



Civil Resolution Tribunal

Date Issued: March 31, 2021

File: ST-2020-004250

Type: Strata

Civil Resolution Tribunal

Indexed as: *Dias v. The Owners, Strata Plan BCS 721*, 2021 BCCRT 354

BETWEEN:

ANIL DIAS

APPLICANT

AND:

The Owners, Strata Plan BCS 721

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about water damage. The applicant, Anil Dias, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan BCS 721 (strata). As shown in the correspondence, Mr. Dias is also known as Gayan Dias.

2. Mr. Dias says the strata must repair certain bathroom water pipes in his strata lot that he submits are common property. He seeks orders for the strata to repair the “piping unit”, repair and repaint nearby drywall, and recant allegations in a May 19, 2020 letter that he is responsible for water damage to other strata lots. He also seeks \$1,000 in damages for mental distress and \$151.61 as compensation for the time his washroom was not usable. Mr. Dias also alleges that the strata’s bylaws are not valid and that the strata should have made an insurance claim. In his application for dispute resolution, Mr. Dias did not ask for specific remedies about the bylaws or insurance, but I discuss them below.
3. The strata disagrees. It says the water leak was caused by a leaking shower cartridge. It says both the cartridge and connected pipe are entirely part of Mr. Dias’ strata lot and not common property. As such, it says it is not responsible for completing any claimed repairs. The strata does not counterclaim against Mr. Dias.
4. Mr. Dias represents himself. A strata council member represents the strata.
5. For the reasons that follow, I find that the strata’s bylaws are valid. I find that the water leak was caused by a faulty shower cartridge and rough-in valve, rather than any pipes. I find that the faulty items are not common property and the strata has no obligation to fix them. I also find that the strata acted properly by not making a claim under its insurance. I dismiss all of Mr. Dias’ claims.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.

8. 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.
9. 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

10. The issues in this dispute are as follows:
 - a. Are the strata's bylaws valid?
 - b. Is the strata responsible for the requested repairs, and if so, what are the appropriate remedies?
 - c. Should the strata have made an insurance claim about the water damage?

BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Mr. Dias as the applicant must prove his claims on a balance of probabilities. I have reviewed the parties' submissions and evidence, but only comment on them as necessary to explain my decision.
12. The strata's property includes 6 low-rise buildings comprised of residential apartment-style strata lots. Mr. Dias has owned and lived in strata lot 95 since 2004. Strata lot 95 is located on the fourth floor of the building named "Building 1 South" on the strata plan. Strata lot 95 is directly above strata lot 67 on the third floor.
13. The Schedule Standard of Bylaws applies to the strata. Since 2004 its owners have approved numerous amendments which are registered in the Land Title Office (LTO).

I discuss the relevant bylaws below. From my review I did not find any of the amendments relevant.

14. On February 11, 2020, the strata's property manager, SL, received complaints of a water leak. The strata's plumber visited strata lot 95 on February 12 and 13, 2020. Their findings are documented in a February 18, 2020 invoice. It shows the following. The plumber observed the tub spout "spitting out water", causing it to splash onto the tile and drip down worn silicone on the tub spout and tile. The plumber cut open the back of the wall behind the tub and found water damage originating from the tub spout. The affected drywall was moldy. The plumber also observed ceiling water stains and warped baseboards in strata lot 67 below.
15. Mr. Dias provided video footage of his shower and tub. It shows the tub is in the interior of the strata lot and backed by a wall. There is also a hole cut into the drywall on the side opposite of the tub. Based on the footage of the wall, I find the wall separates the tub from other areas of the strata lot and is wholly within Mr. Dias' strata lot.
16. Mr. Dias then hired his own plumber. Mr. Dias' plumber visited on February 14, 2020. The plumber reported the following on an invoice. The shower was leaking from the spout. The shower cartridge was malfunctioning. The shutoff stops of the rough-in valve, inside a nearby wall, were also dripping. I infer the shutoff stops stop the flow of water through the valve. The plumber removed the cartridge and found pieces of the shutoff stops loose and running out of the spout. The plumber advised that a nearby wall be opened to cut the piping to replace and reconnect the rough-in valve. The plumber also applied some silicone around the spout and shower arm but did not otherwise do any repairs.
17. I find from the evidence of the 2 plumbers that both the shower cartridge and shutoff stops of the rough-in valve malfunctioned, causing the water leak. I find there was no fault with the pipes, though they would need to be cut to accommodate installation of a new rough-in valve.

18. In February and March 2020 Mr. Dias exchanged several emails with SL about the cause of the leak and who should pay for repairs. In a February 27, 2020 email, Mr. Dias requested a hearing, but this was never held. Mr. Dias did not request any specific remedy about this, so I will not address it further.
19. On March 27, 2020, SL wrote that the strata council had decided that Mr. Dias would be responsible for the repairs because the “shower device” had caused the leak and not any pipes. Mr. Dias disagreed and replied that the piping and rough-in valve within the wall malfunctioned. I note that I have already found the piping did not malfunction.
20. In a May 19, 2020 letter, SL wrote that the total damage was less than the strata’s insurance deductible. It wrote that any expenses incurred for emergency clean-up would be assessed against Mr. Dias’ strata lot account. The strata also wrote it would not undertake any repairs to the strata lot.

Issue #1. Are the strata’s bylaws valid?

21. Mr. Dias says the strata council failed to disclose to the owners the strata’s “financial, legal and insurance liability” about individual strata lots prior to making any amendments to the strata’s bylaws and rules. Mr. Dias did not say which bylaw or rule amendments he was referring to, so I find he means all of them. Mr. Dias says that as such, the strata’s bylaw amendments are invalid and only the Schedule Standard of Bylaws should apply. As a legal basis, Mr. Dias said that the strata should be held to the same disclosure standards as realtors.
22. I find this claim to be essentially a bare allegation unsupported by any facts or law. A strata corporation is not a realtor and different legislative schemes apply. The bylaw amendments in evidence indicate the strata properly amended its bylaws using the procedure outlined in SPA section 128(1). That requires the owners to vote on and approve a resolution by a 3/4 vote margin at a general meeting. The amendments were registered in the LTO as required by SPA section 128(2). There is no evidence that the strata misled the owners or prevented owners from asking questions before voting. Based on the overall submissions and evidence, I find there is nothing to

suggest the strata's bylaws, rules, or any amendments to them are invalid. I dismiss this claim.

Issue #2. Is the strata responsible for the requested repairs, and if so, what are the appropriate remedies?

23. The SPA and the strata's bylaws set out the repair and maintenance obligations of the strata and its owners. SPA sections 3 and 72 generally require the strata to repair and maintain common property. Under section 72(2), the strata may make an owner responsible for certain limited common property, but that does not apply here. Section 72(3) permits the strata to take responsibility for repair and maintenance of specified parts of a strata lot, but I find there are no relevant bylaws to that effect.

24. The relevant bylaws are as follows:

- a. Bylaw 2(1) says an owner must repair and maintain the owner's strata lot, except for repair and maintenance that is the responsibility of the strata under the bylaws.
- b. Bylaw 8(b) says the strata must repair and maintain common property that has not been designated as limited common property.
- c. Bylaw 8(c) says the strata must repair limited common property where the repairs and maintenance ordinarily occur less than once a year, as well as certain building parts and features.
- d. Bylaw 8(d) requires the strata to repair some parts of the strata lot that I find are not relevant to this dispute. These include chimneys, doors, and fences.

25. I have determined that the shower cartridge and rough-in valve malfunctioned. I find a key issue is whether they are common property. SPA section 1 defines common property as

- a. that part of the land and buildings shown on a strata plan that is not part of a strata lot, and

- b. pipes, wires, cables, chutes, ducts and other facilities for the passage or provision of water, sewage, drainage, gas, oil, electricity, telephone, radio, television, garbage, heating and cooling systems, or other similar services, if they are located
 - i. within a floor, wall or ceiling that forms a boundary (A) between a strata lot and another strata lot, (B) between a strata lot and the common property, or (C) between a strata lot or common property and another parcel of land, or
 - ii. wholly or partially within a strata lot, if they are capable of being and intended to be used in connection with the enjoyment of another strata lot or the common property.

26. As noted above, the evidence before me indicates that the shower cartridge and rough-in valve are within a wall next to the tub. I have already found that the wall is an internal wall within the strata lot. Given its location, I also find this internal wall does not form a boundary between the strata lot or another strata lot, common property, or common property and another parcel of land. I find the internal wall is part of the strata lot.

27. I find that the shower cartridge and rough-in valve would be common property under SPA section 1(b)(ii) if they could be considered “pipes...and other facilities for the passage or provision of water...heating and cooling systems or other similar services...located wholly or partially within a strata lot, if they are capable of being and intended to be used in connection with the enjoyment of another strata lot or the common property”.

28. In *Shen v. The Owners, Strata Plan LMS 1005*, 2020 BCCRT 63, the CRT Vice Chair decided that a shower integral valve, located inside a wall, was not common property. The Vice Chair noted that the valve was connected to a pipe but was “not the pipe itself”. She also found that there was no indication that the pipe to which the valve was connected was used in connection with another strata lot or common property. She accepted that the shower water originally flowed through a common pipe but

found that not every branch of water piping within a strata lot was common property, as stated under the SPA.

29. Similarly, in *Thompson v. The Owners, Strata Plan KAS 3267*, 2019 BCCRT 1190, the CRT found that the applicant's plumbing fixtures, including the portion of the shower cartridges that were within a wall, were not common property. I note, however, that the parties did not dispute this finding.
30. Although CRT decisions are not binding, I find the reasoning shown in *Shen* and *Thompson* persuasive and I follow it here. I find that the malfunctioning shower cartridge and rough-in valve are not common property. They are connected to the piping but are not the pipe itself. They, and the pipe they are connected to, are not capable of being or intended to be used in connection with the enjoyment of another strata lot or the common property. As the malfunctioning items, along with the opened drywall, are not common property, I find the strata is not obligated to repair them under the SPA or the bylaws.
31. Mr. Dias asked for the following remedies in relation to this main claim: 1) an order for the strata to repair the "piping unit" and cut wall in his strata lot, 2) payment of \$151.61 as compensation for the time his washroom was not usable, 3) payment of \$1,000 in damages for mental distress, and 4) an order for the strata to recant a "false claim" in the May 19, 2020 letter that he was responsible for water damage to other strata lots. Given my finding above that the strata is not responsible for the shower cartridge, rough-in valve and cut drywall, I decline to make these orders.
32. I further note that the claims for mental distress were unsupported by any evidence. For example, there is no indication that Mr. Dias sought medical treatment or missed work.
33. I would also not order the strata to recant or correct the May 19, 2020 letter even if Mr. Dias had succeeded. In that letter, the strata wrote, "We understand that as a result of water emanating from your strata lot, damage has occurred to your strata lot and others." The strata did not say or decide that Mr. Dias would necessarily be responsible for damage caused to the other strata lots. The strata merely stated its

understanding of the situation, which I find was reasonable based on the facts available to it at the time.

34. For these reasons, I dismiss this claim.

Issue #3. Should the strata have made an insurance claim about the water damage?

35. Mr. Dias says the strata's insurance should cover the cost of repairs as he pays for insurance through his strata fees. The strata disagrees. As noted in its May 19, 2020 letter to Mr. Dias, the strata says the total damage is less than the strata's insurance deductible. I agree with the strata for the following reasons.

36. Under SPA section 149(1)(d), the strata must obtain and maintain property insurance on fixtures built or installed on a strata lot, if the fixtures were built or installed by the owner developer as part of the original construction on the strata lot. Section 9.1 of the *Strata Property Regulation* defines fixtures to include floor and wall covering and plumbing fixtures. I conclude the floor, drywall, and plumbing fixtures in Mr. Dias' strata lot were part of the original construction as there is no evidence to refute this.

37. In the non-binding decision of *David v. The Owners, Strata Plan KAS 2955*, 2018 BCCRT 498 at paragraph 33, the CRT member noted that the duty to insure original fixtures in a strata lot does not create a duty to repair original fixtures where the cost to repair falls below the strata's insurance deductible. Other CRT decisions have similarly held that the duty to insure under SPA section 149(1)(d) does not, by itself, create a duty to repair or maintain original fixtures.

38. I find the reasoning in *David* applicable and follow it here. I find that if the total cost of repairs is less than the deductible then the strata has no obligation to make a claim under its insurance.

39. Ms. Dias provided a summary of the strata's insurance policy from its insurer. From the sheet I find the insurance deductible is \$20,000. Mr. Dias did not provide any evidence of the ultimate cost of repairs. I do not find it obvious from the footage of the damage that repairs will cost more than the deductible. As Mr. Dias has the burden

to prove his claim, I am not satisfied that the strata was obliged to make a claim under its insurance policy. I dismiss this claim.

CRT FEES AND EXPENSES

40. 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 in this case not to follow that general rule.
41. The strata is the successful party. It paid no CRT fees and claimed no dispute-related expenses. I therefore do not order reimbursement for any parties.
42. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Dias.

ORDER

43. I dismiss Mr. Dias' claims and this dispute.

David Jiang, Tribunal Member