in each of the applicants' strata lots. Because of the malfunctioning FCUs, the entire heating, ventilation, and air conditioning (HVAC) system for the 12th floor was shut down. At some point, a short-term repair enabled the other strata lots on the 12th floor to have heating and cooling on a temporary basis.
 13. The strata contacted the applicants on July 25, 2022, and asked that the applicants order replacement FCUs at their own expense. At the applicants' request, the strata held a joint hearing on August 18, 2022. The strata maintained its position that the applicants must pay to replace the FCUs. The applicants arranged and paid for repairs under protest after the strata said it would impose fines if they failed to do so. Mr. Au paid \$4,194.75 for repairs to the FCU and \$630.00 to repair drywall that was cut to service it. Ms. Chui paid \$5,244.75 to replace the FCU and \$1,575.00 in drywall repairs.

EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities, meaning more likely than not. While I have read all the parties' evidence, I only refer what is necessary to explain my decision.

Is the strata responsible for the FCU repair and replacement costs?

15. In addition to the bylaws noted above, the strata's responsibilities are found in the SPA. Section 3 of the SPA states that a strata is responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners. Section 72(1) of the SPA provides that a strata corporation must repair and maintain common property and common assets.

16. Section 1 of the SPA defines common property as:
- a. That part of the land and buildings shown on a strata plan that is not a part of strata lot, and
 - b. Pipes, wires, cables chutes, ducts and other facilities for the passage or provision of water, sewage, drainage, gas oil, electricity, telephone, radio, television, garbage, heating and cooling systems, or other similar services, if they are located
 - i. Within a floor, wall or ceiling that forms a boundary (A) between a strata lot and another strata lot, (B) between a strata lot and the common property, or (c) between a strata lot or common property and another parcel of land, or
 - ii. Wholly or partially within a strata lot, if they are capable of being intended to be used in connection with the enjoyment of another strata lot or the common property
17. Both parties submitted statements made by Broadway as evidence. The evidence shows that Fortis BC has authorized only Broadway to repair and maintain the HVAC system. I accept Broadway's description of the HVAC system as accurate given that both parties rely on it and the system is serviced by Broadway exclusively.
18. As explained by Broadway in emails to the strata, the FCUs in the strata lots are connected to the system through refrigerant and communication lines. The FCUs rely on a network of refrigerant lines that are connected to other FCUs on the same floor. A roof top condensing unit has a compressor that circulates the refrigerant. According to Broadway, each FCU does not operate independently of other FCUs and a faulty FCU can result in other strata lots on the same floor having no heating or cooling from the HVAC system.
19. The applicants say that, as the FCUs cannot operate independently, the FCUs are common property. They note that the need for repairs shut down the entire system

on the floor. They also cite instructions provided by Broadway that owners must not turn off the units in their strata lots. They rely on the CRT decisions *Bowie v. The Owners, Strata Plan VIS 5766*¹ and *Lin v. The Owners, Strata Plan LMS 4071*,² which they say establish that the FCUs are common property because they are part of an integrated whole. I discuss those decisions below.

20. The strata says the FCUs are not common property because they are located in a non-structural dropped ceiling, similar to the facts in *Theil v. The Owners, Strata Plan VIS 6763*.³ The strata says that the FCUs are not capable of and intended to be used in connection with the enjoyment of another strata lot in order to be common property. The strata says that I should consider the developer's intentions as revealed by the Disclosure Statement when interpreting section 1(b)(ii) of the SPA. The strata says a Disclosure Statement indicates a developer's intention of common property designations and points to the decision in *Baker v. The Owners, Strata Plan KAS 2750*⁴ as authority.
21. In *Theil*, the strata lots were heated by FCU's located in a dropped ceiling. The CRT member found that the FCU was not common property because it was located in the strata lot's boundaries. The FCU was independent and did not impact other strata lots or the common property heating system. I find that is not the situation here. In this case, the malfunction of the two FCUs lead to a loss of HVAC operation on the entire floor. As noted by Broadway, the FCUs do not operate independently of each other. Broadway's instructions to strata lot owners are to not turn off power to the FCUs because "you risk disabling all heating and cooling to [the] entire floor."
22. I find the Provincial Court decision in *Fudge v. Owners, Strata Plan NW2636*⁵ applies here. In *Fudge*, the court found that wastewater pipes were common property because they were in a network of pipes that connected individual units as part of an integrated whole. The CRT decisions in *Lin* and *Bowie* rely in part on *Fudge* to find that FCUs in a strata lot were common property. In *Lin*, the CRT member found that a FCU in a strata lot was common property because it was connected to a common property hot water source. In *Bowie*, the CRT member found that an FCU was common property because it was part of an integrated

whole as the FCU could not operate independently of the common property heat pump.

23. While these decisions are not binding on me, I find this approach persuasive and appropriate to apply here. I find the FCUs are part of an integrated whole as each FCU is used by the other strata lot FCUs to create a functioning HVAC system. I find that the FCUs are within the SPA definition of common property because they are “other facilities” for the provision of heating and cooling systems located wholly or partially within a strata lot and are capable of being and intended to be used in connection with the enjoyment of another strata lot. As the FCUs are common property, the strata has a responsibility to repair and maintain them under section 72 of the SPA.
24. I acknowledge that the Disclosure Statement can be relied upon for the developer’s intentions. In *Baker*, the court relied on the Disclosure Statement to resolve an error in the strata plan with respect to a wall’s common property designation. However, a developer’s intentions cannot override the SPA definition of common property. In this case, I find the developer’s intentions as stated in the Disclosure Statement are irrelevant when interpreting section 1(b)(ii) of the SPA. I find that what the developer intended before the strata lots were completed cannot override the current circumstances where an HVAC system requires that all the FCUs in strata lots on an entire floor be in working order for any of the strata lots to have heating and cooling. Whatever the developer’s intentions were before strata building’s completion, the FCUs were not installed in such a way that the FCUs are independent. Rather, they are capable and intended to be used in conjunction with the other FCUs on the floor.
25. So, I find that the FCUs are common property and the strata is responsible for their repair and maintenance. I order the strata to reimburse Mr. Au \$4,194.75 and Ms. Chui \$5,244.75 for repair and replacement of the FCUs.

Is the strata responsible for related drywall repairs?

26. The strata says that repair of drywall falls under the owner's responsibilities laid out in Bylaw 3. The strata points out that the drywall is within the strata lot, according to the section 68 of the SPA as applied in *Watson v. the Owners, Strata Plan NES*.⁶ The strata points out that a strata is only liable to pay for repairs to a strata lot where the strata has been negligent in repairing and maintaining common property.
27. Where a strata corporation intentionally damages part of a strata lot during its investigation or repair of things it is responsible for, the strata has been found responsible for repairing that damage.⁷ I find this approach is appropriate here where the owners were required to make repairs that were the strata's responsibility, and those repairs required cutting into drywall. I find the strata must reimburse Mr. Au \$630 and Ms. Chui \$1,575 for the drywall repairs.

CRT FEES, EXPENSES, AND INTEREST

28. 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. Since the applicants were successful, I find they are entitled to reimbursement of \$225 in CRT fees. They did not claim any dispute-related expenses.
29. As the strata was not successful, there is no need for me to consider its claim for \$7,500 in legal fees.
30. The *Court Order Interest Act (COIA)* applies to the CRT. I find the applicants are entitled to pre-judgement interest on the \$11,644.50 in repair costs from the date they were paid for to the date of this decision, which is \$747.39.
31. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicants.

ORDERS

32. Within 30 days of the date of this decision, I order the strata to pay Mr. Au \$5,246.78 broken down as follows:
- a. \$4,824.75 for reimbursement of FCU and drywall repairs,
 - b. \$309.53 for pre-judgement interest under the COIA, and
 - c. \$112.50 for CRT fees.
33. Within 30 days of the date of this decision, I order the strata to pay Ms. Chui \$7,370.11 broken down as follows:
- a. \$6,819.75 for reimbursement of FCU replacement and drywall repair,
 - b. \$437.86 for pre-judgement interest under the COIA, and
 - c. \$112.50 for CRT fees.
34. The applicants are entitled to post-judgement interest under the COIA, as appropriate.
35. 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.

Maria Montgomery, Tribunal Member

¹ 2020 BCCRT 733

² 2020 BCCRT 690

³ 2019 BCCRT 1065

⁴ 2022 BCSC 1449

⁵ 2012 BCPC 409

⁶ 2020 BCCRT 1404

⁷ *Huang v. The Owners, Strata Plan EPS1279*, 2024 BCCRT 849; *Newson v. The Owners, Strata Plan VAS 2888*, 2023 BCCRT 653; *Juhala v. The Owners, Strata Plan NW 2089*, 2022 BCCRT 1208.