Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Robins v. The Owners, Strata Plan KAS2959*, 2022 BCCRT 805

B E T W E E N :

JENNA ROBINS and SHAUN ROBINS

APPLICANTS

A N D :

The Owners, Strata Plan KAS2959

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Nav Shukla

INTRODUCTION

1. The applicants, Jenna Robins and Shaun Robins, owned strata lot 13 (SL13) in the respondent strata corporation, The Owners, Strata Plan KAS2959 (strata) between September 2019 and November 2021. The Robinses say the strata wrongly refused to repair damage to SL13 allegedly caused by heavy snowfall in December 2019. They say that since the strata's insurer accepted the claim and allowed the repairs to

SL13, they should be reimbursed for engineering fees, legal fees, and an insurance deductible they paid due to the strata's repeated refusal to undertake the repairs. The Robinses seek reimbursement of $5,077.87 for the claimed expenses.

2. The strata says it is not responsible for the Robinses' claimed expenses and that it reasonably relied on its engineer's report in concluding that the strata was not responsible for making the requested repairs to SL13.

3. Mrs. Robins represents herself and Mr. Robins. The strata is represented by a strata council member. For the reasons that follow, I dismiss the Robinses' claims and this dispute.

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.

PRELIMINARY ISSUES

Jurisdiction to hear dispute filed by former owners

8. Though not specifically argued by the parties, I have considered whether the Robinses, as former owners of SL13, have authority to bring this dispute.

9. Section 189.1(1) of the *Strata Property Act* (SPA) says that only a strata corporation, owner or tenant may apply for dispute resolution with the CRT.

10. In *Downing v. Strata Plan VR2356*, 2019 BCSC 1745, the BC Supreme Court stated that the fact that an owner becomes a former owner does not, by itself, result in their no longer being an "owner" under the SPA or remove the CRT's ability to decide a dispute. The court also noted the finding in *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32, that the SPA's definition of "owner" includes former owners. Given these decisions, I find that I have jurisdiction to consider the Robinses' claims even though they are now former owners.

Request for council hearing

11. In its Dispute Response, in response to the Robinses' claim for reimbursement of CRT fees and dispute-related expenses, the strata says that the Robinses did not consult with the strata before applying to the CRT for dispute resolution. Though the strata did not explain this further, I have considered whether the Robinses requested a council hearing as required under SPA section 189.1(2) prior to bringing this CRT dispute. The Robinses did not comment on this issue in their submissions.

12. Section 189.1(2) of the SPA says that an owner (or former owner under *Downing*) cannot ask the CRT to resolve a strata property dispute unless the owner has requested a council hearing under section 34.1 of the SPA, or unless the CRT, at the strata or owner's request, directs that the owner need not request a hearing.

13. The evidence submitted by the parties does not address whether the Robinses requested a council hearing about the expenses they seek reimbursement for in this dispute. However, I note that during the CRT's intake process, the Robinses advised CRT staff that they had requested a hearing, but the strata did not acknowledge their request. The Robinses asked CRT staff to allow the dispute to proceed without them having to request a hearing again.

14. I have considered the strata's position in conjunction with the CRT's mandate under CRTA section 2(2). The mandate is to provide dispute resolution services, for matters that are within the CRT's authority, in a manner that is "accessible, speedy, economical, informal and flexible". I find to refuse to resolve this dispute and refer the matter of a hearing back to facilitation, or obtain further submissions from the parties, would be wasteful of the CRT's resources. It is unlikely the parties will agree to resolve the issues. I also find the CRT's services would be unreasonably delayed, contrary to its mandate, especially given my conclusion. Given the Robinses' assertion to CRT staff that they had requested a hearing, and since the strata has not specifically asked that I refuse to resolve the Robinses' claims for failing to request a hearing, I find this dispute is properly before me and consider it on its merits.

ISSUE

15. The issue in this dispute is whether the strata must reimburse the Robinses for the claimed engineering fees, legal fees, and insurance deductible.

EVIDENCE AND ANALYSIS

16. In a civil proceeding like this one, the applicants, the Robinses must prove their claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.

17. The strata was created in 2006. In October 2006, the strata filed a complete set of bylaws with the Land Title Office. The bylaws have since been amended several

times, but I find those amendments are not relevant to this dispute. I discuss the relevant bylaws in my reasons below.

18. As mentioned above, the Robinses owned SL13 from September 2019 to November 2021. SL13 is part of a duplex building located in Sicamous, British Columbia. It is undisputed that in December 2019, the Sicamous area received heavy snow fall. The Robinses say that in January 2020, they noticed that the heavy snow load on SL13's roof was causing substantial cracking and damage to SL13. The Robinses say they asked the strata's management company if the strata could remove the snow from the roof, provide a list of approved contractors to remove the snow, or if they could remove the snow themselves, but were told not to touch the snow as the roof is common property. They say they were told that the strata had received advice that removing the snow could damage the roof.

19. The Robinses say the damage to SL13 continued to worsen so they engaged Syme Structural Engineering Ltd. (Syme), at their own expense, to inspect the damage after a strata council member had told them that they "had no case".

20. The Robinses do not specify in their Dispute Notice or in their submissions the alleged damage to SL13 from the snow load. However, from the engineers' reports in evidence, I find that the alleged damage was limited to SL13's interior consisting mainly of drywall cracks and nail pops.

21. The strata says that it hired an engineering firm, Bourcet Engineering Company (Bourcet), to investigate and write a report about the alleged damage to SL13. The strata says that based on Bourcet's February 4, 2020 report, it determined it was not responsible for the cosmetic repairs inside SL13. In particular, the strata relied on Bourcet's opinion that the measured snow depth on the roof was "well below the service load of the roof truss system". I note Bourcet's report also stated that, in its opinion, it was unlikely the drywall cracks were caused by the applied snow load.

22. It is undisputed that the Robinses disagreed with the strata's determination and incurred engineering fees and legal fees in an effort to have their repairs covered under the strata's insurance policy. It is also undisputed that the strata's insurer

approved coverage on or about March 15, 2021 for the drywall crack and nail pop repairs. The insurer's March 15, 2021 letter to the strata advising that it was approving coverage is in evidence.

23. The Robinses' reimbursement claims appear to be based on the fact that the strata's insurer approved coverage for the drywall cracks and nail pops. However, I do not agree that the strata's insurer's decision to approve coverage means the strata is liable to reimburse the Robinses for the claimed expenses. My reasoning follows.

Repair and Maintenance Obligations

24. Section 72 of the SPA requires the strata to maintain and repair common property. Bylaw 11 requires the strata to maintain and repair the structure and exterior of a building, which I find includes a building's roof. So, I find the strata is responsible to repair and maintain SL13's roof under both the SPA and its bylaws.

25. Bylaw 2 requires an owner to repair and maintain their own strata lot. A strata corporation is not an insurer but is liable to pay for repairs in a strata lot where it has been negligent. See, for example*, Kayne v. LMS 2374*, 2013 BCSC 51, *John Campbell Law Corporation v. Owners, Strata Plan 1350*, 2001 BCSC 1342, and *Basic v. Strata Plan LMS 0304*, 2011 BCCA 231. So, in order for the strata to be responsible for repairing the drywall cracks and nail pops inside of SL13, the Robinses must prove that this damage was caused by the strata's negligence. If the Robinses can prove the strata was negligent, they may be entitled to reimbursement of their claimed expenses as damages resulting from the strata's negligence.

26. To succeed in their negligence claim, the Robinses must prove that the strata owed them a duty of care, the strata breached the standard of care, and that the breach caused the Robinses' reasonably foreseeable damages (see *Mustapha v. Culligan of Canada Ltd.,* 2008 SCC 27 at paragraph 3). The strata's standard of care in repairing and maintaining common property is one of reasonableness, and not perfection (see *Weir v. The Owners, Strata Plan NW 17,* 2010 BCSC 784).

27. Here, I find the Robinses have failed to prove that the strata was negligent, or that the alleged negligence caused the drywall cracking and nail pops inside of SL13. This is because there is no evidence before me to suggest that the strata negligently handled the snow load's removal from SL13's roof. In fact, the parties have presented no evidence or made any submissions about how or when the snow load was removed. I have reviewed Apple Consulting Engineering Services' May 12, 2020 report that the strata's insurer relied on in approving coverage for the Robinses' claims. I find that though the report concludes the snow load resulted in damage to SL13, it does not indicate that the strata was negligent in how it handled the snow load, or that the strata's negligence caused damage to SL13.

28. Similarly, Syme's February 6, 2020 report also does not suggest the strata was negligent. In its report, Syme said that it did not measure the snow load on SL13's roof so it was difficult for Syme to determine whether the snow load exceeded the amount of snow the roof was designed to handle. Syme further said that it did not observe any major structural issues contributing to the drywall cracks in SL13 and that the small cracks and nail pops were likely due to small building movements that occurred during the heavy snowfall.

29. As noted, in their Dispute Notice, the Robinses referred to advice they were told the strata received that removing the snow could damage the roof. Again, the evidence does not include any reference to such advice. However, I note that strata corporations are entitled to rely on professional advice in carrying out their statutory duties (see *Leclerc v. The Owners, Strata Plan LMS 614,* 2012 BCSC 74). So, if the strata had obtained such advice, it was entitled to rely on it.

30. On balance, I find that the evidence does not establish that the strata acted unreasonably in the way it handled the snow load on SL13's roof.

Should the strata reimburse the Robinses for their claimed expenses?

31. As mentioned, the Robinses engaged Syme and requested its report. The evidence includes Syme's February 6, 2020 invoice which shows the Robinses paid $1,260 to Syme for the report. This report was created well before the Robinses filed their

Dispute Notice, so it is not a dispute-related expense. Since I have found that the strata was not negligent, and since the Robinses have not established that the strata was otherwise required to reimburse them for the engineering fees under the bylaws or the SPA, I dismiss the Robinses' claim for the engineering fees.

32. Similarly, the legal expenses claimed by the Robinses were incurred prior to starting this CRT dispute. Legal fees are not generally recoverable as damages: see *Voyer v. C.I.B.C.*, 1986 CanLII 1226 (BCSC). Rather, they are recoverable in the context of "costs" or dispute-related expenses. Since the Robinses' legal expenses pre-date this CRT proceeding, they are not dispute-related expenses because they do not relate directly to this dispute. So, I decline to order the strata to reimburse the Robinses for their claimed legal expenses.

33. Lastly, the Robinses claim reimbursement for an insurance deductible. The Robinses' Dispute Notice and submissions do not explain what this insurance deductible was for, or how much they allegedly paid. The evidence includes a July 16, 2020 letter from British Columbia Adjustment Corporation to the Robinses which refers to a $1,000 policy deductible. From this letter, I infer that the Robinses' claim reimbursement for this $1,000 deductible under their own personal insurance policy. As I have already found the strata was not negligent, I decline to award the Robinses reimbursement for this insurance deductible. In any event, I note there is no evidence, such as a payment receipt, which proves the Robinses paid this $1,000 deductible. So, even if I had found the strata was negligent, I would not have ordered the strata to reimburse the Robinses for the insurance deductible because they have failed to prove that they made this $1,000 payment.

34. In conclusion, I dismiss the Robinses' claims against the strata.

CRT FEES, EXPENSES

35. 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. As the Robinses were unsuccessful in this dispute, and the strata paid no CRT fees, I order no reimbursement.

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

ORDER

37. I dismiss the Robinses' claims and this dispute.

Nav Shukla, Tribunal Member