



Civil Resolution Tribunal

Date Issued: January 20, 2021

File: ST-2020-004009

Type: Strata

Civil Resolution Tribunal

Indexed as: *Wong v. The Owners, Strata Plan LMS 110*, 2021 BCCRT 72

BETWEEN:

TANG HUNG WONG

APPLICANT

AND:

The Owner, Strata Plan LMS 1101

RESPONDENT

AND:

TANG HUNG WONG

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This dispute is about a water leak. The applicant and respondent in the counterclaim, Tang Hung Wong, owns strata lot 243 in the respondent strata corporation, The Owners, Strata Plan LMS 1101 (strata). The strata is the applicant in the counterclaim.
2. Mr. Wong admits that his plumber removed and replaced a toilet valve in his strata lot before the strata could shut off the building's water. The new valve started to leak within an hour. The strata says the building's water was shut off under emergency conditions to repair the valve. It says when the water was turned back on, the resulting water pressure caused numerous water leaks and water damage throughout the building.
3. The strata says the water damage was caused by Mr. Wong's failure to wait until the water was shut off. It charged Mr. Wong \$43,660.18 for emergency clean up costs, repairs, and the insurance deductible.
4. Mr. Wong seeks an order rescinding the chargeback. He acknowledges that the water leak from the valve that damaged the strata lot below his, unit 601, were caused by his plumber's actions. However, he says the other water leaks in the building after the water was turned back on were due to the strata's failure to maintain the water system pipes. He also says the first plumber the strata hired was incompetent, which delayed repairs and worsened the water damage. He also says in any event, the water leaks caused by re-pressurizing the pipes were inevitable.
5. The strata filed a counterclaim seeking \$42,627.20 for the chargeback. I have addressed the discrepancy between the strata's claim and the chargeback amounts below.
6. The strata is represented by a strata council member. Mr. Wong is self-represented.
7. I find that Mr. Wong is only responsible for the proven repair costs for the water damage to his own strata lot and to unit 601. My reasons are as follows.

JURISDICTION AND PROCEDURE

8. 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.
9. 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.
10. 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.
11. 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.

ISSUES

12. The issues in this dispute are:
 - a. Is Mr. Wong responsible for the water damage caused by re-pressurizing the pipes? If so, what remedies are appropriate?
 - b. Is Mr. Wong responsible for the water damage caused by the leaky valve in his strata lot? If so, what remedies are appropriate?

EVIDENCE AND ANALYSIS

13. As the applicant in this civil claim, Mr. Wong bears the burden of proof on a balance of probabilities. In the counterclaim, the strata bears the same burden. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain and give context to my decision.

Bylaws

14. The strata was created in 1993 and includes 337 residential strata lots in 3 separate buildings. The strata filed updated bylaws in the Land Title Office (LTO) in June 2010. The strata also filed 2 subsequent amendments to its bylaws. The following bylaws are relevant to this dispute and counterclaim.

15. Bylaw 9(1)(a) states that the strata must repair and maintain the common property that has not been designated as limited common property.

16. The strata amended bylaw 34 in May 2014. Bylaw 34(1) states that an owner, tenant, occupant or visitor must not deliberately or negligently cause the strata to incur costs due to a claim made on the strata's insurance policy.

17. Bylaw 34(2) states that an owner must indemnify the strata for the cost of any necessary maintenance, repair or replacement to the common property, common assets, or to a strata lot caused by the act or carelessness of the owner, a resident, guest, servant, contractor, agent or tenant to the extent that the expense is not met by the strata's insurance.

18. Bylaw 34(3) states that the strata is not responsible to an owner for loss, damage or expense caused by a water leak from an adjoining strata lot, or broken or bursting pipes or plumbing fixtures which is not covered by the strata's insurance policy, unless it was caused by the negligent act or omission of the strata, its servants, or agents.

19. Bylaw 34(4) states that under SPA section 158(2), the strata must sue an owner to recover the insurance deductible from an insurance claim if the owner or their residents or guests are responsible for the loss or damage that gave rise to the claim.
20. Section 158(2) of the SPA states that the strata can sue an owner to recover the insurance deductible if the owner is responsible for the loss or damage that gave rise to the claim.

Background

21. The parties agree that on December 4, 2019, Mr. Wong's plumber replaced a leaky compression shutoff valve in Mr. Wong's strata lot bathroom (valve). They also agree that although the strata informed Mr. Wong the building's main water had to be shut off first, Mr. Wong's plumber changed the valve without waiting. They also agree that the valve started leaking within 1 hour of being installed.
22. Mr. Wong says his wife told the property manager to shut off the water supply immediately after the replaced valve started leaking. He also says his plumber, wife, and daughter all tried to contain the water by "scooping, wiping, laying towels, and using a steamvac to pull the water from the carpet". He also says the strata lot owner of unit 601 was "collecting water dripping from above to mitigate damage".
23. The strata says its usual plumbing company, Urban Plumbing and Heating (Urban), was not initially available and so it called High Mark Mechanical Services Ltd. (High Mark) to shut off the building's water. However, the plumber from High Mark was unable to find the shut off valve. The parties agree Urban finally arrived in the evening and shut off the building's water. By this point the valve had been leaking for approximately 6 hours.
24. The strata says after the valve was replaced, Urban turned on the building's water and the resultant water pressure caused small leaks throughout the building that damaged 21 strata lots above Mr. Wong's strata lot and 2 strata lots below him.

25. The strata says the water damage was repaired by Firstonsite Restoration. It says another plumber, Lillie Family Heating (Lillie), also attended twice to repair additional leaks.
26. On February 7, 2020 the strata sent Mr. Wong an account statement and 5 invoices totalling \$43,660.18 for the cost of the water damage repairs. In its counterclaim the strata seeks payment for 4 of the 5 invoices:
- a. Firstonsite Restoration invoice #BCBY-LH19345A for \$35,000 for the insurance deductible,
 - b. High Mark invoice #25551120419 for \$519.75 for its services on December 4, 2019,
 - c. Lillie Family Heating invoice #14909120519 for \$6,582.45 for replacing a leaky pipe on December 6, 2019, and
 - d. Lillie Family Heating invoice #15090010620 for \$1,032.98 for repairs to a women's washroom located in the common area on January 9, 2020.
27. Although the 4 invoices above total \$43,135.18, the strata is only seeking \$42,627.20 in its counterclaim. The strata did not explain the discrepancy between the amounts. However, given my reasons below, I find nothing turns on it.
28. Mr. Wong says he is willing to pay only for the damage to strata lots below his that were directly impacted by the leaky valve. He says the invoices listed above were either for unrelated water damage or the result of the strata's negligence and failure to repair and maintain the building's water system.
29. I find Mr. Wong is responsible only for High Mark's invoice.

Water shut off procedure

30. The strata says the water damage was caused by Mr. Wong's failure to follow its water shut off procedure that required an owner to first complete a water shut off request form. According to the request form submitted by the strata, an owner must

obtain strata council approval 5 days in advance of repairs. They must also agree to be liable for all costs, including damage to the building. The strata also says an owner must also sign a form acknowledging they are aware of the risks in water shutoffs in the building. Since the strata did not provide a copy of the acknowledgement, I give it no weight.

31. I find the request form is inconsistent with bylaw 9(1)(a) since it holds an owner liable for the cost of damage to the building, including common property. The strata did not refer to any bylaw or rule that mandated that an owner must sign the request form and so I find Mr. Wong was not required to sign it.

Firstonsite's invoice

32. The strata says since the water was shut off due to the negligent actions of Mr. Wong's plumber, Mr. Wong must reimburse the strata for the insurance deductible under bylaw 34.
33. While Mr. Wong admits his plumber acted negligently, he denies this caused water damage throughout the building. Mr. Wong says the strata failed its duty to repair and maintain the building's water supply pipes. He also says the water leaks caused by re-pressurizing the pipes were inevitable. For the reasons set out below, I find that the strata met its repair and maintenance duties, but also find that the leaks were inevitable.

Strata's duty to repair and maintain

34. It is undisputed that the building's water system pipes are common property. SPA section 72 and bylaw 9(1)(a) both impose a general duty on a strata corporation to repair and maintain common property.
35. Mr. Wong says a 2004 engineering report prepared by CSA Building Sciences Western Ltd. ("CSA") advised the strata to replace its entire domestic water system as quickly as possible to avoid further repair costs and property damage. Since the report was prepared by a professional engineer, I find the consultant had sufficient

education, training and expertise to make the engineering report. So, I find that the engineering report meets the criteria for an expert report under CRT rule 8.3.

36. The report stated the water supply to the entire building was disrupted every time a repair was needed since the plumbing for individual floors or strata lots could not be isolated in the strata's buildings. The report also stated that each time the system was put back on line there would be a shock to the system, which would typically result in pipe failures and new leaks. CSA advised the strata to replace its entire domestic water system as quickly as possible to avoid further repair costs and property damage.
37. Mr. Wong says despite CSA's recommendations, the strata only approved plans to replace the water system, which included installing isolation valves, at the November 29, 2019 special general meeting. He says if the recommended work had been done in a timely manner, the entire building's water would not have been shut off to change Mr. Wong's valve. He says this would have prevented the re-pressurization leaks and subsequent building-wide water damage.
38. The strata says that the CSA report was commissioned by the previous strata council president and was not part of the strata's records. It also says that it "understands" that the majority of the strata lot owners at the time did not agree with the recommendations. Since the strata did not produce any records to support its assertions, such as strata council meeting minutes, annual general meeting minutes, or special general meeting minutes, which I find were easily available to it, I give its assertions little weight.
39. A strata is not held to a standard of perfection in its maintenance and repair obligations. The strata only has a duty to make repairs that are reasonable in the circumstances (*Wright v. The Owners, Strata Plan #205*, 1996 CanLII 2460 (S.C.), aff'd (1998), 43 B.C.L.R. (3d) 1, 1998 CanLII 5823 (C.A.)).
40. Determining what is reasonable may involve assessing whether a solution is good, better, or best: *Weir v. The Owners, Strata Plan NW 17*, 2010 BCSC 784. Also, an

owner cannot direct the strata how to conduct its repairs: *Swan v. The Owners, Strata Plan LMS 410*, 2018 BCCRT 241.

41. In *Weir*, the court said the starting point for assessing a claim about whether the strata corporation fulfilled its maintenance and repair obligations is deference to the strata council, as approved by the ownership (paragraph 23). The reason for deference is that the strata council must act in the best interest of all owners, which requires it to balance competing interests and work within a budget that the owners can afford. With that in mind, the court found that it is not necessarily unreasonable for a strata corporation to decide not to choose the best repair option.
42. This means that the strata may prioritize between different maintenance projects and may choose a lower standard of maintenance for financial or practical reasons, as long as the decision is reasonable. The fact that an individual owner may be unhappy with the strata's choices does not mean that the strata breached its duty under section 72 of the SPA.
43. In *Fudge v. Strata Plan NW 2636*, 2012 BCPC 409, a strata corporation was held liable to a strata lot owner for the damages caused by wastewater backup from the washing machine discharge pipe. The court found that the strata corporation did not follow recommendations to upgrade its pipes even though it knew for many years that the piping's diameter in the building was undersized, resulting in a number of other similar backups. Such failure was held to constitute a breach of the strata corporation's statutory duty of repair, as well as negligence.
44. Although the CSA report stated that the building was "plagued" with leaks, I find there is no evidence of leaks related to re-pressurizing the pipes after the report was written. I find the strata's decision to delay replacing the pipes was reasonable. And so, I find the strata did not breach its statutory duty to repair and maintain even though it did not follow CSA's recommendations.

Was water damage inevitable?

45. The strata says the most critical part of shutting off the water was opening plumbing fixtures at the top of the building to allow air into the system to replace the draining water. It also says it “understands” that the water was shut off in an emergency on December 4 and so the plumbers could not follow the “usual appropriate protocols”. The strata did not provide the basis for its assertion.
46. I find the strata’s arguments are not supported by its evidence. The strata submitted a statement from Mark Tapping as an expert opinion. Mr. Tapper has been employed by Urban as a plumber for 8 years. I find Mr. Tapping had sufficient education, training and expertise to meet the criteria for an expert under CRT rule 8.3.
47. Mr. Tapping described the usual procedure for shutting off water to minimize the risk of leaks. He stated that Urban followed “strict procedures” for shutting off water in older buildings with a history of water leaks. Mr. Tapping also stated that while following the procedure did not guarantee a leak free shutdown, it “greatly” reduced the risk of a leak.
48. I give limited weight to Mr. Tapping’s evidence. He did not address whether Urban’s plumbers followed “strict procedures” on December 4, whether a different procedure was used for emergency shut offs, or whether the alleged emergency procedures increased the risk of a leak. He also did not address whether replacing the valve in Mr. Wong’s strata lot without first shutting off the water changed the risk of leaks when the water was re-pressurized.
49. I find there is no evidence that replacing the valve in Mr. Wong’s strata lot without shutting off the water changed the shut off procedure or increased the risk of leaks when the water was re-pressurized. Based on Mr. Tapping’s statement, I find that more likely than not, Urban followed its strict procedures when it shut off the water on December 4. Also, despite following strict procedures, I find that water leaks could still result when the water was re-pressurized.

50. I find that the outcome would have been the same, regardless of whether the water was shut off before the toilet valve was replaced. I say this because in any event, Urban would still have had to turn the water back on, which would have resulted in the building wide leaks. I find Mr. Wong's failure to wait did not cause the water leaks and so Mr. Wong is not responsible for water damage from the leaks or the insurance deductible.

51. I dismiss the strata's claim for the \$35,000 insurance deductible.

High Mark Invoice

52. I find that Mr. Wong's plumber did not replace the valve properly, which caused water to leak from Mr. Wong's strata lot to the one below. According to its invoice, High Mark attended on December 4, checked the leaking valve in Mr. Wong's strata lot, and made unsuccessful attempts to shut off the cold line for Mr. Wong's strata lot. High Mark charged the strata \$519.75 for its services.

53. Mr. Wong says that since he was bearing "the risk of shut off", the strata should have consulted with him and he should have made the decision of whether to call High Mark or wait for Urban. Mr. Wong says given the choice, he would have opted to wait for Urban.

54. The strata says based on the CRT decision in *Joshi v. The Owners, Strata Plan NW 1833*, 2019 BCCRT 399 (which I am not bound by) a strata cannot be liable if the work done by a professional or a contractor it retains is carried out ineffectively as long as the strata acted reasonably.

55. 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* at paragraph 30).

56. There is nothing in the evidence before me that shows the strata acted unreasonably by calling High Mark instead of waiting for Urban. Based on Mr. Wong's description, I find the leak from the valve in his strata lot was significant and that it was reasonable

for the strata to call the first available plumber. I accept that High Mark's invoice was not covered by the strata's insurance policy. So, based on bylaw 34(2), I find Mr. Wong must reimburse the strata \$519.75 for High Mark's invoice.

Lillie Family Heating invoices

57. According to the \$6,582.45 invoice, on December 6, 2019, Lillie replaced a leaking copper pipe and valve for the hot water supply on the building's 26th floor.
58. The strata says the leak was related to the December 4 events, namely from re-pressurizing the pipes. Since Mr. Wong is not responsible for the leaks caused by re-pressurizing the pipes, I find Mr. Wong is also not responsible for Lillie's invoice. Given my findings, I do not need to review the parties' additional arguments on this matter. I dismiss the strata's claim for \$6,582.45.
59. A second invoice from Lillie was for repairs to the toilet in the women's bathroom. The strata has admitted this was unrelated to the December 4 event and that the invoice was inadvertently included in its counterclaim. I dismiss the strata's claim for \$1,032.98.

CRT FEES, EXPENSES AND INTEREST

60. 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. Since the parties were each partially successful, I order no fee reimbursement. Neither party claimed dispute-related expenses.
61. The *Court Order Interest Act* (COIA) applies to the CRT. The strata is entitled to pre-judgment interest on High Mark's \$519.75 invoice from the date of the strata's demand for payment to the date of this decision. This equals \$5.32.
62. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Wong.

ORDERS

63. I order that within 14 days of the date of this order, Mr. Wong must pay the strata a total of \$525.09, broken down as follows:

a. \$519.75 in damages, and

b. \$5.32 in interest pursuant to the *Court Order Interest Act*.

64. The strata is also entitled to post-judgement interest under the COIA.

65. I dismiss the strata's remaining claims.

66. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court 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.

Rama Sood, Tribunal Member