



Civil Resolution Tribunal

Date Issued: January 18, 2021

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS1092 v. Souki*, 2021 BCCRT 55

B E T W E E N :

The Owners, Strata Plan LMS1092

APPLICANT

A N D :

NAJWA SOUKI and STEPHANIE AIDA

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The respondents, Najwa Souki and Stephanie Aida (owners), co-own a strata lot (unit 310) in the applicant strata corporation, The Owners, Strata Plan LMS1092 (strata). The strata says that it paid \$3,115.73 to repair unit 310 after a water leak. The strata says that the owners are responsible for the repair costs.

2. The owners say that the water damage was caused by a leak from common property, which is the strata's responsibility under the strata's bylaws. They also say that the strata was negligent. So, they deny that they are responsible for the repair costs.
3. The strata is represented by a strata council member. The owners are each self-represented, but their submissions are identical and they provided a joint statement, so I will refer to them together.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.
7. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the tribunal 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

8. The issue in this dispute is whether the owners must reimburse the strata for the repair costs to unit 310.

BACKGROUND

9. In a civil claim such as this, the strata as the applicant must prove its case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. The strata consists of 45 strata lots in a 4-storey building. Each of the strata lots above the ground floor have balconies that are limited common property. Unit 310 is on the 3rd floor.
11. The strata filed consolidated bylaws in the Land Title Office on January 23, 2002. There have been amendments since then, but none are relevant to this dispute.
12. Bylaw 3.1 says that an owner must repair and maintain their strata lot, subject to certain exceptions that do not apply in this dispute.
13. Bylaw 12 says that the strata must repair and maintain common property, including the balconies. This bylaw reflects section 72(1) of the *Strata Property Act* (SPA), which says that, subject to the bylaws, the strata must repair and maintain common property.

EVIDENCE

14. On November 28, 2018, Ms. Aida noticed a water leak in the ceiling of unit 310's master bedroom. She made an emergency call to the strata, who hired a restoration contractor, KCL Building Services (KCL), attended. KCL determined that the leak was caused by a failure of the membrane of the balcony in unit 409, which is above unit 310. KCL recommended replacing the membrane as it appeared to be at the end of its service life. Further investigation revealed that the balcony's drain also needed to be repaired.

15. The next day, KCL told the strata that unit 309's walls and ceilings were saturated with water, so the next steps of remediation could not proceed until everything was dry and the balcony was repaired.
16. On December 13, 2018, KCL told the strata that it had scheduled installation of insulation and drywall in parts of unit 309 for December 17, 2018. KCL did not plan to install insulation and drywall for all of unit 309, apparently because the balcony had not been fixed yet. KCL said that this was the last of the "emergency" work. While there is no invoice in evidence, I infer that KCL completed this work as scheduled.
17. On January 30, 2019, the strata received a restoration quote for unit 310 from another contractor, Canstar Restorations (Canstar). The quote included installing insulation and drywall and repainting for \$3,115.71, presumably those parts that KCL did not do as part of its emergency work. It is unclear why the strata waited until January 30, 2019, to get a quote for the remaining repairs. There is no evidence about when the drain was repaired.
18. According to the owners, the strata delayed having the repairs done. The owners say that it was 6 months after the leak that unit 309 was fully repaired. The owners say that they had no choice in who the strata hired or when they would complete the repairs.
19. Canstar sent the strata an invoice for the completed repair work on May 14, 2019, which is consistent with the owners' timeline of events. The final repair cost was \$3,115.71, which the strata paid.
20. On July 15, 2019, the strata requested that the owners reimburse the strata for the repair costs because the repairs were not the strata's responsibility. The strata suggested that the owners make a claim through their insurer, which they did. However, the owners' insurer denied coverage because water losses were excluded except in specific situations, none of which applied.

ANALYSIS

Are the owners responsible for the repair costs to unit 310?

21. The strata relies primarily on bylaw 3.1, which says that an owner is responsible for repair and maintenance of their strata lot. The strata says that this bylaw makes the owners responsible for the repairs regardless of the source of the water. The strata says that it does not matter that a failure of common property caused the leak.
22. The owners do not dispute that bylaw 3.1 generally makes them responsible for repairing and maintaining unit 310. However, they argue that the strata is responsible for the repairs because the damage was caused by a failure of the waterproof membrane. The owners also say that the strata was negligent in maintaining the waterproof membrane.
23. I find that I do not need to determine whether the strata was negligent in its repair and maintenance of the balcony's waterproof membrane or drain. This is because even if the strata was not negligent, it still must have legal authority to charge the repair costs back to the owners. For the reasons that follow, I find that the strata does not have that authority, even if the owners were responsible for the repairs under the bylaws.
24. In *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512, the Court of Appeal found that a strata corporation must have a bylaw to charge legal fees to an owner because legal fees are not "lienable" under section 116 of the SPA. Many CRT cases have extended this principle to repair costs because, like legal fees, there is nothing in the SPA that authorizes a strata corporation to charge them to an owner. Without authority from the SPA, a strata corporation must either have a bylaw authorizing it to charge repair costs to an owner, or have the owner's agreement (see, for example, *Huang v. The Owners, Strata Plan EPS1910*, 2019 BCCRT 1072).

25. I agree with this reasoning. Applied to this dispute, I find that there is no bylaw authorizing the strata to charge the repair costs to the owners. There is also no evidence that the owners agreed to pay for the repairs. In fact, it appears that the owners were unaware that the strata expected them to pay for repairs until the strata sent the July 15, 2019 letter. I find that it would be unfair to allow the strata to control the cost, timing and scope of repairs and then require the owners pay for them without clear authorization from a bylaw. After the initial emergency work, there is no evidence that there was any urgency to completing the repairs.
26. So, I find that if the strata wants an owner to pay for repairs that are the owner's responsibility under the bylaws, it should either leave it to the owner to arrange for and pay for the repairs, or get the owner to agree in advance to pay for them.
27. Therefore, even if the strata had no responsibility for the repairs under the bylaws, it has no authority to require the owners to reimburse it, without their express agreement in advance of the repair work. For this reason, I dismiss the strata's claim for reimbursement of the repair costs.
28. I note that the strata also referred to bylaw 39.2, which requires the owners to carry homeowners' insurance. It is unclear why the strata refers to this bylaw. The owners did have homeowners' insurance, it just did not cover the damage at issue. Bylaw 39.2 does not set out any specific coverage that an owner must have. So, I find that bylaw 39.2 has no impact on the outcome of this dispute.

TRIBUNAL FEES AND EXPENSES

29. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. The strata was unsuccessful so I dismiss its claim for CRT fees and dispute-related expenses. The owners did not claim any dispute-related expenses.
30. The strata must comply with the provisions in section 189.4 of the SPA, which includes not charging dispute-related expenses against the owners.

DECISION AND ORDER

31. I dismiss the strata's claims, and this dispute.

Eric Regehr, Tribunal Member