



# Civil Resolution Tribunal

Date Issued: January 8, 2021

File: SC-2020-006615

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jin v. The Wawanesa Mutual Insurance Company*, 2021 BCCRT 22

B E T W E E N :

SUNG HOON JIN

**APPLICANT**

A N D :

THE WAWANESA MUTUAL INSURANCE COMPANY

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. This dispute is about a denied insurance claim in a strata property setting.
2. The applicant, Sung Hoon Jin, owns a strata lot (unit 2503) that they rented out to tenants. A dishwasher in unit 2503 leaked and caused water damage to unit 2503

and several other strata lots. The strata corporation, The Owners, Strata Plan BCS 1772 (strata) made an insurance claim and charged Sung Hoon Jin \$10,000 for the insurance deductible.

3. Sung Hoon Jin then claimed for the deductible charge under their home insurance policy with the respondent, The Wawanesa Mutual Insurance Company (Wawanesa).
4. Wawanesa denied Sung Hoon Jin's claim. Wawanesa says the strata's bylaws did not permit the strata to charge the deductible to Sung Hoon Jin without an "act, omission, negligence or carelessness." It says the leak was caused by a failed dishwasher supply line fitting and neither Sung Hoon Jin nor their tenants were negligent. Wawanesa says the claim should be dismissed.
5. Sung Hoon Jin is self-represented. The respondent is represented by an employee.
6. Sung Hoon Jin's claim is for \$5,000, although the strata appeared to charge Sung Hoon Jin's strata lot account \$10,000. In an August 18, 2020 email to Wawanesa, Sung Hoon Jin said they have "settled down with strata regarding deductible," but they did not provide the settled-upon amount. The monetary limit in Civil Resolution Tribunal (CRT) small claims disputes is \$5,000. By proceeding with this dispute, I find Sung Hoon Jin has abandoned any amount in excess of \$5,000.
7. Although it is not clear what amount the strata actually charged Sung Hoon Jin's strata lot account, I find nothing turns on this because, for the reasons that follow, I dismiss Sung Hoon Jin's claim.

## **JURISDICTION AND PROCEDURE**

8. These are the CRT's formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that 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.

9. Section 39 of the CRTA 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.
10. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
11. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

## **ISSUE**

12. The issue in this dispute is whether the deductible charge the strata applied to Sung Hoon Jin fell within Sung Hoon Jin's insurance policy coverage with Wawanesa.

## **EVIDENCE AND ANALYSIS**

13. As the applicant in this civil dispute, Sung Hoon Jin must prove their claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
14. It is undisputed that on September 1, 2018, water escaped from unit 2503, causing damage to unit 2503 and several other strata lots. According to the plumber's September 6, 2018 report, the cause of the leak was a "sharkbite" fitting on the

dishwasher supply line in unit 2503 that failed, causing it to slip off the pipe, allowing pressurized water to escape.

15. According to the strata's January 24, 2019 letter to Sung Hoon Jin, the strata charged Sung Hoon Jin's strata lot account \$10,000, under bylaw 5. Sung Hoon Jin did not provide a copy of the strata's bylaws, but the letter provides the text of bylaw 5.
16. In summary, bylaw 5 says an owner is responsible for expenses not covered by the strata's insurance if the damage was caused by the owner's "act, omission, negligence or carelessness," or by that of a tenant or guest. It also says the deductible is considered an expense not covered by the strata's insurance.
17. Sung Hoon Jin's insurance policy with Wawanesa provided coverage of up to \$25,000 for a strata's deductible assessment. The question is whether Sung Hoon Jin's claim falls within this coverage. That turns on the wording of the Wawanesa policy.
18. The policy says Wawanesa will pay the deductible assessment only where the strata's "governing rules" specifically permit it to place the responsibility for the deductible on an individual unit owner. I find that the phrase governing rules includes the strata's bylaws. Wawanesa says the strata's bylaws did not permit the strata to charge Sung Hoon Jin in the absence of negligence.
19. Courts in BC have held that a strata may adopt bylaws that establish a specific standard, such as a standard equivalent to negligence, in determining whether an owner should have to repay a deductible expense under section 158 of the *Strata Property Act* (see, for example, *The Owners, Strata Plan BCS 1589 v Nacht*, 2019 BCSC 1785). Cases like *Nacht* and others have considered bylaws with identical wording as bylaw 5 and found they imported a standard of negligence. I find bylaw 5 imports the same standard.
20. What that means is in order for the strata to charge Sung Hoon Jin for the deductible, it is not enough that the damage originated in Sung Hoon Jin's strata lot. Sung Hoon Jin or their tenant must have caused or contributed to the damage in some way.

21. Wawanesa says the failed dishwasher part was likely original to the 12-year-old building, and there were no signs that the part was going to fail. It says the failure was spontaneous, and that Sung Hoon Jin and their tenants did not do or fail to do anything to cause the leak. None of this is disputed by Sung Hoon Jin. Based on the plumber's report, I agree that there is no evidence before me in this dispute that Sung Hoon Jin or their tenants did anything to cause or contribute to the leak by an "act, omission, negligence or carelessness."
22. Based on the evidence before me, the strata had no basis to conclude Sung Hoon Jin or their tenant caused or contributed to the water leak, I find the strata was not permitted under its bylaws to charge the deductible to Sung Hoon Jin. As a result, Wawanesa's decision to deny Sung Hoon Jin's claim was in accordance with the policy that required the strata's assessment of a deductible be valid under the strata's bylaws.
23. Nothing in this decision prevents Sung Hoon Jin from filing a claim against the strata, subject to any applicable limitation period. I make no comment about the merits of such a claim, as this decision was made on the evidence before me, and the strata was not a party and did not have the opportunity to provide evidence.
24. Under section 49 of the CRTA and the CRT rules, as Sung Hoon Jin was not successful, I find they are not entitled to reimbursement of CRT fees. Neither party claimed dispute related expenses.

## **ORDER**

25. I dismiss Sung Hoon Jin's claims and this dispute.

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Micah Carmody, Tribunal Member