



# Civil Resolution Tribunal

Date Issued: November 4, 2020

File: ST-2020-003909

Type: Strata

Civil Resolution Tribunal

Indexed as: *Lim v. The Owners, Strata Plan LMS 3970, 2020 BCCRT 1247*

**BETWEEN:**

KITTY LIM

**APPLICANT**

**AND:**

The Owners, Strata Plan LMS 3970

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## INTRODUCTION

1. This is a strata property dispute about reimbursement of lost rental income stemming from a strata corporation's alleged delay in handling an insurance claim.
2. I note this is 1 of 3 related but separate disputes involving the same strata corporation and the same insurance claim. The other 2 disputes are ST-2020-002952 and ST-2020-

002963. Given the applicants are different in each dispute and the claims are not identical, I have issued separate reasons for each dispute.

3. The applicant, Kitty Lim, owns and rents out a residential strata lot (SL17) in the respondent strata corporation, The Owners, Strata Plan LMS 3970 (strata). Ms. Lim represents herself and a strata council member represents the strata.
4. Ms. Lim submits that the strata failed to follow up with building permit applications made to the City of Vancouver (City). She also says the strata caused delay in providing information to the City for building permits necessary to complete water damage repairs covered under the strata's insurance policy. She says the strata's actions resulted in her losing 5 months rental income. Ms. Lim seeks orders that the strata pay her \$12,500 for her lost rental income.
5. The strata denies responsibility for any delay in the water damage repairs to SL17. It says the repair process was entirely in the hands of others, such as its insurer and the insurance adjuster, the City, and the contractor and consultants involved in the repair. As a result, the strata says it cannot be held liable for negligence and asks that Ms. Lim's claims be dismissed.
6. For the reasons that follow, I find in favour of the strata.

## **JURISDICTION AND PROCEDURE**

7. 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.
8. 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.

9. 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.
10. 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.

## **ISSUE**

11. The sole issue in this dispute is whether the strata must reimburse Ms. Lim \$12,500 for lost rental income.

## **BACKGROUND, EVIDENCE AND ANALYSIS**

12. In a civil proceeding such as this, the applicant, Ms. Lim, must prove her claims on a balance of probabilities. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
13. The strata is a mixed-use strata corporation created in August 1999 and it exists under the *Strata Property Act* (SPA). It consists of 97 residential strata lots in a high-rise building plus 21 non-residential strata lots in the lower floors of the high rise building and in an adjacent low-rise building. The strata is located in Vancouver, BC.
14. The strata filed an entirely new set of bylaws at the Land Title Office (LTO) on July 30, 2014 that replaced all previously filed bylaws (bylaws). I infer the Schedule of Standard Bylaws under the SPA do not apply. I find the July 2014 filed bylaws are the applicable bylaws in this dispute and that subsequently filed bylaw amendments are not relevant.
15. I note the bylaws create 2 separate sections within the strata as permitted under the SPA; a residential section and a commercial section. Ms. Lim's SL17 is a residential strata lot and is within the residential section. There are no bylaws that specifically address insurance responsibility or coverage by a section. For this reason, and because the strata council was involved with, and reported on the insurance claim and related

repairs, rather than either of the section executives, I find the strata is the appropriate respondent. Further, there is no dispute it was the strata's insurance policy that responded to the water loss, so I do not find it appropriate to add either of the separate sections as respondents to this dispute.

16. The following facts are undisputed:

- a. On November 3, 2018, a sprinkler line (or sprinkler head) burst in a 7<sup>th</sup> floor strata lot in the high-rise. The resulting water damage affected several common areas of the high-rise from the 7<sup>th</sup> floor and below, and 19 strata lots, including SL17 owned by Ms. Lim, required restoration. I note that 15 strata lots are involved in the insurance claim as it appears that some or all of the additional 4 strata lots may have received a pay out from the strata's insurer. Regardless, final repair costs were several hundred thousand dollars.
- b. As noted, the strata's insurance policy responded to the loss, and Phoenix Restorations Ltd. (Phoenix) was retained to complete emergency restoration work. In addition to the emergency restoration work, Phoenix reinstalled drywall, apparently without authorization.
- c. Due to the size of the loss, an architect and consultant were retained to assist in preparing specifications for the restoration work. In about April 2019, Belfor Property Restoration (Belfor) was awarded the contract to complete the restoration work to the common property and 15 affected strata lots. I infer from the evidence that the strata's insurer, through the adjuster, hired the architect, consultant and Belfor. I say this because the consultant's specifications for the restoration work instructed bidders to submit quotations to the insurance adjuster. In addition, the consultant's April 1, 2019 letter to the insurance adjuster shows the bids were summarized at the insurance adjuster's request.
- d. In May 2019, Belfor emailed the strata and insurance adjuster to say the City required building permits for each affected strata lot. It appears from the evidence that this may have resulted from Phoenix replacing drywall and uncertainty about whether the newly installed drywall met fire stop regulations. This meant that each of the 15 affected strata lot owners were required to submit an application and

- undertaking about the restoration work. Belfor and the architect coordinated this process with assistance from the strata's property manager.
- e. By July 8, 2019, the strata had collected the required documents from the 15 affected owners, which were provided to Belfor. The City acknowledged receipt of 15 permit applications on July 31.
  - f. On July 31, 2019, Belfor requested the strata provide a letter to the City setting out the strata's authorization for Belfor to complete the work including work related to the 15 strata lots. As I discuss further below, Belfor's request identified only 14 strata lots and mistakenly omitted unit 405 as one of the affected strata lots. The strata issued the requested letter to Belfor on August 6, 2019.
  - g. On August 30, 2019, Belfor provided the strata's letter and other documents to the City to start the building permit process.
  - h. In early September 2019, the City calculated the total building permit fees based on each of 14 strata lots (excluding unit 405), and Belfor paid the total building permit fees requested by the City on September 6, 2019.
  - i. By October 7, 2019, it was discovered that unit 405 was omitted from the list of strata lots to be repaired and thus from the list of strata lots requiring a building permit. The strata issued a revised letter listing the affected strata lots, including unit 405, on October 7, 2019. Based on the numerous emails provided in evidence it appears Belfor provided the strata's revised letter and the missing information for unit 405 to the City on October 25, 2019. The City acknowledged receipt of the strata's revised letter on November 4, 2019.
  - j. Between November 4 and November 20, 2019, several emails were exchanged among the strata, the strata's architect, Belfor, and the City about additional

- information required by the City. Several enquiries were made by the architect and Belfor about when the building permits would be issued during this time.
- k. The City issued the building permits on December 9, 2019 and the restoration work on all 15 affected strata lots commenced shortly thereafter.
  - l. Ms. Lim rented out SL17 starting February 1, 2018. The tenancy agreement stated the rental period was 1 year ending January 31, 2019 and the rent charged was \$2,500 per month.
  - m. The CRT issued the Dispute Notice on May 25, 2020.

***Must the strata reimburse Ms. Lim \$12,500 for lost rental income?***

- 17. Ms. Lim submits the strata was advised by Belfor at its council meeting held June 12, 2019 that building permit applications would take about 2 to 3 weeks. While I agree that is what the June 2019 minutes show, I do not agree with Ms. Lim that the strata's lack of follow up after June 2019 constitutes negligence. First, as I discuss further below, I find the strata reasonably relied on professionals and contractors to handle the insurance claim and the building permit process. Also, based on the numerous emails in evidence, I find the strata and its advisors did follow up about the status of building permits at various times, but other delays occurred that were outside the strata's control. I discuss this further below.
- 18. Ms. Lim also says the strata failed to issue a letter to the City that authorized Belfor to complete the work for the strata and all affected strata lots in a timely manner. She says the letter was requested on July 26, 2019 and not received by the City until November 4, 2019. To a great extent, I find Ms. Lim's delay argument is identical to that of Mr. Der's, the applicant in ST-2020-002952. I note she did not provide evidence of any direct communications with either the City or the strata.
- 19. The strata's position is essentially that it was not in control of the insurance claim or repair process and relied on the architect, insurance adjuster and Belfor to co-ordinate the restoration work.
- 20. The courts have held that a strata corporation is not an insurer and has an obligation to act reasonably when discharging its repair and maintenance responsibilities. (See *Basic*

*v. Strata Plan LMS 0304*, 2011 BCCA 231, and *Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74 at para 61). In order for Ms. Lim to be successful, she must prove the strata was negligent.

21. To prove negligence Ms. Lim must show that the strata owed her a duty of care, the strata breached the standard of care, Ms. Lim sustained damage, and the damage was caused by the strata's breach (See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, at par 33).
22. Given it was the strata's insurance policy that responded to the property damage, I find the strata owed a duty of care to Ms. Lim to cooperate with the insurance adjuster, architect, and Belfor in the management of the insurance claim, including for damage caused to SL17. The standard of care required by the strata is reasonableness as found in *Leclerc*. That means the strata must have acted unreasonably when cooperating with the professionals and contractors involved in the insurance claim for Ms. Lim to be successful in this dispute.
23. Based on the evidence provided, I cannot find that the strata acted unreasonably or failed to cooperate. In particular, I do not find the strata unreasonably delayed the repair process.
24. Ms. Lim relies on her Mr. Der's exchange with the City's Deputy Manager (city manager) between December 1 and 18, 2019. In that email exchange, the city manager explained the City did not receive the required letter from the strata authorizing Belfor to complete the restoration work until November 4, 2019. Ms. Lim says the strata was solely responsible for causing for the delay because it did not provide the letter in a timely fashion. She submits the City requested the letter in July 2019 and the strata did not provide it until November 2019. I disagree with Ms. Lim's position for the following reasons.
25. First, it is clear from Mr. Der's email exchange with the city manager that the city manager was not directly involved in the permit process and had to consult staff to obtain answers to Mr. Der's questions.

26. I prefer the version of events set out by Belfor's senior project manager in his December 2, 2019 email to Mr. Der because of his direct involvement in the process, and because it aligns with the overall evidence. That email states the permit applications, including the required letter, were made in August 2019 and the permit fees were paid in September 2019. This aligns with the date of the building permit receipt for fees paid by Belfor. These dates also align with a July 31, 2019 email from the City to the architect that confirms 15 building permit applications were received by the City on that day.
27. Second, I find there were other things that delayed the City from issuing the building permits. Such as:
- a. The City's July 31, 2019 email to the architect requesting that the value of each affected strata lot be re-assessed.
  - b. The City's request in October 2019 for "energy checklist reports" for each strata lot. This is supported by an October 25, 2019 email from Belfor to the strata property manager that reports the City's request and that the architect "plans on working on those this weekend."
  - c. The city manager's acknowledgement in his December 2, 2019 email to Mr. Der of the City's near 4-week delay in processing the permits between November 4 and 29, 2019.
28. Finally, I find it is clear from the evidence that the strata had very little, if any, direct contact with the City. I agree with the strata that it worked through and relied on the architect, insurance adjuster and Belfor in its dealings with the insurance claim. This is shown in the June 12, 2019 strata council meeting minutes in the report provided by the Belfor representative under "Guest Business". Also, the emails that I have mentioned above support this, as do other emails provided in evidence. One example is the July 31, 2019 email from Belfor to the strata property manager which states in part:

The architect, [*name omitted*], was at the City of Vancouver (COV) on Friday and again this morning for permit application purposes.

The COV needs a letter on behalf of the Owners of Strata Plan LMS 3870 as follows:



"We give authorization to Belfor Property Restoration Ltd. to perform construction work in the following units: 303, 305, 306, 402, 403, 406, 502, 503, 505, 603, 605, 606, 702, 703, along with second floor common areas."

29. I also note this email is also lists only 14 strata lots, which is exactly what the August 6, 2019 strata letter stated. Thus supporting that the strata acted solely on the advice of Belfor when it issued the August 6, 2019 letter.
30. The courts have recognized that strata corporations are entitled to rely upon and be guided by professional advice. Even if the professionals it hires fail to carry out work effectively, a strata corporation is not held responsible for this result so long as it acted reasonably in the circumstances (See *Wright v. The Owners, Strata Plan #205*, (1996), 20 B.C.L.R. (3d) 343 (S.C.), at paragraph 30; *Leclerc* at paragraph 56 citing *Wright*, and *Kayne v. The Owners, Strata Plan LMS 2374*, 2013 BCSC 51 at paragraph 185).
31. There is nothing in the evidence before me that shows the strata acted unreasonably in its cooperation about the insurance claim and related restoration work or that it did not act in accordance with the professional advice it received and on which it relied.
32. For these reasons, I find the strata was not negligent in causing any delay and I dismiss Ms. Lim's claims and this dispute.

## **CRT FEES AND EXPENSES**

33. As noted, 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. I see no reason to deviate from this general rule. The strata was the successful party in this dispute but did not pay CRT fees or claim dispute-related fees, so I order none.
34. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Lim.

## **ORDER**

35. I dismiss Ms. Lim's claim and this dispute.

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J. Garth Cambrey, Vice Chair