



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Llagas v. The Owners, Strata Plan BCS 2742*, 2018 BCCRT 451

B E T W E E N :

Maria Llagas

APPLICANT

A N D :

The Owners, Strata Plan BCS 2742

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Michael F. Welsh, Q.C.

INTRODUCTION

1. “The turn of the screw” is an expression meaning to make matters worse. In this case, the screw was turned by the husband of the applicant owner (owner) while trying to hang a mirror in a bathroom. It punctured a main hot water pipe, causing a leak. At the owner’s request, the strata manager of the respondent strata corporation (strata) contacted a plumbing company to make repairs. According to the owner, the plumber made matters worse again by not shutting off the water before trying to repair the pipe. It split open. Flooding occurred causing significant additional damage to the owner’s strata lot and to common property. The main issue is whether the owner or the strata must bear the cost of repair of the common property.
2. The applicant owner acts for herself. The respondent strata is represented by legal counsel, Lisa Mackie.

JURISDICTION AND PROCEDURE

3. 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* (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.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I determine this dispute through written submissions, as I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
5. 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.

6. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute the tribunal may make order a party to do or stop doing something, order a party to pay money, order any other terms or conditions the tribunal considers appropriate.

ISSUES

7. The issues in this dispute are:
 - a. Is the owner responsible to pay the strata \$2,121.45 for the costs to repair common property from the water damage, or is it a strata responsibility?
 - b. Should the tribunal order the strata to assess whether there are building code violations in relation to the location of the main water pipes in all strata lot bathrooms?
 - c. If this claim is dismissed, is the owner liable to pay dispute-related legal expenses incurred by the strata in defending this claim and totalling \$11,682.13?

BACKGROUND AND EVIDENCE

8. The respondent is a phased residential strata corporation with 231 strata lots located on Sherbrooke Street in New Westminster, named the "Copperstone." It retains a strata manager and a caretaker. The owner and her husband jointly own one of the strata lots in which they live. It is in a 4 story building containing several other strata lots.
9. On December 27, 2016, the owner's husband was hanging a mirror in a bathroom. By accident, as he was inserting a screw into a bathroom wall, he punctured a main hot water pipe for the building. By opening the wall, he determined there was

a small amount of water leaking out which he controlled by wrapping a towel around the pipe.

10. He called the strata caretaker who inspected the leaking pipe and suggested, given the limited amount of leakage, it could wait until after the holidays. The owner and her husband wanted a repair done more quickly and they called the strata manager to request a plumber. They agreed to pay the repair costs, including any overtime charges, and were told by the strata manager that the costs could be charged back to their strata lot. The strata manager arranged for a plumbing company it dealt with to attend.
11. According to the owner, when the plumber arrived, he could not find the main shut-off valve, but he still proceeded to do a temporary repair without turning off the water. The pipe split and hot water flooded out. The caretaker located the shut-off valve for the 3 strata buildings, shut off the water, and the plumber with help from a colleague did a permanent repair of the pipe.
12. A statement from the caretaker largely confirms these events and I find they occurred as the owner describes. For reasons I provide later, whether they constitute negligence on the part of the plumber is not a matter I have sufficient evidence to decide.
13. There was water damage to both the strata unit and common property. The owner paid for repairs to the strata lot and the strata paid for repairs to the common property. The strata charged back the common property repair costs of \$2,121.45 to the owner, stating it had authority under its bylaws to do so.
14. Neither the owner nor the strata have made any claim against the plumber for their respective costs of repair.
15. If the claim is dismissed, the strata seeks \$11,609.50 in legal fees and \$72.63 in disbursements incurred in its dispute of this claim.

POSITION OF THE PARTIES

16. The owner submits that, as the strata selected the plumber who caused the damage by not shutting off the water, it should pay its costs to repair the common property. She seeks an order holding that she is not responsible for the strata's costs of repair as she says they did not arise from the screw puncture made by her husband, but instead from the plumber's negligence.
17. In essence, she is arguing a well-known legal doctrine which goes by the Latin name of *novus actus interveniens*. It literally means a new intervening act that is the real cause of the damage or loss. This is what she argues the actions of the plumber are here.
18. She also seeks an order, based on what her husband observed about the proximity of the main hot water pipe to the bathroom wall in their strata unit, that the strata assess all strata lots to determine if hot water pipes are installed in contravention of the building code.
19. The strata submits that:
 - The strata was established in 2008 under section 2 of the *Strata Property Act*, (SPA). In addition to the SPA, the strata is also governed by its bylaws.
 - The bylaws include the basis upon which the strata can recover reimbursement for property damage. The bylaws have been substantially amended since this incident, but the prior bylaws in place in December 2016 govern.
 - Bylaw 37 provided that an owner shall indemnify the strata for any necessary maintenance, repair or replacement to common property by the act, omission, negligence or carelessness of the owner, or (amongst other persons) the owner's agents or contractors. Bylaw 44, entitled "Responsibility of Owners" made an owner responsible for any loss or damage to common property and again required the owner to indemnify the strata for any necessary

maintenance, repair or replacement expense from any act or omission of the owner, and certain other persons including the owner's agents or contractors.

- The plumber was not an agent of the strata in this case, but an independent contractor retained at the request of the owner at her cost. The strata had no reason to doubt the plumber's professionalism or competence.
- The strata sought reimbursement of the repair costs from the owner by way of requests for payment and has, under section 112 of the SPA, properly given notice of a charge back on the owner's strata lot account ledger.
- The owner has refused to pay the repair costs and these charges remain outstanding on the strata lot's account. The strata has not yet initiated legal proceedings on its collections request or filed a certificate of lien under section 116 of the SPA.
- The owner has disclaimed responsibility for the pipe damage and resulting repair costs because of an alleged building code violation, but no details, expert opinion or evidence of any code violation has been provided in this proceeding.

20. The strata submits that I should dismiss the applicant owner's claim. It further submits that this is an appropriate case for an order that the owner pay the strata's legal expenses in defending the claim, given her refusal to pay.

ANALYSIS

Is the owner responsible to pay the strata \$2,121.45 for the costs to repair common property from the water damage, or is it a strata responsibility?

21. Based on the evidence presented, and the legal onus on the owner to prove her claims on the balance of probabilities, I find that she has failed to do so.

22. I begin by looking at whether the plumber's actions were the intervening and real cause of the damage.

23. Even though I have found on the evidence that the plumber did not turn off the water before starting the repair, there is not sufficient evidence presented on which I can conclude that the plumber was negligent in carrying out the repair. Expert evidence on proper plumbing practices in this situation is needed for me to be able to decide this issue.
24. The chain of events started with an act or omission of the owner's husband (her co-owner) in puncturing the pipe, and ended with the flood damage during the pipe repair.
25. This situation is akin to that in an older Supreme Court of Canada decision, *The King v. Hochelaga Shipping & Towing Co. Ltd.*, [1940] SCR 153. It was a shipwreck case where a ship hit an underwater hazard owned by the defendant and sank. The defendant argued that the ship captain's actions after collision were the real cause for his ship sinking, and not the hazard. The court held that the defendant had to prove that "those in charge of the ... vessel were guilty of negligence (as opposed to mere error of judgment) amounting to a *novus actus interveniens* which caused the extra damage." The court found it failed to do so.
26. Similarly here, the owner has not proven any negligence by the plumber, and proof of negligence is necessary.
27. Secondly, there is no evidence that the plumber was anything but an independent contractor contacted by the strata on the owner's behalf, with the owner's agreement to pay the repair costs. If anything, the strata was acting as agent for the owner in retaining the plumber. She has also not established that the plumber was an agent of the strata as opposed to her own agent or contractor.
28. While the owner believes the fault lies with the plumber, it does not change her responsibility under the bylaws to pay.
29. I dismiss her claim for an order holding that she is not responsible for the strata's costs of repair.

30. I specifically note that, subject to limitation issues, this dismissal does not prevent the owner from making a claim within the tribunal's small claims jurisdiction against the plumber. She can do so for these costs or her own costs for her strata lot repairs if they are within the tribunal's statutory monetary limits. She also can initiate small claims proceedings in the Provincial Court if they exceed those limits.

Should the tribunal order the strata to assess whether there are building code violations in relation to the location of the main water pipes in all strata lot bathrooms?

31. I have no evidence on which I can assess whether there are any potential building code violations over location of the main hot water pipes. The owner has not proved this a problem that needs to be addressed. I dismiss this claim.

If this claim is dismissed, is the owner liable to pay dispute-related legal expenses incurred by the strata in defending this claim and totalling \$11,682.13?

32. I decline to make this order. As was stated by this tribunal in *Lam v. The Owners, Strata Plan EPS 2328*, 2018 BCCRT 73 at paragraphs 77-80, the tribunal, under section 49 of the Act and the tribunal rules, will generally order an unsuccessful party to reimburse a successful party for tribunal fees paid and reasonable dispute-related expenses. However, section 189.4(b) of the SPA expressly states that an owner who brings a claim against a strata corporation is not required to contribute to the expense of defending the claim.

33. Here, the strata claims as its expenses the amount of its legal bills to defend the applicant owner's claims. This is not an exceptional case, but rather a relatively straightforward dispute about who pays to repair common property. Barring exceptional circumstances, I find to order reimbursement is contrary to section 189.4(b) of the SPA.

DECISION AND ORDERS

34. I order that:

- a. The owner's claim for an order holding that she is not responsible for the strata's claimed costs of repair of \$2,121.45 is dismissed.
- b. The owner's claim for an order that the strata assess whether there are building code violations in relation to the location of the main water pipes in all strata lot bathrooms is dismissed.
- c. I decline to order that the owner pay the strata's claimed dispute-related legal fees and disbursements.

35. As noted earlier, under section 189.4(b) of the SPA, an owner who brings a tribunal claim against the strata corporation is not required to contribute to the expenses of bringing that claim. I order the strata to ensure that no part of the strata's expenses in defending this claim be allocated to the owner.

36. Under section 57 of the Act, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia, a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.

Michael F. Welsh, Q.C.,
Tribunal Member