



Civil Resolution Tribunal

Date Issued: December 18, 2020

File: ST-2020-003398

Type: Strata

Civil Resolution Tribunal

Indexed as: *Vacca v. Sahagun*, 2020 BCCRT 1429

B E T W E E N :

PATRICK VACCA, KAREN SUSAN VACCA, ADRIENNE VACCA, and
NICOLE VACCA

APPLICANTS

A N D :

PETROV PAVLOVSK SANCHEZ SAHAGUN, MARGARET OLGA
WESTAWAY, and The Owners, Strata Plan VR 35

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This dispute is primarily over a charge for mold remediation in a strata building.

2. The applicants, Patrick Vacca, Karen Susan Vacca, Adrienne Vacca, and Nicole Vacca own strata lot 26 (SL26) in the respondent strata corporation, The Owners Strata Plan VR 35 (strata).
3. The respondents, Petrov Pavlovsk Sanchez Sahagun and Margaret Olga Westaway, own strata lot 27 (SL27) that shares a wall with the applicants' strata lot. Meaning no disrespect, I will refer to Mr. Sahagun and Ms. Westaway as the SL27 owners.
4. In about June 2018, the strata remediated mold between the shared bathroom walls of SL26 and SL27. The applicants say the strata improperly charged them \$1,835.40 for mold remediation. They say the mold was caused by a failed seal around SL27's soap dish and the strata should have charged the SL27 owners with the expense. The applicants seek \$1,835.40 as reimbursement of the mold remediation charge, plus \$2,326.27 in "non-legal administrative expenses".
5. The strata says the applicants suffered no loss because the strata had already reversed the \$1,835.40 "chargeback" from their account before the applicants filed for dispute resolution with the *Civil Resolution Tribunal* (CRT). It says the applicants' claims have no merit and should be dismissed.
6. In the alternative, the strata says the applicants' claims were settled and resolved through an action before the Provincial Court of BC (PCBC action). It asks the CRT to refuse to resolve the claims under section 11(1) of the *Civil Resolution Tribunal Act* (CRTA), which I discuss in the jurisdiction section below.
7. The SL27 owners deny that they caused the mold behind the strata lot walls and say they are not responsible for the remediation costs. Further, they say the applicants suffered no loss and their claims should be dismissed.
8. The applicants and SL27 owners are self-represented. The strata is represented by a strata council member.
9. For the reasons that follow, I dismiss the applicants' claims.

JURISDICTION AND PROCEDURE

10. These are the CRT's formal written reasons. The CRT has jurisdiction over strata property claims under section 121 of the 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.
11. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the BC Supreme Court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
12. 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.
13. 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.

Preliminary Issue

14. Under CRTA section 11(1) the CRT may refuse to resolve a claim or dispute within its jurisdiction including if it considers it has been resolved through a legally binding process or other dispute resolution process, discloses no reasonable claim, or is an abuse of process.
15. The strata says the CRT should refuse to resolve the claims because they have already been decided in a PCBC action. The PCBC Notice of Claim shows the

applicants brought claims against the strata, an upstairs strata lot owner, and the strata property manager for damages arising from 2 water loss incidents. The SL27 owners were not parties to the PCBC action. The PCBC records show the claims were settled and the applicants withdrew their claims by consent.

16. The strata relies on the legal principle of *res judicata*, which can arise in 2 ways. The first is called cause of action estoppel, which stops someone from pursuing a matter that was or should have been the subject of a previous process. The second is called issue estoppel, which stops someone from raising an issue that has already been decided in another process (see *Erschbamer v. Wallster*, 2013 BCCA 76).
17. Both cause of action estoppel and issue estoppel include a strict requirement that the parties to the new proceeding be the same as the prior proceeding. Of the respondents, only the strata was a party to the PCBC action. Therefore, the parties to this dispute are not the same parties in the PCBC action. I find *res judicata* does not apply to this dispute. I find it appropriate in the circumstances that the CRT resolve this dispute.

ISSUES

18. The issues in this dispute are:
 - a. Must the respondents pay the applicants \$1,835.40 for mold remediation?
 - b. Must the respondents pay the applicants \$2,326.27 for alleged administrative expenses?

EVIDENCE AND ANALYSIS

19. In a civil claim such as this one the applicants must prove their claims on a balance of probabilities. The parties provided a large volume of documents, which I have fully reviewed. However, I have only referred to the evidence and arguments I find necessary to explain my decision.

Must the respondents pay the applicants \$1,835.40 for mold remediation?

20. The strata building is a 2 floor building with underground parking. SL26 and SL27 are neighbouring strata lots that share adjoining walls on the first floor.
21. On January 2 and June 20, 2018, SL26 was damaged by water leaks from the strata lot directly above it, which is not SL27. The strata made a claim under its insurance for the losses. The insurer paid out the claim less a \$10,000 deductible. These facts are not disputed.
22. During the course of the repairs, the strata's contractor removed the walls in SL26's bathroom and discovered mold. The photographs show mold on the backside of SL27's bathroom wall, around its soap dish insert. The contractor determined the mold was unrelated to the water leaks from the upstairs strata lot. The strata's insurance denied coverage for the mold remediation expenses. The strata paid to remediate the mold.
23. The contractor issued a report stating that the mold was from SL26. The strata council decided, therefore, that the applicants were responsible for the mold. On May 1, 2019, the strata notified the applicants that it was charging them \$1,835.40 for the mold remediation expense.
24. The applicants disputed the chargeback on the basis that the mold was from a leak around SL27's soap dish insert, and because the mold remediation work was to the backside of SL27's wall. The applicants' position was, as it is here, that the SL27 owners are responsible for the mold remediation expense.
25. As I discuss further below, I find the strata reversed its decision and removed the chargeback from the applicants' account. So, I find no need to discuss or make findings on what caused the mold or whether the strata had the authority under its bylaws to impose the chargeback.
26. In addition to the mold chargeback, there was an issue over \$1,467.49 in expenses that the applicants paid to fix or upgrade their bathroom after the January and June 2018 water leaks. The applicants refer to the \$1,467.49 as a portion of the strata's

deductible that they paid on the strata's behalf. As I find nothing turns on the specific nature of the \$1,467.49, I refer to it here as the insurance deductible.

27. Based on the parties' written communications, I find the strata decided to reimburse the applicants for the \$1,467.49 insurance deductible. Rather than issuing a cheque, the strata applied a "credit" to the mold remediation chargeback leaving a balance of \$367.91.
28. It seems the applicants treated the credit as a partial write-off for the mold remediation rather than as payment for the claimed insurance deductible. I say this because soon after the strata applied the credit, the applicants "invoiced" the strata \$1,467.49 for the insurance deductible, thus treating the insurance deductible as unpaid.
29. On June 2, 2019, the applicants filed the PCBC action discussed above. The Notice of Claim shows they claimed \$1,467.49 for "recoupment of insurance deductible", plus \$10,494.35 in other damages. The PCBC action settled on November 2019. As set out in the November 22, 2019 "Full and Final Release", the applicants accepted a lump sum payment in exchange for a full and final release of all claims arising out of "water damage alleged to have occurred on January 2, 2018 and June 20, 2018".
30. On January 22, 2020, the applicants wrote the strata and requested a meeting to discuss "unauthorized charges of \$1,835.40" and to seek "reimbursement of \$1,467.49" for the insurance deductible.
31. After a February 2020 hearing, the strata agreed to reverse the \$1,835.40 chargeback in full. It declined to reimburse the insurance deductible on the basis of the settlement and release discussed above. I find the settlement and release included the \$1,467.49 insurance deductible as it had formed part of the PCBC claim. In any event, the applicants did not make a claim for the \$1,467.49 insurance deductible here.
32. I find on review of the applicants' Statement of Account for SL26 that the strata removed \$1,467.49 from the chargeback on May 2, 2019 and the remaining \$367.91 on April 2, 2020. I find the SL26 account shows no remaining chargeback for the mold

remediation. I also find the applicants did not pay the mold remediation expense themselves.

33. For the above reasons, I dismiss the applicants' claims against all the respondents for the \$1,835.40 mold remediation.

Must the respondents pay the applicants \$2,326.27 for alleged administrative expenses?

34. The applicants sent the strata and the SL27 owners a January 25, 2020 invoice for \$2,326.27 and demanded payment. The invoice states that it is for "Costs and expenses incurred in trying to correct the account &/or recoup moneys owed to this date". The invoice is not further itemized. In their submissions, the applicants say that Patrick Vacca looked "after this matter on a fee for service basis". They also say they incurred expenses, including for a notary and registered mail.
35. The applicants argue the respondents failed to "negotiate in good faith" and were "in default" for not responding to the invoice sent multiple times. The applicants say the respondents had "ample opportunity to protest and/or return the invoices" and did not. The applicants argue that the respondents have therefore, admitted by default to owing the \$2,326.27. I disagree with the applicants' position.
36. I find that issuing invoices and demanding payment does not create a legal basis on which the respondents would be responsible to pay. The applicants have not shown, for example, that the respondents were in breach of any duties owing to them or that a breach caused their loss. I find the evidence also does not show that the strata or the SL27 owners acted in bad faith. I find a mere disagreement between owners and the strata does not in itself form a basis to award reimbursement of the claimed expenses. I find no merit to the applicants' claim for these alleged expenses.
37. I dismiss the applicants' claim for administrative expenses.

CRT FEES AND DISPUTE-RELATED EXPENSES

38. 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. As the applicants are the unsuccessful parties, I find they are not entitled to reimbursement of CRT fees or dispute-related expenses. I dismiss these claims.
39. The strata and the SL27 owners each submitted invoices for their respective legal fees. I infer they are seeking reimbursement for legal fees as dispute-related expenses. CRT rule 9.5(3)(b) says that the CRT will not order one party to pay another party any fees charged by a lawyer in a strata dispute, unless there are extraordinary circumstances.
40. While the parties submitted a lot of evidence, I find the factual and legal issues in this dispute were not complex. Also, the evidence does not show that the applicants' conduct during this CRT proceeding was improper or deserving of rebuke. I find there are no extraordinary circumstances here to award legal fees. I dismiss all claims for legal fees.
41. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicants.

ORDERS

42. I dismiss the applicants' claims, the respondents' claims for dispute-related expenses, and this dispute.

Trisha Apland, Tribunal Member