



Civil Resolution Tribunal

Date Issued: February 13, 2024

File: ST-2023-002154

Type: Strata

Civil Resolution Tribunal

Indexed as: *McMillan v. The Owners, Strata Plan LMS 997*, 2024 BCCRT 142

B E T W E E N :

HUGH MCMILLAN

APPLICANT

A N D :

The Owners, Strata Plan LMS 997

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This dispute is about a plumbing repair expense.
2. Hugh McMillan co-owns a strata lot (SL 13) in the respondent strata corporation, The Owners, Strata Plan LMS 997 (strata). Mr. McMillan says SL 13's shower drain backed up 3 times in November and December 2022 after the strata's stacks were

flushed in the fall of 2022. Mr. McMillan says after the third backup, they had to hire a plumber to “snake” the shower drain. They say the strata is responsible for the plumbing expense because the backup occurred in a common property pipe, and was likely the result of the stack flushing. They also say the strata paid for other owners’ similar plumbing expenses. Mr. McMillan claims \$202.65 for the plumbing expense.

3. The strata denies Mr. McMillan’s claims. It says the stack flushing was most recently performed in July 2023, and before that in August 2020, so it could not have caused SL 13’s 2022 backup. Also, the strata says the blockage was in a pipe that only serviced SL 13, so it was Mr. McMillan’s responsibility to repair. The strata asks me to dismiss this dispute.
4. Mr. McMillan is represented by their spouse, who is not a lawyer. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

5. These are the Civil Resolution Tribunal’s (CRT) 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.
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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me, without the need for 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.

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.

ISSUES

9. The issues in this dispute are:
 - a. Did the strata fail to repair and maintain the common property stacks or pipes?
 - b. Did the strata treat Mr. McMillan significantly unfairly?
 - c. If the answer to either of these is yes, is Mr. McMillan is entitled to the claimed \$202.65 for their plumbing expense?

BACKGROUND AND EVIDENCE

10. As the applicant in this civil proceeding, Mr. McMillan 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 information I find necessary to explain my decision.
11. The strata was created in 1993 under the *Condominium Act* and continues under the *Strata Property Act* (SPA). It includes 84 strata lots in 2 3-story buildings, built in 2 phases. SL 13 is on the first floor of the phase 1 building. In 2018, the strata repealed and replaced its bylaws. Two bylaw amendments since then, in 2019 and 2022, are not relevant to this dispute.
12. The following background is undisputed. Around December 7, 2022, Mr. McMillan's spouse emailed the strata council to advise that SL 13's shower drain had backed up. A strata council member advised Mr. McMillan's spouse to get Mandau Plumbing & Heating B.C. Ltd. (Mandau) to snake the drain, which they did. Mandau invoiced Mr. McMillan \$202.65 for the plumbing work on December 9, 2022, which Mr. McMillan paid.

13. Mr. McMillan says this backup was preceded by 2 others, and that they all occurred after the strata had its sanitary stacks flushed in the fall of 2022. The strata says it was only aware of 2 incidents, the one in December 2022 and an earlier backup in December 2021. Whatever the case, the strata says it did not have the stacks flushed in 2022, and the August 2020 flushing did not cause the backups, as it pre-dated the earliest possible backup by 16 months.
14. The strata provided an August 28, 2020 invoice from Ashton Service Group (Ashton) for cleaning the strata's main sanitary drainage lines. Mr. McMillan does not specifically dispute this invoice, nor do they provide any supporting evidence that the strata had additional flushing performed in the fall of 2022, as they allege. Neither party submitted expert evidence about whether stack flushing might have caused the shower drain to back up in December 2022. Based on the information submitted, I find no flushing was performed in the fall of 2022, and there is nothing to suggest the backup was caused by the flushing performed in August 2020, about 28 months earlier.
15. I note the strata also submitted an October 5, 2022 invoice from Ashton in connection with a leak in another strata lot. The work to fix the leak included replacing the old stack with a new one. However, there is no mention of stack flushing, and no evidence the stack replacement affected SL 13 in any way. So, I find it unproven that this work caused SL 13's shower drain backup.
16. Mr. McMillan also says the blockage occurred in a common property pipe, which means the strata is responsible to pay for the repair. In support of this assertion, they rely on the SPA's definition of common property (more on this below).
17. The strata disputes Mr. McMillan's assertion. It relies on Mandau's December 9 invoice, which records "remove water closet and clean 3" drain to stack". The strata says the 3" drains are lines within SL 13 that connect to the shower, toilet and sink at one end and to a 4" common property horizontal pipe at the other end. The strata also relies on an email Mandau sent it on January 23, 2023 in response to its questions about the backup. The email says Mandau "cleaned the drain to the

common line. If the common line would of been plugged then he would have had a back up when ever anyone ran water into his unit. It was a localized plug from his unit” (reproduced as written). The strata council wrote to Mr. McMillan 3 times following a hearing at which Mr. McMillan requested reimbursement for the plumbing expense, to explain its decision not to reimburse them for the plumbing invoice.

ANALYSIS

18. I begin with the applicable law.
19. Under SPA section 72 and the strata’s bylaw 10, the strata must repair and maintain common property. The definition of “common property” under SPA section 1 includes pipes and other facilities for the passage of water and sewage that are located within a strata lot’s boundary floor, wall, or ceiling, or that is wholly or partly within a strata lot if it can be used in connection with the enjoyment of another strata lot or the common property.
20. Mr. McMillan says Mandau told them it had to go 25 feet down into their drain to clear the blockage. Mr. McMillan says they do not think their drain is 25 feet long so the blockage must have been in a common property pipe between their floor and the garage ceiling. They also suggest since the backup was sewage, which does not typically come from a shower drain, it must have been caused by a common property pipe blockage. I do not consider it obvious that a sewage backup means the blockage was not within the strata lot’s pipes, and Mr. McMillan did not provide proof that it does. Also, Mandau’s invoice and email to the strata directly contradict Mr. McMillan’s assertions. As noted above, Mr. McMillan bears the burden of proving their claim. Here, they have not shown the blockage was in a common property pipe, and their own plumber said it was not. So, I find Mr. McMillan has not proven the strata failed to repair and maintain common property pipes, causing their shower drain to back up.

21. Mr. McMillan also points to 2 other strata lots, in which they say there were leaks that the strata paid to repair. They also say the strata lot directly above theirs recently suffered a sink backup and that the strata paid to clear the drain.
22. I find Mr. McMillan argues it was significantly unfair for the strata to pay for these other leak and backup repairs, but not to pay for theirs. The CRT has authority to make orders remedying a significantly unfair act or decision by a strata corporation under CRTA section 123(2). The legal test for significant unfairness is the same for CRT disputes and court actions (see *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113). In *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173, the court confirmed that significantly unfair actions or decisions are those that are burdensome, harsh, wrongful, lacking in probity and fair dealing, done in bad faith, unjust, or inequitable. In applying this test, the owner's objectively reasonable expectations are a relevant factor, but are not determinative.
23. The strata agrees it paid for plumbing expenses connected with the 2 other strata lots' leak repairs. The strata notes in both cases, the damage was not over the strata's \$50,000 insurance deductible, so the strata paid for plumbing expenses to fix the common property sanitary line between the 2 strata lots. The strata also says in both cases, the owners were responsible for repair costs to their own strata lots.
24. Turning to the backup in the strata lot above SL13, the strata says the common property stack was blocked and required snaking, so it was the strata's responsibility to repair the stack, which it arranged and paid for.
25. I find Mr. McMillan's expectation that the strata would reimburse their repair expense was not objectively reasonable. These other repairs resulted from blockages the strata says were in common property pipes, which Mr. McMillan does not dispute. I have already concluded Mr. McMillan's blockage was not in a common property pipe. Given the different circumstances, I find the strata did not act significantly unfairly by refusing to reimburse Mr. McMillan for their plumbing expense.

CRT FEES AND EXPENSES

26. 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 find the successful strata is entitled to reimbursement of \$25 for its CRT fees. Neither party claimed dispute-related expenses.
27. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. McMillan.

ORDER

28. I dismiss Mr. McMillan's claims.
29. Within 30 days of the date of this order, I order Mr. McMillan to pay the strata \$25 as reimbursement for its CRT fees.
30. The strata is also entitled to post-judgment interest under the *Court Order Interest Act*.
31. 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 it is filed in.

Megan Stewart, Tribunal Member