Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Luke-Spires v. Commercial Section of The Owners, Strata Plan LMS 2229*, 2022 BCCRT 943

B E T W E E N :

SHARMAIN LUKE-SPIRES and BRIAN SPIRES

APPLICANTS

A N D :

COMMERCIAL SECTION OF THE OWNERS, STRATA PLAN LMS 2229

RESPONDENT

REASONS FOR DECISION

Tribunal Member: J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This strata property dispute is about alleged negligence of a section of a strata corporation for failure to repair limited common property (LCP).

2. The applicants, Sharmain Luke-Spires and Brian Spires, co-own a commercial strata lot (SL60 or unit 209) in The Owners, Strata Plan LMS 2229 (strata). The strata is not a party to this dispute. The named respondent, Commercial Section of The Owners, Strata Plan LMS 2229 (commercial section) is a section of the strata comprising all non-residential strata lots in the strata.

3. The applicants rent out SL60 to a health care provider. SL60 is located next to a public washroom located within the strata. The public washroom is designated on the strata plan as LCP for the exclusive use of all of the commercial section strata lot owners (washroom). The applicants say the commercial section failed to repair and maintain the washroom and that SL60 sustained water damage January 1, 2020 as a result. The applicants say this is not the first time SL60 has sustained water damage from the washroom and claims the commercial section was negligent in its duty to repair and maintain it. The applicants seek an order that the commercial section "restore flooring and drywall" in SL60 which they value at $5,000.

4. The commercial section disagrees with the applicants and claims it has taken reasonable steps to address water issues in the washroom from affecting SL60. The commercial section also says the applicants' claim is out time under the *Limitation Act* (LA). This is because the incident occurred on January 1, 2020 and the Dispute Notice was issued on January 17, 2022, over 2 years later. I infer the commercial section asks that the CRT dismiss the applicants' claims.

5. Mrs. Luke-Spires represents the applicants. A commercial section executive member represents the commercial section.

6. For the reasons that follow, I find the strata was negligent, but I dismiss the applicants' claim for damages because the amount was not proven.

JURISDICTION AND PROCEDURE

7. 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.

8. 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.

9. 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.

10. Under section 123 of the CRTA and the CRT rules, 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 Matter –Evidence

11. I was unable to properly open a video the applicants submitted in evidence about the slope of the washroom floor. At my request, CRT staff sought a viewable copy which the applicants provided. The commercial section was given the new evidence and provided an opportunity for response submissions but declined them. I have considered the video evidence in my decision below.

ISSUES

12. The issues in this dispute are:

    a. Is the applicants' claim out of time under the *Limitation Act* (LA)?

b. If not, was the commercial section negligent in repairing and maintaining the washroom?

c. What, if anything, is an appropriate remedy?

BACKGROUND, REASONS AND ANALYSIS

13. In a civil proceeding such as this, the applicants must prove their claims on a balance of probabilities, meaning "more likely than not". I have reviewed all the submissions and evidence provided by the parties, but I refer only to information I find relevant to give context for my decision.

14. The strata plan shows the strata is a mixed-use strata corporation comprising 69 residential and non-residential strata lots in a 4-storey building. There are 40 non-residential strata lots located on the first 2 levels of the building, and 29 residential strata lots located on the 3rd level. The 4th level is attic space and mechanical rooms. The strata was created under the *Condominium Act* (CA) in November 1995 and continues to exist under the *Strata Property Act* (SPA).

15. The strata's owner developer filed amendments to the Part 5 bylaws under the CA with Land Title Office (LTO) in November 1995 when the strata was created. These bylaws created residential and commercial sections. The strata, I infer with the sections' approval, filed a complete new set of bylaws with the LTO on October 9, 2012 that retained the sections, but replaced all other bylaws. I find the October 9, 2012 bylaws are the bylaws applicable to this dispute. Subsequent bylaw amendments were filed with the LTO that I find are not relevant to this dispute. I address relevant bylaws applicable to this dispute below, as necessary.

16. The parties agree there is a history of water ingress into SL60 from the washroom. They both refer a January 1, 2019 incident from the washroom flooding that resulted in a prior CRT decision indexed as *Spires v. Commercial Section of The Owners, Strata Plan LMS 2229*, 2020 BCCRT 11 (2020 CRT Decision). However, I note that 2020 CRT Decision involved strata lot 61 and not SL60. While I accept that the alleged

cause of the water ingress was from the washroom in both disputes, I find the 2020 CRT Decision is unrelated to this dispute.

17. I summarize the following relevant facts in this dispute.

18. At the annual general meeting (AGM) held July 13, 2019, the commercial section passed resolutions to replace 8 toilets in the washroom with "pressure-assist units" and to replace hand towel dispensers with air dryers. The minutes stated the January 2019 incident was due to a clogged toilet and "there had been isolated similar incidents in the past".

19. A flood occurred in the building on December 27, 2019 from a damaged sprinkler head in unit 323, which I find is a residential strata lot and not the commercial section's responsibility. However, I find the applicants' claim does not involve this incident, because there is no express claim about it. Therefore, I will not address the December 27, 2019 incident further.

20. I find the applicants' claim solely relates to a January 1, 2020 incident involving a fluorescent light fixture in the washroom as I discuss in greater detail below. The commercial section dispatched Walsh Restoration Services (Walsh) for emergency work to SL60 on January 1, 2020, when it became aware of the incident.

21. A strata council hearing was held on January 15, 2020 to consider the applicants' request for repairs to the SL60, among other things. The minutes of the meeting were provided in evidence. The strata council president (whom I understand is also the commercial section chair) issued a letter to Mrs. Luke-Spires dated January 17, 2020 denying the applicants' request for SL60 repairs. The strata council is separate and distinct from the commercial section executive, although section executive members are entitled to also serve on the strata council. I find the strata council hearing was likely intended to be a hearing of the commercial section executive committee based on the matters discussed. I say this because SPA section 196(2) gives the commercial section executive the same powers and duties as a strata council over matters relating to the section. However, I find nothing turns on the hearing, given my conclusion below to dismiss the applicants' claim for reimbursement of flooring costs.

22. Between January and November 2020, the commercial section completed various repairs to the washroom as evidenced by several invoices provided by the commercial section, that I discuss further below. The commercial section received an invoice from Walsh in about November 2020 (invoice # 90292R), which describes repair work that includes demolition, drywall, painting, cove base, and final cleaning. I infer the invoice was for work done in SL60 based on submissions. The commercial section paid the invoice of $3,483.90.

23. At some point, the commercial section charged the Walsh invoice amount to the applicants and the applicants requested another hearing. Another hearing was held on February 24, 2021, that resulted in the charged back amount being reversed. This was confirmed by the commercial section manager in a letter dated February 25, 2020.

24. None of this is disputed.

Is the applicants' claim out of time under the LA?

25. Section 13 of the CRTA confirms that the LA applies to CRT claims. Section 6 of the LA says that the basic limitation period to file a claim is 2 years after the claim is "discovered". At the end of the 2-year limitation period, the right to bring a claim disappears. CRTA section 13.1 says the limitation period stops running after a claim is filed with the CRT.

26. Section 8 of the LA says a claim is "discovered" on the first day the person knew, or reasonably ought to have known, that the loss or damage occurred, that it was caused or contributed to by an act or omission of the person against whom the claim may be made, and that a court or tribunal proceeding would be an appropriate way to remedy the damage.

27. The applicants filed their CRT dispute application on December 31, 2021. In order for their claim to have been filed in time, it must have been discovered, or discoverable, only after December 31, 2019.

28. As mentioned above, the evidence shows Mrs. Luke-Spires first received a letter denying the applicants' request that the SL60 repairs be paid by the commercial section on January 17, 2021. I find this is the earliest date the applicants could have discovered their claim. Given the date is within the 2-year limitation period, I find the applicants' claim is not out of time.

Was the commercial section negligent in repairing and maintaining the washroom?

29. The parties agree a light fixture above a toilet caught fire which ultimately triggered the fire suppression system, which then flooded the washroom. Based on the photographs in evidence and the overall submissions, I accept that that the washroom flooded and leaked under or through the wall into SL60, causing the damage claimed by the applicants. The applicants say the commercial section was negligent in its repair and maintenance of the light fixture. They also say the commercial section failed to ensure there was a properly functioning floor drain in the washroom to drain the water away, especially considering that recurring floods in the washroom caused damage to SL60 at least 3 previous times since 2016. This aligns with the statements contained in the July 2019 AGM minutes that similar flooding problems had occurred previously.

30. The commercial section says it was not negligent. It says it retains a third party contractor to maintain the washroom on a daily basis, which the applicants do not dispute. The commercial section also says it engaged a plumbing contractor to inspect and repair all plumbing in the "LCP" and to "re-pipe any problem drainage" in the washroom "to ensure there were no chronic issues that may cause future flooding". It also says it replaced the toilets and paper towel dispensers with air dryers as approved at the July 13, 2019 AGM.

31. Subject to its bylaws, a strata corporation is not responsible for repairs to the interior of a strata lot unless it has been negligent: see *Kayne v. LMS 2374,* 2013 BCSC 51 *and Basic v. Strata Plan LMS 0304,* 2011 BCCA 231. This is the case even where the strata lot damage was caused by a common property failure: see *Wawanesa Mutual Ins. Co. v. Keiran*, 2007 BCSC 727. I find the same applies to a section, given SPA

section 194(2) gives a section the same powers and duties as the strata about matters that relate solely to the section.

32. In this dispute, there are no bylaws making the commercial section responsible for the interior of a strata lot. Therefore, in order for the applicants to be successful, they must prove the commercial section was negligent. To prove negligence, the applicants must show that the commercial section owed them a duty of care, the commercial section breached the standard of care, they sustained damage, and the damage was caused by the commercial section's breach: see *Mustapha v. Culligan of Canada Ltd*., 2008 SCC 27, at paragraph 33.

33. Bylaw 2.4.1 requires the commercial section to repair and maintain the LCP washroom, except for structural issues, which are not evident here. I find bylaw 2.4.1 clearly establishes the commercial section owed the applicants a duty of care to repair and maintain the washroom.

34. The courts have clearly established a strata corporation's standard of care for repair and maintenance under SPA section 72 is reasonableness. See for example, the recent BC Supreme Court decision in *Slosar v The Owners, Strata Plan KAS 2846*, 2021 BCSC 1174, at paragraph 66. Given SPA Part 11 essentially gives a section the same powers and duties as a strata corporation, I find the reasoning in *Slosar* applies equally to the commercial section in this dispute.

35. In summary, the applicants must prove the commercial section breached its standard of care by acting unreasonably. I find the applicants have done so for the following reasons.

36. Based on my review of the invoices the commercial section submitted, I agree the commercial section completed drainage re-piping work for the washroom. There are 2 invoices from Pipeline Plumbing and Heating Ltd. dated January 27 and March 12, 2020 that describe re-piping completed in washroom. I also agree the commercial section regularly attended to plumbing issues and installed air dryers. It is difficult to tell from the invoices whether the toilets were replaced, but I accept they were because the applicants appear to agree toilet replacement was completed. The invoices

provided confirm the commercial section took steps to address the washroom flooding problem. But were the steps adequate? I find the answer to that question is no.

37. I do not agree that the commercial section's submitted invoices about the work completed in the washroom confirm that future flooding would not occur, as the commercial section says. The applicants expressly note the commercial section did not undertake any investigation of the washroom's floor drain or consider waterproofing the floor and walls so that if a flood occurred in the washroom, it would not affect SL60. I find these concerns of the applicants were raised with the commercial section at the January 15, 2020 hearing based on notes taken at that meeting that were provided by the commercial section. The notes say that 1 executive member recommended getting a plumber's opinion on the floor drain. There is no evidence such an opinion was obtained. While I note the applicants' submitted video evidence that alleges water on the floor of the washroom does not flow to the drain, I find the video does not assist the applicants as I find it shows water on the washroom floor but does not show the water flowing.

38. Overall, I find the commercial section owes the applicants a duty to repair and maintain the washroom in a condition that does not affect SL60, if a flood in the washroom occurs. This is especially true given the commercial section has admitted washroom floods have affected SL60 in the past. I find it was unreasonable for the commercial section not to investigate the adequacy of the floor drain. I also find it was unreasonable for the commercial section not to investigate other repairs that might alleviate flooding in SL60 when the washroom floods.

39. I recognize that flooding of the washroom cannot be eliminated, and that flooding of SL60 might occur in the future. However, the commercial section has a duty to reasonably repair and maintain the washroom so flooding of SL60 does not occur and I find the steps it has taken fall short of that duty.

40. Based on evidence such as the photographs and repair invoices, I find SL60 sustained damage to the floors and walls. I also find the commercial section's breach of its duty caused the damage. Following *Mustapha*, I find the commercial section was negligent.

What is an appropriate remedy?

41. The applicants claim $5,000.00 in damages from the commercial section to "restore flooring and drywall" in SL60. However, as I have noted the commercial section reversed the Walsh invoice (#90292R) charge of $3,483.90 it originally charged back to the applicants. I find the Walsh invoice includes all work to SL60 following the January 1, 2020 flood damage except flooring, based on the invoice description and overall submissions.

42. The applicants submitted a paid invoice from Shaw Carpet & Floor Centre (2008) Ltd. (Shaw) in the amount of $3,496.50 for SL60 to remove existing carpet and supply new "LVP" flooring and cove base to 2 rooms. I infer "LVP" refers to 'luxury vinyl plank" flooring. The applicants say the drying equipment installed by Walsh was removed early and that water was still evident under the ***vinyl*** flooring and provided a photograph. However, the Shaw invoice refers to carpet removal and the photographs provided by the applicants' tenant also show carpet in the room where water damage was sustained. The applicants did not explain the discrepancy between vinyl and carpet, so I find they have not proved new flooring was required in SL60. For this reason, I dismiss the applicants' claim.

CRT FEES AND EXPENSES

43. 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 not to follow this general rule in this dispute. The applicants were not successful, so I make no order for CRT fees. The strata did not claim dispute-related fees.

44. The commercial section must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicants.

ORDER

45. The applicants' claim for damages to flooring and drywall in SL60 is dismissed.

J. Garth Cambrey, Vice Chair