



# Civil Resolution Tribunal

Date Issued: August 27, 2020

Date Amended: September 2, 2020

File: ST-2020-001765

Type: Strata

Civil Resolution Tribunal

Indexed as: *Leguerrier v. The Owners, Strata Plan K 776*, 2020 BCCRT 958

B E T W E E N :

VANESSA LEGUERRIER

**APPLICANT**

A N D :

The Owners, Strata Plan K 776<sup>1</sup>

**RESPONDENT**

A N D :

VANESSA LEGUERRIER

**RESPONDENT BY COUNTERCLAIM**

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**AMENDED REASONS FOR DECISION**

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## **INTRODUCTION**

1. This is a strata property dispute about payment of an insurance deductible.
2. The applicant and respondent by counterclaim, Vanessa Leguerrier, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan K 776<sup>1</sup> (strata). The strata is the applicant in the counterclaim. Ms. Leguerrier is self-represented, and the strata is represented by a strata council member.
3. Ms. Leguerrier says the strata has improperly charged her strata lot \$10,000 for an insurance deductible relating to a leaking drain line from her dishwasher. She relies on advice she received from her insurer that she is not responsible under the strata bylaws because she was not negligent, which is what she says the bylaws require. She asks for an order that the strata pay the \$10,000 insurance deductible.
4. In its counterclaim, the strata says its bylaws do not require an owner to be negligent in order for the strata to recover an insurance deductible. Rather, the strata says its bylaws only require an owner to be responsible for the insurable loss, which sets a much lower standard. The strata asks for an order that Ms. Leguerrier pay the \$10,000 deductible.
5. For the reasons that follow, I order Ms. Leguerrier to pay the strata \$10,000 for the insurance deductible plus \$75.53 in interest and \$125 for fees related to this dispute.

## **JURISDICTION AND PROCEDURE**

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.

7. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, email, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.
8. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
9. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.
10. In its submissions, the strata stated it had difficulty uploading evidence into the CRT's online portal. According to CRT staff, the strata did not provide its evidence by the deadline established by staff and did not advise of any difficulties, even after it was provided with copies of late evidence from Ms. Leguerrier. Nevertheless, I asked staff to request the strata provide the evidence it referenced in its submissions. The strata provided only 1 piece of evidence despite being given the opportunity to provide more. Ms. Leguerrier was given the opportunity to revise her submissions based on the strata's single piece of evidence but declined to do so.
11. I have issued this decision based on the evidence and submissions that were provided by the parties.

## **ISSUE**

12. The sole issue in this dispute is who is responsible to pay the \$10,000 insurance deductible.

## **BACKGROUND, EVIDENCE AND ANALYSIS**

13. In a civil proceeding such as this, the applicant, Ms. Leguerrier, must prove her claim, and the strata must prove its counterclaim, on a balance of probabilities.

14. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
15. The strata is a residential strata corporation created in October 1989 under the *Condominium Act* that continues to exist under the *Strata Property Act*. (SPA). It consists of 198 strata lots in several low-rise buildings located in Kelowna, BC.
16. The strata filed bylaw amendments that repealed and replaced all registered bylaws with the Land Title Office (LTO) on July 26, 2018. LTO records show 2 subsequent bylaw amendments were filed but I find these bylaw amendments are not relevant to this dispute. I find the Schedule of Standard Bylaws do not apply.
17. The applicable bylaws in this dispute are bylaws 3.1, 9.3, and 15. Bylaw 3.1 states an owner is responsible for repair and maintenance to their strata lot, among other things, except for repairs that are the strata's responsibility. Bylaw 15 states the strata is responsible for common property, common assets, and certain parts of a strata lot that do not apply here.
18. Bylaw 9.3 addresses responsibility for insurance deductibles and I restate it in its entirety (my emphasis):

9.3 An owner shall indemnify and save harmless the Strata Corporation for the expense of any maintenance, repair or replacement rendered necessary to the common property or to any strata lot arising from any act, neglect or carelessness by such owner, but only to the extent that such expense is not satisfied by the proceeds of insurance carried by the Strata Corporation.

19. The following facts are not disputed:
  - a. On about October 1, 2019, the drain line of the dishwasher located in Ms. Leguerrier's strata lot leaked.
  - b. The dishwasher and drain line are Ms. Leguerrier's property, not common property or a common asset of the strata.
  - c. Water damage occurred to Ms. Leguerrier's strata lot and the strata lot below.

- d. The strata's insurance policy covered the water damage, and repairs to both strata lots resulting from the dishwasher leak were completed.
- e. The strata paid a \$10,000 insurance deductible as a result of the dishwasher leak.
- f. On November 19, 2019, the strata wrote to Ms. Leguerrier stating that she was responsible to pay the insurance deductible under existing law, and asked that she refer the matter to her insurers for consideration.

***Who is responsible to pay the \$10,000 insurance deductible?***

- 20. As noted, Ms. Leguerrier says the strata's bylaws require her to be negligent before the strata can charge her strata lot for the insurance deductible it paid. Conversely, the strata says that the owner needs only to be responsible as its bylaws do not import a standard of negligence. At the heart of this dispute is the interpretation of the strata's bylaw 9.3, in particular the words "act, neglect or carelessness", and whether those words require the strata to prove Ms. Leguerrier was negligent, rather than responsible, in order to charge her the \$10,000 insurance deductible.
- 21. For the following reasons, I find the applicable standard is responsible, rather than negligent, and Ms. Leguerrier must pay the \$10,000 insurance deductible.
- 22. In her submissions, Ms. Leguerrier mentions 2 Court decisions: *Keiran* and *Mari*. I find Ms. Leguerrier is referring to 2 well-known BC Supreme Court decisions; *Wawanessa Mutual Insurance Co. v. Keiran*, 2007 BCSC 727 and *The Owners, Strata Plan LMS 2835 v. Mari*, 2007 BCSC 740.
- 23. Both *Keiran* and *Mari* were appeals of Provincial Court decisions where the Supreme Court found that a strata lot owner is liable for a strata corporation's insurance deductible under section 158(2) of the SPA if the owner is "responsible for" the loss giving rise to the strata corporation's insurance claim. The court held that a strata lot owner is responsible for what occurs within their strata lot and that a strata corporation may look to such an owner to recover its insurance deductible where the owner's responsibility for the loss falls short of negligence. In other

words, section 158(2) only requires an owner to be “responsible for” the loss in order for the strata to recover the deductible.

24. Ms. Leguerrier correctly notes that the Court did not consider the strata corporation bylaws in either *Keiran* or *Mari*. She also correctly notes that the BC Provincial Court, in *Strata Plan LMS 2446 v. Morrison*, 2011 BCPC 519, found a strata corporation’s bylaws could import a negligence standard with respect to a strata corporation’s ability to charge an insurance deductible to an owner.
25. Ms. Leguerrier takes the position that bylaw 9.3 imports a negligence standard. She also notes that this tribunal has relied on *Morrison* in several decisions, including *Clark v. The Owners, Strata Plan LMS 3938*, 2017 BCCRT 62.
26. In *Morrison*, the Provincial Court was asked to determine if section 158(2) was affected by the strata’s bylaws. In particular, if a strata corporation’s bylaws required the strata corporation to show the strata lot owner was negligent, as opposed to “responsible for” a loss under section 158(2) of the SPA, before being able to recover its insurance deductible.
27. The strata says the language used in its bylaw 9.3 differs from the language used in the bylaws before the Court in *Morrison* and before the CRT in most of the decisions cited by Ms. Leguerrier, including *Clark*. I agree.
28. The bylaw language considered in *Morrison* and in all but 1 of the cited CRT disputes included the word “negligence“. The exception was bylaw language considered by the CRT in *Bowles v. The Owners, Strata Plan NW 227*, 2018 BCCRT 484, where the bylaw used the words “act or omission“. However, in *Bowles*, the CRT found that “act or omission” required a negligence standard.
29. Here, the bylaw language used is “act, neglect or omission“. The strata says the CRT had decided a dispute with the same bylaw language in *Robertson v. The Owners, Strata Plan LMS 1952*, 2019 BCCRT 771.
30. In *Robertson*, the CRT considered a bylaw with identical language as the strata’s bylaw 9.3 in this dispute. The CRT found that *Morrison* was distinguishable due to

the difference in the wording of the bylaws, and specifically because the word “negligence” was not used. At paragraph 20 of *Robertson*, the CRT found that the words “negligence” and “neglect” represent 2 distinct concepts, and at paragraph 21 stated:

Negligence is defined in Black Law Dictionary, 7th ed., at page 1056 as "the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregarding of others' rights". By contrast, Black's Law Dictionary at page 1055 defines "neglect" as "omission of proper attention to a person or thing, whether inadvertent, negligent or willful". Therefore the bar for responsibility is lower with the concept of neglect than it is for negligence.

31. Although not binding on me, I find the reasoning in *Robertson* that establishes the standard for neglect to be lower than a standard of negligence persuasive and I agree with it. Although the dispute in *Robertson* was about a chargeback for repair costs below the amount of an insurance deductible, I find the same bylaw interpretation analysis applies to this dispute.
32. Ms. Leguerrier admits that she did not maintain her dishwasher or inspect the dishwasher drain line. She takes the position that she had no reason to know that it was likely to fail. Under the standard of neglect, whether or not she knew the dishwasher drain line required maintenance, Ms. Leguerrier is responsible for the leak that occurred as a result of the drain line’s failure because it is her property.
33. I acknowledge the views of Ms. Leguerrier and her insurer, but find that these views are not consistent with the wording of bylaw 9.3. I find that Ms. Leguerrier is responsible for the \$10,000 insurance deductible and I order that she pay it within 30 days of the date of this decision. As such, she is not entitled to have these charges reversed from her strata lot account and her claim is dismissed.

34. Nothing in this decision restricts Ms. Leguerrier's insurer from paying the \$10,000 insurance deductible on her behalf.

## **CRT FEES, EXPENSES AND INTEREST**

35. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Given Ms. Leguerrier was unsuccessful in this dispute she is not entitled to be reimbursed for CRT fees or dispute-related expenses.

36. The strata was successful in its counterclaim and paid \$125 for CRT fees but did not claim dispute related expenses. Therefore, I order Ms. Leguerrier to pay the strata \$125 for CRT fees.

37. The *Court Order Interest Act* (COIA) applies to the CRT. The strata is entitled to pre-judgement interest under the COIA from the date the \$10,000 insurance deductible was due, to the date of this decision.

38. The strata submits Ms. Leguerrier had a hearing on February 20, 2020 to consider whether she was responsible to pay the \$10,000 insurance deductible. The strata also submits that it provided Ms. Leguerrier reasons for why it found her responsible for the \$10,000 deductible in a letter dated February 20, 2020. Although the strata's February 20, 2020 letter is not before me, Ms. Leguerrier did not dispute the strata's submissions. Therefore I accept that the strata issued the February 20, 2020 letter requesting Ms. Leguerrier pay the \$10,000 deductible.

39. Allowing for 4 days' notice for the strata's letter to be received by Ms. Leguerrier under section 61(3) of the SPA, I find it reasonable to conclude February 24, 2020 is the date the insurance deductible was due from Ms. Leguerrier. I calculate pre-judgement interest due under the COIA from February 24, 2020 to August 27, 2020, the date of this decision, to be \$75.53. I order Ms. Leguerrier to pay the strata this amount within 30 days of this decision.

40. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Leguerrier.



## ORDERS

41. I dismiss Ms. Leguerrier's claim.
42. Within 30 days of the date of this decision, I order Ms. Leguerrier to pay the strata \$10,200.53, broken down as follows:
- a. \$10,000.00 for the insurance deductible,
  - b. \$75.53 for pre-judgement interest under the COIA, and
  - c. \$125.00 for CRT fees
43. The strata is also entitled to post-judgement interest under the COIA, as applicable.
44. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia. Under section 58 of the CRTA, the order can also be enforced by the Provincial Court of British Columbia if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

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J. Garth Cambrey, Vice Chair

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<sup>1</sup> Amendment note: The index, style of cause, and paragraph 2 of these reasons were amended to correct the legal name of the respondent strata corporation under the authority of section 64 of the *Civil Resolution Tribunal Act*.