Civil Resolution Tribunal

Date Issued: July 4, 2022

File: SC-2020-007377

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *0827893 B.C. Ltd. v. AWM - Alliance Real Estate Group Ltd.*, 2022 BCCRT 762

B E T W E E N :

0827839 B.C. LTD.

APPLICANT

A N D :

AWM - ALLIANCE REAL ESTATE GROUP LTD. and THOMAS MCGREER

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Kate Campbell, Vice Chair

INTRODUCTION

1. This small claims dispute is about responsibility for an insurance deductible after a water leak in a strata corporation.

2. The applicant, 0827839 B.C. Ltd. (839), is the corporate owner of strata lot 6 (SL6) in a strata corporation, BCS 3165 (strata). 839 is represented by its director, Dr. Yasdan Mirzanejad.

3. The respondents in this small claims dispute are AWM - Alliance Real Estate Group Ltd. (AWM) and Thomas McGreer. AWM is the strata's management firm, and Mr. McGreer is AWM's Vice President. Mr. McGreer represents both respondents in this dispute.

4. The strata is not a party to this dispute. The strata is the sole respondent in a related dispute which 839 filed under the Civil Resolution Tribunal's (CRT's) strata property jurisdiction. I have issued a separate decision about that dispute (ST-2021-003580).

5. 839 says it incurred a $5,000 insurance deductible, triggered by water leak restoration costs. 839 says the leak was the result of negligent maintenance in the strata building. As remedy in this dispute, 839 requests an order that the respondents, AWM and Mr. McGreer, reimburse the $5,000 deductible.

6. Mr. McGreer says he and AWM are not liable for the deductible. Mr. McGreer says the leak's source was not the strata's common property or common assets. Rather, he says the leak came from a drainage line that is part of the neighbouring commercial air space parcel owned by KBK No. 11 Ventures Ltd. (KBK). Mr. McGreer says he and AWM do not manage KBK's property, and are not responsible to repair or maintain KBK's drainage system.

7. For the reasons set out below, I dismiss this 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). 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.

9. 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 which includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.

10. 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.

11. Where permitted by CRTA section 118, 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.

12. 839 uploaded a document to the CRT's online evidence portal containing submissions about alleged negligence. In that submission, 839 said that in addition to the $5,000 insurance deductible, it was also seeking reimbursement of $1,078.23 in Goods and Services Tax paid to On Side Restoration. 839 did not include this claim in its dispute application, and did not request an amendment to the Dispute Notice to all this new claim. For that reason, I find it would be unfair to the respondents to consider it, and I have not done so. However, given my reasons on liability set out below, I would not have ordered the respondents to pay this new claim in any event.

ISSUE

13. Must AWM or Mr. McGreer reimburse 839 for the insurance deductible?

REASONS AND ANALYSIS

14. In a civil claim like this one, 839, as applicant, must prove its claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision.

15. For the following reasons, I find the respondents AWM and Mr. McGreer are not liable for 839’s insurance deductible.

16. As noted above, the strata is not a party to this dispute, AWM is the strata’s management firm, and Mr. McGreer is AWM’s Vice President. Strata managers like AWM provide management services to strata corporations under private contracts. Individual strata lot owners, like 839, are not parties to these strata management contracts. Rather, the strata corporation signs the contracts, using its authority under *Strata Property Act* (SPA) sections 3 and 38(a). These provisions say the strata is responsible for managing and maintaining the strata’s common property and common assets on behalf of all owners, and the strata may enter contracts in respect of these powers and duties.

17. Since 839 is not a party to the strata management contract between the strata and AWM, I find it cannot obtain a remedy for a breach of that contract. There is also nothing in the SPA or bylaws that makes AWM or Mr. McGreer liable to 839 for negligence in repairing or maintaining strata property. Instead, I find that AWM and Mr. McGreer carried out their duties as the strata’s agents. So, only the strata can be liable to 839 for the alleged maintenance deficiencies that 839 says caused the July 2020 leak.

18. I also place some weight on 839’s dispute application, which says the strata is “to blame” for the fact that 839 incurred the insurance deductible. Even if the strata is “to blame” for the leak, I find AWM and Mr. McGreer are not vicariously liable (responsible) as the strata’s agents. As stated in paragraph 10 of *Portnoy v. The Owners, Strata Plan LMS 2781*, 2020 BCCRT 650, the strata is responsible for its strata manager’s actions when the manager is acting within the scope of its

capacity as the strata's agent. Prior CRT decisions are not binding, but I find the reasoning in *Portnoy* persuasive, and rely on it here.

19. For these reasons, I find AWM and Mr. McGreer are not responsible to pay 839's insurance deductible. I dismiss 839's claims against them.

20. As previously noted, the strata is not a party to this dispute. I therefore make no findings about its liability in this decision.

CRT FEES AND EXPENSES

21. Under CRTA section 49 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.

22. AWM and Mr. McGreer were the successful parties, but paid no CRT fees and claimed no dispute-related expenses, so I order no reimbursement.

ORDER

23. I dismiss 839's claim and this dispute.

Kate Campbell, Vice Chair