



# Civil Resolution Tribunal

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File: ST-2021-003701

Type: Strata

Civil Resolution Tribunal

Indexed as: *Morawski v. The Owners, Strata Plan LMS 3818*, 2022 BCCRT 111

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

MACIEJ MORAWSKI and KRISTIN MORAWSKI also known as  
KRISTIN LOFSTRAND

**APPLICANTS**

**A N D :**

The Owners, Strata Plan LMS 3818

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Trisha Apland

## **INTRODUCTION**

1. This dispute is about a plumbing repair expense.
2. The applicants, Maciej Morawski and Kristin Morawski who is also known as Kristin Lofstrand, co-own strata lot 53 (unit 403) in the respondent strata corporation, The Owners, Strata Plan LMS 3818 (strata).

3. The Morawskis say unit 403's bathroom sink was backing up in November 2020. The strata hired a plumber who cleared an obstruction in the common property pipe. The strata charged back the \$497.18 plumbing expense to the Morawskis' strata lot account.
4. The Morawskis say it was a common property repair and the strata was responsible to pay for it under the strata's bylaws and the *Strata Property Act* (SPA). They seek an order that the strata reverse the \$497.18 charge. They also seek an order that the strata not "charge back a plumbing invoice for repairing/maintaining common property to the owners of unit 403".
5. The strata says the Morawskis caused the obstruction by their daily use of the bathroom drain, it was an "in-suite" issue and the Morawskis are responsible to pay the plumbing expense under the strata's bylaws. The strata asks that I dismiss their claim.
6. The Morawskis are self-represented. The strata is represented by a strata council member.
7. For the reasons that follow, I find the strata must reverse the \$497.18 charge from the Morawskis' strata lot account.

## **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). 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.
9. 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.

10. 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.
11. 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.

### ***Late Evidence***

12. The Morawskis submitted a photograph of the strata building exterior with their notations about the alleged plumbing stack after the CRT's deadline for submissions. The CRT gave the strata the opportunity to respond to the late evidence and it provided response submissions about it. I find the late evidence is relevant to the disputed issues and the parties are not prejudiced by including it. Consistent with the CRT's mandate for a flexible process, I have allowed the late evidence.

## **ISSUES**

13. The issues in this dispute are:
  - a. Who is responsible for the plumbing repair and its associated costs?
  - b. What, if any, is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

14. In a civil claim such as this one, as the applicants, the Morawskis must prove their claim on a balance of probabilities. I have reviewed all the submissions provided by

both parties, but only refer to the evidence and argument necessary to explain my decision.

15. The background facts are largely not disputed. On November 18, 2020 Mr. Morawski signed a Request for Strata Assistance Form and notified the strata's building manager that his bathroom sink was not draining, the shower was draining slowly, and suggested there was "an obstruction in the stack".
16. The strata hired Pioneer Plumbing & Heating Inc. (Pioneer) who attended unit 403, cleared an obstruction, and charged the strata \$497.18 for this work. Pioneer's November 18, 2020 invoice describes its work as follows (as written):

Upon arrival pulled trap and attempted to cable multiple time. Was eventually able to get cable down stack and cleared at approx 2' down stack. Pulled back substantial punt of hair.

Pulled tub waste plug and removed hair from waste - ran cable down overflow and cleared more hair from trap. Tested - all ok."

17. As mentioned, the strata concluded the Morawskis' use of the bathroom drains had caused the common property obstruction, finding it was an "in-suite" issue and that the Morawskis must reimburse the expense under its bylaws. On March 1, 2021, the strata wrote to the Morawskis and asked them to pay for the plumbing expense, which the Morawskis contested.
18. Although the Morawskis' strata account is not in evidence, there is no dispute that the strata applied a \$497.18 charge back for Pioneer's work to the Morawskis' strata lot account and that the charge remained at the time of the parties' submissions.

***Who is responsible for the plumbing repair and its associated costs?***

19. Before discussing the parties' positions, I discuss the strata's bylaws. I find the applicable bylaws are those filed at the Land Title Office (LTO) on April 2, 2019.

20. The strata's bylaw 2(1) says an owner must repair and maintain their strata lot, except for repair and maintenance that is the strata's responsibility. Strata bylaw 14 requires the strata to repair and maintain common property, common assets, and some parts of a strata lot that are not relevant to this dispute. The strata has a parallel obligation under SPA section 72.
21. SPA section 1 defines common property to include water, sewage, and drainage pipes within a floor, wall, or ceiling that forms a boundary between 2 strata lots, or between a strata lot and common property or a parcel of land. I find the drainage pipes under a strata lot floor and vertical stack pipes that run between 2 strata lots' walls are part of the common property.
22. Bylaw 38 is headed "Insurance Deductible and Damage to Property". The strata relies on sub-bylaw 38(4) that says that subject to the SPA and bylaws, the strata shall recover from an owner, the costs to repair physical damage to common property and those portions of a strata lot which the strata corporation is required to repair (or otherwise choose to repair) and which is not covered by the strata corporation's insurance policy for which:
  - (a) the owner, a tenant, an occupant of the strata lot or their guest or invitee are responsible; or
  - (b) the source of which originated in the strata lot (other than from common property within the strata lot).
23. Bylaw 38(7) says the strata council, acting reasonably, and after having provided an owner facing liability under this bylaw with an opportunity to make submissions to the strata council, shall determine whether or not an owner is responsible for damage or whether the source of damage originated within the owner's strata lot.
24. Under bylaw 38(8) the strata is permitted to recover "emergency repairs" to a strata lot not covered under an insurance claim. I note the strata's insurance was not engaged for this minor repair to clear an obstruction and there is no suggestion that it was an emergency strata lot repair.

25. I turn now to the parties' arguments. The Morawskis say Pioneer told them the obstruction was due to a "giant rat-type ball" that was 2 feet down the "common stack", which they say is consistent with the details in Pioneer's invoice. They say that unit 403 is connected to a stack that is shared by several other units above and beside them. They say the strata is responsible to repair and maintain the common stack under the bylaws and the SPA and so, it is a strata expense. As a result, the Morawskis say they are not responsible to reimburse the strata for Pioneer's invoice.
26. The strata says Pioneer's invoice only states that a cable was inserted to a distance of 2 feet down the stack, took some effort to insert, and what was extracted was a punt of hair. It says the plumbing pipe takes several turns under the floor before it reaches the stack and this all means the obstruction was likely cleared before the cable reached the stack. So, it says the obstruction was "between the unit and the stack". Alternatively, the strata says if the obstruction was in the stack itself, unit 403 was the only contributor because it is allegedly the unit at the top of the common stack. The strata says it was an "in-suite" issue under bylaws 14 and 38(4) and it was authorized to charge back the expense. I note the strata does not address the specific wording of bylaw 38(4) that says it applies to "physical damage", which I come back to below.
27. Based on Pioneer's invoice and the architectural plumbing diagrams, I find the obstruction was somewhere in the common property pipe. Without a witness statement from Pioneer, I have insufficient evidence about whether the obstruction was in the horizontal pipe under the floor or in the vertical common stack or in both. Either way, I find it was the strata's responsibility to clear the obstruction under bylaw 14 and SPA section 72. The strata undisputedly met that responsibility by hiring Pioneer.
28. The question is whether the strata, having hired and paid Pioneer for the plumbing work, can charge the expense back to the Morawskis' strata lot account.
29. In *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512 (*Ward*), the BC Court of Appeal held that a strata corporation must have a bylaw to charge back legal fees to an

owner because they are not “lienable” under SPA section 116. Several CRT decisions have extended this principle to common property repair and maintenance expenses, because like legal fees, there is nothing in the SPA that authorizes the strata to charge them back to an owner: see *Rintoul et al v. The Owners*, Strata Plan KAS 2428, 2019 BCCRT 1007 and *The Owners, Strata Plan LMS1092 v. Souki*, 2021 BCCRT 55. Although CRT decisions are not binding on me, I find their reasoning persuasive and I agree with it. I find an expense to clear a common property pipe obstruction is a “non-lienable” expense under the SPA. I find the strata can only shift its responsibility to pay for this work as authorized under its bylaws, or alternatively, by an enforceable rule or an agreement that created the debt. I note there are no applicable rules here.

30. As mentioned, Mr. Morawski signed a standard Request for Service Form granting the strata permission to proceed with the service call. The Form states that the strata only maintains the “common areas” and does not pay its trades to conduct “in-suite” work. It states that the owner pays for all charges related to servicing in-suite issues and the trade’s invoice will be provided to the owner along with a charge back letter. It states that if the problem is “with/or related to the common areas, the costs may be covered by the Strata Corporation”.
31. The wording in the Request for Service Form does not mirror the language in the SPA or the bylaws. I find a plain reading of “in-suite” likely means repairs done inside a strata lot because it is the owner’s responsibility to maintain and repair their strata lot under bylaw 2. I find the Form is not worded to shift responsibility to an owner to pay for common property maintenance and repair that is normally the strata’s obligation under SPA 72 and bylaw 14.
32. Here unit 403’s sink and tub were not draining and the Pioneer’s service was conducted from inside unit 403. However, the obstruction itself was cleared along the common property pipe with a cable under unit 403’s floors or the common stack or both. Since the obstruction was in the common property, I find it cannot reasonably be called an “in-suite” issue. I find the Morawskis did not agree to pay for this common property plumbing expense by signing the Form.

33. Again, the strata says its authority to apply the charge back is from bylaw 38. It refers to and relies on the non-binding CRT decision, *Marchioni v. The Owners, Strata Plan LMS 31*, 2020 BCCRT 1197. In *Marchioni*, the owner had brought a claim against the strata corporation to reverse a charge back for an expense to unclog their bathroom sink. The obstruction was in a common property pipe. The strata corporation's bylaw 14.2 said an owner "shall indemnify and save harmless the strata corporation against any and all manner of actions, causes of actions, damages, costs, loss, or expense of whatever kind...arising out of damage for which an owner or his, her or its guests are responsible". The CRT member found that the obstruction originated from the owner's bathroom sink, drain or pipe as it serviced only that owner's strata lot. She concluded that the owner was responsible for it and must pay for the repair expense to unblock the common pipe under bylaw 14.2. The strata says the Morawskis are similarly responsible for obstruction and the repair expense under bylaw 38(4).
34. However, I find the strata's authority to charge back a common property expense under bylaw 38(4) is more limited than the broadly worded bylaw 14.2 in *Marchioni*. I find bylaw 38(4) only permits the strata to recover an expense to repair "physical" damage to common property or certain strata lot parts not covered by insurance. Reading bylaw 38 as a whole, I find the qualifier that the damage is "physical" in nature has meaning. Similar to what would normally be covered under an insurance policy, I find physical damage must mean tangible injury to the property itself and more than just an obstruction. There is no evidence or suggestion that the obstruction physically damaged or altered the common property pipes or compromised their structure. So, I find bylaw 38(4) did not apply to this common property obstruction.
35. As I find no relevant charge back bylaw, rule or agreement, I find the strata had no authority to recover the plumbing expense from the Morawskis. Given this, I find no need to decide whether the strata gave the Morawskis reasonable notice under bylaw 38(7) or whether the Morawskis were responsible for the obstruction or whether it originated from their strata lot. I find the \$497.18 charge back cannot stand.



### ***What is the appropriate remedy?***

36. For the reasons above, I find the strata had no authority to charge the Morawskis for Pioneer's plumbing work and it must reverse the \$497.18 charge from the Morawskis strata lot account. If the Morawskis have already paid the chargeback, I find the strata must reimburse them within 2 weeks of this decision.
37. As for the Morawskis' second requested remedy, I find no basis to make a general order that the strata not charge back any plumbing invoice for repairing or maintaining common property. Depending on the circumstances and nature of the damage, the strata may have authorization to recover a future plumbing repair under bylaw 38.

### **CRT FEES and EXPENSES**

38. 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 Morawskis were primarily successful in their claim even though I did not grant the second, more general requested order. I find the Morawskis are entitled to reimbursement of their paid \$225 in CRT fees. They did not claim any specific dispute related expenses and so I award none.
39. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the Morawskis.

### **ORDERS**

40. I order the strata to immediately reverse the \$497.18 charge for the plumbing repair from the Morawskis' strata lot account. If the Morawskis have already paid the chargeback, I order the strata to reimburse them within 14 days of this decision.
41. Within 14 days of this decision, I order the strata to pay the Morawskis \$225 for CRT fees.

42. The Morawskis are entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
43. 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.

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Trisha Apland, Tribunal Member