Civil Resolution Tribunal

Date Issued: April 9, 2021

File: ST-2020-006144 and ST-2020-007796

Type: Strata

Civil Resolution Tribunal

Indexed as: *Dufrane v. The Owners, Strata Plan VIS 6620,* 2021 BCCRT 372

B E T W E E N :

CHRIS DUFRANE

APPLICANT

A N D :

The Owners, Strata Plan VIS 6620

RESPONDENT

REASONS FOR DECISION

Tribunal Member: J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute about responsibility for alleged damages suffered by a strata lot owner during and following repairs to their strata lot under a strata corporation's insurance policy. This decision is for 2 linked disputes (ST-2020-006144 and ST-2020-

007796) which include the same applicant and respondent, so I find I can issue a single decision for both disputes.

2. The applicant, Chris Dufrane, is the owner of strata lot 38 (SL38) in the respondent strata corporation, The Owners, Strata Plan VIS 6620 (strata). Mr. Dufrane rents out SL38 and does not reside there.

3. In dispute ST-2020-006144, Mr. Dufrane claims the strata was negligent because it failed to take reasonable steps to correct a storm drain backup issue that caused water damage to SL38. Mr. Dufrane says the same storm drain backed up a total of 4 times. Once in 2011 causing damage to SL38, once in 2016 without causing damage to SL38, and 2 more times in August and September 2018 when SL38 sustained property damage. It is the 2018 events that triggered this dispute.

4. Mr. Dufrane also claims the strata is responsible for damage sustained to SL38 by contractors during the course of the repairing the 2018 damage to SL38, and for the contractor's delay in completing the repair work.

5. As remedy, Mr. Dufrane seeks orders that the strata reimburse him $3,535.65 for the following damages:

    a. $700.00 for an insurance deductible paid to his personal insurer,

    b. $160.71 for flooring materials he purchased that were returned without a refund,

    c. $1,117.91 for refrigerator repairs, and

    d. $1,557.03 for lost rental income.

6. The strata accepts SL38 flooded on the dates noted by Mr. Dufrane, but denies responsibility for Mr. Dufrane's alleged losses. The strata asks that his claims be dismissed.

7. In dispute ST-2020-007796, Mr. Dufrane claims the strata's property manager breached the *Strata Property Act* (SPA) by failing to provide requested documents as required by the SPA. He says that some legal documents have not been provided and the strata council breached its duty of care under the SPA when it failed to take responsibility for

the actions of its property manager. Mr. Dufrane seeks orders that the strata comply with and enforce the SPA, and report the wrongdoing of its property manager to the Real Estate Council of BC (REC), the provincial government body that licences the property manager.

8. The strata disagrees with Mr. Dufrane's claims that the SPA was not breached. I infer the strata asks that his claims under this dispute also be dismissed.

9. Mr. Dufrane represents himself, and the strata is represented by a strata council member.

10. For the reasons that follow, I dismiss all of Mr. Dufrane's claims in dispute ST-2020-006144. For dispute ST-2020-007796, I dismiss Mr. Dufrane's claims against the strata's property manager and I refuse to resolve his claims against the strata.

JURISDICTION AND PROCEDURE

11. 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.

12. The CRT has discretion to decide the format of the hearing, including by writing, 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.

13. 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.

14. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.

15. 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 Issues in Dispute ST-2020-007796

Legal Documents

16. Mr. Dufrane asked to provide late evidence he says is crucial to his claims. I admitted the evidence and requested staff obtain further submissions from both parties, which they provided. In summary, the late evidence consisted of a March 4, 2021 email exchange between Mr. Dufrane and the strata's property manager. The email was about his request for documents that I find led to his claims in dispute ST-2020-007796, which he earlier believed had been satisfied.

17. In his further submissions, Mr. Dufrane says the strata was untruthful and deliberately made misleading statements in its original submissions that a "legal opinion" was obtained by the strata when it appears the property management company obtained the legal information. The strata representative says they were under the mistaken belief the information was obtained by the strata when the original submissions were made, but now understands it was not. Based on my review of the overall submissions and evidence, I do not agree the strata's representative made untruthful statements or intentionally attempted to mislead either the CRT or Mr. Dufrane. I accept the strata representative simply misunderstood how the information was obtained.

18. My understanding of Mr. Dufrane's current concern in ST-2020-007796 is that he now believes a legal opinion exists which has not been provided to him, despite his earlier requests. Mr. Dufrane requests an order that the strata provide "any and all legal opinion records", which I infer means legal documents relating to his disputes. I decline Mr. Dufrane's request for the following 2 reasons.

19. First, the March 4, 2021 email exchange between Mr. Dufrane and the property manager and other evidence explains a legal opinion was never obtained and that the strata's reference to "legal opinion" in its submissions was about a template letter drafted by a lawyer for the strata to use when dealing with water damage claims. Based on the evidence, I find Mr. Dufrane has been provided with a copy of that letter.

20. Second, even if there is legal information that has not been disclosed to Mr. Dufrane, it would not change the outcome of my decision below. In other words, nothing turns on whether legal information or opinions have been properly disclosed to Mr. Dufrane. This is so because I dismiss his claims against the property manager and refuse to resolve his claims against the strata in dispute ST-2020-007796 for other reasons discussed below.

Standing

21. Mr. Dufrane claims the property manager breached the SPA by not providing documents he requested. I infer Mr. Dufrane references section 35 of the SPA, given that is the section that addresses document disclosure. I find Mr. Dufrane has no standing (is not legally able) to make a claim against the property manager for duties it may owe to the strata: *Wong v. AA Property Management Ltd.*, 2013 BCSC 1551, summarized in paragraph 66. Therefore, I dismiss Mr. Dufrane's claim against the strata's property manager.

22. I also note that the property manager was not a named respondent in this dispute. So even if Mr. Dufrane did have standing, I would have dismissed his claim because it would be procedurally unfair to make an order against a non-party.

Jurisdiction – Standard of Care

23. Mr. Dufrane also says the strata council breached its duty of care under the SPA when it failed to take responsibility for the actions of its property manager. I find that a strata council member's standard of care is set out in section 31 of the SPA.

24. Section 31 says that each council member must act honestly and in good faith, with a view to the best interests of the strata, and exercise the care, diligence, and skill of a reasonably prudent person in comparable circumstances.

25. Section 31 applies to individual strata council members and not to the strata council as a whole or to the strata. I find this has been confirmed by the B.C. Supreme Court in *Wong* and in T*he Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc*., 2016 BCSC 32.

26. In *Sze Hang* the BC Supreme Court found that the duties of strata council members under section 31 of the SPA are owed to the strata corporation, and not to individual strata lot owners (at paragraph 267). This means that a strata lot owner cannot be successful in a claim against a strata corporation for duties owed by its strata council members under section 31.

27. In *Wong* the court concluded that the only time a strata lot owner can sue an individual strata council member is for a breach of the conflict of interest disclosure requirement under section 32 of the SPA (at paragraph 36). Remedies for breaches of SPA section 32 are specifically excluded from the tribunal's jurisdiction, as set out in section 122(1)(a) of the CRTA. Thus, the tribunal does not have jurisdiction over claims brought by an owner against an individual strata council member.

28. The court decisions in *Wong* and *Sze Hang* are binding precedents, and the CRT must apply them. Following, *Wong* and *Sze Hang* I find the CRT has no jurisdiction to decide the owner's section 31 claims set out above.

29. For all of these reasons, I refuse to resolve the owner's claims against the strata for breach of section 31 under section 10(1) of the CRTA, because it is outside the CRT's jurisdiction.

30. Given there are no other claims to address in dispute ST-2020-007796 I will not consider that dispute further.

ISSUES

31. The remaining issues are those related to dispute ST-2020-006144. They are:

    a. Was the strata negligent in dealing with multiple water leaks into SL38?

    b. Is the strata responsible for the actions of the trades involved in the repair of SL38?

    c. What remedies are appropriate, if any?

BACKGROUND, EVIDENCE AND ANALYSIS

32. In a civil proceeding such as this, Mr. Dufrane as applicant must prove his 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.

33. The strata is a strata corporation created in July 2008 under the SPA. It consists of 89 strata lots in a single 4-storey building. Strata plan VIS 6620 shows SL38, also known as unit 216, is located on the second floor of the building.

34. Land Title Office (LTO) documents show the strata filed a complete new set of bylaws on February 27, 2017, that replaced the Standard Bylaws under the SPA. Given the incidents that triggered this dispute occurred in August and September 2018, I find these are the applicable governing bylaws. Subsequent bylaw amendments were filed on November 27, 2017 and November 27, 2018 that I find are not relevant here. Another complete new set of bylaws was filed with the LTO on January 24, 2020, which I find do not apply because they were filed after the 2018 incident. I discuss the applicable bylaws below as necessary.

35. It is undisputed that in July 2011, SL38, and possibly other strata lots, suffered water damage. The parties do not agree on what caused the July 2011 water damage, which I address further below.

36. The parties agree that a further incident of water damage occurred in May 2016 that affected only first floor strata lots. SL38 was not affected. As a result of the 2016

incident, the strata retained Rocky Point Engineering Ltd. (Rocky Point) to investigate the cause of the water back up into the first floor strata lots. Rocky Point attended the building on July 14, 2016 and inspected 4 strata lots and common property, including the parking level. In a preliminary report dated August 2016, Rocky Point noted all but 5 of the first floor strata lots (23 of the 28) suffered water damage. The report states "a number of suites were damaged by water flowing back from the storm system through the hot water tank pan drain due to heavy storm and hail." It also found 3 "non-standard" back flow valves had been installed, although the locations were not identified.

37. Among other things not relevant to this dispute, Rocky Point recommended that 23 backwater valves be added to the hot water tank pan drain connections and that the 3 "nonstandard" valves be removed. I infer the 23 valves were recommended to be installed on the 23 affected first floor strata lots. Marked up mechanical drawings were included in the report to show where the backwater valves should be installed.

38. Rocky point updated its August 2016 report in January 2017. In the updated report, Rocky Point added a recommendation to install "whenever possible", a backwater valve on 2-inch "drain pipes from drain stack" for a total of 29 backwater valves. A December 3, 2020 email from a principal of Rocky Point to Mr. Dufrane clarifies the added recommendation in the January 2017 report was to have backwater valves added to "drain pan stacks serving multiple floors" at the parkade level "before [the multilevel drainpipes] connected to the storm piping". Revised marked up mechanical drawings were included in the January 2017 report to show the locations where the backwater valves should be added to the existing drainpipes.

39. An invoice from The Comfort Group Heating Corporation dated February 24, 2017 (Comfort invoice) describes the supply and installation of "check valves for water heater drain pan lines as per engineer's recommendations".

40. The parties also agree that further water damage occurred to SL38 about August 11 and September 16, 2018. This is the focus of Mr. Dufrane's remaining claims. The 2 incidents resulted in 2 claims against the strata's insurance policy. There is no issue about payment of the insurance deductibles nor any dispute that significant damage occurred to SL38. The evidence shows the affected areas of SL38 included all rooms

except the main bedroom. The flooring was replaced in the affected areas along with some drywall, mostly in the laundry room where the hot water tank is located.

41. The strata again requested Rocky Point to investigate the cause of the leak into SL38 and one other 2nd floor strata lot that had only minor damage. A Rocky Point representative attended the building on August 15 and 29, 2018 and provided a report to the strata dated January 2019. The report stated that the 2018 incident did not result in damage to first floor strata lots where backwater valves had been installed, but confirmed that backflow occurred at the drain pan of SL38. The report also observed that the storm drain pipes differed from available drawings and stated pan drain lines and rainwater leaders "at a couple of locations where there was damage have been combined".

42. In the December 3, 2020 email to Mr. Dufrane noted above, a principal of Rocky Point confirms it was not previously aware that "upper level drain pans were connected to stormwater drain stacks" until its 2018 investigation. In a follow up email to Mr. Dufrane dated December 4, 2020, the principal clarified that Rocky Point's 2017 recommendations included "adding backwater valves to piping connections serving multiple floors… which we understood at the time served the upper level drain pans."

43. In August 2018, the strata's insurer appointed Coast Claims (Coast) to adjust the insurance claims. Initially, a contractor, ProPacific DKI (ProPacific), was retained to complete emergency work to SL38 and continued with the insurance restoration work. Mr. Dufrane was unhappy with the quality and pace of the work and the replacement flooring selection which he believed was inferior to the flooring that existed before the incident. He also claimed ProPacific damaged his refrigerator (now claimed against the strata in this dispute), which ProPacific denied. As a result, in early November 2018, ProPacific was replaced by another contractor, International Hazmat Services Inc. (IHS), to complete the remaining insurance work in SL38. Mr. Dufrane agreed to the change of contractors.

44. Between November 2018 and April 2019, IHS completed the insurance work to SL38. During the course of doing so, IHS allegedly damaged newly installed flooring and the kitchen countertop. Both were repaired.

45. The entire SL38 repair occurred between August 2018 through April 2019, a period of about 9 months. Mr. Dufrane's tenant vacated SL38 for most of this period. Mr. Dufrane claimed against his personal insurance for lost rental income and his insurer paid a portion of the lost rent. As discussed below, I find Mr. Dufrane claims for lost rental income totaling $1,557.03 are for the amounts not covered by his personal insurer that exceeded his insurer's maximum amount.

Was the strata negligent in dealing with multiple water leaks into SL38?

46. I accept Rock Point's assessment that the cause of the water damage in 2016 and 2018 was from a back up of water through storm drainpipes. The parties do not say otherwise and an August 2018 email from the property manager to Mr. Dufrane requests urgent access to SL38 to investigate "the roof drains that lead into a few [strata lots] including yours….[because of] a past roof drain leak that happened in 2016".

47. Although not expressly stated by the parties, I find the overall evidence and submissions support the backflow of water into SL38 involves drainpipes from the roof area to the underground parking garage, located within the interior walls of the building. Such pipes are defined as common property under section 1(1) of the SPA because they service more than 1 strata lot and common property. Under section 72 of the SPA, the strata has a duty to repair and maintain common property. None of this is disputed.

48. Courts have said that a strata corporation, in discharging its repair and maintenance obligations, must act reasonably, and is not liable for damage unless it has been negligent: see *Weir v. Strata Plan NW 17*, 2010 BCSC 784; *John Campbell Law Corp. v. Strata Plan 1350*, 2001 BCSC 1342.

49. The strata denies it was negligent. Mr. Dufrane argues the 2018 damage to SL38 resulted from the strata's negligence in the following ways:

    a. The strata failed to advise its engineer, Rocky Point, of the flooding and damage that occurred in 2011, and

    b. The strata failed to install a backflow valve for SL38 after the 2016 flooding occurred to the first floor strata lots.

50. To be successful in an action for negligence, Mr. Dufrane must demonstrate that the strata owed him a duty of care, that the strata breached the standard of care, that the owner sustained damage, and that the damage was caused by the strata's breach: *Mustapha v. Culligan of Canada Ltd*., 2008 SCC 27. The courts have confirmed the strata's standard of care for repair and maintenance is reasonableness: *Wright v. The Owners, Strata Plan #205,* 1996 CanLII 2460 (BC SC)*, affirmed (1998), 43 B.C.L.R. (3d) 1, 1998 CanLII 5823 (BC CA)*.

51. The BC Court of Appeal has also held that a strata corporation is not an insurer, and is not responsible for damage as long as it acted reasonably in the circumstances. This means that even if a strata corporation's contractors fail to carry out work effectively, the strata is not responsible, and cannot be found negligent: *Kayne v. LMS 2374*, 2013 BCSC 51, *John Campbell Law Corp v. Strata Plan 1350*, 2001 BCSC 1342, and *Wright*.

52. Based on section 72 of the SPA and bylaw 8(2) that requires the strata to repair and maintain common property that has not been designated as limited common property, I find the strata owed Mr. Dufrane a duty of care to properly maintain the stormwater drainpipes.

53. It is clear from Mr. Dufrane's email exchange with the strata's property manager in August 2011 that water damage occurred in SL38. The strata does not dispute SL38 suffered water damage in 2011, but it argues the 2011 incident was not caused by events similar to those which occurred in 2016 and 2018.

54. Notably, the 2011 email in evidence only states the flooring and drywall repairs were nearing completion. It does not address the cause of the water damage. While the photograph provided by Mr. Dufrane, which he says was taken in 2011, appears to show damage to the SL38 laundry area where the hot water tank is located, the photograph does not prove the cause of the damage.

55. The strata admits it did not make Rocky Point aware of the 2011 water damage that affected SL38. Further, the Rocky Point principal confirmed in his December 2020 email that it was not aware of the 2011 incident. However, as he clarified in email, Rocky Point did not determine the true issue affecting SL38 until 2018 when it discovered the

drawings used in 2016 were incorrect because they did not reflect actual construction. Even if the strata made Rocky Point aware of the 2011 event, Rocky Point could not have known the cause of the 2011 event. Nor is it reasonable to conclude that if Rocky Point was aware of the 2011 damage to SL38 during its 2016 investigation, that it would have discovered the drain lines were not as shown on the drawings. This is especially true considering the 2016 backflow did not affect SL38 or any other 2nd level strata lots.

56. Mr. Dufrane also argues that the strata failed to follow the recommendations of Rocky Point after the 2016 water damage to the first level strata lots. As I have noted, Rocky Point recommended the installation of 23 backwater valves on first level strata lots and 6 additional backwater valves on drain lines it thought included upper level strata lots such as SL38. There is no evidence to prove the strata did not follow these recommendations. Rather, the Comfort invoice suggests the backwater valves recommended by Rocky Point were installed in 2017. Based on the overall evidence and submissions, I find strata reasonably followed the recommendations of its engineer in 2016 by installing backwater valves at locations identified by Rocky Point.

57. There is nothing before me that shows the strata did not act reasonably in the circumstances of this dispute. For these reasons, I find the strata was not negligent in addressing the multiple water leaks into SL38.

Is the strata responsible for the actions of the trades involved in the repair of SL38?

58. The main issue here is about alleged damage or delay caused by the contractors involved with the insurance repair, and not with the insurance-related repairs themselves. I note Mr. Dufrane was not successful in recovering his claimed amounts from the strata's insurers or the adjuster, and that his request that the strata reimburse him for his claimed losses at a March 2019 strata council hearing was also denied.

59. Mr. Dufrane claims the strata is responsible for damage sustained to SL38 by the contractors involved in repairing the 2018 damage, and for the contractor's delay in completing the repairs. In essence, Mr. Dufrane argues that the strata retained the contractors and is therefore responsible for their actions. The strata says it asked

ProPacific only to investigate and complete emergency work in SL38 to mitigate the water damage. The strata says it did not hire ProPacific or IHS to repair SL38.

60. For the following reasons, I dismiss Mr. Dufrane's claims against the strata for the contractors' actions.

61. The only documentary evidence before me about the August and September 2018 water damage is correspondence. A copy of the strata's insurance policy was not provided. Nor are there copies of estimates or approved scopes of work, signed contracts, or completed proof of loss forms relating to the 2018 losses.

62. However, there is no question the strata's insurance policy responded to the 2018 water damage sustained to SL38. I therefore conclude that the strata met its duty to insure the fixtures installed by the owner developer within SL38 as required under section 149(1)(d) of the SPA and section 9.1 of the *Strata Property Regulation* (Regulation). Had the strata not met its duty to insure Mr. Dufrane's fixtures in SL38, I find its insurers would more than likely not covered the SL38 damage. As a result, to the extent Mr. Dufrane claims the strata was negligent in meeting it duty to insure, I dismiss his claim.

63. An insurance policy is a contract of indemnity, meaning the insurer is obligated to pay the cost of the insured's damaged property. Under SPA section 155, owners and tenants are deemed to be named insureds in a strata corporation policy. As a result, Mr. Dufrane was entitled to make a claim under the strata's policy if the strata did not: *Amnipour v. The Owners, Strata Plan NW 1990*, 2010 BCSC 592. In this case, it is clear that the strata initiated the 2018 insurance claims, but as I discuss below, I find Mr. Dufrane took control of the claims process and the contractors involved.

Refrigerator Damage

64. Mr. Dufrane claims $1,117.91 for the cost to repair his refrigerator. There is no question Mr. Dufrane's refrigerator is his personal property. It is not a fixture covered under the strata's insurance policy.

65. In order for the strata to be responsible for refrigerator damage, I find Mr. Dufrane must prove the strata had some responsibility for the interior repairs to SL38, was responsible

for the contractors that completed the repairs, and that a contractor under the control of the strata damaged his refrigerator. I find Mr. Dufrane has proved none of these points.

66. Bylaw 2(1) says an owner is responsible for repair and maintenance of their strata lot except for repair and maintenance that is the strata's responsibility under bylaw 8. Bylaw includes requires the strata to repair and maintain common property as I have mentioned. It also requires the strata to repair and maintain certain parts of a strata lot, such as the structure and things on the exterior of the building, but I find none of those things are relevant here.

67. The fact that the strata's insurance policy covered the water damage does not change who is responsible for the related property repairs. That is, Mr. Dufrane is responsible for repairs to SL38 under bylaw 2(1), and the strata is responsible for repairs to common property, consistent with bylaw 8 and SPA section 72.

68. Finally, there is only Mr. Dufrane's assertion, supported by his tenant's witness statement, that ProPacific damaged his refrigerator. While some of the photographs provided show scratches on the refrigerator door, it is unclear when the photographs were taken. I find that the photographs allegedly taken before the repairs began do not clearly show whether the door was scratched or not. As I discuss below, I also find the strata did not have control over ProPacific's work, so I find the strata is not responsible for the cost of the refrigerator repairs.

69. I turn now to the relationship between the strata and the contractors, ProPacific and IHS.

70. The British Columbia Strata Property Practice Manual, online current to February 1, 2020, (Vancouver: Continuing Legal Education Society of British Columbia, 2016) at §19.15 states:

> A strata lot owner's status as a named insured, as well as their responsibility for the repair and maintenance of most, if not all, aspects of a strata lot under a strata corporation's bylaws, likely entitles the owner to direct the manner of repair of their strata lot by the insurer if damaged: *Chubb Insurance Co. of Canada v. Novex Insurance Co.*, 2012 ONSC 4670.

71. I find this is exactly what Mr. Dufrane did, which also demonstrates a relationship existed between Mr. Dufrane and the contractors. As mentioned, there is no evidence of any signed agreements between ProPacific and either the strata or Mr. Dufrane. However, in *Crosse Estate (Re)*, 2012 BCSC 26 at paragraph 31, the British Columbia Supreme Court found unsigned agreements can be binding, and acceptance can be implied by the parties' conduct. Contrary to what Mr. Dufrane suggests, I find the evidence is that Mr. Dufrane instructed the contractors and controlled their work.

72. As mentioned, the strata admits it initially involved ProPacific. Based on the overall evidence, I find the strata more than likely initiated the claim for SL38 on Mr. Dufrane's behalf. That does not mean the strata retained ProPacific. There is no such evidence, and Mr. Dufrane has not proved that to be the case. I infer that ProPacific completed the emergency work and continued on with the permanent SL38 repairs with Mr. Dufrane's permission. Mr. Dufrane did not initially object to ProPacific doing the work.

73. For the most part, aside from his concerns over the pace of ProPacific's work, he accepted the completed work until he discovered a supplier for his original flooring and damage to his refrigerator in November 2018, which he alleges was caused by ProPacific. According to the adjuster, Mr. Dufrane provided a key to ProPacific so it could enter SL38 to complete the repairs. Mr. Dufrane does not dispute this. In addition, Mr. Dufrane was very active in choosing the replacement flooring and eventually selected a product from one of ProPacific's suppliers. Finally, in an email to his personal insurer on November 21, 2018, Mr. Dufrane stated "I had to let go of the restoration company". All of these things imply that Mr. Dufrane consented to ProPacific completing the repairs and controlled their work.

74. That the strata may have assisted Mr. Dufrane in organizing the repairs and even recommending companies to complete the work does not mean the strata hired the contractors.

75. Based on the submissions and evidence before me, I find it more likely than not that ProPacific had an agreement with Mr. Dufrane rather than the strata.

76. The relationship between Mr. Dufrane and IHS is clearer. There is a document in evidence that shows Mr. Dufrane agreed to IHS completing its scope of work on November 17, 2018. The document is signed by Mr. Dufrane and I find it is sufficient proof that he hired IHS to replace ProPacific.

77. For these reasons, I decline to order the strata to reimburse Mr. Dufrane the alleged refrigerator repairs totaling $1,117.91

Insurance Deductible and Lost Rental Income

78. I find Mr. Dufrane's requested reimbursement of his personal insurance deductible ($700.00) and lost rental income ($1,557.03) both relate to his claim the contractors delayed the work. Mr. Dufrane admits he had personal insurance to cover lost rental income from his tenant who moved out of SL38 while the repairs were in progress. Based on Mr. Dufrane's submissions, I understand the $700 deductible he paid to his insurer was strictly related to his rental income loss. Mr. Dufrane did not provide detail on his personal rental loss claim, but based on his insurance documents and other evidence, I find Mr. Dufrane's rental income loss coverage was for a maximum of $5,400, or about 4.5 months of rent. As mentioned, I find his claimed loss of $1,557.03 against the strata represents the amount of his rental income loss in excess of the amount covered by his personal insurance.

79. At the outset, I dismiss Mr. Dufrane's claim for reimbursement of his $700.00 insurance deductible. I say this because he would have paid this deductible amount even if there were no delays in the restoration work to SL38.

80. Having found Mr. Dufrane controlled the contractors, I also find, to some extent, he was involved with the pace of their work. This is especially true of the flooring repairs. In November 2018, after Mr. Dufrane had accepted the flooring material suggested by ProPacific that had already been delivered to SL38, he discovered the same product that was originally installed in SL38 was available through another supplier. He preferred the original flooring material over the material he had already approved and discussed the possibility of changing the flooring material with the adjuster. In December 2018, the adjuster agreed to the new product, which Mr. Dufrane knew would delay the

repairs by at least 3 to 4 weeks, which was the estimated delivery time. Given his insistence with the change in flooring, I find Mr. Dufrane contributed to the delay of the repair.

81. At about the same time, Mr. Dufrane determined that ProPacific should also be replaced by another contractor. While there may have been legitimate reasons to make this change, the contractor change was clearly made at the Mr. Dufrane's request. There is no evidence the strata was involved in these decisions.

82. Further delay occurred because IHS damaged the newly installed flooring, although IHS took responsibility for the flooring damage and replaced the damaged areas. This was not the strata's responsibility as I have already found Mr. Dufrane hired IHS.

83. Based on my earlier findings and these circumstances, I do not agree Mr. Dufrane has proved the strata is responsible for the work delay. I therefore decline to order the strata to reimburse him $1,557.03 for lost rental income.

Flooring Materials Purchased

84. Finally, Mr. Dufrane claims $160.71 for the expense of new flooring in his den or office. There is no dispute that the flooring in the room was not the same material being replaced elsewhere in SL38. I understand that the $160.71 represents the cost of flooring in the den or office to match the new flooring chosen. The adjuster's March 22, 2019 email to the strata states this was an upgrade and was not included in the scope of work. Mr. Dufrane provided a receipt for the flooring that shows he paid the supplier directly. Mr. Dufrane submits that when the decision to change the flooring was made, the flooring that had been delivered to SL38, including for his den office, was returned to the supplier, but that he did not receive a reimbursement for this extra amount of material he paid for.

85. Again, there is no evidence the strata had any involvement with return of the originally selected flooring, the decision to return it, or the fact that Mr. Dufrane received no refund. Therefore, I decline to order the strata to reimburse Mr. Dufrane $160.71 for the upgraded flooring.

86. For all of these reasons, I dismiss Mr. Dufrane's claims and this dispute.

CRT FEES AND EXPENSES

87. 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 it did not pay CRT fees or claim dispute-related fees. Accordingly, I make no order for thee expenses.

88. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Dufrane.

ORDERS

89. In dispute ST-2020-007796, I dismiss Mr. Dufrane's claims against the strata's property manager and I refuse to resolve his claims against the strata.

90. I order Mr. Dufrane's remaining claims in both disputes dismissed.

J. Garth Cambrey, Vice Chair