



Civil Resolution Tribunal

Date Issued: August 7, 2020

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Fortunato v. The Owners, Strata Plan EPS1232*, 2020 BCCRT 878

B E T W E E N :

SANTE FORTUNATO and DESIDERIO FORTUNATO

APPLICANTS

A N D :

The Owners, Strata Plan EPS1232

RESPONDENT

A N D :

SANTE FORTUNATO and DESIDERIO FORTUNATO

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This dispute is about a strata's decision to charge an owner's account for emergency services arising from a water leak.
2. The applicants and respondents by counterclaim, Sante Fortunato and Desiderio Fortunato (owners), along with Mona D'Amours, co-own strata lot 9 (unit 303) in the respondent strata corporation, The Owners, Strata Plan EPS1232 (strata). The strata is the applicant in the counterclaim.
3. Even though she is a co-owner, Ms. D'Amours is not named as a party in this dispute. Desiderio Fortunato and Mona D'Amours are Sante Fortunato's parents.
4. The owners say the strata did not inform them about a defective plumbing part in each strata lot in the building that was causing water leaks. The owners also say the strata ignored their request for a hearing. They seek an order that the strata reverse a \$5,867.40 emergency work and inspection charge to their account after a water leak in their strata lot. While the owners initially thought the charge was a fine, they now agree it was a chargeback.
5. The strata says it sent several memoranda to the owners advising them to replace the defective part before the water leaked in their strata lot. In the counterclaim, the strata seeks orders that the owners' claims be dismissed and that the owners pay \$5,867.40 for the cost of the emergency services.
6. The owners are self-represented. The strata is represented by CM. I infer CM is a strata council member.

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). 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.

8. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.
9. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
10. Under section 123 of the CRTA and the CRT rules, 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

11. The issues in this dispute are:
 - a. Whether the owners were notified about the faulty plumbing part,
 - b. Whether the strata was responsible for replacing the faulty plumbing part, and
 - c. Whether the strata responded to the owners' request for a hearing.

BACKGROUND, EVIDENCE AND ANALYSIS

12. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
13. In a civil proceeding such as this, the owners must prove their claims on a balance of probabilities. The strata must prove its counterclaim on a balance of probabilities.

14. The strata filed bylaws at the Land Title Office (LTO) on December 1, 2014 subject to amendments. The relevant bylaws applicable to this dispute are summarized as follows:
- a. Bylaw 2 states an owner must repair and maintain the strata lot, except for repair and maintenance that is the responsibility of the strata under the bylaws. On October 4, 2017 this bylaw was amended to add bylaw 2(3) which states that any repair and maintenance issues must be addressed in a timely manner or within the time frame set out by strata council.
 - b. Bylaw 8 sets out the repair and maintenance obligations of the strata. It states the strata must repair and maintain common property, and also limited common property where the repair and maintenance occurs less often than once a year, or no matter how often, the building structure and other portions that are not relevant here.
15. The strata became aware in October 2018 that the dishwasher water hammer arrestors (arrestors) in all of the building's strata lots were faulty and needed to be replaced. Some of the arrestors had already caused water leaks. Since the warranty on them had expired, the strata says it sent memoranda to the strata owners advising them to replace the arrestors as soon as possible at their own expense. The strata says it also arranged for interested owners to have the work done by an outside company, PWL, for a reduced group rate.
16. The strata building manager, JM, says the strata mailed the following memoranda about the arrestors to all strata owners, posted copies in the elevators, and slipped copies under the doors of individual strata lots:
- a. October 22, 2018 – the strata notified the strata owners that there had been water damage to several strata lots and the arrestors should be replaced. It also stated that PWL was offering a group rate and interested strata owners should notify the building manager by October 26, 2018.

- b. November 26, 2018 – the strata provided several dates that PWL was scheduled to replace arrestors and a list of strata lots it would be working on during those dates. The owners' strata lot was scheduled to be replaced for December 11, 2018. The memorandum also stated that PWL would require in-suite access and strata owners could leave their keys with the building manager if no one would be home.
 - c. February 14, 2019 – the strata informed strata owners there had been an increase in claims for water damage and they should have home insurance. It also informed that some arrestors have failed resulting in major leaks and strongly advise strata owners to have them replaced ASAP. Strata owners should notify the building manager if they want to be in next round of replacements.
 - d. March 12, 2019 - the strata encouraged strata owners to replace the arrestors and notified that there had been leaks in strata lots. It requested that strata owners should submit receipts to the building manager by March 29, 2019 if the work had already been done in their strata lot.
 - e. May 13, 2019 – the strata notified strata owners that PWL would be on site again to replace the arrestors. Interested strata owners who wanted the bulk pricing should email the building manager by May 31, 2019.
 - f. May 14, 2019 – the strata provided a list of strata lots that PWL would be replacing arrestors in on May 27, 2019. The owners' strata lot was on the list. Strata owners were asked to leave a key with the building manager if no one would be home that day.
17. The owners say they did not have the arrestor replaced because they did not receive any of the memoranda. Consequently, there was a water leak in their strata lot on May 28, 2019. The parties do not dispute that it was caused by the faulty arrestor. The strata paid \$5,867.40 to a restoration company for emergency repairs. The strata then charged back this amount to the owners' strata lot account (chargeback).

18. The owners say they should not have to pay the chargeback because:
- a. The strata should have emailed the memoranda to them,
 - b. They were not informed that they should replace the arrestor,
 - c. The strata should have replaced the arrestor on May 27, 2019, and
 - d. The strata did not respond to their request for a hearing before imposing the chargeback.

Was the strata required to email the memoranda to the owners?

19. The parties agree the owners had rented their strata lot to tenants at the time and had provided the strata with a mailing address in Coquitlam. The strata says it mailed the memoranda to the owners' Coquitlam address. The owners deny they received any of the strata's memoranda. However, the owners admit they received the strata's correspondence mailed to the Coquitlam address in January 2019 about an unrelated bylaw fine involving the owners' tenants.
20. Mr. Fortunato says he is frequently out of town and does not receive regular mail in a timely manner. He also says after the tenant incident, he emailed the strata several times between January 21, 2019 and May 30, 2019 and asked to be contacted by email in the future. The strata emailed Mr. Fortunato on February 12, 2019 that it had to use regular mail for "all main communication". The strata did not explain what this term meant. Mr. Fortunato says he also tried phoning the strata every few weeks to inquire about any matters that may have arisen. However, he says he was unable to speak to any person and that the strata did not return his calls.
21. Section 61 of the *Strata Property Act* (SPA) states that the strata can give notices or documents to a non-resident owner by mailing it to the address provided or, if no address was provided, by putting it under the person's strata lot door. I note that in *Ferreira v. The Owners, Strata Plan EPS867*, 2020 BCCRT 239 at paragraph 75 the vice chair said that it is up to the owner to regularly check the mail or establish a method of receiving communication from the strata as set out in section 61, such as

an outside mailing address or an email address in order to ensure the timely receipt of notices, records and documents from the strata.

22. I find that since the strata notified Mr. Fortunato in February 2019 that it would not email notices to him, the owners were responsible for establishing another method under section 61 of receiving the strata's notices. I find the strata met the section 61 requirements by mailing the memoranda to the alternative address the owners provided and by leaving copies under the door of the owners' strata lot.

Did the strata notify the owners about the arrestor?

23. The strata says they took adequate steps to notify the owners about the arrestor by mailing, posting, and delivering the memoranda to the strata owners. Based on my reasons above, I agree.
24. JM also stated that in May 2019 he met the owners in the building and asked them if they wanted to replace the arrestor in their strata lot. JM stated the owners responded that the part was not broken and did not need replacement. The owners deny they met JM. The owners work for a touring company and provided copies of their schedules which showed they were out of town in April 2019 and May 2019. I accept the owners' statements that they did not meet with JM because they were out of town for work at the time.
25. The strata also says the memoranda and notices were posted on its website. It says the owners were provided with a welcome package that contained instructions on accessing the website when they purchased their strata lot in 2016. The owners deny they received a welcome package. I find regardless of whether the owners received the welcome package, posting information on the website does not meet the requirements in section 61 of the SPA which I discussed above.
26. The strata says the owners must have known about the arrestors since their strata lot was listed for replacement in the November 26, 2018 and May 14, 2019 memoranda. The strata says strata lots were only added to the replacement list at the strata owner's request. According to the May 13, 2019 memorandum, interested

strata owners were required to email the building manager if they wanted the arrestor replaced. The strata did not provide an email from the owners with such a request. For this reason, I find that even though the owners' strata lot was on the lists, it does not mean the owners were aware of the arrestor issue or had asked to be added to the list.

Should the strata have replaced the arrestor in the owners' strata lot?

27. The owners say according to the strata's May 14, 2019 memorandum, their strata lot's arrestor was scheduled to be replaced on May 27, 2019 by PWL. They say the strata should have replaced their arrestor on that day. The owners did not refer to the November 26, 2018 memorandum which also stated their strata lot's arrestor was scheduled for replacement.
28. As stated above, bylaw 2 states that an owner must repair and maintain their strata lot. The owners did not provide any evidence that the strata was responsible for the repair and maintenance of the arrestors under bylaw 8. Hence, I find it was the owners' responsibility to replace the arrestors.
29. In addition, I find the owners did not comply with the strata's instructions in order to have their arrestor replaced on May 27, 2019. The May 14, 2019 memo advised strata owners that someone had to be present to let PWL into the strata lot on May 27, 2019, or strata owners could leave a key with the building manager. The owners did not state they did either.

The hearing request

30. The strata says since the owners contravened a bylaw, it is permitted under section 133 of the SPA to charge back reasonable costs to the owner for reasonably necessary work done by the strata to remedy a bylaw contravention.
31. The strata sent the following letters to the owners about the chargeback:

- a. June 3, 2019 – Notice of infraction that the owners contravened bylaw 2 on May 28, 2019 since they did no repair a water leak and the strata had to pay for the repairs. The owners could reply in writing in 2 weeks or could request a hearing.
 - b. July 12, 2019 – Notice of decision. The strata was charging back the cost of repairs to the owners.
 - c. December 13, 2019 - Notice of infraction that the owners contravened bylaw 2 on May 28, 2019 since they did no repair a water leak. The owners could reply in writing in 2 weeks or could request a hearing.
 - d. January 23, 2020 – Notice of decision. Further to the December 13, 2019 letter that the owners contravened bylaw 2, the strata was charging back the cost of repairs to the owners.
32. Mr. Fortunato requested a hearing by email on June 11, 2019. He also stated that he wanted to be informed by email about the hearing since he was out of town. The owners say the strata ignored their request for a hearing. They also say the chargeback should be removed from their account.
33. The strata says its strata agent, YM, called Mr. Fortunato to schedule a hearing and left a voicemail. In her written statement, YM stated that Mr. Fortunato did not call back and she assumed he was no longer interested in attending a hearing. Mr. Fortunato denies he received the phone message. Mr. Fortunato did not state whether he made any further requests for a hearing.
34. After the owners filed this dispute, the strata scheduled a hearing on March 5, 2020 before the strata council. The owners say the only reason the strata held the hearing was to technically comply with the SPA. Neither party provided the meeting's minutes.
35. After the hearing, the strata sent the owners a notice of decision dated April 17, 2020. It noted that the owners attended a hearing on March 5, 2020 about the bylaw 2 contravention. The strata also stated that the owners were still being charged \$5,867.40.

36. Any action taken by the strata to enforce bylaw violations must strictly follow section 135 of the SPA. Section 135 of the SPA states that a strata corporation may not require a person to pay the costs of remedying a bylaw contravention unless it has received a complaint, given the owner or tenant written particulars of the complaint and a reasonable opportunity to answer the complaint, including a hearing if requested, and given written notice to the person “as soon as feasible”. The requirements of section 135 must be strictly followed before a fine can be imposed (see *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449).
37. I find YM’s phone call was an inadequate response to Mr. Fortunato’s request for a hearing, especially since Mr. Fortunato asked to be contacted about the hearing by email. I find the strata contravened section 135(1)(e) of the SPA when it did not comply with the owners’ June 11, 2019 request for a hearing. However, in *Cheung v. The Owners, Strata Plan VR 1902*, 2004 BCSC 1750, the British Columbia Supreme Court (BCSC) found that a procedural error under section 135 of the SPA can be corrected by reversing the fines and re-starting the procedural requirements of section 135.
38. While I am not bound by it, I find this scenario is similar to the one in *Lum v. Section 1 of the Owners, Strata Plan LMS 921*, 2019 BCCRT 1207 where the strata charged back the cost of repairs, held a hearing, and then decided not to reverse the chargeback. I find that likewise, in this case the strata corrected the irregularity in the section 135 process by the time the strata sent its April 17, 2020 notice upholding the chargeback. I find the strata has complied with the procedural requirements in section 135 of the SPA before imposing the chargeback.
39. Accordingly, I find the owners must pay the strata the \$5,867.40 chargeback and I dismiss the owners’ claims.

CRT FEES, EXPENSES AND INTEREST

40. 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. I therefore order the owners to reimburse the strata for CRT fees of \$125. The strata did not seek dispute-related expenses.

41. The strata requests pre-judgement interest based on the *Court Order Interest Act* (COIA). The interest on the \$5,867.40 which accumulated from the date of the account statement, or April 17, 2020, until the date of this decision, equals \$5.02.
42. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owners.

ORDERS

43. I order that within 30 days of this decision, the owners pay the strata a total of \$5,997.42, broken down as follows:
 - a. \$5,867.40 as reimbursement for repair costs charged back under the strata's bylaws,
 - b. \$5.02 in pre-judgement interest under the COIA, and
 - c. \$125 for tribunal fees.
44. The strata is also entitled to post-judgement interest under the COIA.
45. The owners' claims are dismissed.
46. Under sections 57 and 58 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia. The order can also be enforced by the Provincial Court of British Columbia 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.

Rama Sood, Tribunal Member