



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Zimmerman Contracting Ltd. v. The Owners, Strata Plan BCS2103*,
2024 BCCRT 48

B E T W E E N :

ZIMMERMAN CONTRACTING LTD.

APPLICANT

A N D :

The Owners, Strata Plan BCS2103

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr, Vice Chair

INTRODUCTION

1. Zimmerman Contracting Ltd. owns a strata lot 84, known as unit 1101, in the strata corporation The Owners, Strata Plan BCS2103, which it rents out. There were floods in unit 1101 on July 5 and October 30, 2022. Both floods came from blockages in the strata's common property pipe system. Zimmerman says that the strata is responsible

for the floods because they failed to adequately maintain the pipe system. Zimmerman claims a total of \$20,374.80 in repair costs after the 2 floods. Zimmerman is represented by its president, Ian Zimmerman.

2. The strata denies responsibility for the repair costs because they were all within unit 1101. It says it responded reasonably each time there was a blockage. It asks me to dismiss Zimmerman's claims. The strata is represented by an employee of its insurer.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over certain cooperative association claims under section 125 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.
4. 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. I have considered the potential benefits of an oral hearing. Here, I am properly able to assess and weigh the documentary evidence and submissions before me. So, the CRT's mandate to provide proportional and speedy dispute resolution outweighs any potential benefit of an oral hearing. I find that an oral hearing is not necessary in the interests of justice. I therefore decided to hear this dispute through written submissions.
5. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.
6. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the tribunal 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

7. The issues in this dispute are:
 - a. Did the strata fail to reasonably repair and maintain its common property pipes?
 - b. If so, what are Zimmerman's damages?

BACKGROUND

8. In a civil claim such as this, Zimmerman as the applicant must prove its claims on a balance of probabilities. This means 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.
9. The strata consists of 608 strata lots in 2 towers. Unit 1101 is a residential strata lot on the 11th floor of Tower 2, which is 34 stories. The strata was created in 2006.
10. As discussed in more detail below, the floods in unit 1101 all came from blockages in common property pipes in a vertical stack that takes wastewater from strata lots' kitchen drains to the municipal main. Under unit 1101, there is a horizontal jog or offset in the pipe.

EVIDENCE AND ANALYSIS

11. I will start with the applicable law. The strata filed a complete set of bylaws in the Land Title Office in 2018. Bylaw 3(1) says that an owner must repair and maintain their strata lot unless the bylaws make the strata responsible. Bylaw 13(d) makes the strata responsible for only for certain specific strata lot repairs. It is undisputed that Zimmerman claims compensation for repairing parts of unit 1101 that are its responsibility under these bylaws.
12. Section 72 of the SPA requires the strata to repair and maintain common property, as does strata bylaw 13. The parties agree that the strata was responsible for repairing and maintaining the pipes where the blockages occurred. However, the

strata is not an insurer of common property. This means that even if a common property failure causes damage within a strata lot, the strata will not be liable for the strata lot repairs unless it acted unreasonably. See *John Campbell Law Corp. v. Owners, Strata Plan 1350*, 2001 BCSC 1342.

13. The BC Supreme Court explained how to assess the reasonableness of a strata corporation's repair and maintenance decisions in *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113, at paragraph 69. The strata must act in the best interests of all owners and try to achieve the greatest good for the greatest number by implementing necessary repairs within a budget the owners can afford. Because of this, the strata is entitled to some deference in their repair and maintenance decisions because they are best placed to balance competing interests within their community. The strata's decisions must be assessed based on what it knew at the time and not with the benefit of hindsight. Finally, because strata councils are made up of lay volunteers who are not expected to have expertise in building repair and maintenance, the strata is entitled to rely on professional advice. If those professionals provide bad advice or perform poor work, the strata will not be negligent as long as it acted reasonably in hiring and instructing them.

14. The strata argues that its bylaw 34(4)(a) protects it from liability even if it was negligent. The relevant part of bylaw 34(4)(a) says:

If an owner is responsible for any loss or damage to a strata lot, that owner must indemnify and save harmless the strata from the expense of any repair rendered necessary to the strata lot but only to the extent that such expense is not reimbursed from the proceeds received by operation of any strata insurance policy.

15. The strata says this bylaw essentially shields it from liability for any strata lot repairs because bylaw 3 generally makes owners "responsible" for strata lot repairs. I disagree with this interpretation. Bylaw 34(4)(a) applies when an owner is responsible for causing the damage, not when the owner is generally responsible for repairing the damage. In other words, the bylaw applies when the source of damage is something

that the owner controls, like a washing machine. See *Mari v. Strata Plan LMS 2835*, 2007 BCSC 740. Here, Zimmerman does not control or have any responsibility over the pipes where the backups originated. So, bylaw 34(4)(a) does not apply.

The Floods

16. As noted, Zimmerman claims compensation for floods in July and October 2022. However, there were several backups from unit 1101's kitchen sink before July 2022. The first was in 2011. At that time, strata's former manager wrote to Zimmerman confirming that a kitchen sink backup was from a common property pipe blockage. There is no other evidence about this incident. Zimmerman says this is "precedent setting", but there were no further incidents for over 9 years. So, there was nothing unreasonable about the strata taking no specific action in response to that flood.
17. According to Zimmerman, the problem resurfaced in late 2020. It says there were backups in November 2020 and April 2021. It says that both times, its plumber said the backup was a strata problem, and the strata's plumber dealt with it. Zimmerman also says that after the April 2021 backup, the strata's plumber told Mr. Zimmerman that there was a restriction in the kitchen stack, which the strata knew about. Zimmerman suggests that this "restriction" is the offset below unit 1101.
18. The strata changed plumbers shortly after the April 2021 backup. The strata provided all its invoices from its current plumber, Ashton Mechanical Group, but none from its former plumber. The strata also says nothing in its submissions about the November 2020 or April 2021 backups. So, there is no objective evidence about what the strata's former plumber told the strata after those backups. Ultimately, I decided it was unnecessary to determine whether the strata's former plumber told it about the offset. I say this because I have concluded that the strata's actions were unreasonable regardless of what its former plumber did or did not tell it.
19. There was another backup into unit 1101 on December 20, 2021. Ashton attended. According to the notes on Ashton's invoice, its plumber cabled from unit 1201 (directly above unit 1101) 50 feet down and cleared a blockage. They recommended flushing all the tower's kitchen stacks.

20. The strata did not follow this advice, and I find the strata likely failed to even notice it. I say this for 2 reasons. First, in late 2022, the strata manager asked Ashton's operations manager if there was a better way to track the strata's many ongoing plumbing issues instead of just relying on invoices. The strata manager said they were concerned they would miss something. This suggests that the strata manager was having difficulty tracking the strata's plumbing issues by reviewing invoices. Second, the strata never mentioned the December 2021 backup in council meeting minutes. The minutes in evidence show that the strata's standard practice was to mention every reported "water incident" and describe in detail how the strata handled it. The failure to mention the December 2021 flood at all suggests the strata simply missed it.
21. The next backup occurred on July 1, 2022. It originated in a different 11th floor strata lot. The plumber went to the strata lot above and ran an auger down 49 feet, finding a blockage. The plumber cleared the blockage, which had "loads of grease and food stuffs".
22. Zimmerman's tenant was out of town until July 5. Upon returning home, they found damage to unit 1101's kitchen cabinets, drywall, and carpets. Zimmerman provided a \$10,760.72 invoice from Epic Restoration Services Inc. for restoration and repairs after the July 2022 flood.
23. I conclude from the above that the strata's failure to flush the lines before July 2022 was unreasonable. The strata relies on *Carten v. The Owners, Strata Plan BCS 183*, 2022 BCCRT 384. In that dispute, another CRT vice chair concluded that there is no standalone obligation for a strata corporation to have a plan or schedule for cleaning drainpipes. I agree with that general statement, but the facts here are different. In *Carten*, the vice chair found that the strata corporation was unaware of any need for preventative maintenance.
24. Here, after the December 2021 backup, Ashton told the strata it needed to flush Tower 2's lines, which the strata had not done since 2019. The strata's failure to do so caused the July 2022 flood. I order the strata to pay Zimmerman \$10,760.72.

25. I reach a different conclusion about the next flood, which occurred on October 30, 2022. I conclude that the strata's actions after the July 2022 backup were reasonable.
26. First, the strata promptly flushed Tower 2's lines, as recommended. Strata council meeting minutes indicate this occurred between August 17 and 29, 2022.
27. Despite this, on September 11, 2022, Zimmerman's tenant texted him a photo of the kitchen sink backing up again. Zimmerman contacted the strata's concierge, who called a plumber, who cleared the blockage. Ashton emailed the strata manager on September 19 that the buildup was in the kitchen drain's horizontal line below unit 1101. There is no suggestion of any damage, so I infer this was a minor backup.
28. On September 20, the strata manager emailed Ashton asking why there were more backups on the 11th floor after the recent drain cleaning. Ashton suggested that a resident had caused the recent leak by putting grease down the drain. The strata manager asked again why there were backups so soon after the flushing. Ashton said that it was not uncommon for buildup to occur relatively soon after a vertical flush. Ashton did not suggest any investigation or maintenance.
29. The second overflow at issue occurred on October 30, 2022. According to a report from an emergency restoration contractor, the damage was similar to the first backup.
30. On October 31, Ashton sent a report to the strata manager. It said that the plumber had run a cable 30 feet to clear the blockage. The report said this fixed the problem. The strata manager asked for a more detailed report. At this point, Ashton suggested scoping the line. Ashton also said that it had attended another 11th floor strata lot (unit 1105) on October 19, 2022, and found that there was grease build up on an offset under that strata lot too. The invoice for that service said that the cable almost got stuck, which "makes me think there is something wrong at 20 feet". The plumber recommended a camera inspection. The plumber's later invoice said that the offset appeared to be filling with grease.
31. On November 25, 2022, Ashton emailed the strata manager that it had reviewed building plans and determined that there were only offsets below units 1101 and

1105, which would explain why they were particularly prone to backups. The strata agreed to have Ashton perform a detailed inspection of the stack under the 11th floor. They eventually scheduled this for early January 2023.

32. The plumber provided a report on January 16, 2023. They confirmed that there was an offset under unit 1101, which was already built up with “a fair amount of grease”. They believed that after previous backups, “the grease blockage is just widened, not removed”. They recommended thoroughly cleaning the offset and doing ongoing proactive maintenance. The strata has since implemented this recommendation.
33. As mentioned above, strata corporations are entitled to rely on professionals when making repair and maintenance decisions. After the July 2022 flood, the strata followed Ashton’s recommendation by promptly flushing the line. After the September 2022 backup, the strata manager appropriately pressed Ashton on why this happened only weeks after flushing the line. With the benefit of hindsight, Ashton’s response blaming the residents’ disposal practices and implying that the backups were inevitable was, at best, incomplete. Still, the strata was entitled to rely on Ashton. I dismiss Zimmerman’s claim for compensation for the October 2022 flood.

TRIBUNAL FEES, EXPENSES, AND INTEREST

34. 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. Zimmerman was partially successful, so I find it is entitled to reimbursement of half of its \$225 in CRT fees, which is \$112.50. The strata did not pay any CRT fees and neither party claimed any dispute-related expenses.
35. The *Court Order Interest Act* (COIA) applies to the CRT. Zimmerman is entitled to pre-judgement interest on Epic’s July 15, 2022 invoice to the date of this decision. This equals \$618.77.
36. The strata must comply with the provisions in section 189.4 of the SPA, which includes not charging dispute-related expenses against Zimmerman.

DECISION AND ORDERS

37. Within 30 days of this decision, I order the strata to pay Zimmerman \$11,491.99, broken down as follows:

- a. \$10,760.72 in damages,
- b. \$618.77 in prejudgment interest under the COIA, and
- c. \$112.50 in CRT fees.

38. Zimmerman is also entitled to post judgement interest under the COIA, as applicable.

39. I dismiss Zimmerman's remaining claims.

40. 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, Vice Chair