Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Groven v. The Owners, Strata Plan LMS 2460*, 2022 BCCRT 1270

B E T W E E N :

BEATRIZ GROVEN

APPLICANT

A N D :

The Owners, Strata Plan LMS 2460

RESPONDENT

A N D :

BEATRIZ GROVEN

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: Kate Campbell, Vice Chair

INTRODUCTION

1. This strata property dispute is about who must pay for water damage restoration expenses after a plumbing leak.

2. Beatriz Groven co-owns strata lot 29 (SL29) in a strata corporation, The Owners, Strata Plan LMS 2460 (strata). Ms. Groven filed this Civil Resolution Tribunal (CRT) dispute against the strata, seeking reversal of a $21,415.21 chargeback for emergency restoration expenses incurred after a water leak. The strata filed a counterclaim against Ms. Groven, seeking payment of the chargeback.

3. Ms. Groven is self-represented in this dispute. The strata is represented by a strata council member.

4. Ms. Groven says she is not liable for the chargeback because the leak was caused by a weakness in the common property piping system, which is not her responsibility.

5. The strata says Ms. Groven is liable under the strata's bylaws because her contractor damaged the plumbing, and because the plumber was performing repairs without prior notice to the strata.

6. For the reasons set out below, I find in favour of Ms. Groven in this dispute.

JURISDICTION AND PROCEDURE

7. These are the CRT's formal written reasons. 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 which 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 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.

ISSUES

11. Must Ms. Groven pay the $21,415.21 chargeback for restoration services?

BACKGROUND

12. In a civil claim like this one, Ms. Groven, as applicant, must prove her claims on a balance of probabilities (meaning "more likely than not"). The strata must prove its counterclaim to the same standard. I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision.

13. The strata was created in 1996, and includes apartment-style strata lots in a 4-storey building with basement. The strata plan shows that SL29 is located on the second floor, with other strata lots above and below it.

14. The strata filed consolidated bylaws at the Land Title Office in May 2016. The strata also filed some bylaw amendments after that, which are not relevant to this dispute. So, I find this dispute is governed by the May 2016 bylaws. I refer to the relevant bylaws in my reasons below.

15. The parties agree there was a water leak in SL29 on October 31, 2019. Ms. Groven's submitted chronology, which the strata does not specifically dispute, sets out the following facts:

    - Ms. Groven's tenant hired a plumber, SH, to attend SL29 to inspect a running toilet.
    - SH said the toilet tank needed new parts.
    - SH closed the water feed valve to the toilet and unscrewed the feed line at the toilet tank.
    - Water began to flood onto the bathroom from a failed joint on the plastic "Flowguard" water supply line inside the wall.
    - The tenant called Ms. Groven's husband "in a panic", while SH attempted to find SL29's main water shut off valve.
    - Ms. Groven's husband called the strata management firm, which shut off the water approximately 30 minutes later.
    - The strata then called its plumber LPI to fix the pipe, and ServiceMaster to do restoration work to other strata lots affected by the leak.

16. On December 4, 2019, the strata sent Ms. Groven a letter stating that because her contractor had caused water loss and damage, she was responsible for the restoration charges. After a hearing held at Ms. Groven's request, the strata sent another letter confirming its decision to charge her $21,451.21 for restoration and repair work. The strata's letters cite various bylaws as authority for the charge, which I discuss in my reasons below.

REASONS AND ANALYSIS

17. The evidence shows that the leak occurred because the plastic water supply line located within the bathroom wall behind the toilet came apart at the joint. This is confirmed by photographs and a video in evidence, as well as ServiceMaster's initial

site visit report, which says, “water supply line in wall of bathroom…released from coupling”. Similarly, the strata’s plumbing contractor, LPI, wrote on a November 4, 2019 invoice that LPI’s technician opened the drywall and “found that that the water line had come unglued from the tee.”

18. The strata says Ms. Groven is responsible for the resulting water damage, because her contractor was performing repairs in SL29, and no one had notified the strata about these repairs in advance so that a caretaker could be on site to turn off the water in the event of a leak.

19. Ms. Groven says the pipe that leaked is common property and therefore the strata’s responsibility. She says neither she, her tenant, nor SH caused the leak. Ms. Groven says the pipe joint simply became unglued due to improper initial installation when the strata was built, and also to the known weakness of the Flowguard piping system.

20. In general, *Strata Property Act* (SPA) section 72 says a strata corporation is responsible to repair and maintain common property. Under the strata’s bylaws, owners are responsible to repair and maintain their own strata lots.

Is the pipe common property, or part of SL29?

21. For the following reasons, I find the pipe in question is common property. SPA section 1(1)(b)(i) says “common property” means “pipes…if they are located within a floor, wall or ceiling that forms a boundary between a strata lot and another strata lot, or between a strata lot and the common property”.

22. I find the evidence before me establishes that the water line is located within a wall that forms a boundary between a strata lot and common property. This is confirmed by the report of RK, a plumber Ms. Groven hired to provide a report as evidence in this dispute. In that report, RK describes the pipe as a “flowguard gold water supply line coming from the main cold water distribution within the party wall between unit 214 and 216”.

23. The evidence before me suggests that RK based their opinion on photos, rather than from an in-person inspection. However, the strata provided no contrary evidence

showing that the pipe was located in a wall interior to SL29. Also, I find RK's evidence about the pipe's location is consistent with the photographs attached to ServiceMaster's initial site visit report. So, I conclude that the pipe is located within a boundary wall. This means that the pipe is necessarily common property, based on the definition in SPA section 1(1)(b)(i).

24. The strata argues that the pipe is part of SL29, and is not common property. The strata says this is because the pipe services only SL29, and is not centered in the midpoint of the wall, but is actually located closer to SL29. However, I find this argument does not apply. The strata is referring to SPA section 1(1)(b)(ii) and SPA section 68. Section 1(1)(b)(ii) says a pipe located within a strata lot is common property only if it is capable of being used in connection with another strata lot or common property. Section 68 says unless otherwise shown on the strata plan, a strata lot's boundary is the midpoint of the structural portion of the wall that separates it from other property.

25. However, a close reading of section 1(1) shows that section 1(1)(b)(ii) only applies when a pipe is not located within a boundary wall. All water pipes located within boundary walls are common property.

26. So, I conclude that the pipe is common property because it is located in a boundary wall.

Authority for Chargeback

27. As noted above, a strata corporation is generally responsible for all common property maintenance and repairs. There are exceptions for limited common property, but those do not apply here. Other than for limited common property, the only time a strata can chargeback common property repair costs to an owner is if it there is a valid bylaw permitting it to do so: see *Ward v. Strata Plan VIS #6115*, 2011 BCCA 512 and *Rintoul et al v. The Owners, Strata Plan KAS 2428*, 2019 BCCRT 1007.

28. In this case, the strata relies on several bylaws as justification for the chargeback, as cited in its December 4, 2019 and November 24, 2020 letters to Ms. Groven. First,

the strata relies on bylaws 6.7, 6.13, and 6.14. and 6.13. The relevant portions of these bylaws say:

> 6.7 – an owner must give the strata advance notice of the arrival of tradespersons "in the event of major alterations taking place".
>
> 6.8 6.13 – an owner performing or contracting with others to "perform renovations or alterations" will be responsible for obtaining all required permits and licences.
>
> 6.9 6.14 – the strata may require as a condition of its approval that the owners agree to take responsibility for any expenses "relating to the alteration" and provide evidence of appropriate insurance coverage "relating to the alteration".

29. I find these bylaws do not apply in this case. Bylaw 6.13 does not apply because there is no evidence that a permit or licence was required to repair the running toilet in SL29.

30. Also, bylaws 6.7 and 6.14 only apply to "alterations". The courts have considered what "alteration" means in the context of the SPA. In *Simon Fraser University Foundation v. The Owners*, Strata Plan BCS 1345, 2021 BCSC 360, the court said that "immaterial changes" are not alterations. The court said actions such as cutting holes through exterior walls, or removing windows and flashings to install air conditioning equipment, are material changes and therefore alterations.

31. I find fixing or replacing a toilet, in the same location as a previous toilet, is not an alteration or renovation. Therefore, bylaws 6.7, 6.13, and 6.14 do not apply.

32. Second, the strata relies on bylaws 3.6 and 13.7. I find these bylaws do not make Ms. Groven responsible to pay for the pipe and water damage repairs.

33. In summary, the relevant parts of these bylaws say:

34. 3.6 – any damage to any strata lot or common property "directly attributable to" the owner, tenant or occupant of a strata lot shall be the liability of the owner, tenant or occupant. Council may repair such damage and recover the costs from the owner of the strata lot from which the damage originated.

35. 13.7 – if any owner, occupant, or their family member, guest, servant or agent causes damage to common property and the damage so caused is not covered under the strata's insurance, the strata lot owner shall be held responsible for the loss and promptly reimburse the strata for the full costs of repair or replacement.

36. The parties agree that the strata's insurance deductible was $150,000, well below the repair cost, so there was no insurance claim. So, the damage was effectively not covered under the strata's insurance.

37. The parties disagree about whether Ms. Groven or her tenant hired the plumber, SH, who turned off the water valve on the toilet supply line. I accept Ms. Groven's evidence that the tenant hired SH, since the strata provided no evidence proving otherwise.

38. I note that bylaw 3.6 does not make a strata lot owner responsible for the actions of their tenant's contractor or employee. I find it would be unreasonable to imply vicarious liability under bylaw 3.6, in part because bylaw 13.7 specifically addresses liability for an occupant's servants or agents. Also, the BC Supreme Court has said a strata corporation is not vicariously liable for the actions of its contractors, even if a contractor fails to carry out work effectively: see *Wright v. The Owners, Strata Plan #205*, 996 CanLII 2460 (S.C.), affirmed (1998), 43 B.C.L.R. (3d) 1, 1998 CanLII 5823 (C.A.) I find that without specific wording to that effect, it would be unreasonable to imply that owners are vicariously liable for contractors' actions when strata corporations are not vicariously liable in the same situation.

39. I also find that Ms. Groven is not responsible for the chargeback under bylaws 3.6 and 13.7 because the damage is not "directly attributable" to SH, and SH did not "cause" the flood and resulting water damage.

40. Ms. Groven says did nothing but turn off the toilet supply line valve, and then disconnect the supply line from the toilet tank. There is no evidence to the contrary, so I accept this. There is no suggest in the evidence or submissions, including the evidence from LPI and ServiceMaster, that SH or the tenant did anything that would have damaged the pipe or caused the joint to let go, other than turning off the toilet supply valve.

41. Ms. Groven argues that the supply line within the wall simply became unglued, due to faulty installation and known weaknesses of Flowguard pipes. In support of her position, Ms. Groven relies on a news media story about leaks in plastic pipes, a social media discussion about problems with Flowguard pipes, and a report that she says was prepared "with the help of" Warren Gardner.

42. I place limited weight on this evidence. The social media and news articles are general and provide no specific information about what caused the pipe joint failure at issue in this dispute. Also, it appears that Ms. Groven wrote much of the content of the Warren Gardner report. It is unclear what portions the report Warren Gardner wrote, if any. Ms. Groven has no established expertise in plumbing. So, I find the report does not meet the requirements to be accepted as expert evidence under the CRT rules.

43. The parties disagree about the admissibility of a recorded phone call between Ms. Groven and the strata manager. The strata says it should not be admitted in evidence because the strata manager was unaware of the recording and did not consent. In BC it is legal to record a conversation as long as one party consents. But in any event, I place no weight on the recording, as Ms. Groven relies on it as evidence that the strata manager said SH did not cause the pipe to separate. The strata manager's statement is double hearsay, as it is a second hand conversation about what someone else allegedly said, on an issue that I find requires expertise in plumbing. So, I place no weight on the recording or its transcript.

44. Ms. Groven also provided a report from RK. Since RK is a plumber, I find the report qualifies as expert evidence. RK says the pipe "appears not to have been glued

properly during the initial installation when the condo was built." RK did not explain their reasons for this opinion. For example, RK did not say what aspects of the photographs indicate improper gluing, or in what way the gluing was improper. I cannot tell if the type of glue was incorrect, or its placement, or if the pipe was somehow connected improperly. Without this explanation, I am not persuaded by this opinion, and do not accept that the pipe was improperly installed or glued.

45. RK also says that due to the weakness of the particular piping used, it is susceptible to premature failure over time due to the plastic becoming brittle and glue joints failing. RK says it was "an accident just waiting to happen." Given RK's expertise in plumbing, and the fact that there is no contrary evidence giving a different cause for the pipe joint failure, I accept this opinion.

46. Again, bylaw 13.7 says a strata lot owner is responsible when an occupant, or their servant or agent "causes damage to common property". Based on the evidence, including RK's report, I accept that neither the tenant nor plumber SH were negligent, as all they did was turn off the water valve on the toilet supply line. However, I find that the phrase "causes damage" in bylaw 13.7 means negligence is not required.

47. In *The Owners, Strata Plan VR 2266 v. 228 Chateau Boulevard Ltd.*, 2018 BCCRT 198, a tribunal member analyzed the meaning of "cause damage" in the context of strata bylaws. She cited Black's Law Dictionary, which defines "cause" as a reason why an event occurs. The tribunal member concluded that "cause" need not imply wrongdoing, particularly where the bylaws do not say someone must be careless or negligent to be liable. The tribunal member then found that based on this reasoning, the strata lot owner was liable for a water leak that came from their ruptured hot water tank, even though the owner did nothing to cause the leak. The owner owned the hot water tank that broke, and was responsible for it, and was therefore found to have "caused" the resulting water damage.

48. The reasoning in *Chateau Boulevard* is not binding on me, but I find it persuasive and rely on it. In this case, I find that neither Ms. Groven nor her tenant were responsible for the water pipe that failed, because it was common property and therefore the

strata's responsibility. I find this case is different and distinguishable from the facts in *Chateau Boulevard,* since in that case the strata lot owner owned the leaking fixture. In this case, the strata's common property pipe leaked.

49. Again, there is no evidence that SH or the tenant did anything to the water pipe itself. Based on the very short time period between when SH turned off the water supply valve and when the leak became visible, I accept that turning the valve caused the pipe to separate inside the wall, due to the failure of the glued joint. However, I find that this action of turning the valve did not "cause damage" as contemplated in bylaw 13.7. If the common property pipe joint had been sound, turning the valve (which is meant to be turned) would not have caused any leak. So, turning the valve was not the cause of the leak. Rather, I find the evidence before me, including RK's report, establishes that the cause of the leak was a failed glue joint inside the wall. SH could not have seen the joint, as it was located within the wall, behind the drywall. I therefore conclude that neither SH nor the tenant caused the damage resulting from the disconnected pipe joint.

50. For the same reasons, I find the leak was not "directly attributable" to SH or the tenant. Rather, the leak is directly attributable to the fact that the glue joint failed.

51. Finally, I also note that much of the claimed chargeback is for repairs to other strata lots. Bylaw 13.7 only makes an owner liable for repairs to common property, not strata lots. But since I find Ms. Groven is not liable under bylaw 13.7 in any event, this is not determinative of the outcome of this dispute.

52. For all of these reasons, I conclude that Ms. Groven is not responsible to pay for the water damage restoration or repairs. I order the strata to remove the $21,451.21 chargeback from Ms. Groven's strata lot account. I dismiss the strata's counterclaim.

CRT FEES AND EXPENSES

53. As Ms. Groven was successful in this dispute, under the CRTA and the CRT's rules I find she is entitled to reimbursement of $225.00 in CRT fees. As the strata was

unsuccessful, I find it is not entitled to any reimbursement. Neither party claimed reimbursement of dispute-related expenses, so I order none.

54. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to SL29.

ORDERS

55. I order that:

    a. The strata must immediately remove the $21,451.21 chargeback from Ms. Groven's strata lot account.

    b. Within 30 days of this decision, the strata must reimburse Ms. Groven $225 for CRT fees.

56. Ms. Groven is entitled to postjudgment interest under the *Court Order Interest Act*, as applicable.

57. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under CRTA section 58, 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.

Kate Campbell, Vice Chair