Civil Resolution Tribunal

Date Issued: November 7, 2022

File: ST-2021-009334

Type: Strata

Civil Resolution Tribunal

Indexed as: *Kingsley Estates Ltd. v. The Owners, Strata Plan NW2168*, 2022 BCCRT 1219

B E T W E E N :

KINGSLEY ESTATES LTD.

**APPLICANT**

A N D :

The Owners, Strata Plan NW2168

**RESPONDENT**

---

**REASONS FOR DECISION**

---

Tribunal Member: Micah Carmody

## INTRODUCTION

1. The applicant, Kingsley Estates Ltd. (Kingsley), is the former owner of strata lot 82 (SL82) in the respondent strata corporation, The Owners, Strata Plan NW2168. The strata charged Kingsley's account for the cost of repairing SL82's limited common

property (LCP) balcony. The damage was from a footprint Kingsley's contractor undisputedly made in a still-wet basecoat the strata's contractor had applied. Kingsley was required to pay $2,205.54 chargeback when it sold its strata lot, and now seeks to recover that amount. Kingsley says the strata's contractor never repaired the balcony damage.

2. Kingsley also says the strata's contractors negligently caused tile and carpet damage in SL82. Kingsley seeks $486 for carpet cleaning and $2,016 for tile repairs. The strata says it is not responsible for its contractors' negligence.

3. Lastly, Kingsley says the strata manager refused to allow Kingsley's contractor access to the courtyard to deliver renovation materials. Kingsley claims $840 for an extra delivery charge. The strata says delivery vehicles are not permitted in the courtyard.

4. Kingsley is represented by a business contact. The strata is represented by a strata council member. As I explain below, I dismiss Kingsley's claims.

## JURISDICTION AND PROCEDURE

5. 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.

6. 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. Based on the evidence and submissions provided, I am satisfied that I can fairly decide this dispute without an oral hearing.

7. 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 the parties and witnesses questions of and inform itself in any other way it considers appropriate.

8. 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.

9. Kingsley sold SL82 on July 29, 2021. This raises the issue of whether Kingsley has standing, or the legal right, to bring a CRT strata dispute. On this point, I agree with previous CRT decisions, including *Gill v. The Owners, Strata Plan EPS 4403*, 2020 BCCRT 725, which confirm that former owners have standing to bring CRT strata disputes. The strata does not argue otherwise.

## ISSUES

10. The issues in this dispute are:

    a. Did the strata have authority to impose the $2,205.54 chargeback for damage to the LCP balcony?

    b. Is the strata responsible for its contractors' alleged damage to SL82?

    c. Is the strata responsible for Kingsley's delivery charge allegedly incurred when the strata manager denied access to the courtyard?

## EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Kingsley must prove its claims on a balance of probabilities, meaning more likely than not. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

12. The strata was created in 1984 and includes 185 strata lots. SL82 is on the second floor. The strata plan shows a limited common property (LCP) balcony attached to

SL82 and designated for SL82's exclusive use. I will refer to that balcony as SL82's balcony or simply the balcony.

13. In 2016, the strata repealed all previous bylaws and replaced them with a complete set of bylaws filed with the Land Title Office. Additional bylaws filed after that date are not relevant to this dispute. I discuss the relevant bylaws below.

14. Kingsley owned SL82 until July 29, 2021. It is undisputed that as part of the sale, Kingsley was required to pay the strata a $2,205.54 chargeback imposed for damage to SL82's LCP balcony.

### *Chargeback for balcony damage*

15. The facts related to the damage on SL82's balcony are largely undisputed. Kingsley hired one or more contractors to renovate SL82 before the sale. Around the same time, the strata hired Ridgeback Contracting Ltd. (Ridgeback) to repair balconies, including SL82's balcony. As part of those repairs, on May 13, 2021, Ridgeback installed a fresh basecoat to the balcony. On the same day, a Kingsley contractor walked onto the fresh basecoat, leaving a partial footprint. From photos, the basecoat appears thick and viscous, like concrete.

16. Ridgeback returned the next day. According to the notes on Ridgeback's invoice, the basecoat damage meant Ridgeback could not apply the topcoat as planned. Instead, it had to install tarps, allow the basecoat to fully dry, grind down the footprint ridges, and reapply primer and basecoat to the entire balcony. Ridgeback charged the strata for 19.5 hours of labour and $349.51 in materials, totalling $2,205.54. The strata charged that amount against SL82's account.

17. On August 11, 2021, a Kingsley representative attended a hearing to dispute the chargeback. According to the minutes, Kingsley's contractor also attended and gave a report. The minutes do not detail, and the parties do not explain, what information Kingsley or its contractor gave the strata. Ultimately, the strata did not reimburse Kingsley for the chargeback.

18. For a strata corporation to charge repair costs to a strata lot account, it must have the authority to do so under a valid and enforceable bylaw that creates the debt (see *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512 at paragraphs 40 to 41).

19. The strata relies on bylaw 31. Bylaw 31(1) says an owner is deemed responsible for any loss or damage to common property, LCP, common assets or any strata lot where the cause of such loss or damage originated within the owner's strata lot and the loss or damage is not covered by the strata's insurance policy.

20. Bylaw 31(2) says an owner is deemed responsible for any loss or damage to common property, LCP, common assets or any strata lot where the cause is the result of an act, omission, negligence or carelessness of the owner or the owner's tenants, occupants or visitors.

21. Bylaw 31(4) says any owner deemed responsible under bylaws (1) or (2) is strictly liable and will indemnify and save harmless the strata for any resulting expense below the strata's insurance deductible for maintenance, repair or replacement rendered necessary. Bylaw 31(5) says the strata will assess any amount for which an owner is deemed responsible against the owner's strata lot and include it in their statement of account.

22. I find bylaw 31 satisfies the requirement from *Ward* for an enforceable bylaw that creates a debt for repair costs.

23. I find bylaw 31(1) applies to things like damage from water escape or fire originating in a strata lot, but does not apply to a situation like this where a person damages common property directly. Rather, I find that bylaw 31(2) is applicable. I also find that bylaw 31(2) creates a standard of negligence (see *The Owners, Strata Plan BCS 1589 v. Nacht*, 2019 BCSC 1785). The strata appears to agree, as it argues that Kingsley's contractor was negligent or careless when they stepped on the wet balcony basecoat.

24. To prove negligence, the strata must prove that Kingsley's contractor owed the strata a duty of care and failed to meet the applicable standard of care, causing damage. I

accept that Kingsley's contractor, working in SL82, owed a duty of care to the strata, which was responsible for repair and maintenance of the balcony.

25. The next question is whether stepping on the balcony, in the circumstances, was a breach of the standard of care. The evidence before me is limited. Kingsley said in its Dispute Notice that when its contractor "tried to get better phone signal, he totally forgot DO NOT walk on the deck. He stepped out balcony, but he realize right way. So he only left 1 footprint at balcony."

26. From this statement, I am satisfied that Ridgeback or the strata, or perhaps Kingsley, warned Kingsley's contractor not to step on the balcony and the contractor simply forgot. Given that Kingsley's contractor was trying to get a better phone signal, I find they were likely already talking on the phone or had their phone in hand and were distracted. I find a reasonable person in Kingsley's contractor's position would have taken care not to be distracted on the worksite and not to walk on the freshly installed basecoat, as instructed. Although not necessary to reach this conclusion, I also find Kingsley's contractor was likely aware of the wet basecoat as they were working in SL82 at the same time as Ridgeback was applying the basecoat. So, I find Kingsley's contractor was negligent. Under bylaw 31(2), Kingsley is deemed responsible for the resulting repair costs.

27. Kingsley argues that the strata or Ridgeback ought to have used signage or a barrier to prevent access to the balcony. While that may have been helpful, I find the absence of a sign or barrier does not change my conclusion that Kingsley's contractor was negligent given they were made aware of the wet basecoat and distracted when the incident occurred.

28. I turn to Kingsley's argument that Ridgeback did not actually repair the balcony as claimed. Kingsley relies on photos taken May 17, 2021 while Ridgeback was applying the new basecoat. Kingsley says the photos show the footprint still visible, partially obscured by a Ridgeback employee's foot. Kingsley says Ridgeback simply applied a second coat overtop without grinding out the footprint. I disagree. The photo does not show a visible footprint, and appears to show that Ridgeback repaired the

footprint. On balance, I find Ridgeback completed the repairs as described in its invoice. So, I dismiss Kingsley's claim for reimbursement for the chargeback.

### *Tile and carpet damage in SL82*

29. Kingsley says on May 13, 2021, the same day Kingsley's contractor damaged the basecoat on SL82's balcony, a Ridgeback employee walked on tiles recently installed by Kingsley's contractor, 1DL Construction Ltd. (1DL). Kingsley says this caused 4 tiles not to settle properly. 1DL invoiced Kingsley $2,016 for removing 4 tiles and the underlying mortar, purchasing more tiles, and reinstalling them. Kingsley claims $2,016 from the strata for tile damage.

30. Kingsley also says that, on a date that is not clear from the evidence and submissions, a strata contractor replacing a skylight window caused dirt and debris to fall on SL82's carpet. Kingsley claims $486 for carpet cleaning.

31. The strata says it is not an insurer and is not responsible for its contractor's negligence, in the absence of negligence on the strata's part.

32. It is undisputed that the strata had a statutory duty of care, based on the SPA and its bylaws, to repair and maintain SL82's LCP balcony and skylight. The courts have said that the standard of care for a strata corporation's repair and maintenance obligations is reasonableness. This means the strata must act reasonably in meeting these obligations (see *John Campbell Law Corp. v. Strata Plan 1350*, 2001 BCSC 1342, and *Wright v. Strata Plan #205 (Owners)*, 1996 CanLII 2460 (BC SC)).

33. In *Wright*, the BC Court of Appeal said that a strata corporation is not an insurer, and is not responsible for damage as long as it acted reasonably in the circumstances. This means a strata corporation will not be found negligent even if its contractors fail to carry out work effectively.

34. Here, I find the strata acted reasonably in hiring contractors to complete the balcony and skylight repairs. There is no evidence that the contractors were not qualified to do the work or that the strata was negligent in selecting them. So, I find the strata is not responsible for Kingsley's claimed repair costs.

35. Why is Kingsley responsible for its contractor's mistakes while the strata is not responsible for the strata's contractors' mistakes? The different outcome is explained by the strata's bylaws. The bylaws make owners responsible to the strata for their contractors' negligence, but neither the bylaws, the SPA nor the common law make the strata responsible to owners for its contractors' negligence.

36. As the strata's contractors are not named parties in this dispute, I make no findings about whether they were negligent.

37. For these reasons, I dismiss Kingsley's claims about carpet and tile damage.

### *Delivery charge*

38. Kingsley says that on May 25, 2021, their contractor, identified on an invoice as "1271690 BC LTD" (127), tried to deliver "extra long" baseboards for installation into SL82. Kingsley says 127 asked the building manager to "open the chain at back yard entrance" but the building manager refused, saying access was only for emergency vehicles. 127's invoice shows an $840 "extra delivery charge" due to not having access to the courtyard. This was in addition to the $120 delivery charge.

39. Kingsley says during the renovations, 127 saw non-emergency vehicles, including Ridgeback's vehicle, access the "back court yard" more than 10 times, and even took a photo. Kingsley's evidence about what a 127 employee observed is hearsay, which I would normally give little weight. However, the photo shows a non-emergency vehicle in the courtyard, so I accept that this happened at least once. Moreover, the strata does not address the photo, nor does it specifically dispute the allegation that Ridgeback was given access to the courtyard while 127 was not, other than a general denial of Kingsley's claims. The strata says the courtyard area has "subsidence/sinking issues" but provided no evidence in support.

40. Although Kingsley does not use these words, I find it argues that the strata treated it in a way that was significantly unfair when it denied 127 access to the courtyard.

41. Under CRTA section 123(2), the CRT can make orders to remedy a strata's significantly unfair actions or decisions. In *King Day Holdings Ltd. v. The Owners,*

*Strata Plan LMS3851*, 2020 BCCA 342, the court confirmed that an owner's reasonable expectations may be relevant to determining whether the strata's discretionary decisions or actions were significantly unfair. I find the same reasoning applies in this dispute. The test asks: what was Kingsley's expectation? Was that expectation objectively reasonable? Did the strata violate that expectation with a significantly unfair action or decision?

42. I find Kingsley's expectation was that 127 would have reasonable access to the courtyard. Given that there is no bylaw and no evidence of a rule against courtyard vehicle access, and there is evidence that other non-emergency vehicles had access to the courtyard, I find that expectation was reasonable.

43. However, for the reasons that follow, I find Kingsley has not met its burden of showing that the strata's courtyard access denial was significantly unfair. First, Kingsley does not explain what 127 did when the strata refused access to the courtyard. As noted, SL82 is on the second floor, so I infer that the baseboards had to be carried through an entrance and up a flight of stairs. However, there is no explanation of where 127 parked in relation to the entrance used or what distance the baseboards had to be carried when the truck could not be parked in the courtyard.

44. Kingsley largely relies on its contractor's invoice, but I find the invoice, without more, does not establish significant unfairness. I say this in part because the invoice lacks detail. The contractor's invoice says "2 men extra". It is not clear why 2 additional people were required given that the baseboards had to be unloaded from the truck to SL82 regardless of where the truck was parked. Kingsley does not say, for example, that the truck had a crane that could have loaded the baseboards directly into SL82.

45. I also do not find the invoice reliable overall. There is no explanation of how much additional time was required when courtyard access was denied, or what rate that time was billed at. I also note, although it is not determinative, that the invoice is not marked paid, and there is no evidence Kingsley paid the invoice, despite its being dated 6 months before Kingsley filed its CRT dispute application.

46. For these reasons, I find Kingsley has not shown that the strata's access denial was, as stated in *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, unduly burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable. I dismiss Kingsley's claim for reimbursement of the delivery charge.

## CRT FEES AND EXPENSES

47. Under section 49 of the CRTA, and the CRT rules, as Kingsley was unsuccessful I find it is not entitled to any reimbursement. The strata did not pay any CRT fees or claim any dispute-related expenses

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

## ORDER

49. I dismiss Kingsley's claims and this dispute.

Micah Carmody, Tribunal Member