



# Civil Resolution Tribunal

Date Issued: October 5, 2021

File: ST-2021-003259

Type: Strata

Civil Resolution Tribunal

Indexed as: *Metzner v. The Owners, Strata Plan VR773*, 2021 BCCRT 1067

**B E T W E E N :**

LOUIS JAMES METZNER

**APPLICANT**

**A N D :**

The Owners, Strata Plan VR773

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Chad McCarthy

## INTRODUCTION

1. This dispute is about responsibility for water leak damage and repairs. The applicant, Louis James Metzner, co-owns strata lot 6, known as unit 1039, in the respondent strata corporation, The Owners, Strata Plan VR773. A bathtub in strata lot 6 leaked while Mr. Metzner was not present, and the strata paid \$1,156.87 for emergency plumbing repairs. Mr. Metzner says he is not responsible for those repairs, or for

\$1,995 in water damage repairs incurred by the owner of unit 1033 below his strata lot. He seeks a decision about liability for the leak, and an order that he not be required to pay for the plumbing repairs and water damage. Mr. Metzner values his claim at \$3,000 although it is undisputed that he has not paid for the plumbing repairs or unit 1033 repairs.

2. The strata says that Mr. Metzner is responsible for the plumbing repairs, but the strata makes no counterclaim. The unit 1033 owner is not named as a party to this dispute.
3. Mr. Metzner is self-represented in this dispute. The strata is represented by a strata council member.

## **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). CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
5. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.
6. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even where the information would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

7. Under CRTA section 123, 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.
8. Mr. Metzner appears to claim, in part, an order that he not be required to pay the unit 1033 owner for water damage repairs. However, the unit 1033 owner is not named as a party to this dispute. I cannot make orders against a non-party because they have not had an opportunity to know and respond to the allegations against them, or to review and submit evidence, which would be procedurally unfair. I make no findings about whether Mr. Metzner is liable to the unit 1033 owner, and I refuse to resolve Mr. Metzner's claims to the extent that they are for orders against the unit 1033 owner.

## **ISSUE**

9. Is Mr. Metzner liable to the strata for the plumbing repairs and unit 1033 repairs, and if not, should I order the strata not to charge Mr. Metzner for those repairs?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, as the applicant Mr. Metzner must prove his claims on a balance of probabilities. I have read and weighed the parties' evidence and submissions, but I refer only to that which I find necessary to explain my decision.
11. The strata was formed in 1980 and presently exists as a strata corporation under the *Strata Property Act* (SPA). The strata's premises are a 4-storey building with 8 strata lot apartments. The strata has not filed any bylaw amendments with the Land Title Office, so under SPA section 120(1), its bylaws are the Standard Bylaws set out in the SPA's Schedule of Standard Bylaws.
12. SPA section 72 says that the strata must repair and maintain common property (CP) and common assets. It also says that the strata may by bylaw make an owner responsible for the repair and maintenance of CP that is not limited common property (LCP) if identified in the regulations. However, the regulations do not identify any non-LCP CP that the strata may make an owner responsible for.

13. Bylaw 8 confirms that the strata must repair and maintain CP that is not LCP, as well as certain parts of strata lots that are not relevant here, such as the building's structure and some exterior features. Bylaw 2(1) says that an owner must repair and maintain the owner's strata lot, except for repair and maintenance that is the strata's responsibility under the bylaws.
14. This dispute turns on whether a water leak is the strata's responsibility because it involved CP plumbing or is Mr. Metzner's responsibility because it occurred in his strata lot. SPA section 1 says that CP includes pipes, ducts, and other facilities for the passage or provision of water, sewage, drainage, and other similar services, if they are located wholly or partially within a strata lot, and if they are capable of being and are intended to be used in connection with the enjoyment of another strata lot or the common property. So, the precise location of the leak is an important consideration in this dispute.
15. The undisputed evidence is that strata lot 6 has two levels, with a bathtub on the upper level. I find the bathtub and its attached drainpipes are wholly within strata lot 6. Unit 1033 is beneath strata lot 6's lower level. In the early morning of March 13, 2021, the owner of unit 1033 discovered water leaking from the ceiling of their strata lot. The unit 1033 owner called Mr. Metzner, as well as a plumber from Benchmark Mechanical Ltd. (Benchmark). Mr. Metzner's strata lot was rented on a short-term basis at the time, and Mr. Metzner was not in the area. Mr. Metzner called the renters, who confirmed the strata lot 6 leak and said that they would start mopping the floor and allow access for an emergency plumber. I find the evidence does not suggest that Mr. Metzner objected to an emergency plumber investigating the leak's cause and performing necessary repairs. However, the evidence does not show that the parties discussed responsibility for the plumber's fees around the time of the leak.
16. A March 23, 2021 Benchmark invoice addressed to the strata provided a detailed description of Benchmark's work at the strata on March 13, 2021. The parties do not directly dispute the invoice's contents, and do not take issue with Benchmark's professional skills in diagnosing and repairing the leak. I find the Benchmark invoice is both reliable and persuasive.

17. The invoice said Benchmark investigated the source of the leak by opening holes in the drywall of unit 1033 and strata lot 6, and tracing visible water while activating individual plumbing fixtures. Benchmark determined that water was leaking from the strata lot 6 bathtub drain. Benchmark removed the drain, re-sealed the bathtub and its drain with new silicone, and tightened the drain, which was loose. It is undisputed that this repair successfully stopped the leak, and that Benchmark performed the bathtub repairs from within the bathtub, not from a location below the bathtub.
18. The parties disagree about whether this was a bathtub leak or a problem with the pipes below the bathtub. On the evidence before me, and relying on the Benchmark invoice in particular, I find that the leak was caused by a loose and ineffectively sealed bathtub drain, which I find was part of the bathtub. I find that the leak did not come from a pipe attached to the bathtub that was intended to be used in connection with the enjoyment of another strata lot or CP. So, according to the SPA's definition of CP, I find that the leaking bathtub drain was not CP, and was part of strata lot 6. This means that under the SPA and bylaw 2(1), Mr. Metzner was responsible for the leak, including the costs of repairing the leak. This is consistent with the non-binding decision *The Owners, Strata Plan K 407 v. Kelly*, 2019 BCCRT 789 identified by Mr. Metzner, which has similar facts, and where the owner was liable to the strata for bathtub strainer repairs (at paragraphs 48 and 49).
19. Mr. Metzner suggests that the strata has previously paid for other water leak repairs, but the evidence contains little detail about those other leaks and payments. I find there is insufficient evidence to conclude that the strata has a practice of paying for leak repairs that are a strata lot owner's responsibility, or that it would be unfair for the strata to discontinue that alleged practice for the leak repairs at issue here.
20. In a March 30, 2021 letter, the strata asked Mr. Metzner to pay the \$1,156.87 invoiced by Benchmark, and to coordinate with the owner of unit 1033 on required repairs in that unit. The strata says it paid the Benchmark invoice, and the unit 1033 owner paid for their drywall repairs. I find that the strata has not asked Mr. Metzner to pay the strata for any of the unit 1033 repairs. I also find that the Benchmark invoice was

entirely for diagnosing the source of the strata lot 6 bathtub drain leak and repairing it, and for no other remediation or repair work.

21. As noted, Mr. Metzner was aware that an emergency plumber would be performing leak inspections and repairs, and did not object to that work. I find the parties never agreed that the strata would pay for such work. Given my finding that Mr. Metzner is responsible for the bathtub leak and repairs, I find Mr. Metzner is responsible for the cost of the Benchmark investigations and repairs.
22. For the above reasons, I decline Mr. Metzner's request to order the strata not to charge Mr. Metzner the \$1,156.87 invoiced by Benchmark. I also decline to order the strata not to charge Mr. Metzner for the cost of unit 1033 repairs. Such an order is unnecessary, because the strata has not asked Mr. Metzner pay the strata for the unit 1033 repairs, and the evidence does not show that it intends to do so. I dismiss Mr. Metzner's claims against the strata. As noted, the strata made no counterclaim, so I make no orders against Mr. Metzner.

## **CRT FEES AND EXPENSES**

23. 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. I find the strata was successful in this dispute, but it paid no CRT fees. Neither party claimed CRT dispute-related expenses. So, I order no reimbursements.
24. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Metzner.

## **ORDER**

25. I refuse to resolve Mr. Metzner's claims to the extent that they are for orders against the non-party unit 1033 owner. I dismiss Mr. Metzner's other claims, and this dispute.

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Chad McCarthy, Tribunal Member