



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 1424 v. Horton et al*, 2019 BCCRT 621

B E T W E E N :

The Owners, Strata Plan LMS 1424

APPLICANT

A N D :

David Horton and Cynthia Horton

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about renovations performed on a limited common property (LCP) deck.

2. The applicant, The Owners, Strata Plan LMS 1424 (strata) is a strata corporation existing under the *Strata Property Act* (SPA). Respondent David Horton owns strata lot 70 (SL70) in the strata. Respondent Cynthia Horton lives in SL70 but is not on title as an owner.
3. Cynthia Horton served as strata council president from July 31, 2017 to July 10, 2018.¹ The strata says that in August 2017, while Ms. Horton was president, she undertook extensive, unauthorized renovations to the LCP deck adjoining SL70 (the deck), using strata funds. The strata says it was unaware of the extent of the renovations, which were invoiced to the strata in the amount of \$6,300, as part of a larger strata renovation project involving a strata-owned rental suite.
4. The strata seeks payment \$5,500 for the unauthorized deck repairs, \$200 for a bylaw violation fine, and \$10,000 for water damage to the strata lot below the Hortons'.
5. The Hortons deny liability. They say the strata council was aware of all the deck work before and during construction. They also say the water damage in the unit below was caused by deficiencies in the deck due to substandard work by the strata's contractor.
6. The Hortons are self-represented. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

7. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 121 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.

¹ Under strata bylaw 15.2, an owner's spouse is entitled to be a strata council member.

8. 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.
9. 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.
10. Under section 123 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.

ISSUE

11. The issues in this dispute are:
 - a. Must the Hortons pay the strata \$5,500 for deck renovations?
 - b. Must the Hortons pay a \$200 bylaw violation fine?
 - c. Must the Hortons reimburse the strata for the \$10,000 insurance deductible?

EVIDENCE, FINDINGS AND ANALYSIS

12. I have read all of the evidence provided but refer only to evidence I find relevant to provide context for my decision. In a civil proceeding such as this, the applicant (in this case, the strata) must prove its claims on a balance of probabilities.
13. The strata says it was aware that some repairs to the deck were warranted. It says the scope and estimated cost of these repairs, at \$950, were discussed and approved by the strata council. The strata says the Hortons were not given any approval or authority for the more extensive deck renovation that was ultimately performed in August 2017. The strata says Ms. Horton overrode the project scope

approved by the strata council and provided to its contractor, MacBeth Roofing (MacBeth), and that she did so without approval or authority.

14. In particular, the strata says the Hortons instructed MacBeth to remove all the existing concrete pavers from the deck, and replace them with a vinyl membrane. The strata says this was never approved, and that no other townhouse in the strata has vinyl decking.
15. The strata says Ms. Horton willfully abused her power as strata council president by having the deck, which is assigned solely to the use of SL70, fully refurbished to her preference instead of merely repaired to the common standard. The strata also says Ms. Horton misappropriated strata funds to pay for this work.
16. The strata says it only became aware of the more extensive deck renovation when Ms. Horton complained to MacBeth and the property manager that the deck work was substandard. On October 17, 2017, the strata lot below SL70 sustained around \$18,500 in rainwater damage, which the parties agree was due to MacBeth's substandard work on the deck. MacBeth ultimately re-did the work, and the strata's insurer paid out the water damage claim, minus a \$10,000 deductible paid by the strata.

\$5,500 for Deck Repairs

17. I find that the strata has proved its claim that the Hortons did not have the necessary approval for the deck renovations that were performed.
18. The parties agree that the deck is LCP. This is consistent with the strata plan, which shows that the deck is LCP assigned to the exclusive use of SL70.
19. Section 72(1) of the *Strata Property Act* (SPA) says the strata corporation must repair and maintain all common property and common assets, including LCP. While Section 72(2) of the SPA allows a strata to enact bylaws making an owner responsible for the repair and maintenance of LCP that the owner has a right to use.

20. As allowed under SPA section 72(2), the strata has enacted bylaws delegating some LCP repairs to individual strata lot owners. Bylaw 7.3 says that an owner who has the use of LCP shall repair and maintain it, except for repair and maintenance that is the responsibility of the strata corporation under Bylaw 7.4(c).
21. Bylaw 7.4(c) says the strata corporation will repair and maintain LCP in the following circumstances:
- (i) repair and maintenance that in the ordinary course of events occurs less often than once a year; and
 - (ii) the following, no matter how often the repair or maintenance readily occurs:
 - (A) the structural components of the building;
 - (B) the exterior of the building;
 - (C) chimneys stairs, balconies, decks, patios, and other things attached to the exterior of a building;
 - (D) doors, windows and skylights...
 - (E) fences, railings and similar structures that enclose patios, balconies, decks and yards.
22. Thus, under the bylaws, particularly bylaw 7.4(c)(ii)(C), the strata had a duty to repair and maintain the deck.
23. The strata does not dispute this, but says the renovation work performed on the deck at Ms. Horton's instruction went beyond maintenance or repair, as all of the concrete pavers were removed and replaced with a vinyl membrane.
24. I place significant weight on an audio recording of a telephone call with a representative of MacBeth, provided by the strata. In the call, a member of the current strata council asked who "gave the go-ahead" to re-do the entire deck with vinyl. The MacBeth representative said they took their instructions from Ms. Horton. The MacBeth representative also said that about 33 to 40% of the deck was rotted.

He also said it would have cost about 1/3 of the total price for the job if they had instead repaired the deck and replaced the existing pavers.

25. I am persuaded by this verbal statement from the MacBeth employee, and note there is no contrary evidence before me confirming that someone else instructed MacBeth to install the vinyl. Ms. Horton provided a copy of an August 16, 2017 email from the strata's property manager to another owner in the strata, who had asked why the deck at SL70 was being covered with vinyl. The property manager wrote that the "membrane company" had found areas that were completely rotten, and they recommended installing a vinyl deck.
26. While this email indicates the property manager was aware that vinyl had been installed on the deck, I find it does not prove that the property manager or the strata council approved that installation. There is no evidence before me confirming the property manager's assertion that a membrane company (or roofing company) recommended vinyl decking. Also, even if they had, there is no indication that the strata council (other than Ms. Horton) was informed of or approved the increased cost compared to the original scope of work from June 21, 2017.
27. The June 21, 2017 scope of work said that MacBeth would charge \$950 plus GST to remove the deck pavers, remove and dispose of the collapsed drain mat, supply and install a new drain mat, and reinstall and level the old pavers. The property manager emailed MacBeth on June 21, 2017, asking that they go ahead and perform this scope of work.
28. Ms. Horton says MacBeth did a site visit on July 19, 2017, and provided a new quote with a new scope of work and price. This scope of work is not typed and dated, unlike the June 21, 2017. The copy provided by Ms. Horton shows that a handwritten note on the previous scope of work, showing a price of \$5,450, as a "re quote" for a new plywood and vinyl deck. The actual scope of work was not changed from the June 21, 2017 document. The quote was initialed by "JB", who is a MacBeth employee. In a July 19, 2017 email to some other MacBeth employees,

JB wrote that there was visible mold, and some of the plywood, plus a cross brace and truss, were rotten.

29. Ms. Horton says the strata property manager was present during this July 19, 2017 site visit with MacBeth. However, I again find there is no evidence before me confirming that the property manager approved the new quote, or referred the matter for council for approval. Rather, based on the audio recording with the MacBeth employee, I accept that Ms. Horton accepted the new scope of work. There is no indication that Ms. Horton informed the strata council of the changed scope of work or the increased price until after problems with the work arose in September 2017.
30. For these reasons, I find it is reasonable in the circumstances that the Hortons pay for the portion of the deck work that went beyond the approved scope of work. I find the evidence before me does not indicate that it was necessary, or structurally preferable, to dispose of the pavers and replace them with vinyl. Based on the audio recording I accept that the price for simply repairing the deck and re-installing the pavers would have been 1/3 of the total bill of \$6,300, or \$2,097. While this is more than the \$950 plus GST shown on the original quote, I accept that more extensive wood rot was revealed after repairs began, and necessary deck repairs are the strata's responsibility.
31. I note that bylaw 10.6(e) requires an owner to pay for alterations, additions, renovations, or other work to LCP decks that is beyond the strata's repair obligations. I discuss the application of bylaw 10.6 below.
32. For these reasons, I order the Hortons to pay 2/3 of the repair bill, which equals \$4,221.

\$200 Bylaw Violation Fine

33. The strata seeks an order that the Hortons pay a \$200 fine for violating strata bylaw 10.4, which states an owner must obtain written approval from the strata council before making an alteration or addition or doing a renovation or other work on or to

various parts of the strata buildings, including the structural components of the building, the exterior of the building, decks, and limited common property.

34. Section 135(1) of the SPA says that in order to impose a fine against an owner for a bylaw contravention, the strata must have received a complaint about the contravention, and given the owner particulars of the complaint and a reasonable opportunity to answer the complaint, including a hearing if requested. Section 135(2) of the SPA says the strata must provide its written decision on the issue as soon as feasible. I find that these requirements were met in this case. The strata provided notice in writing about the violation, and held a hearing on June 13, 2018. The strata provided written notice of its decision on June 19, following the hearing, and set out the \$200 fine.
35. Ms. Horton did not provide a specific reply to the strata's claim for payment of the \$200 fine, other than to state that the deck repairs were the strata's responsibility.
36. The strata says that in deciding to replace the concrete pavers on the deck with vinyl membrane, the Hortons altered LCP without approval, contrary to bylaw 10.4. I agree. While I do not necessarily find that the vinyl membrane was a significant change, this is not required under bylaw 10.4. Rather, bylaw 10.4 requires written approval from the strata council for any alteration to LCP, including decks. While I agree with Ms. Horton that the strata council was aware of repair work on the deck, I find the evidence shows that the strata council was not aware of, and did not provide the required written approval for, any change to the deck. Rather, the scope of work approved via email on June 21, 2017 specifically called for replacement of the original concrete pavers. Since no written approval was issued, I find the Hortons violated bylaw 10.4. The \$200 fine is permitted by the bylaws, and I order the Hortons to pay it.

\$10,000 Insurance Deductible

37. As previously stated, the strata lot below SL70 sustained around \$18,500 in rainwater damage in October 2017, shortly after the deck work was completed. The parties agree that this water damage was due to deficiencies in MacBeth's work on

the deck. This is consistent with the evidence before me. In a June 7, 2018 report, building inspector and contractor SH wrote that the leak was caused by improper installation of the vinyl membrane at the scupper drain area. Similarly, a September 11, 2017 report from LJS Property Services identified numerous problems with the deck repairs, including the fact that the deck membrane did not wrap properly at the wall underneath the door threshold, leaving bare OSB sheathing.

38. MacBeth ultimately re-did the work, and payment for that is not at issue in this dispute. The strata's insurer paid out the water damage claim, minus a \$10,000 deductible paid by the strata. The strata seeks an order that the Hortons reimburse the \$10,000 deductible.
39. There is no indication before me that the Hortons were negligent. Rather, it appears that the leak was the result of negligence by MacBeth. However, I find it is not necessary for the strata to prove negligence by the Hortons. Section 158(1) of the SPA says a strata can sue an owner to recover a deductible if the owner is "responsible for the loss or damage that gave rise to the claim". This is a lower threshold than negligence: *Mutual Insurance Co. v. Keiran*, 2007 BCSC 727 and *The Owners, Strata Plan LMS 2835 v. Mari*, 2007 BCSC 740.
40. Unlike in *Strata Plan LMS 2446 v. Morrison*, 2011 BCPC 519, there is no strata bylaw in this case that imports a negligence standard. Rather, I find that under the strata's bylaws, the Hortons are responsible to pay the insurance deductible.
41. Bylaw 10.7 says that in performing "work", as defined in bylaw 10.4, an owner must comply with all of the obligations set out in bylaw 10.6. I have already found that replacing the concrete pavers with vinyl decking was "work", as defined in bylaw 10.4. Thus, the obligations set out in bylaw 10.6 apply.
42. Bylaw 10.6(g) requires an owner to pay for all any damage or cost suffered by the strata as a direct or indirect result of the work. Similarly, bylaw 10.6(r) says that an owner must indemnify and save harmless the strata for any action, damages, costs, loss, or expense of whatever kind which the strata may sustain in connection with the work.

43. Since Ms. Horton approved the vinyl deck membrane, which I have found was an alteration beyond the scope of the original repairs and not approved by the strata, I find the Hortons are bound by bylaws 10.6(g) and (r). Thus, they must indemnify the strata for any damages or loss resulting from that work. I find the \$10,000 insurance deductible is such a loss, as the inspection reports show that the water damage was the direct result of the vinyl membrane application.
44. For these reasons, I order the Hortons to reimburse the strata \$10,000 for the insurance deductible.

CONCLUSION

45. In summary, I order the Hortons to pay the strata \$4,221 for the deck work, \$200 for the bylaw violation fine, and \$10,000 for the insurance deductible. This totals \$14,421. The strata is entitled to pre-judgment interest on this amount, under the *Court Order Interest Act* (COIA). I find the interest reasonably accrues from the date the Dispute Notice was issued, July 27, 2018, as it is unclear that the strata requested payment of the insurance deductible before that. I calculate the pre-judgement interest to be \$199.35.

FEES AND EXPENSES

46. 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. As the strata was largely successful in this dispute, I see no reason to depart from this general rule. I therefore order the Hortons to reimburse the strata \$225.00 for tribunal fees. The strata also provided receipts in the amount of \$21.42 for the cost of sending the Dispute Notices to the Hortons. I find this expense was reasonable in the circumstances, so I order reimbursement of \$21.42

DECISION AND ORDERS

47. I order that within 60 days of this decision, the Hortons must pay the strata a total of \$14,866.77, broken down as follows:
- a. \$4,221.00 for the deck work,
 - b. \$200.00 for the bylaw fine,
 - c. \$10,000.00 for the insurance deductible,
 - d. \$199.35 as pre-judgment interest under the COIA, and
 - e. \$246.42 for tribunal fees and dispute-related expenses.
48. The strata is also entitled to post-judgment interest under the COIA.
49. 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 123.1 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.
50. 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 123.1 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.

Kate Campbell, Tribunal Member