



Civil Resolution Tribunal

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File: ST-2020-001862

Type: Strata

Civil Resolution Tribunal

Indexed as: *Marchioni v. The Owners, Strata Plan LMS 31*, 2020 BCCRT 1197

B E T W E E N :

ROBERTO MARCHIONI

APPLICANT

A N D :

The Owners, Strata Plan LMS 31

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about who is responsible for paying to unblock a clogged pipe.
2. The applicant, Roberto Marchioni, co-owns a residential strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 31 (strata). The strata charged back the cost of unclogging a bathroom sink outflow pipe to Mr. Marchioni's strata lot. Mr.

Marchioni says the strata is responsible for the cost of unclogging the pipe, as the pipe is common property and the strata has failed to maintain the pipe. Mr. Marchioni seeks an order that the strata reverse the charge back and stop invoicing him \$173.25 for the plumbing costs.

3. The strata agrees that the clogged pipe is common property and is an outflow pipe from Mr. Marchioni's suite. The strata says the clog originated in Mr. Marchioni's suite so he is responsible for the cost of unclogging the pipe. The strata asks that the dispute be dismissed.
4. Mr. Marchioni represents himself. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

5. 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.
6. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, 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.
7. 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.

8. 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.
9. Under section 61 of the CRTA, the CRT may make any order or give any direction in relation to a CRT proceeding it thinks necessary to achieve the objects of the CRT in accordance with its mandate. The CRT may make such an order on its own initiative, on request by a party, or on recommendation by a case manager.

ISSUE

10. The issue in this dispute is whether the strata is responsible for paying the costs to unclog the pipe and, if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this one the applicant, Mr. Marchioni, must prove his claim on a balance of probabilities. I have reviewed all the evidence and submissions provided by both parties, but only refer to that necessary to explain my decision.
12. Based on a November 25, 2019 invoice, I find a plumber drained and cleaned the bathroom sink's "wet vent" in Mr. Marchioni's strata lot. The plumber found a blockage in the pipe in the wall. The plumber noted the outflow pipe only served Mr. Marchioni's bathroom sink. The plumber charged the strata \$173.25 for the work.
13. Based on the strata's January 16, 2020 letter to Mr. Marchioni, I find the strata charged the \$173.25 plumbing cost to Mr. Marchioni's strata lot.
14. Mr. Marchioni refused to pay the plumbing cost because the pipe in the wall was common property and the strata was responsible for repairing and maintaining common property. The strata heard Mr. Marchioni's arguments on the matter at a hearing held on February 19, 2020. The following day the strata advised Mr. Marchioni that he was responsible for the repair costs. None of this is disputed.

15. I find the strata's applicable bylaws are those filed at the Land Title Office on December 14, 2012. Although the strata amended some bylaws after this date, I find none of those amended bylaws apply to this dispute.
16. Section 1 of the *Strata Property Act* (SPA) and strata bylaw 1.6(b) both define common property to include water, sewage, and drainage pipes within a wall between 2 strata lots, or between a strata lot and common property. Mr. Marchioni says the blocked pipe is in the wall between his suite and his neighbour's suite and the strata does not dispute this. The parties agree that the blocked pipe is common property and I find this is the case, based on the SPA, strata bylaws, and the location of the pipe.
17. Section 72 of the SPA and strata bylaw 10.4 require the strata to repair and maintain common property. Mr. Marchioni relies on bylaw 10.4 in arguing that it is the strata's obligation to pay for the unblocking of the outflow pipe, because it is common property.
18. The strata says it charges back to any owners the cost of repairing any advertent, or inadvertent damage, for which those owners can be held responsible. It says the blockage must have come from Mr. Marchioni's bathroom sink, and therefore Mr. Marchioni is responsible for paying the cost of clearing the blockage. I infer the strata relies on bylaw 14.0, entitled "Damage to Property". Bylaw 14.1 says that an owner, tenant, occupant, or invitee shall not do anything or omit to do anything that causes damage to the premises. Premises are defined to include strata lots, common property and common assets.
19. Bylaw 14. 2 states (my emphasis added):

An owner shall indemnify and save harmless the strata corporation from and against any and all manner of actions, causes of action, damages, costs, loss, or expenses of whatever kind (including without limitation legal fees on a solicitor and client basis) which the strata corporation must sustain, incur, or be put to by reason of or arising out of:

(a) **Damage for which an owner** or his, her or its guests **are responsible**;

(b) Without limiting the generality of bylaw 14.2(a), any act or omission of the owner or his, her, or its guests...

20. The court considered the use of the word “responsible” in section 158(2) of the SPA in *Mari v. Strata Plan LMS 2835*, 2007 BCSC 740. Section 158(2) allows a strata to sue an owner to recover the strata’s insurance deductible, if that owner is responsible for the damage giving rise to the insurance claim. The court considered the meaning of the word “responsibility” as discussed in *Beazer East Inc. v. Environmental Appeal Board et al*, 2000 BCSC 1698. In that case, the court found “responsible for” referred to legal authority over, and obligations with respect to, something
21. In *Mari*, the court found the use of the word “responsible”, rather than terms such as legally liable, liable, or negligent, made it clear that no finding of negligence was required. In other words, the strata need only show the owner was responsible for the damage, not that the owner caused the damage through any action, or failure to act. In reaching that conclusion, the court found it would be unfair to impose liability on all owners for what would ordinarily be insured by an owner of a particular unit if the owner owned the unit as a single-family dwelling. There, the court found that, as the owners allowed, or “caused” their washing machine to be used, they were responsible for the unexpected water leak and resulting damage that followed.
22. Although *Mari* related to payment of an insurance deductible, I find the same reasoning applies to payment of the strata’s repair costs. Applying the reasoning in *Mari*, I find the strata need not prove Mr. Marchioni caused the blockage by any action, or inaction, in order to be responsible for the costs of unblocking the pipe. I find Mr. Marchioni had authority over his bathroom sink and pipes that led to the blocked outflow pipe. I agree with the strata that the blockage must have originated in Mr. Marchioni’s bathroom sink, drain, or pipe, based on the plumber’s finding that the common pipe only serviced Mr. Marchioni’s bathroom sink. Applying the reasoning in *Mari*, I find Mr. Marchioni is responsible for the blockage. So, I find Mr.

Marchioni must pay the repair costs for the damage, that is unblocking the pipe, under bylaw 14.2.

23. In *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512, the BC Court of Appeal said that in the absence of a bylaw or rule giving it authority to do so, a strata corporation cannot charge an owner for costs it has incurred. In *Ward*, the charge in question was for legal fees. However, in *Rintoul et al v. The Owners*, Strata Plan KAS 2428, 2019 BCCRT 1007, a CRT vice chair applied the reasoning in *Ward* in a dispute where the strata had charged strata lot owners for a damaged hydroelectric line. The vice chair concluded that since the strata had no bylaw allowing it to charge back the repair costs, the owners were not obligated to pay. He found the reasoning in *Ward* applied to repair charges, and not just to legal fees. Although *Rintoul* is not a binding precedent, I find its reasoning persuasive and rely on it. I find bylaw 14.2 authorizes the strata to charge back the \$173.25 plumbing costs for unblocking the common pipe.
24. Mr. Marchioni says the pipe likely became blocked because the strata failed to properly maintain the outflow pipe, as it is obliged to do under bylaw 10.4. There is no evidence showing that the pipe became blocked because of a failure to maintain it. As the applicant, it is up to Mr. Marchioni to prove it is more likely than not that the strata failed to maintain the pipe and that failure to maintain caused the blockage. I find he has failed to do so.
25. On balance, I find Mr. Marchioni is responsible for the blocked pipe and that the strata is entitled to charge back the repair costs to Mr. Marchioni's strata. I dismiss Mr. Marchioni's claim.
26. In accordance with the CRTA and the CRT rules, as Mr. Marchioni was unsuccessful, I find he is not entitled to reimbursement of his CRT fees. Neither party claimed reimbursement of any dispute-related expenses.
27. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Marchioni.

ORDER

28. I dismiss the owner's claims and this dispute.

Sherelle Goodwin, Tribunal Member