



Civil Resolution Tribunal

Date Issued: March 23, 2022

File: ST-2021-005739

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan BCS 2781 v. Ha*, 2022 BCCRT 323

BETWEEN:

The Owners, Strata Plan BCS 2781

APPLICANT

AND:

TRU TICH HA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This dispute is about who is responsible to pay an insurance deductible for a water damage claim.
2. The respondent, Tru Tich Ha, owns strata lot 17 (SL17) in the applicant strata corporation, The Owners, Strata Plan BCS 2781 (strata). The strata says Mr. Ha is

responsible to pay its \$75,000 insurance deductible under section 158(2) of the *Strata Property Act* (SPA) and the bylaws because the insured loss occurred or originated from a failed toilet supply line connector in his SL17. The strata seeks payment of \$75,000.

3. Mr. Ha agrees his toilet supply line connector broke and caused water damage to the strata building but says it was not his fault. He disagrees that he is responsible to pay the strata's insurance deductible.
4. The strata is represented by a strata council member. Mr. Ha represents himself.
5. For the reasons that follow, I find Mr. Ha is responsible to pay the strata's \$75,000 insurance deductible.

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). 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.
7. 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.
8. 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.

9. 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.

ISSUE

10. The issue in this dispute is whether Mr. Ha is responsible to reimburse the strata \$75,000 for its insurance deductible.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the strata as the applicant must prove its claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.

Background

12. There is no dispute over the background facts.
13. As shown on the strata plan, Mr. Ha's SL17 is on the sixth floor of a 19-floor residential building.
14. On January 8, 2021, the toilet supply line connector inside SL17 failed and caused a significant water leak that damaged the common property and several strata lots over three floors.
15. Under bylaw 2.2(1) an owner is required to repair and maintain their strata lot unless it is the strata's responsibility under the bylaws. I find Mr. Ha was responsible under bylaw 2.2(1) to maintain his toilet supply line and connector as they were part of his strata lot.

16. Phoenix Restorations (2015) Ltd. (Phoenix) initially estimated about \$90,000 for emergency services and repairs. The strata made a claim under its insurance policy because the estimated repairs exceeded its \$75,000 deductible for “water damage claims” shown in its policy.
17. After Phoenix completed emergency and initial repairs, it invoiced the strata a total of \$75,000, which was the deductible portion. The estimated cost to fully complete the repairs was over \$150,000. This balance was covered by the strata’s insurance.
18. Bylaw 2.10 requires an owner to indemnify the strata for any loss or damage to the common property, assets, and limited common property, which is the result of any damage, event, occurrence or incident “occurring or originating” in the owner’s strata lot and “not reimbursed from the proceeds received by the operation of any insurance policy”.
19. All the water damage and related loss undisputedly originated from the failed connector in Mr. Ha’s strata lot bathroom.
20. On April 22, 2021, the strata sent Mr. Ha a letter notifying him that it had made an insurance claim, the cost of repairs would exceed the insurance deductible, and he was responsible to reimburse the \$75,000 deductible under bylaw 2.10. It notified him that the strata might apply a charge back to his account. The strata offered Mr. Ha the opportunity to respond and dispute his responsibility for the deductible.
21. Following a hearing, the strata decided that Mr. Ha was responsible for the insurance deductible and informed him of its decision on May 7, 2021. It asked him to pay by June 1, 2021 and applied the insurance deductible as a charge back to his account. The strata later offered a 2-phase installment plan, which the respondent rejected.
22. Mr. Ha did not have his own strata lot insurance to cover any part of the claim. When Mr. Ha did not then pay the strata commenced this CRT proceeding on July 22, 2021 for reimbursement of its insurance deductible under SPA section 158(2). I note there is no issue over the sufficiency of the strata’s notice under the SPA.

Must Mr. Ha reimburse the strata's \$75,000 insurance deductible?

23. SPA section 158(2) permits a strata corporation to sue an owner for repayment of an insurance deductible if that owner is “responsible” for the loss or damage that gave rise to the claim, unless the standard is modified by its bylaws. The court *Yang v. Re/Max Commercial Realty (482258 BC Ltd.)*, 2016 BCSC 2147 at paragraph 139 concluded that the word “responsible” does not require the strata to prove that an owner is negligent. It is enough if the damage originated in the owner’s strata lot: *Mari v. Strata Plan LMS 2835*, 2007 BCSC 740; *The Owners, Strata Plan BCS 1589 v. Nacht*, 2019 BCSC 1785, upholding CRT decision 2017 BCCRT 88 on appeal. So, unless the strata modified the standard by its bylaws, it does not need to establish negligence under SPA section 158(2) to claim the deductible.
24. Mr. Ha does not address SPA section 158(2) or the strata’s bylaws in his response. He argues that he is not at fault for the claimed loss and so, not responsible for the insurance deductible. He also argues that the loss was the owner developer’s fault for purportedly installing a plastic non-CSA approved connector in about 2008. Alternatively, Mr. Ha alleges the strata is at fault for either not warning him more clearly that the connector needed replacement, or not paying to replace the connector itself prior to January 2021.
25. I find the strata’s bylaws do not modify SPA section 158(2) to require a finding of fault or negligence. The relevant strata bylaw is 2.10 and it only requires that the strata’s loss or damage occurred or originated in SL17 to make Mr. Ha responsible to pay the insurance deductible. While I find the issue is also not about the relative fault of others, I have addressed Mr. Ha’s arguments.
26. I find the owner developer’s choice of connector 13 years prior is irrelevant to Mr. Ha’s responsibility to indemnify the strata’s insurance deductible under SPA section 158(2) and bylaw 2.10. As the owner developer is also not named as a respondent or a third-party in this dispute, the question of whether the owner developer is liable to the strata or Mr. Ha is not before me. As a result, I have not discussed this line of argument any further.

27. As for the strata, I find it had no responsibility under the bylaws to replace the toilet line connector in Mr. Ha's strata lot. Instead, I find it was Mr. Ha's responsibility to maintain and repair his own toilet under bylaw 2.2(1) and this included ensuring the connector was sound. Even if the strata had a responsibility to inform Mr. Ha about the risk that the original plastic connector might fail, which is not proven, I find the strata had already done so. Specifically, the strata notified the owners in April 2020 to check the condition of the toilet supply lines and shut offs and replace them as necessary, and to install a leak detection system in their units.
28. Under SPA section 158(2) and bylaw 2.2(1), I find Mr. Ha is responsible to pay the strata's insurance deductible because the water damage and loss that gave rise to the claim originated from his strata lot toilet line connector.

CRT FEES, EXPENSES AND INTEREST

29. 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 therefore order Mr. Ha to reimburse the strata \$225.00 in paid CRT fees. The strata did not claim any specific dispute-related expenses and so, I have not awarded any.
30. The strata claims interest under the *Court Order Interest Act*, which applies to the CRT. I find the strata is entitled to prejudgment interest on the \$75,000 insurance deductible debt from the June 1, 2021 due date in the strata's May 7, 2021 letter following the parties' hearing. The interest equals \$273.70.
31. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Ha.

ORDERS

32. I order that within 90 days of this order, Mr. Ha pay the strata a total of \$75,498.70, broken down as:

- a. \$75,000.00 for the insurance deductible,
 - b. \$273.70 in prejudgment interest, and
 - c. \$225.00 in CRT fees.
33. The strata is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
34. 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.

Trisha Apland, Tribunal Member