



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Di Lollo v. The Owners, Strata Plan BCS 1470*, 2018 BCCRT 24

B E T W E E N :

Vincent Di Lollo

APPLICANT

A N D :

The Owners, Strata Plan BCS 1470

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. The applicant Vincent Di Lollo (owner) owns a strata lot in the respondent strata corporation The Owners, Strata Plan BCS 1470 (strata).

2. The applicant claims the respondent failed to adequately repair a leak in the garage ceiling above his assigned parking stalls, resulting in damage to his vehicle. The respondent says it acted reasonably in making the necessary repairs and is not responsible for the vehicle damage.
3. The applicant seeks an order for reimbursement of the cost of repairing the vehicle damage as well as reimbursement of his tribunal fees.
4. The applicant is self represented. The respondent is represented by its property manager as agreed by the applicant and permitted by the tribunal.
5. For the reasons that follow I dismiss the applicant's dispute.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 3.6 of the *Civil Resolution Tribunal Act* (CRT Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
8. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

9. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
10. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute the tribunal may order a party to do or stop doing something, order a party to pay money, or make an order that includes any other terms or conditions the tribunal considers appropriate.

ISSUES

11. The issues in this dispute are:
 - a. Should the strata reimburse the owner the \$687.04 paid to repair his vehicle?
 - b. Should the strata reimburse the owner the \$225 he paid in tribunal fees?

BACKGROUND AND EVIDENCE

12. The strata was created in 2005 and consists of two buildings, building A and building B. There is one large, one-level parking garage, below both buildings. The strata plan designates the parking garage as common property.
13. The owner has been assigned the use of two parking stalls, #135 and #136.
14. The strata's relevant bylaws, most recently updated in 2012, are summarized as follows:
 - a) *Bylaw 3.7:* the strata shall repair and maintain common property, unless it has been designated as limited common property. The strata shall also repair and maintain the structural components of the building.
15. In early 2010 white marks appeared on the top of the owner's car. He washed them off and the marks re-appeared. At an auto body shop the owner was told that the marks were caused by an acidic mixture created by water leaking through a

concrete ceiling. The owner observed a leak in the ceiling of the garage above his assigned parking stall #135.

16. The owner reported the leak, and the damage to his vehicle, to the strata's property manager in early February 2010. He stated that he would hold the strata responsible for any further damage caused to his vehicle.
17. Around April 2010 the garage ceiling leaked again. The strata repaired the leak by applying waterproof material to the garage ceiling. The owner told the property manager that he was dissatisfied with the repairs. The owner believed that the water was entering the garage from the outside, and that the leak should be fixed at the point where the water entered the garage.
18. In late November 2016, there was another leak in the garage ceiling over parking stall 135. The spots reappeared on the owner's vehicle.
19. On November 22, 2016 the owner reported the leak, and the vehicle damage, to the property manager. The owner asked that the strata repair the leak again, in a more permanent manner, and assume some responsibility for the cost of repairing the damage to his vehicle.
20. The following day the property manager asked the building maintenance team to investigate the issue.
21. On December 2, 2016 the property manager advised the owner that the crack above stall 135 had been repaired. The owner parked his vehicle in stall 135 that evening and, on December 3, 2016, there were new spots on his car, in addition to the November 2016 spots.
22. The owner paid \$687.04 to have the damage to his vehicle repaired on December 7, 2016.

23. On December 16, 2016 the crack in the garage ceiling above stall 135 was resealed by a concrete restoration company.

POSITION OF THE PARTIES

24. The applicant requests that I order the strata to:

- a) pay the application \$678.04 for the cost of repairing the damage to his vehicle, and
- b) reimburse the applicant \$225 in tribunal fees.

25. The applicant argues that the strata council was negligent in failing to adequately repair the garage ceiling leak, resulting in a recurrence of the leak causing damage to his vehicle. He argues that the strata's responsibility to maintain and repair common property includes taking steps to prevent water from entering the building and damaging his car.

26. The respondent argues that it took appropriate steps, in a timely manner, to repair the identified leaks. It submits that the repair required multiple applications of the sealant. The respondent argues that it was not negligent and is therefore not responsible for the damage to the owner's personal property.

27. The applicant acknowledged that the repairs were done quickly, but argues they were done inadequately.

PRELIMINARY ISSUE

28. The applicant argues that the strata failed to adequately repair the garage ceiling in February and April 2010, which failure caused the November 2016 recurrent leak. Before considering the merits of that claim, I must first consider whether part of the applicant's claim is out of time under the *Limitation Act*. Section 13 of the CRT Act confirms that the *Limitation Act* applies to claims under the CRT Act.

29. Section 6 of the *Limitation Act* states that a court proceeding in respect of a claim must not be commenced more than 2 years after the day on which the claim was discovered.
30. Section 8 of the *Limitation Act* provides that a claim is discovered by a person on the first day that person knew, or reasonably ought to have known:
- a) That injury, loss or damage had occurred;
 - b) That the injury, loss or damage was caused by or contributed to by an act or omission;
 - c) That the act or omission was that of the person against whom the claim is or may be made; and
 - d) That, having regard to the nature of the injury, loss or damage, a court proceeding would be an appropriate means to seek to remedy the injury, loss or damage.
31. Although the applicant is raising a claim about the repairs made by the strata in 2010, he is claiming for damage done to his vehicle in approximately November 2016. As the damage did not occur until 2016, the claim was not discoverable until that time. I am satisfied that the limitation period on the applicant's claim did not begin to run until he discovered the damage to his vehicle in 2016. The applicant's claim is not out of time under the *Limitation Act*.

ANALYSIS

32. The strata has not disputed that the owner's vehicle was damaged as a result of the water leaking from the concrete ceiling of the garage, nor that he paid the amount of \$678.04 to repair that damage. I accept that the ceiling leak caused such damage to the owner's vehicle, based on the advice the owner received at the auto shop.

33. There is no dispute that the parking garage, including the ceiling, is common property and that the strata is responsible for maintaining that common property. What is in dispute is whether the strata is responsible for the damage to the owner's vehicle, by failing to repair and/or maintain the garage ceiling.
34. Neither the bylaws of the strata nor the *Strata Property Act* address claims by owners for damage caused by the strata or by others associated with it.
35. The strata is not an insurer. The courts have held that a strata corporation is not held to a standard of perfection. Rather, it is required to act reasonably in its maintenance and repair obligations which, in this case, arise under bylaw 3.7. If the strata's contractors fail to carry out work effectively, the strata should not be found negligent if the strata acted reasonably in the circumstances. The strata has no liability to reimburse an owner for expenses an owner incurs, unless the strata has been negligent in repairing and maintaining common property. (see *Kayne v. LMS 2374*, 2013 BCSC 51, *John Campbell Law Corp. v. Strata Plan 1350*, 2001 BCSC 1342, and *Wright v. Strata Plan No. 205*, 1996 CanLII 2460 (BCSC), affirmed 1998 CanLII 5823 (BCCA))
36. In order to be successful in an action for negligence, the owner must demonstrate that the strata owed him a duty of care, that the strata's behaviour breached the standard of care, that the owner sustained damage, and that the damage was caused, in law and in fact, by the strata's breach of care. (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27)
37. The standard of care owed by the strata in maintaining and repairing the garage is one of reasonableness. In determining whether the strata was negligent, I must consider what would be reasonable in these circumstances. Again, the standard is not one of perfection.
38. I find that the strata acted reasonably in applying waterproofing material to the garage ceiling in 2010. There is no indication that the strata should have been aware of the possibility of the leak prior to early 2010. Other than the owner's belief, there is no indication that the leak was a result of water entering the garage

from the garden level. I do not find it reasonable to require the strata to investigate the potential of water entering the building structure from the garden level, given that the repairs made in 2010 appeared to have remedied the leak in the garage ceiling at that time.

39. I acknowledge the owner's argument that the 2010 repairs were inadequate, as the leak recurred in late 2016. While it is tempting to look back in hindsight to see what could have been done differently, a standard of perfection is not required. The fact that the repair was inadequate does not show that the strata was negligent in its choice of repair method at the time.
40. I find that the strata also acted reasonably in repairing the November 2016 leak. The property manager took steps to address and investigate the leak upon being advised of it. It appears that the repairs consisted of applying waterproof coating to the garage ceiling again.
41. I acknowledge that the November 2016 repairs were inadequate, as the leak recurred on December 2 or 3, 2016. Again, the fact that the repair is inadequate does not show that the strata was negligent in its choice of repair method. I do not find that the strata should have chosen a different method of repair. As noted above, other than the owner's expressed belief, there is no evidence that the leak was caused by water coming into the garage from the garden level.
42. Overall, I find that the strata did not act unreasonably in repairing the garage ceiling, in either 2010 or in 2016. As the strata was not negligent in the manner in which it repaired the garage ceiling, it is not liable for the cost of repairs to the owner's vehicle.

DECISION AND ORDERS

43. The applicant is not entitled to reimbursement of the \$678.04 he paid to repair the damage to his vehicle.

44. As the applicant is not successful in this dispute, I find that he is not entitled to reimbursement of the \$225 he paid in tribunal fees.

Sherelle Goodwin, Tribunal Member