Civil Resolution Tribunal

Date Issued: July 14, 2022

File: SC-2021-007688
ST-2021-004732
ST-2021-008328

Type: Strata and Small Claims

Civil Resolution Tribunal

Indexed as: *Wolfram v. Urban Nook Investments Ltd.*, 2022 BCCRT 801

B E T W E E N :

ELIZABETH WOLFRAM

APPLICANT

A N D :

URBAN NOOK INVESTMENTS LTD. and Section 1 of The Owners, Strata Plan LMS 1866

RESPONDENTS

A N D :

URBAN NOOK INVESTMENTS LTD.

RESPONDENT BY THIRD PARTY NOTICE

REASONS FOR DECISION

Tribunal Member: Eric Regehr

INTRODUCTION

1. Elizabeth Wolfram and Urban Nook Investments Ltd. both owned residential strata lots in The Owners, Strata Plan LMS 1866 (strata). The strata is divided into 2 sections. Section 1 is the residential section (section). Ms. Wolfram's strata lot, unit 613, was directly below Urban Nook's strata lot, unit 713. Ms. Wolfram has since sold unit 613.

2. It is undisputed that on December 5, 2020, Ms. Wolfram found water in her bathroom ceiling fan. Ms. Wolfram says that Urban Nook's tenant negligently repaired unit 713's toilet, which caused condensation to form on a pipe under the toilet. She says that this condensation then dripped onto her ceiling. She asks for an order that Urban Nook reimburse her $2,707.93, which she says was the cost to repair the damage to her ceiling. She also asks for an order that the section reimburse her repair costs because she says the pipe was common property.

3. Urban Nook denies that there was anything wrong with the toilet. It says that the water came from a common property pipe. Urban Nook asks me to dismiss Ms. Wolfram's claim against it.

4. The section denies that the pipe was common property. It asks me to dismiss Ms. Wolfram's claim against the section. If I determine that the section is liable for the repair costs, the section asks for an order that Urban Nook should reimburse the section based on the section's bylaws.

5. The section also claims $637.56 against Urban Nook in chargebacks for investigating the initial leak and hiring a locksmith to gain entry to unit 713. Urban Nook denies responsibility for the chargebacks and asks me to dismiss the section's claim against it.

6. Ms. Wolfram is self-represented. Urban Nook is represented by a director, Zara Jiwa. The section is represented by an executive member.

JURISDICTION AND PROCEDURE

7. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT has jurisdiction over strata property claims under section 121 of the CRTA.

8. Section 2 of the CRTA states that 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. Ms. Wolfram initially started CRT dispute ST-2021-004732 under the CRT's strata property jurisdiction against both Urban Nook and the section. The CRT does not have jurisdiction over tort claims between owners, so the CRT staff asked Ms. Wolfram if she would agree to separate her claim against Urban Nook into a small claims dispute. She agreed. Dispute SC-2021-007688 is the resulting small claims dispute between Ms. Wolfram and Urban Nook.

10. Later, the section started a new dispute, ST-2021-008328, against Urban Nook. The CRT treated this new dispute as a third party claim in Ms. Wolfram's dispute against the section. A third party claim is a claim where a respondent alleges that another person is liable for the claim. I agree that in substance, the section's claim is a third party claim, because the main part of the section's claim is that if the section is liable to Ms. Wolfram in ST-2021-004732, then the section's bylaws require Urban Nook to reimburse the section.

11. The CRT regularly has separate small claims and strata disputes about the same incident, such as a water leak. They typically travel together through the CRT's process, including the adjudication process. Here, SC-2021-007688 went through a separate facilitation process than the 2 strata disputes. However, during the adjudication phase, the 3 disputes were essentially treated as a single dispute.

12. In these circumstances, the CRT's past practice was to publish separate small claims and strata decisions. This because small claims and strata disputes had different appeal processes. Since July 1, 2022, the CRT's small claims and strata disputes are both reviewable by judicial review. I therefore find that there is no reason to separate these disputes into separate decisions.

13. Under section 61 of the CRTA, the CRT may make any order or give any direction in relation to a CRT proceeding it thinks necessary to achieve the objects of the CRT in accordance with its mandate. I find that the 3 disputes should be consolidated into a single decision, with the section and Urban Nook as respondents and Urban Nook as a respondent by third party claim. Under section 61 of the CRTA, I have amended the style of cause accordingly.

14. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, the parties of this dispute call into question the credibility, or truthfulness, of the others. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

15. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

16. Where permitted by sections 118 (for small claims) and 123 (for strata claims) of the CRTA, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.

17. Ms. Wolfram sold unit 613 on April 16, 2021. This raises the issue of whether she still has standing, or the legal right, to bring a CRT strata dispute. On this point, I agree with the previous CRT decision *Gill v. The Owners, Strata Plan EPS 4403*, 2020 BCCRT 725, at paragraphs 19 to 24, that former owners have standing to bring or continue CRT strata disputes. The section did not argue otherwise.

ISSUES

18. The issues in this dispute are:

    a. What caused the water ingress?

    b. Is Urban Nook liable for the damage?

    c. Is the section liable for the damage because the water dripped from common property pipes?

    d. Is Urban Nook responsible for the chargebacks?

BACKGROUND

19. In a civil claim such as this, Ms. Wolfram as the applicant must prove her case on a balance of probabilities, meaning "more likely than not". The section must prove its third party claim to the same standard. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

20. The strata consists of 449 strata lots in a mixed-use high rise building. The section consists of strata lots 1 to 243. Unit 613 is on the 6th floor of the strata's main tower, directly below unit 713.

21. The strata filed a complete set of bylaws in the Land Title Office (LTO) on May 8, 2003. The section filed a complete set of bylaws in the on June 6, 2019. Both sets of bylaws have been amended several times. I will address the relevant bylaws below as applicable.

EVIDENCE AND ANALYSIS

22. Ms. Wolfram says that on December 5, 2020, she noticed water pooling in her bathroom ceiling fan. She contacted the strata's onsite building manager, who in turn contacted a contractor Elafon Mechanical Ltd. Elafon sent an employee, RO, to determine the cause of the water ingress. On December 7, 2020, the building manager emailed Ms. Wolfram that RO had found "an issue" with unit 713's toilet.

23. On December 8, 2020, RO sent a report to the building manager, which was forwarded to Ms. Wolfram. According to that report, the tenant in unit 713 had used a butter knife as part of a makeshift repair. It is unclear what the "repair" was meant to accomplish, but RO said that the end result was that the toilet's water ran constantly, and condensation formed on the toilet's pipes in the space between unit 713's floor and unit 613's ceiling. This condensation then dripped onto unit 613's ceiling. RO took a photo that shows the toilet's tank cover removed and a butter knife across the tank, holding up the lever that controls the flush valve. I return to RO's report below.

24. The section and Ms. Wolfram both contacted Urban Nook. On December 11, 2020, Ms. Jiwa emailed the section's strata manager that she had "already sent someone to deal with the toilet issue". Ms. Jiwa confirmed that the toilet was "fixed".

25. The same day, Ms. Wolfram reported to the building manager that there was a small amount of water pooling in her bathroom underneath the fan hole. She also reported new damage to her ceiling. There were no further reports of water after this.

26. Ms. Wolfram hired On Side Restoration to dry out unit 613 and assess the damage. An On Side employee, AB, attended unit 613 on December 15, 2020, to inspect the damage and provide a quote. AB said in a written report that there was no longer an active drip. AB also said that they had tried to inspect unit 713 but no one answered the door.

27. AB took a video showing the inside of the ceiling between units 613 and 713. In the video, AB identified which pipes came from unit 713's toilet. There is visible water staining on wood and particle board around the pipe. The contractor said that it appeared that the water originated there.

28. Ms. Jiwa emailed Ms. Wolfram on December 18, 2020. Ms. Jiwa disputed that such a minor drip could have caused enough damage to require repair. Ms. Jiwa also said that her plumber told her that the toilet was functioning properly.

29. On December 28, 2020, Ms. Wolfram emailed the building manager alleging that because the water came from condensation that formed on pipes underneath unit 713's floor, the water's source was common property under section 1 of the *Strata Property Act* (SPA). Ms. Wolfram said that the section's repair and maintenance obligations under section 72 of the SPA meant that it was responsible for the repair cost. The section denied that the pipes were common property and refused to pay the repair costs.

What caused the water ingress?

30. Ms. Wolfram relies on RO's report to prove that the water ingress was caused by Urban Nook's tenant's "makeshift" toilet repair. I find that she wants me to accept RO's report as expert evidence. The CRT's rules require parties to provide the qualifications of proposed experts to prove that they have the experience or training necessary to give an expert opinion. The only evidence of RO's qualifications is that they were listed as a "technician" on Elafon's invoice. However, CRT rule 1.2 allows me to waive the strict application of the CRT's rules if it would be in the interests of justice and fairness to do so.

31. I find that it is appropriate here to waive the strict application of the CRT's rules about the qualification of experts. I find that RO is likely qualified to give an expert opinion about the water ingress's cause because of their employment as a technician with a well-established company that does building maintenance. I note

that Urban Nook does not object to RO's qualifications. I therefore accept RO's evidence as expert evidence.

32. Urban Nook argues that its toilet could not have caused the water ingress because it did not replace the toilet until December 2021, with no further reports of water entering unit 613. Urban Nook denies that there was a "makeshift" repair.

33. Urban Nook also relies on a report from the plumber, SK, who replaced their toilet in December 2021. SK said that "there was no damage or leakage from the toilet that was replaced" and that "it was a fully functioning toilet". Again, there is no evidence of SK's qualifications other than their invoice, which indicates that SK was a plumber. Again, I find that it is appropriate to allow SK's report as expert evidence despite the lack of detailed information about their qualifications. I find that SK was likely qualified to assess whether the toilet they removed was functioning properly.

34. Weighing the evidence, I find that Urban Nook's tenant likely caused the water ingress. Urban Nook does not explain its submission that there is "no evidence" of a makeshift repair when there is a photograph of it. Urban Nook also does not explain Ms. Jiwa's December 11, 2020 email confirming that its plumber had "dealt with" and "fixed" the toilet. If the toilet was functioning properly at the time, I find that Ms. Jiwa likely would have said so. Notably, there is no evidence from Urban Nook's plumber from December 2020. I find that Urban Nook likely had a plumber fix the toilet in December 2020, which explains why there was no further issue.

35. As for SK's report, I find that it may well be accurate that in December 2021, the toilet was functioning properly. I find that this is likely because another plumber had already fixed the toilet in December 2020.

36. I therefore find that Urban Nook's tenant's butter knife repair was responsible for the water ingress. However, this finding does not end the matter. Briefly put, Urban Nook, as a landlord, is not automatically liable for the actions of its tenants, as Ms. Wolfram seems to suggest. Rather, Ms. Wolfram must prove that Urban Nook is

liable either in negligence or nuisance. On this point, I agree with the reasoning in *McGill v. Singh*, 2021 BCCRT 1336, which considered a similar situation.

37. To succeed in negligence, I find that Ms. Wolfram must prove that Urban Nook breached the standard of a reasonable strata lot owner, and that the breach caused the water damage. To succeed in nuisance, I find that Ms. Wolfram must prove that Urban Nook substantially and unreasonably interfered with her use and enjoyment of her property. Under both legal concepts, Urban Nook will not be liable unless there is evidence that it acted unreasonably. See *Singh*, at paragraphs 20 to 26.

38. Here, there is no evidence to suggest that Urban Nook knew about its tenant's makeshift repair until after the water damage occurred. After the issue was known, I find that Urban Nook took appropriate steps to fix the problem by promptly having a plumber attend. I find that there is no evidence that Urban Nook did anything unreasonable either before or after it found out about the water ingress. I therefore find that Ms. Wolfram has failed to prove that Urban Nook is liable for the water damage. I dismiss Ms. Wolfram's claim against Urban Nook.

39. Nothing in this decision prevents Ms. Wolfram from making a claim against Urban Nook's tenants. I make no finding about whether the tenants' actions were negligent.

Is the section liable for the damage because the water dripped from common property pipes?

40. Ms. Wolfram and the section agree that the pipe where the condensation formed connects unit 713's toilet to a main vertical sewage drainpipe. They disagree whether the pipe is common property. Section 1 defines common property, in part, as pipes for the passage of sewage located within a floor or ceiling that divides 2 strata lots. Based on AB's video of the pipe at issue, I agree with Ms. Wolfram that the pipe in question is common property.

41. Ms. Wolfram argues that the section is liable for the damage because the water that dripped onto her ceiling was from condensation on common property pipes. Ms.

Wolfram relies on section 72 of the SPA, which requires the strata to repair and maintain common property. Section 194(2) of the SPA says that when a matter relates solely to a section, the section has the same obligations as the strata. Also, under the strata's bylaw 2, the section must repair and maintain pipes that are used in connection with multiple strata lots within the section. There is no plumbing schematic or other evidence to conclusively prove that the pipe in question is used in a system that services only the section. For the purposes of this decision, I assume that the pipe is the section's responsibility to repair and maintain.

42. It is well-established that a strata corporation (and by extension, a section) is not an insurer. To fulfill its repair and maintenance obligations, the section must act reasonably, not perfectly. This means that the section will not be responsible for strata lot repairs unless Ms. Wolfram can proven that the section negligently failed to repair and maintain the pipes. See *John Campbell Law Corp. v. Strata Plan 1350*, 2001 BCSC 1342. In other words, it is not enough for Ms. Wolfram to prove that the water condensed on and dripped from a common property pipe.

43. Ms. Wolfram does not point to anything that the section could have done to prevent the water condensation. I find that the section did not know about the makeshift repair and resulting condensation until it received RO's report.

44. Ms. Wolfram argues that the section unreasonably failed to make sure that Urban Nook repaired the toilet. She relies on the section's authority under its bylaw 7.1 says that a resident must allow the section to enter their strata lot in an emergency to prevent significant loss or damage. She says that the section relied on Urban Nook's assertion that it had fixed the toilet on December 11, 2020, even though she observed more water that same day. She says that the section should have used its authority to enter unit 713 to verify that the repairs were done.

45. I find that the section's overall handling of the water ingress was reasonable. The section sent a contractor after receiving Ms. Wolfram's report, who was able to access unit 713 to determine the water's source. The section contacted Urban Nook promptly after it learned that the problem was with Urban Nook's toilet. I find that the

section was entitled to rely on Urban Nook's confirmation that the toilet was fixed because Ms. Wolfram did not report any water after December 11, 2020, even though she was in regular communication with the strata manager and building manager. I find that the most likely explanation for Ms. Wolfram finding more water on that day is that there was residual condensation on the pipes.

46. Because the section did not act unreasonably, it does not need to reimburse Ms. Wolfram for the repair costs. I dismiss this claim. It follows that I also dismiss the section's third party claim against Urban Nook for Ms. Wolfram's repair costs.

Is Urban Nook responsible for the chargebacks?

47. The section claims 3 separate chargebacks from Urban Nook. The first is the $180.60 the section paid Elafon to investigate the water ingress on December 7, 2020. The section relies on its bylaw 37.1, which says that if an owner is "responsible" for damaging a strata lot or common property, they must indemnify the section for any "expenses" the section incurs. Bylaw 37.2 says that an owner will be considered "responsible" for damage if the damage's cause "originates" from a toilet. Bylaw 37.3 says that "expenses" includes investigation costs.

48. Even though the water itself condensed on a common property pipe, I find that the damage "originated" from the toilet because it was the constantly running water from the toilet that caused the condensation. I therefore find that Urban Nook is "responsible" within the meaning of bylaw 37.2. I therefore find that Urban Nook must repay the investigation cost.

49. The other 2 chargebacks relate to locksmith charges. The section's bylaw 7.1 requires residents to provide access to a strata lot on 48 hours' notice to ensure compliance with the section's bylaws. Bylaw 7.3 says that if a resident does not provide access in accordance with bylaw 7.1 and the situation is an emergency, the owner will be responsible for any cost of forced entry.

50. On May 4, 2021, the section wrote Urban Nook "requesting" copies of the invoices for the repair of unit 713's toilet. The section referred to several bylaws, notably

bylaw 3.1(a), which requires owners to repair and maintain their strata lot. The section said that failing to respond to these "requests" would constitute a violation of these bylaws.

51. On August 13, 2021, the section wrote Urban Nook to inform them that the section required access to unit 713 on August 18, 2021, to ensure compliance with the section's bylaws by confirming that the toilet was fixed. The section said that they would hire a locksmith if access was not provided. No one answered the door on August 18, 2021, but the section did not force entry even though a locksmith was present. The locksmith charged $131.25 for attending. On August 24, 2021, the section sent another letter, this time requiring access on August 27, 2021. Again, no one answered the door. This time, a locksmith forced entry. The locksmith charged $325.71.

52. I find that the section is not entitled to either chargeback because there is no evidence that it was an emergency that the section inspect the toilet on those dates. The had been no reports of any water ingress for over 8 months.

53. I therefore order Urban Nook to reimburse the section $180.60 for the Elafon investigation. I dismiss the section's other chargeback claims.

54. The *Court Order Interest Act* (COIA) applies to the CRT. The section is entitled to pre-judgment interest on the chargeback from January 20, 2021, the date of the chargeback, to the date of this decision. This equals $1.28.

55. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Ms. Wolfram was unsuccessful, so I dismiss her claim CRT fees. The section was partially successful against Urban Nook, so I find that the section is entitled to reimbursement of half of its $225 in CRT fees, which is $112.50. Urban Nook did not pay any CRT fees. None of the parties claimed any dispute-related expenses.

56. The section must comply with the provisions in section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Wolfram or Urban Nook.

ORDERS

57. Within 30 days of the date of this order, I order Urban Nook to pay the section a total of $294.38, broken down as follows:

    a. $180.60 for Elavon's January 20, 2021 investigation invoice,

    b. $1.28 in pre-judgment interest under the COIA, and

    c. $112.50 for CRT fees.

58. The section is entitled to post-judgment interest, as applicable.

59. I dismiss the remaining claims.

60. Because the order against Urban Nook is made under the CRT's strata jurisdiction, 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.

Eric Regehr, Tribunal Member