Civil Resolution Tribunal

Date Issued: December 21, 2018

File: ST-2017-006482

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wong v. Section 1 - The Owners, Strata Plan LMS 2371 et al*, 2018 BCCRT 896

B E T W E E N :

Lai Por Paul Wong

APPLICANT

A N D :

Section 1 - The Owners, Strata Plan LMS 2371 and The Owners, Strata Plan LMS 2371

RESPONDENTS

A N D :

Lai Por Paul Wong and The Owners, Strata Plan LMS 2371

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: Eric Regehr

INTRODUCTION

1. The applicant and respondent by counterclaim, Lai Por Paul Wong (applicant), is an owner of strata lot 333 in the respondent strata corporation, The Owners, Strata Plan LMS 2371 (strata). The strata includes commercial and residential strata lots in 2 buildings, one low-rise and one high-rise, in downtown Vancouver. The strata contains 2 sections, a residential section and a commercial section. The residential section, Section 1 - The Owners Strata Plan LMS 2371, is a respondent and the applicant in the counterclaim. The strata is an additional respondent in the counterclaim.

2. The applicant's strata lot (applicant's lot) is on the second highest floor of the high-rise building and is in the residential section. The strata and the residential section are managed by the same property management company.

3. The applicant is self-represented. The strata and the residential section are both represented by the strata council president. The applicant does not live in the applicant's lot and rents it out to a long-term tenant.

4. This is a dispute about who is responsible for repair and maintenance costs from three separate incidents:
    a. April 5, 2017 leak that originated above the applicant's lot (pipe leak).
    b. June 29, 2017 repair and maintenance work on the applicant's terrace (terrace repair).
    c. August 25, 2017 leak that the residential section says originated in the applicant's lot's bathroom (bathroom leak).

JURISDICTION AND PROCEDURE

5. 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.

6. 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.

7. 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.

8. Under section 61 of the Civil Resolution Tribunal Act, the tribunal may make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the tribunal in accordance with its mandate. In particular, the tribunal may make an order on its own initiative.

9. Initially, the applicant only claimed against the residential section. As discussed in more detail below, the strata's bylaws place some obligations on the residential section and other obligations on the strata. As a result, I found that some of the applicant's claims were properly against the strata, not the residential section. In a separate decision, I ordered that the strata be added as a respondent to the applicant's claim and the residential section's counterclaim. The strata had an opportunity to provide submissions on the matters that may affect it. The applicant and residential section had the opportunity to provide reply submissions to the strata.

10. 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.

BACKGROUND AND ISSUES

11. While I have reviewed all of the materials provided, I have only commented on the evidence and submissions as necessary to explain and give context to my decision.

12. The strata filed a complete set of bylaws with the Land Title Office on February 22, 2006. Since then the strata has filed a number of changes to the bylaws, but none are relevant to the issues in this dispute.

13. As mentioned above, the applicant's lot is on the 30th floor of a 31-floor residential high-rise. The applicant's lot includes an outdoor space that is referred to as a "terrace" on the strata plan.

14. The strata and the residential section share the same property manager. There is a significant amount of correspondence between the property manager and the applicant in evidence. Unfortunately, the property manager seems to use the word "strata" to refer to both the strata and the residential section. It is not always clear whether the property manager is writing on behalf of the strata, the residential section, or both. In addition, while the residential section was the initial respondent, it only referred to the strata in its submissions. Further complicating matters, the applicant does not distinguish between the strata and the residential section, referring only to the strata in his submissions.

15. I have attempted to accurately capture which evidence and submissions relate to the residential section and which relate to the strata. This has required me to make some assumptions. That said the strata and the residential section are represented by the same person in this dispute and use the same property manager. In addition, they did not take any inconsistent positions in this dispute. Therefore, I find that my decision would not be different if any of my assumptions are incorrect.

16. This dispute includes 3 separate claims.

17. First, the applicant claims $3,333 as a result of the pipe leak, broken down as follows:
    a. $2,500 deductible that the applicant paid to his insurer.
    b. $17 in bank fees to wire the deductible.
    c. $816 in uninsured repairs to the applicant's floor.

18. The applicant claims that the strata should have to pay for the pipe leak because the leak originated in pipes that are common property. The residential section and the strata both say that the applicant must prove that they were negligent in their repair and maintenance obligations.

19. Second, the residential section counterclaims for $10,920 for the terrace repair. The residential section claims that it arranged for and paid for the terrace repair because the applicant refused to do so. The strata and residential section both allege that the maintenance and repair of the terrace is the applicant's responsibility under the bylaws.

20. Third, the residential section counterclaims for $581.45 for repair costs caused by the bathroom leak. The residential section alleges that it paid for repairs after the bathroom leak caused damage to a strata lot 2 stories below the applicant's lot. The residential section alleges that the leak originated in the applicant's lot and that the applicant is responsible for the damage.

21. The residential section initially claimed a further $12,736.88 in repair costs from other leaks, alleging that they resulted from the applicant's failure to repair the terrace. However, the residential section abandoned those claims during the facilitation phase of this dispute.

22. The issues in this dispute are:
    a. Is either the strata or the residential section responsible for the applicant's insurance deductible and uninsured repairs caused by the pipe leak?

b. Who is responsible to repair and maintain the terrace under the bylaws?

c. Is the applicant responsible for the repair costs caused by the bathroom leak?

EVIDENCE AND ANALYSIS

The Pipe Leak

23. On April 5, 2017, a pipe leak damaged the applicant's lot's walls and laminate flooring. The report from the emergency response contractor stated that the leak may have originated in the water supply line in the strata lot above the applicant's lot. The applicant's insurer covered the cost to repair the damage but the coverage was subject to a $2,500 deductible.

24. On June 20, 2017, the applicant paid the $2,500 insurance deductible for the water damage. The applicant initially refused to pay it but eventually relented on the understanding that he would be able to claim it from the unit above. The applicant also paid $17 in bank charges to wire the deductible.

25. During repairs to the applicant's lot, the applicant's tenancy manager advised the applicant that the subfloor was not level and that installing a new floor without levelling the subfloor would void the new floor's warranty. The applicant agreed to level the concrete floor, which cost $816. There is no evidence that the uneven subfloor was caused by the pipe leak.

26. In this dispute, the applicant does not make a claim against the owner of the unit above the applicant's lot. Rather, the applicant alleges that because the leak originated from a pipe that was the residential section's responsibility to repair and maintain, the residential section is responsible for the applicant's uninsured repairs.

27. As the applicant points out, bylaw 4(b)(iii) requires the residential section to repair and maintain the pipes in the residential section's strata lots and common property. Bylaw 3(a)(iii) requires the applicant to repair and maintain the applicant's lot, with certain exclusions that do not apply here.

28. The applicant relies on a legal opinion dated February 7, 2013, which states that regardless of the cause, when damage to common property results in damage to a strata lot, a strata must pay to repair the strata lot. The legal opinion appears to be general advice and is not directed specifically to the residential section or the strata. It refers to the SPA but not the bylaws. It does not refer to the case authorities that state that a strata's obligation to repair and maintain is to be assessed on a standard of reasonableness, such as *Basic v. Strata Plan LMS 0304*, 2011 BCCA 231.

29. A strata does not necessarily have to reimburse an owner for expenses incurred to repair their strata lot just because the source of the damage is the strata's responsibility to maintain. The applicant must show that the residential section was negligent in repairing and maintaining the pipe that leaked. See *Chan v. The Owners, Strata Plan LMS 1781*, 2018 BCCRT 306.

30. There was initially no evidence or submissions about whether the residential section was negligent in the repair and maintenance of the pipe that leaked. I gave the applicant and the residential section the opportunity to provide evidence and make submissions about whether the strata was negligent, but neither party provided any relevant evidence.

31. Therefore, in the absence of any evidence to suggest the residential section acted negligently, I dismiss the applicant's claim for $3,330.

The Terrace Repair

32. On August 24, 2016, the property manager sent the applicant a letter advising that the terrace required repairs. The property manager included 3 quotes and advised the applicant that the applicant would be responsible for the cost of repairs because the terrace is within the applicant's lot.

33. On October 21, 2016, the property manager sent another letter to the applicant, advising that if the applicant did not select a contractor within 7 days, the residential section would complete the repairs and charge the applicant. The property manager

included a copy of the strata plan that showed that the terrace was part of the applicant's lot.

34. On November 8, 2016, the applicant sent the property manager a letter challenging the property manager's position that the applicant was responsible for the cost to repair and maintain the terrace.

35. On January 17, 2017, the property manager advised the applicant that the units below his were experiencing water leaks. The property manager believed that the leaks originated in the terrace because the membrane needed repair.

36. On January 26, 2017, the applicant selected a contractor and advised the property manager to arrange for the terrace repair. The contractor completed the terrace repair in June 2017, which consisted of replacing the waterproof membrane under the pavers on the terrace.

37. On July 3, 2017, the applicant sent the property manager a letter stating that he felt misled by the strata's demand that he pay for the repairs to the terrace. The applicant refused to pay for the work.

38. On August 25, 2017, the property manager applied a chargeback of $10,920 to the applicant's account for the completed terrace repairs.

39. On September 19, 2017, the strata council held a hearing about the terrace repair. On September 26, 2017, the property manager sent a letter telling the applicant that the terrace is over the living space of the strata lot below the applicant's lot, and therefore is not a balcony, roof or patio.

40. Even though the applicant referred to the bylaws in some of his communications with the property manager, in his submissions, the applicant only refers to the Schedule of Standard Bylaws under the SPA. However, the strata has filed its own bylaws that replaced the Standard Bylaws, so I find that the Standard Bylaws do not apply.

41. As mentioned above, bylaw 3(a)(iii) requires an owner to repair and maintain their strata lot, excluding windows and doors on the exterior of the building. Bylaw 3(a)(iii) makes no mention of balconies.

42. Bylaw 4(a)(iii) sets out the some of the repair and maintenance obligations of the strata. Because the precise wording of the bylaw is important, I will reproduce the relevant portion:

> The strata corporation shall maintain and repair all common property and maintain and repair the exterior of the buildings, (including windows, doors, balconies and patios attached to the exterior of the building).

43. On the strata plan, it is clear that the terrace is part of the strata lot. The terrace is not common property.

44. The strata plan uses the word “terrace” to describe the large outdoor areas that are part of the large strata lots on the top 2 floors of the high-rise building, including the applicant’s lot. The strata plan uses the word “balcony” to describe smaller areas on most of the strata lots. The word “patio” does not appear on the strata plan. None of the balconies identified on the strata are common property. All are part of individual strata lots.

45. The word “terrace” does not appear anywhere in the bylaws.

46. The applicant submits that the terrace is attached to the exterior of the building just like the features called balconies on the strata plan. The applicant suggests that the distinction between balconies and terraces on the strata plan is not relevant to determining who is responsible to repair and maintain the terrace under the bylaws. The applicant submits that the strata must repair and maintain the terrace because the terrace is either the exterior of the building or attached to the exterior of the building.

47. The residential section makes 2 main arguments about why the applicant must repair and maintain the terrace.

48. First, as mentioned above, the residential section submits that the applicant's obligation to maintain and repair the terrace arises because the terrace is part of the applicant's lot and is not limited common property.

49. Second, the residential section submits that the meaning of the word "balcony" in the bylaws is governed by how the word is used in the strata plan. The residential section submits that because the respondent's outdoor area is called a "terrace" on the strata plan, it is not a "balcony" within the meaning of the bylaws. Therefore, because it is not specifically captured in the strata's responsibilities, it falls within the applicant's general duty to repair and maintain the applicant's lot.

50. The strata made separate submissions with respect to the repair and maintenance of the terrace. The strata argues that bylaws 3(a)(iii) and 4(a)(iii) must be read in conjunction with section 72(3) of the SPA, which states that a strata may take responsibility of repairing and maintaining specific portions of a strata lot by passing a bylaw. The strata says that because bylaw 4(a)(iii) does not specifically include the terrace, the strata has not taken responsibility for it. The repair and maintenance obligation therefore falls within the applicant's general duty to repair and maintain his own strata lot. In effect, the strata's argument expands upon the residential section's argument that bylaw 4(a)(iii) should not be interpreted as including the terrace.

51. In *Strata Plan VIS4663 v. Little*, 2001 BCCA 337, the Court of Appeal warned against highly technical and literal interpretations of strata bylaws. The Court of Appeal stated that strata bylaws should be interpreted purposively, pragmatically and fairly with an eye to accomplishing their community's goals. While the Court of Appeal's comments were directed towards the interpretation of a specific bylaw, I take those comments to be generally applicable.

52. With respect to the residential section's first argument, it says that the applicant must repair and maintain the terrace because it is within the strata lot and not limited common property. I find that this argument ignores the fact that none of the "balconies" on the strata plan are limited common property. All balconies form part

of a strata lot. Bylaw 4(a)(iii) requires the strata to repair and maintain balconies, which necessarily means that the strata has taken responsibility for certain parts of strata lots. Therefore, the mere fact that the terrace is within the applicant's lot and is not limited common property does not determine whether the strata must repair and maintain the terrace. Rather, the bylaws govern who must repair and maintain the terrace, which is the focus of the residential section's second argument.

53. I will address the residential section's second argument and the strata's argument together. I do not agree that because bylaw 4(a)(iii) does not explicitly include terraces, the terrace must be excluded. Bylaw 4(a)(iii) states that the strata must repair and maintain the exterior of the building, including balconies and patios. It is a well-accepted principle of statutory interpretation that the using the word "including" before a list signifies that the list is either intended to enlarge or expand the meaning of the preceding words or to provide clarification of the preceding words: see *Harrison Hydro Project Inc. v. British Columbia (Environmental Appeal Board)*, 2018 BCCA 44. The word "including" does not mean that the list that follows is an exhaustive list. The rules of statutory interpretation apply to strata bylaws: see *Semmler v. The Owners, Strata Plan NES3039*, 2018 BCSC 2064.

54. In the context of bylaw 4(a)(iii), I find that the use of the words "balconies" and "patios" are used to clarify what "exterior of the building" includes. The words do not limit the strata's responsibility to those parts of the exterior of the building that are specifically listed. By using the words "balconies" and "patios", the bylaw clarifies that the exterior of the building includes parts of the exterior of the building that are within a strata lot.

55. In addition, if the strata intended to have the bylaws track perfectly with the language used in the strata plan, then one would expect that the bylaws would explicitly assign responsibility for repairing and maintaining the terraces. Along the same lines, one would not expect to see any reference to patios, which do not exist in the strata plan.

56. The strata states that the applicant has care and control over the terrace, but that is true of all of the balconies in the residential section as well. Neither the residential section nor the strata has provided any rationale as to why the strata would assume the obligation to repair and maintain balconies but not terraces, and I find that it would be overly technical and unpragmatic to interpret the bylaws in that way. I therefore find that the "exterior of the building" in bylaw 4(a)(iii) includes the terrace.

57. In case I am wrong with the above analysis, I will address the applicant's argument that the terrace is a balcony within the meaning of bylaw 4(a)(iii). I find that a balcony is an enclosed or partially enclosed outdoor space on the outside of an upper floor of a building that is accessed through a window or a door. The applicant has provided photographs of the terrace. The terrace is a long outdoor space with a glass and concrete railing. It is accessed through a door from the applicant's lot. I disagree with the strata's argument that the fact that there is living space underneath the terrace distinguishes it from a balcony. Therefore, I find that the terrace is a "balcony" within the meaning of bylaw 4(a)(iii).

58. I find that the strata is responsible for the cost of the terrace repair.

59. Both the applicant and the residential section sought orders with respect to the terrace repair. The applicant sought an order reversing the chargeback on the applicant's account. The residential section sought an order that the applicant pay for the terrace repair.

60. For reasons mentioned above, it is not entirely clear whether the strata or the residential section applied the chargeback. Therefore, I order that the residential section and the strata cancel the chargeback on the applicant's strata account for the terrace repair, as applicable. I dismiss the residential section's counterclaim for $10,920.

The Bathroom Leak

61. The bathroom leak occurred on August 25, 2017. The residential section alleges that the leak originated in the toilet in the powder room of the applicant's lot. The applicant disputes that the leak originated in the applicant's lot.

62. On December 29, 2017, the property manager applied a chargeback for $581.45 to the applicant's lot for the cost of the repairs to the bathroom in the strata lot below the applicant's lot.

63. The applicant provided email correspondence between the applicant's tenancy manager and one of the applicant's tenants. In that correspondence, the tenant stated that they did not think that there were any repairs or renovations in August 2017. They recalled that someone had used towels in their powder room for some purpose, but believed that this was in July and not August 2017. However, this email was from May 2018 and the tenant does not state how they remember which month this took place.

64. The applicant says that his tenant's denial is proof that the bathroom leak did not originate in the applicant's lot. However, given that the tenant was recalling something that took place 9 to 10 months beforehand and that the tenant did recall someone using the towels in his powder room, I do not agree that the tenant's denial is determinative.

65. The residential section relies on the plumber's invoice to support its contention that the leak originated in the applicant's lot.

66. The plumber's invoice is not clear regarding the source or cause of the bathroom leak. All the plumber stated about the applicant's lot was that the leak seemed to be originating from the wall. It does not appear from the invoice that the plumber did any repair work in the applicant's lot. It simply states that the plumber assessed the leak and that the applicant's tenants would monitor the situation. It is therefore unclear where the water in the applicant's powder room originated.

67. Bylaw 4(b)(iii) requires the residential section to repair and maintain pipes within the residential section, including pipes existing in the strata lots.

68. The burden is on the residential section to prove on a balance of probabilities that the applicant is responsible for repair costs caused by the bathroom leak. The only evidence regarding the source of the leak in the applicant's lot is that it appeared to come from a wall. I find that the evidence falls far short of proving that the applicant is responsible for the bathroom leak and resulting damage.

69. As with the terrace repair, it is not entirely clear whether the strata or the residential section applied the chargeback. Therefore, I order that the residential section and the strata cancel the chargeback on the applicant's strata account for the bathroom leak, as applicable. I dismiss the residential section's counterclaim for $581.45.

TRIBUNAL FEES AND EXPENSES

70. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case to deviate from the general rule. While none of the parties was entirely successful, there was a significant discrepancy between the $3,333 claimed by the applicant and the $24,238.33 initially claimed by the residential section. In addition, the applicant was successful in having the 2 chargebacks at issue in this dispute cancelled. Because it is not clear whether the residential section or the strata took the actions that gave rise to this dispute, I order the strata and the residential section to each reimburse the applicant for half of the applicant's tribunal fees of $225. The applicant did not claim any other dispute-related expenses.

71. The residential section and the strata must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owner, unless the tribunal orders otherwise.

DECISION AND ORDERS

72. I order the residential section and the strata to immediately cancel the chargeback on the applicant's account of $10,920.00 for the cost of the terrace repair, as applicable.

73. I order the residential section and the strata to immediately cancel the chargeback on the applicant's account of $581.45 for the repair costs from the bathroom leak, as applicable.

74. Within 14 days of this order, I order the residential section to reimburse the applicant's tribunal fees of $112.50.

75. Within 14 days of this order, I order the strata to reimburse the applicant's tribunal fees of $112.50.

76. I dismiss the applicant's remaining claims. I dismiss the residential section's counterclaims.

77. The applicant is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

78. 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.

79. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia. However, the principal amount or the value of the personal property must be within the Provincial Court of British Columbia's monetary limit for claims under the *Small Claims Act* (currently $35,000). Under section 58 of the Act, the Applicant can enforce this final decision by filing in the Provincial 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 Provincial Court of British Columbia.

Eric Regehr, Tribunal Member