



# Civil Resolution Tribunal

Date Issued: July 19, 2019

File: ST-2018-005202

Type: Strata

Civil Resolution Tribunal

Indexed as: *Cheong Holistic Medicine Network Inc. v. The Mariners' Medical Clinic Ltd. et al*, 2019 BCCRT 885

B E T W E E N :

Cheong Holistic Medicine Network Inc.

**APPLICANT**

A N D :

The Mariners' Medical Clinic LTD. and Stan Karon Holdings Inc.

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Sarah Orr

## **INTRODUCTION**

1. The applicant, Cheong Holistic Medicine Network Inc., owns strata lot 23 (SL23) in The Owners, Strata Plan VR 780 (strata). The respondent, The Mariners' Medical Clinic LTD. (Mariners), is a tenant in strata lot 31 (SL31) of the strata.
2. As discussed further below, on April 29, 2019, I added Stan Karon Holdings Inc. (SKH) as a respondent to this dispute. SKH owns SL31. I order the style of cause to be amended accordingly.
3. The applicant says 2 separate water leaks in February and June 2017 originating in SL31 damaged the ceiling and floor in SL23. The applicant says the respondents are responsible for the damage. Mariners says they were not negligent, nor did they know about the water leaks before they occurred, and therefore they are not responsible for the cost of repairing the damage to SL23. SKH says the applicant has failed to establish that the water leaks caused damage to SL23, and that in any event the dispute is between the applicant, Mariners, and their respective insurance companies.
4. The applicant is represented by an employee or principal. Mariners and SKH are both represented by E.S., an employee or principal.

## **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 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.
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. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
9. 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.
10. The applicant did not name SKH as a respondent to this dispute. Upon reviewing the applicant's and Mariners' evidence and submissions, I determined it may be necessary to add SKH as a respondent, since SKH owns SL31 and some of the applicant's correspondence about the water leaks appears to be with representatives of SKH. Section 61 of the Act gives the tribunal authority to add a party to a dispute. I gave the applicant and Mariners the opportunity to provide submissions on whether I should add SKH as a party under section 61 of the Act, and neither party objected. Therefore, on April 29, 2019 I sent the parties my preliminary decision to add SKH as a respondent to the dispute. SKH submitted a Dispute Response and made submissions but chose not to provide evidence despite having the opportunity to do so.

## **ISSUES**

11. The issues in this dispute are:
  - a. Are either of the respondents required to reimburse the applicant \$4,350 for the cost of repairing the water damage to SL23?

- b. Are either of the respondents required to reimburse the applicant \$150 for its legal fees?

## **EVIDENCE AND ANALYSIS**

12. In a civil claim like this one, the applicant must prove their claim on a balance of probabilities. This means the tribunal must find it is more likely than not that the applicant's position is correct.
13. As noted above, SKH made submissions but chose not to submit evidence despite having the opportunity to do so. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.
14. The strata is a mixed commercial and residential use complex created in 1980. The strata's bylaws create separate sections for the residential strata lots and commercial strata lots. There are 8 residential strata lots in the residential section and 50 commercial strata lots in the commercial section. Both SL23 and SL31 are commercial strata lots within the commercial section.
15. On December 5, 2014 the strata deposited bylaws with the Land Title Office (LTO) which repealed and replaced the Schedule of Standard Bylaws in the *Strata Property Act* (SPA) and all previous bylaw amendments registered with the LTO. On December 11, 2014 the commercial section deposited bylaws with the LTO that are in addition to the strata's bylaws and only apply to the commercial section strata lots.
16. Mariners leases SL31 from SKH for use as a medical clinic. Mariners submitted its lease agreement dated April 1, 2006 (lease) which states that the the lease continues on a year-to-year basis until one of the parties terminates the tenancy.
17. On February 7, 2017 the applicant noticed water leaking into SL23 from SL31 directly above it. The applicant submitted 2 videos of the water leaks which they say were taken on February 7, 2017. The videos show water pooling on the floor and a damp examination table with water dripping from the ceiling.

18. Mariners submitted an invoice dated February 7, 2017 from Lew Plumbing and Heating Ltd. (Lew Plumbing), which states, "Service call to investigate water leaking to unit below...Turned shower on found water leaking from the drain, lifted the lid for the drain, found gasket, found gaps between the gasket and drain, siliconed the gasket and around the shower, tested for leaks, no leaks after siliconed." The invoice also states, "Notes: Temporarily repaired, should be taken apart and replaced with new parts."
19. The applicant submitted an estimate from Woori Homes dated February 23, 2017 for \$1,890 to repair the water damage in SL23. This estimate indicates that the laminate floor and underlay in rooms 2 and 4 of SL23 were water damaged requiring new laminate floorings and associated repairs. It is unclear from the evidence before me whether the applicant repaired the water damage at this time.
20. Mariners submitted an invoice dated May 30, 2017 from Lew Plumbing which states that it investigated a water leak in SL31 that day. I note the applicant does not allege any damage to SL23 caused by a water leak on this date. The invoice says the plumber opened the drywall behind the shower and sinks but found no sign of water leaking. They also tested all fixtures and found no leaks. The invoice states, "Drained toilet, lifted toilet to check wax seal, found wax seal no good, replaced wax seal, reset toilet, filled tested for leaks, no leaks... If water leak appears again will have to return and cut more drywall to locate."
21. On June 2, 2017 the applicant again noticed water leaking into SL23 from SL31 directly above it. The applicant submitted 4 videos of the water leak which they say were taken on June 2, 2017. The videos shows someone mopping a wet floor, a garbage can on an examination table, and water pooling on the floor in an examination room and hallway.
22. The applicant says they were unable to work on June 2, 2017 because of the damage from the water leak. They submitted an undated statement from a patient who says they witnessed water leaking into SL23 from the office upstairs and that water was "gushing" from the ceiling. The statement does not specify the date of the

incident, but the applicant says it was June 2, 2017, and the respondents do not dispute this.

23. I note that the applicant submitted what they say are additional videos from the 2 water leaks, however they submitted a Facebook hyperlink which did not direct me to the videos, so I am unable to view them.
24. Mariners submitted an invoice dated June 2, 2017 from Lew Plumbing which states, "Service call water leaking causing carpet to be wet. Investigated water leak found the faucet and legs from the washroom basin not properly bolted to wall, causing stress on water pipe, causing water to leak." The invoice says that after repairing the pipe and testing it the plumber found no more leaks and noted that everything appeared to work properly.
25. The applicant submitted an estimate from Woori Homes dated June 16, 2017 for \$4,350 to repair the damage to SL23. This estimate indicates that the laminate floor and underlay in rooms 1, 2 and a hallway were water damaged and required replacing, along with other associated repairs including ceiling tiles. I note the February 7, 2017 estimate from Woori indicated water damage to rooms 2 and 4. It is unclear whether the applicant had any repairs done to SL23 between the February 7, 2017 water leak and the June 2, 2017 water leak. Therefore, I cannot determine whether the damage to room 2 noted on the June 16, 2017 estimate was caused by the February 7, 2017 water leak or the June 2, 2017 water leak. I address this discrepancy further below.
26. By letter dated June 20, 2017 the applicant asked SKH to pay for the \$4,350 June 16, 2017 estimate. The applicant exchanged various emails with people representing SL31 over the next few months arranging estimates. It is unclear from the emails whether the people representing SL31 were representing SKH or Mariners, which is part of the reason I determined SKH should be added as a party to this dispute. SKH says it has had no communication with the applicant about the water leaks.

27. At some point in the fall of 2017 a representative from SL31 told the applicant they would be making an insurance claim for the damage from the water leaks, and that someone would be in touch with the applicant with an update.
28. The applicant submitted an estimate dated March 23, 2018 from Do My Floors for \$3,407.25 to repair the damaged floors in 2 rooms and a hallway of SL23. The emails in evidence indicate that this estimate did not include repairs of the ceiling tiles because Do My Floors does not do ceiling work.
29. On May 15, 2018, a representative from SL31 sent the applicant an email stating “your claim is completely recognized,” but on May 23, 2018 they informed the applicant that SL31’s insurance claim had been denied.
30. In emails dated June 25 and 26, 2018 the strata’s building manager informed the applicant that the strata’s policy is not to get involved in private disputes between owners. They said the source of the water leak was a pinhole in SL31’s water line connected to the sink faucet and that SKH was solely responsible for the damage since the source of the damage was not related to common property of the strata.
31. In an email dated July 25, 2018 the strata’s council president informed the applicant that SKH was unwilling to enter into a voluntary dispute resolution process.

***Are either of the respondents required to reimburse the applicant \$4,350 for the cost of repairing the water damage to SL23?***

32. The applicant says the respondents are responsible for the cost of repairing the damage to their strata lot. Mariners says they were not negligent, nor did they know about the water leaks before they occurred, and therefore they are not responsible for any damage to SL23. SKH says the applicant has not proven that either of the water leaks caused damage to SL23, and that in any event this dispute is between the applicant, Mariners, and their respective insurance companies.
33. The strata’s bylaw 34.1 says an owner is deemed to be responsible for any loss or damage caused to any strata lot when the cause of such loss or damage originated

within the owner's strata lot and the loss or damage is not covered by the strata's insurance policy. The strata's bylaw 34.2 says an owner is also deemed to be responsible for any loss or damage to any strata lot when the cause of such loss or damage is the result of an act, omission, negligence or carelessness of the owner and/or the owner's tenants, occupants or visitors, and the loss or damage is not covered by the strata corporation's or the applicable section's insurance policy.

34. The strata's bylaw 6.1 and the commercial section's bylaw 3 (1) both say an owner or tenant must not use a strata lot in a way that causes a nuisance or hazard to another person, or unreasonably interferes with the rights of other people to use and enjoy another strata lot.

### ***Mariners***

35. Mariners is a tenant, not an owner, and bylaws 34.1 and 34.2 clearly state that responsibility for damage to another strata lot lies with the owner of the strata lot from which the loss or damage originated, not with a tenant. Therefore, I find Mariners is not responsible for the damage to SL23 under bylaws 34.1 or 34.2.
36. With respect to bylaw 6.1 and commercial section bylaw 3 (1), on the evidence before me I am satisfied that the water leaks were nuisances to the applicant and that they interfered with the applicant's right to use and enjoy their strata lot. However, Mariners relies on the decision of this tribunal in *Li et al v. Song*, 2018 BCCRT 232, a case with similar facts to his one. In that case, in the absence of specific bylaws in place governing the dispute, the tribunal member decided the dispute based on the laws of nuisance and negligence. The tribunal member dismissed the applicant's claim because there was no evidence the respondent knew or ought to have known of the problem in their strata lot causing the water leak. In coming to their conclusion, the tribunal member relied on 2 court decisions which Mariners specifically relies upon in this dispute, *Kraps v. Paradise Canyon Holdings Ltd.*, 1998 CanLII 6650 (BC SC) and *Theberge v. Zittlau*, 2000 BCPC 225 (CanLII). Those decisions discuss the well settled laws of nuisance and negligence and state that when an occupier of land does not create a nuisance, that occupier is



only liable for the nuisance if they fail to take reasonable steps to address it once it is discovered or ought to have been discovered.

37. I find there no evidence Mariners created the nuisance or that it knew or ought to have known about the water leaks before they occurred. There is no evidence Mariners had any reason to suspect a water leak in SL31 before February 7, 2017. The evidence indicates the February 2017 leak was caused by a gap between the gasket and shower drain, whereas the June 2017 leak was caused by the sink being improperly bolted to the wall which caused undue pressure on its water pipe. There is no evidence the source of these leaks were related. I also find Mariners acted reasonably in addressing each of the water leaks as soon as it learned of them by immediately hiring a plumber to investigate and repair the leaks. Therefore, I the Mariners is not responsible for repairing any water damage to SL23 under the law of negligence, nuisance, the strata's bylaw 6.1, or the commercial section's bylaw 3 (1). I dismiss the applicant's claim against Mariners.

### **SKH**

38. According to bylaw 34.1, an owner is not required to be negligent to be responsible for loss or damage to another strata lot. It is enough for the cause of the loss or damage to originate in the owner's strata lot. There is no dispute that the cause of the water leaks originated in SL31 and that the damage to SL23 was not covered by the strata's insurance policy. Therefore, according to bylaw 34.1, I find SKH is responsible for any damage to SL23.

39. The thrust of SKH's defence is that SL23 has not established that either of the water leaks caused damage to SL23. SKH says its principal, S.K. entered SL23 on June 2, 2017 to help clean up the water and minimize the damage, and that he did not observe any damage to the floors at that time. However, SKH did not submit a statement from S.K. or any other evidence to support this assertion, and the applicant denies that S.K. was in SL23 that day.

40. The applicant submitted video evidence and a witness statement which I find are consistent with its description of the water leaks and resultant damage to SL23. The

applicant submitted 3 separate estimates of the water damage to SL23 from February 2017, June 2017, and March 2018. I note the applicant is claiming \$4,350, which is the exact amount of the Woori Homes June 2017 estimate. This estimate is for damage to rooms 1, 2, and a hallway. The applicant's Do My Floors March 2018 estimate describes damage which is consistent with the damage noted in the June 2017 estimate. I note the March 2018 estimate is for a slightly lower amount, but the applicant explained that it does not include replacement of the ceiling tiles which are included in the June 2017 estimate. I find this to be a reasonable explanation for the difference between the amounts of the 2 estimates.

41. I note that the February 2017 estimate is for damage to rooms 2 and 4, and the applicant has not clarified whether the damage to room 2 described in the June 2017 estimate was caused by the February or June water leak. However, I find it is unnecessary for me to determine which leak caused the damage, since it is undisputed that both leaks originated in SL31, and since I have found SL31 responsible for the damage caused by both leaks under bylaw 34.1.
42. On balance, I am satisfied the applicant has proven that the February and June 2017 water leaks caused damage to SL23, and that SKH must pay the applicant \$4,350 for the cost of repairing that damage under bylaw 34.1. The applicant is entitled to pre-judgment interest on this amount under the *Court Order Interest Act* calculated from June 2, 2017, which was the date of the second water leak.
43. I note this dispute is limited to determining who must compensate the applicant for the water damage. It is beyond the scope of this dispute to determine whether SKH may be entitled to recover some or all of the amount owing from Mariners as its tenant, and nothing in this dispute prevents SKH from bringing a dispute against Mariners.

***Are either of the respondents required to reimburse the applicant \$150 for its legal fees?***

44. In accordance with the tribunal's rules, the tribunal will generally not order reimbursement of a party's legal fees in strata property disputes, except in

extraordinary circumstances. I find there is nothing extraordinary about this case, and therefore I find the applicant is not entitled to reimbursement of its legal fees. I dismiss this claim.

## **TRIBUNAL FEES AND EXPENSES**

45. Under section 49 of the Act, and the tribunal's rules, since the applicant was generally successful I find it is entitled to reimbursement of \$225 in tribunal fees and \$20 in dispute-related expenses for registered mail, which I find to be reasonable expenses in the circumstances.

## **DECISION AND ORDERS**

46. Within 14 days of the date of this decision, I order SKH to pay the applicant a total of \$4,716.93, broken down as follows:

- a. \$4,350 as compensation for the water damage in SL23;
- b. \$121.93 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$245 for \$225 in tribunal fees and \$20 for dispute-related expenses.

47. The applicant is entitled to post-judgment interest, as applicable.

48. I dismiss the applicant's claims against Mariners.

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 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.

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 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.

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Sarah Orr, Tribunal Member