



Civil Resolution Tribunal

Date Issued: August 21, 2020

File: ST-2019-007621

Type: Strata

Civil Resolution Tribunal

Indexed as: *Yuan v. The Owners, Strata Plan EPS 3982*, 2020 BCCRT 933

B E T W E E N :

YE YUAN

APPLICANT

A N D :

The Owners, Strata Plan EPS 3982

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. The applicant, Ye Yuan, owns strata lot 465 (SL465) in the respondent strata corporation, The Owners, Strata Plan EPS 3982 (strata).
2. Mr. Yuan says the strata charged him \$1,466.10 in strata fees from September 2018 to February 2019 during a time that he was not living in SL465. He says the

strata should not have collected strata fees because he was forced to move out during repairs from a flood. Mr. Yuan seeks reimbursement of \$1,466.10 that he paid in strata fees.

3. On May 29, 2019, the strata had registered a certificate of lien against Mr. Yuan's strata lot for \$1,221.75 in unpaid strata fees. It also charged Mr. Yuan a lien fee of \$500. After the strata filed the lien, Mr. Yuan undisputedly paid the strata fee arrears but not the lien fee. In this dispute, Mr. Yuan seeks an order that the strata remove the \$500 lien fee from his strata lot account.
4. The strata denies Mr. Yuan's claims. The strata says that Mr. Yuan was obligated to pay his strata fees during the flood repairs. The strata says it was permitted to register the lien and charge Mr. Yuan for the related lien fees and expenses under sections 116 and 118 of the *Strata Property Act* (SPA).
5. Mr. Yuan is self-represented. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.
8. 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.

9. 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.
10. As a preliminary issue, the strata requested an amendment to the Dispute Response, which the CRT's case manager allowed during the case management phase. In the amended Dispute Response before me, the strata seeks an order "confirming that its legal costs are owing by the owner to the strata under the lien". However, the strata brought no counterclaim and is requesting a declaratory order that I find the CRT does not have authority to grant. So, I refuse to resolve it under CRTA section 10 (1).

ISSUES

11. Is Mr. Yuan entitled to reimbursement of \$1,466.10 in strata fees?
12. Must the strata remove the \$500 lien fee from Mr. Yuan's strata lot account?
13. Must Mr. Yuan reimburse the strata's legal fees?

EVIDENCE AND ANALYSIS

14. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
15. As the applicant, Mr. Yuan carries the burden of proof on a balance of probabilities. For the reasons that follow, I find that Mr. Yuan has not met that burden and I dismiss Mr. Yuan's claims.

Bylaws

16. The strata filed a complete set of bylaws replacing all previous bylaws in the Land Title Office (LTO) on June 19, 2018. I find the bylaws summarized below are relevant to this dispute:

Bylaw 1 – An owner must pay strata fees on or before the first day of the month to which the strata fees relate.

Bylaw 31(1) – Strata fees are due and payable on or before the first day of each month. Strata fees not received by the 10th day of the month in which they are due are subject to a 10% per annum interest penalty compounded annually until paid.

Bylaw 31(2) – When arrears of strata fees exceed 2 months a lien will be placed by the strata corporation on the strata lot involved at the owner's expense for the total monies due, including all legal and other expenses.

Is Mr. Yuan entitled to reimbursement of \$1,466.10 in strata fees?

17. Mr. Yuan says that his strata lot was seriously affected by a flood caused by a water pipe leak. He alleges that the flood was “potentially” caused by the strata's lack of maintenance. He says that he was forced to move out of his strata lot during the restoration period from September 2018 to February 2019. Mr. Yuan says the strata should compensate him in the form of reduced strata fees because of the flood.
18. I find that the SPA and the strata's bylaws both require Mr. Yuan to pay strata fees and require the strata to collect them. This is a mandatory requirement under SPA section 92 and the strata's bylaws 1 and 31. I find the SPA and the bylaws do not give the strata discretion to waive or reduce strata fees.
19. I also find that Mr. Yuan was not permitted to withhold strata fees as compensation for losses or because he could not live in the strata lot due to the flood. This is because neither the SPA nor the strata's bylaws permit Mr. Yuan to withhold strata fees. Mr. Yuan was required to pay his strata fees regardless of whether he

believed the strata caused the flood or was responsible for him moving out of his strata lot during the restoration.

20. I dismiss Mr. Yuan's claim for reimbursement of strata fees.

Must the strata remove the \$500 lien fee from Mr. Yuan's strata lot account?

21. Section 116 of the SPA allows a strata corporation to register a lien against an owner's strata lot by registering a certificate of lien at the LTO for failure to pay strata fees, as well as for other items that do not apply here.

22. Section 118 of the SPA states that the costs of registering a lien against an owner's strata lot may be added to the amount owing under a certificate of lien. Those costs include (a) reasonable legal costs (b) land title and court registry fees and (c) other reasonable disbursements.

23. The strata's bylaw 31(2) permits the strata to place a lien after non-payment of 2 monthly strata fee payments at the owner's expense.

24. The statement of account in evidence shows that Mr. Yuan did not pay his November 2018 strata fees when due. On November 7, 2018, Mr. Yuan wrote the strata stating that he did not think it fair that he should pay strata fees because he believed the developer's poor-quality construction might have caused his strata lot damages. In response, the strata informed Mr. Yuan that he is obligated to pay strata fees on time and building quality was a separate issue. It told him that the strata would collect the strata fees and if not paid, it might place a lien on his strata lot, charge him a \$500 lien fee and potentially charge him for the strata's legal expenses.

25. Following the strata's warning, Mr. Yuan failed to pay his November strata fees and his subsequent strata fees. The April 25, 2019 statement of account for Mr. Yuan's strata lot in evidence shows unpaid strata fees from November 1, 2018 to April 1, 2019.

26. On April 25, 2019, the strata wrote Mr. Yuan a notice demanding payment of \$1,221.75 in strata fee arrears within 14 days and warned the strata would register a lien against his strata lot. It also notified Mr. Yuan that he would be responsible to pay \$500 to register and remove the lien, and other expenses. Additionally, it warned him of potential BC Supreme Court action if he failed to pay. It told Mr. Yuan that if he was not able to comply within the deadline, that he must contact the strata property manager to make alternative arrangements.
27. Mr. Yuan did not pay his strata fees and there is no evidence that he made other arrangements to pay.
28. On May 29, 2019 the strata wrote to Mr. Yuan to inform him that it registered a lien against his strata lot in the amount of \$1,221.75 for “strata fees and other charges”. It also informed him that it charged him \$500 in fees to register the lien and to register a Form H in anticipation of removing the lien. It informed him that the total amount due and payable to remove the lien was \$1,721.75. These amounts were applied to Mr. Yuan’s strata lot account.
29. It is undisputed that Mr. Yuan then paid the strata fee arrears. However, he did not pay the \$500 lien fee. The strata refused to remove the lien until Mr. Yuan paid the lien fee.
30. I find the strata’s April 25, 2019 letter complied with the notice obligation under SPA section 112(2). That section requires the strata to notify an owner with at least 2 weeks written notice demanding payment and indicating that a lien under SPA section 116 may be registered if payment is not made within that 2 week period.
31. As I found above, Mr. Yuan was not entitled to withhold payment of his strata fees. Since payment was not made within the 2 week period, I find that the strata was permitted under the SPA and its bylaws to register the lien on Mr. Yuan’s strata lot as it did on May 29, 2019. I find the strata was also permitted to charge Mr. Yuan the \$500 lien fee under SPA section 118 (b) and bylaw 31(2).

32. For the reasons above, I find no basis to order that the strata to remove the lien fee. I dismiss Mr. Yuan's claim that the strata remove the \$500 lien fee from his strata lot account.

Must Mr. Yuan reimburse the strata's legal fees?

33. The strata claims reimbursement of \$752.64 in legal expenses. The strata argues that this is an extraordinary circumstance "to give effect to section 118 of the SPA". Section 118(a) permits a strata corporation to add reasonable legal costs to a lien. In the circumstances here, the strata's legal invoice show it is for legal services incurred in responding to Mr. Yuan's claims in this CRT dispute. The legal fees set out in the invoice were not incurred for filing the lien under section 118 and there is no evidence that the strata charged Mr. Yuan's strata lot account under section 118(a).
34. I find the strata is conflating a claim for dispute-related expenses with a claim for reimbursement of legal fees under SPA section 118. I find the strata's claim for legal fees falls under CRTA section 49(1). That section says that the CRT may order one party to pay to another party some or all reasonable expenses and charges that the CRT considers relate directly to the conduct of the proceeding. CRT rule 9.5(3)(b) says that the CRT will not order one party to pay another party any fees charged by a lawyer in a strata dispute, unless there are extraordinary circumstances.
35. I find the relevant question that I must decide is whether there were extraordinary circumstances in the course of this CRT proceeding that warrant an order that Mr. Yuan pay the strata's legal fees.
36. I find the factual and legal issues in this dispute were not complex. The parties simply disagreed over Mr. Yuan's obligations under the SPA. While I found the strata's interpretation of the SPA was correct, there is no evidence before me that Mr. Yuan's conduct during this CRT proceeding was improper or somehow deserving of rebuke. I find there were no extraordinary circumstances here. I dismiss the strata's claim for legal fees.

37. As Mr. Yuan was unsuccessful in this dispute, I find he is not entitled to reimbursement of CRT fees or dispute-related expenses. The strata paid no CRT fees and claimed no dispute-related expenses apart from legal fees which I already dismissed.

38. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Yuan.

ORDER

39. I order that Mr. Yuan's claims, the strata's claim for dispute-related legal fees, and this dispute are dismissed.

Trisha Apland, Tribunal Member