



Civil Resolution Tribunal

Date Issued: January 21, 2022

File: ST-2021-003182

Type: Strata

Civil Resolution Tribunal

Indexed as: *La v. The Owners, Strata Plan EPS4743*, 2022 BCCRT 85

B E T W E E N :

THUAN LA

APPLICANT

A N D :

The Owners, Strata Plan EPS4743

RESPONDENT

A N D :

THUAN LA

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about bylaw fines.
2. The applicant and respondent by counterclaim, Thuan La, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan EPS4743 (strata). Mr. La says the strata incorrectly told Mr. La's bank that he owed \$9,400 in lienable strata fees and so the bank paid \$9,400 to the strata from Mr. La's mortgage account without Mr. La's consent. Mr. La claims \$9,400.
3. The strata admits that it made a mistake in telling the bank that Mr. La owed lienable strata fees. Rather, the strata says, Mr. La owed \$9,400 in outstanding bylaw fines. In its counterclaim, the strata acknowledges it cannot prove \$700 of the levied fines but says it is entitled to keep \$8,700 of the funds as fine payment.
4. Mr. La says he owes the strata nothing and denies breaching the strata's short-term accommodation (STA) bylaw, or other bylaws, as the strata alleges.
5. Mr. La represents himself. A strata council member represents the strata.
6. As explained below, I order the strata to reimburse Mr. La \$9,400 and dismiss the strata's counterclaim.

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.

Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, 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.

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. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
10. 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

11. The issues in this dispute are:
 - a. Was the strata entitled to request \$9,400 from Mr. La's mortgage holder?
 - b. Are the strata's fines for violating various bylaws valid?
 - c. What is the appropriate remedy?

EVIDENCE AND ANALYSIS

12. In a civil dispute like this one the applicant, Mr. La, must prove his claim on a balance of probabilities (meaning "more likely than not"). The strata has the same burden in proving its counterclaim. I have reviewed the parties' submissions and weighed the evidence submitted but only refer to that necessary to explain and give context to my decision. I note that Mr. La provided no submissions to the strata's counterclaim argument beyond his Dispute Response, despite having the opportunity to do so.

Background

13. The strata was created in 2018 with the deposit of the strata plan in the Land Title Office (LTO). The strata consists of 348 mixed commercial and residential strata lots in a high-rise tower. It is undisputed that part of the strata is run as a hotel.
14. Mr. La became the co-owner of strata lot 306 in August 2018. It is undisputed that strata lot 306 is referred to as #4607, a one-bedroom apartment located on the 46th floor. I infer Mr. La's strata lot is not part of the hotel.
15. On May 25, 2018 the strata filed a set of bylaws with the LTO, which I find apply here. Bylaw 52 defines rental for less than 30 days as a short-term rental. The bylaw prohibits a resident, including owner, to use or permit their strata lot to be "used or occupied" for short-term rental or short-term occupancy or accommodation of any kind, including short-term accommodation advertised under "Airbnb", unless approved by the strata council. The strata filed amendments to bylaw 52 at the LTO on December 11, 2019. As explained below, the strata's allegations of STA all relate to events which occurred prior to December 11, 2019, so I find the amended bylaw does not apply here.
16. It is undisputed that the strata fined Mr. La a total of \$9,400 between November 30, 2018 and April 14, 2020. Mr. La's strata lot account ledger shows \$8,300 in fines for STA, \$200 for smoking, \$400 for illegal activity, \$100 for late payment and \$200 for an unknown fine with no description.

Payment of \$9,400 from Mr. La's Mortgage Holder

17. The strata is managed by a strata property manager (manager). On May 4, 2020 the manager sent a letter to the bank that undisputedly holds Mr. La's mortgage. The manager wrote that Mr. La owed \$9,400 to the strata and demanded payment by May 25, 2020 or the strata would take further action, including levying fines and registering a lien against Mr. La's strata lot, in accordance with section 116 of the *Strata Property Act* (SPA). Contrary to the strata's argument, I find the letter requests payment from the bank.

18. Based on Mr. La's banking records and correspondence, I find the bank paid \$9,400 from Mr. La's property tax account to the strata around May 14, 2020. So, I find Mr. La had to pay the bank the \$9,400 it paid to the strata on Mr. La's behalf.
19. Mr. La requested a strata council hearing, which was held on April 20, 2021. Following the hearing, the strata refused to return Mr. La the \$9,400, because it considered it fair payment for the outstanding fines. None of this is disputed.
20. Section 116(3) of the SPA expressly prohibits the registration of a lien for an unpaid fine. The strata admits the letter was sent by mistake and acknowledges it could not have filed a lien for the unpaid fines. The strata acknowledges it had no right to request payment for the bank for the outstanding fine amounts.
21. The strata does not argue that it was entitled to recover the outstanding bylaw fines from Mr. La's mortgage holder. Rather, it says it should be allowed to keep the funds as payment for Mr. La's fines. Essentially, the strata claims a set off against the \$9,400 it owes to Mr. La.

Bylaw Fines

22. On October 19, 2019 the strata advised Mr. La that it had received a complaint that he was using #4607 for STA, contrary to former bylaw 52. The letter included a copy of an October 11, 2018 Airbnb advertisement listed by "Thuan". The strata says Thuan's photo in the listing is Mr. Lan, the same person who appeared for the April 20, 2021 strata council hearing. The advertisement includes photos of the 1-bedroom suite which I find resemble the strata's submitted floor plan for all suites ending in "07", including #4607. The photos also show a high-floor view of the city. The listing did not include an address, but the general location provided includes the strata's municipal address.
23. On balance, I find it likely the October 11, 2018 Airbnb advertisement is for #4607 and was placed by Mr. La. However, I find Mr. La did not violate bylaw 52 by placing the advertisement. This is because the bylaw does not specifically prohibit advertising a strata lot as STA. Rather, the bylaw prohibits using or occupying the strata lot as

STA. In interpreting bylaws, they are to be given their plain and ordinary meaning (see *The Owners, Strata Plan LMS 3259 v. Sze Hang Holdings Inc.*, 2016 BCSC 32). I find the plain and ordinary meaning of “use or occupy” means providing accommodation, not simply advertising it as such. In other words, to prove the bylaw violation, the strata must show #4607 was used for STA, not just advertised as such. I find it has failed to do so here.

24. Mr. La’s strata lot account ledger shows an initial \$500 fine for STA on November 30, 2018. As I find Mr. La did not violate bylaw 52 by advertising #4607 as STA, the fine is invalid. I also find the strata’s additional \$500 weekly fines from November 30, 2018 to January 25, 2019 are invalid, as the underlying bylaw contravention is unproven. I would have found those fines invalid in any event as the strata provided no evidence that Mr. La continued to violate bylaw 52 during December 2018 and January 2019.
25. The strata next wrote Mr. La about STA in #4607 on March 8, 2019. The strata referred to an Airbnb listing # and included a paper copy of the listing. Comparing this 2019 Airbnb listing with the October 2018 listing, I find the 2019 listing contains a different username, photo, nightly rate, description, and slightly different view photo. The 2019 listing contains no other photos, location information, availability calendar or reviews which might provide further information. I find there is nothing in the 2019 listing linking it to either #4607 or Mr. La. Further, even if the 2019 listing was placed by Mr. La or was about #4607, I would find the advertisement itself does not violate bylaw 52, as explained above.
26. The strata also submitted a series of reports written by security officers who undisputedly work for the hotel within the strata. On March 29, 2019 security officer BD wrote that a woman (D) told him that her friend was in #4607, that her boyfriend had rented the unit but had been arrested earlier that night, and that she needed a key to access the unit. BD explained to D that #4607 was a residential unit so the hotel did not have keys. According to BD’s report, D asked to be rented another room, offered the hotel staff money to make her a key, and threatened to sleep in the lobby. She became belligerent and confrontational when asked to leave the building and

was subsequently arrested. BD's earlier report that day confirms a male was arrested in the building but does not explain what connection, if any, the male had to #4607.

27. I give BD's account of D's statement about her boyfriend renting #4607 little weight. Although I find BD likely accurately recounted what D told him, I find I cannot rely on D's statement to BD. First, there is no explanation why or how D learned her boyfriend allegedly rented #4607. Second, it is hard to assess the truthfulness of D's statement when it was clear that she needed a place to stay that night. Third, even if D's boyfriend rented #4607, there is no indication that he rented it from Mr. La, that Mr. La permitted the rental to occur, or that it was a short-term rental as defined under bylaw 52.
28. In any event, the strata did not send Mr. La a bylaw violation complaint letter, or fine him for violating bylaw 52 on March 28, 2019. Rather, the bylaw warned and fined Mr. La for using his strata lot for illegal activity.
29. Bylaw 4.1(d) prohibits a resident, including an owner, from using a strata lot "in a way that is illegal". As noted, the March 28, 2019 security report does not show how the man's arrest is linked to #4607. Even if there were a link, I find arresting someone from an apartment, absent further evidence, is insufficient to prove illegal activity was occurring in the apartment.
30. Other security reports filed by the strata show that the police returned and asked to be escorted to unit #4607 on April 3 and 5 and on May 15, 2019. On each occasion the police talked with whoever answered the door. On May 15, 2019 the police informed the security officer they had an arrest for someone they determined to be inside #4607, based on their review of the building's video surveillance footage. Although the security officer wrote in the report that he suspected human trafficking, there is no explanation why he believed that and no evidence to support such a belief. As explained above, arresting someone from a unit is not sufficient to prove illegal activity in the strata lot.
31. On balance, the strata has failed to prove any violation of bylaw 4.1(d). So, I find the \$400 in fines for illegal activity are invalid.

32. The strata also submitted a September 1, 2019 violation report written by VS who, I infer, is either a hotel security officer or staff member. VS wrote that he reviewed the building's video surveillance footage and found that Mr. La rented #4607 to different tenants between August 30 and September 1, 2019. The report included still photos from the residential lobby and elevator cameras which show a few individuals using a key to open what appears to be a mailbox in the residential lobby and other individuals taking the elevator to the 46th floor with suitcases. There is no indication that any of these people were seen leaving or entering #4607. So, I find the report does not show these people were using #4607 as STA.
33. Even in considering all the strata's evidence together, I find the strata has failed to prove Mr. La used #4607, or permitted it to be used, as STA between March and October 2019. So, I find the strata's \$8,100 in fines for violating bylaw 52 are invalid.
34. The strata admits its \$100 in late payment fines in 2020 are invalid. It also acknowledges that it cannot prove a January 24, 2019 \$200 fine assessed for unknown reasons on Mr. La's strata lot account ledger. The strata has provided no evidence supporting an April 9, 2019 smoking bylaw violation fine for \$200. So, I find these fines are also invalid.
35. In summary, I find the strata has failed to prove Mr. La violated the strata's bylaws prohibiting STA, illegal activity, smoking, or late payments. So, I find the strata is not entitled to the \$8,700 set-off it counterclaims for fine payments. The strata must reimburse Mr. La \$9,400.

CRT FEES, EXPENSES AND INTEREST

36. 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. As Mr. La was successful in this dispute, he is entitled to \$225 as reimbursement of his paid CRT fees. The unsuccessful strata is not entitled to reimbursement of CRT fees. Neither party claimed any dispute-related expenses.

37. The *Court Order Interest Act* applies to the CRT. Mr. La is entitled to prejudgment interest on the \$9,400 from May 14, 2020, the date the bank paid the strata, to the date of this decision. This equals \$90.16.
38. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. La.

ORDERS

39. Within 30 days, I order the strata to pay Mr. La a total of \$9,715.16, broken down as follows:
- a. \$9,400 as reimbursement of funds paid by the bank,
 - b. \$90.16 in interest, and
 - c. \$225 in CRT fees.
40. Mr. La is also entitled to post-judgment interest under the *Court Order Interest Act*.
41. I dismiss the strata's counterclaim.
42. 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.

Sherelle Goodwin, Tribunal Member