



Civil Resolution Tribunal

Date Issued: October 31, 2024

File: SC-2023-004022

Type: Strata

Civil Resolution Tribunal

Indexed as: *Chen v. The Owners, Strata Plan EPS3930*, 2024 BCCRT 1097

BETWEEN:

TINGTING CHEN

APPLICANT

AND:

The Owners, Strata Plan EPS3930

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. Tingting Chen owns a leasehold interest in strata lot 6 (unit 107) in the respondent leasehold strata corporation, The Owners, Strata Plan EPS3920 (strata). On March 9, 2023, wastewater backed up from Ms. Chen's kitchen sink while the strata's contractor was "hydroflushing" a common property wastewater pipe. Ms. Chen says

the strata is responsible for the resulting water damage. She claims \$45,146.70 for remediation, repair, and temporary accommodation expenses. Ms. Chen is represented by her spouse, Hao Hu.

2. The strata says I should dismiss the claim. It says the backup was caused by an unexpected blockage in the wastewater line in the parkade below unit 107. The strata says it was not negligent and under its bylaws, Ms. Chen is responsible for repairing her strata lot. The strata is represented by Lauren Shenkar, an articulated student assigned by its insurer.
3. As I explain below, I dismiss Ms. Chen's claim.

JURISDICTION AND PROCEDURE

4. 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)*. The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between parties that will likely continue after the CRT process has ended.
5. The CRT has discretion to decide the shearing's format, including by writing, telephone, videoconference, 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 shearing.
6. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court.

ISSUES

7. The issues in this dispute are:
 - a. Was the strata negligent in how it maintained common property pipes or responded to the backup?

b. If so, what are Ms. Chen's proven damages?

EVIDENCE AND ANALYSIS

8. As the applicant in this civil proceeding, Ms. Chen must prove her claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
9. The strata was created in 2016 and includes 214 strata lots in one tower and one mid-rise building. Ms. Chen's unit 107 is on the first floor of the mid-rise building, above a common property parkade.
10. According to a notice distributed to strata residents, the strata's plumber, Pacific West Mechanical Ltd. (Pacific), was "hydroflushing" the "kitchen sink, laundry, toilet and parkade drainage lines" throughout March 2023.
11. On March 9, 2023, Ms. Chen returned home after work and found that a substantial amount of wastewater had overflowed from her kitchen sink. As shown in Ms. Chen's texts with the building manager, wastewater started backing up again the next morning before Pacific returned to resume hydroflushing. The strata then had a restoration company attend unit 107 that afternoon.
12. It is common ground that there was a clog in a wastewater line downstream of unit 107 in the parkade, and that this clog caused the backup from Ms. Chen's kitchen sink when Pacific hydroflushed the line. The strata says Pacific retrieved a large metal plumbing snake from the sanitary line in the parkade. This is documented in a March 15, 2023 email from a person I infer is the strata's building manager, to the strata manager and others, attaching a photo of a person standing in a parkade holding what I accept is a plumbing snake. The email said the snake was likely from someone trying to clean their own line and losing the snake.
13. The strata says that Pacific said the snake was likely the cause of the clog that led to the backup in unit 107. It would have been preferable for the strata to provide a

statement from Pacific to confirm this, but as I explain below, nothing turns on the exact nature of the clog.

14. Ms. Chen submitted a March 23, 2023 report from Ronald Siu of Green Earth Plumbing and Heating Ltd. In the brief report, Ronald Siu said they were hired to “check the cause of flooding” in unit 107. The report did not describe Ronald Siu’s qualifications, such as their education, training or plumbing experience, as required by CRT rule 8.3(2). I have waived strict compliance with that rule under CRT rule 1.2(2) for two reasons. First, I find Ronald Siu is likely a plumber given the company’s name. Second, the strata does not challenge Ronald Siu’s qualifications or conclusions. So, I accept Ronald Siu’s report as expert evidence.
15. Ronald Siu said Ms. Chen’s sink backup was caused by hydroflushing which caused all the “dirt” in the pipe to be washed from the third floor into the parking lot. The “drainage was filled with the dirt,” which caused sewage to flow back into unit 107’s kitchen sink. Ronald Siu does not comment on whether the plumbing snake caused or contributed to the problem. It is not clear if they were aware that a plumbing snake was found in the pipe.
16. In any event, the evidence from both parties is consistent that Ms. Chen’s kitchen sink backed up because Pacific hydroflushed a wastewater line that was clogged in the parkade area. Whether the clog was caused by a plumbing snake, “dirt”, a combination of the two, or something else, Ms. Chen does not argue that the strata was or should have been aware of the clog before starting the hydroflushing.
17. The parties agree the wastewater line in the parkade is common property. Under section 72 of the *Strata Property Act* (SPA), the strata has a duty to repair and maintain common property. The strata’s bylaw 2(1) requires owners like Ms. Chen to repair and maintain their strata lot, except for repair and maintenance that the strata is responsible for under the bylaws. The bylaws do not make the strata responsible for anything inside a strata lot, like Ms. Chen’s damaged flooring, carpet and drywall.

18. Several decisions from the BC Supreme Court have found that a strata corporation is not an insurer. Where, like here, the bylaws do not make the strata corporation responsible for strata lot repairs, it is only liable to pay for strata lot repairs where it has been negligent (see e.g., *Kayne v. LMS 2374*, 2013 BCSC 51 and *John Campbell Law Corporation v. Owners, Strata Plan 1350*, 2001 BCSC 1342). Below, I consider whether the strata was negligent.

Was the strata negligent in how it maintained common property pipes or responded to Ms. Chen's sink backup?

19. I begin with the strata's initial response to the backup. I accept Ms. Chen's unchallenged submission that when she discovered her sink backup and told the building manager at 11 pm, she was told that the strata could not find a plumber to fix the problem at that time. It is possible that more diligent efforts to find a plumber after hours could have prevented the second backup that happened the next morning. However, I find from Ms. Chen's evidence that the sink was no longer actively backing up by the evening when hydroflushing had stopped. For that reason, I find it was not obvious that the backup was likely to recur, so I find the strata did not act unreasonably by failing to investigate the issue further until the next day. There is also no evidence that the second backup damaged anything beyond what the first backup damaged. I find the strata appropriately hired an emergency restoration contractor to mitigate the damage.

20. I turn to pipe repair and maintenance. The standard that a strata corporation must meet in performing its duty to repair and maintain common property under SPA section 72 is reasonableness, not perfection: see *Wright v. The Owners, Strata Plan #205*, 1996 CanLII 2460 (BC SC) and *Weir v. Strata Plan NW 17*, 2010 BCSC 784. So, a strata corporation will not be found negligent unless it has been unreasonable in its approach to repairing and maintaining common property.

21. In *John Campbell*, the BC Supreme Court considered a case where a common property sewer pipe became blocked by a tree root and caused sewage to flood the plaintiff's strata lot. The court concluded the strata corporation was not liable for the damage. The court found that although the strata corporation had not routinely

inspected the sewer pipes for blockage, it acted reasonably in the circumstances because the blockage could not have been anticipated.

22. Thus, the question before me is whether the strata unreasonably failed to perform plumbing maintenance or repairs. I find it did not.
23. Since August 2017, the strata has contracted with Pacific to maintain its plumbing systems. I accept that strata's unchallenged submission that Pacific is a reputable company with fully licensed plumbing technicians. The strata does not say the last time it had hydroflushing done, if ever. In a March 20, 2023 email shortly after the backup in unit 107, the strata manager noted that Pacific had been advising the strata to do the hydroflushing for "some time". However, there is no evidence before me that hydroflushing the pipes earlier would have prevented this backup. I agree with the strata that blockages in pipes can happen at any time. I also note that Ronald Siu does not say whether the strata could have anticipated a clog and resulting backup, or what, if anything, the strata could or should have done differently in terms of preventative maintenance.
24. On February 15, 2023, Pacific gave the strata a deficiency report, but it did not say anything about the need for hydroflushing. The deficiency report did say that backflow assembly testing was due, and was a City of Vancouver annual requirement. The strata scheduled this testing for March 2023, after unit 107's backup. However, I do not agree with Ms. Chen that backflow testing before the hydroflushing would have prevented this backup. First, I have no evidence about where the backflow assemblies are found within the strata's plumbing system, and no evidence that any backflow assembly failed. Second, I note the backflow assembly testing requirement falls under Vancouver's Water Works Bylaw, which defines a backflow preventer as something that prevents backflow from entering the drinking water system. The Sewer and Watercourse By-Law does not contain backflow preventer requirements. Because the backup in unit 107 was sewage or wastewater, it does not appear that the backflow assembly referred to in the deficiency report could have prevented wastewater from backing up into unit 107.

Such a conclusion would need to be supported by expert evidence, and there is none about backflow prevention here.

25. Ms. Chen says that other strata lots have had backups. She points to November 8, 2022 council meeting minutes, in which the building manager “advised of plumbing issues that have been experienced regarding backups.” However, there is no suggestion that these backups were caused by or experienced during hydroflushing. To the contrary, hydroflushing was mentioned in the minutes as a maintenance strategy the strata would employ to prevent future backups. The strata also, in its minutes, encouraged residents to use sink strainers and not to flush certain things, and reminded residents that the strata is not responsible for strata lot repairs as a result of sewage backups. I find that reminding residents of their responsibilities was part of the strata’s fulfillment of its duty to maintain the common property pipes.
26. Ms. Chen also points to a notice of a “sink clog cleanout” Pacific conducted in certain strata lots in April 2023. However, she does not explain how this shows that the strata was negligent.
27. In *John Campbell*, the court’s conclusion that the strata was not negligent rested in part on the absence of evidence that other strata corporations commonly inspected their sewer pipes for clogs where there had been no previous clogs reported. Similarly, Ms. Chen has not provided any evidence that other strata corporations inspect wastewater pipes for clogs routinely or before hydroflushing, or take other precautions that the strata here did not take. Nor is there any evidence of a history of clogs in the strata’s pipes.
28. Overall, I find the strata was not negligent in how it maintained the common property pipes. Ms. Chen has not shown that the strata reasonably ought to have anticipated the clog, nor has she shown that the backup was a result of any failure by the strata to maintain its plumbing system to a reasonable standard. For these reasons, I dismiss Ms. Chen’s claim.

CRT FEES AND EXPENSES

29. Based on the CRTA and the CRT's rules, as Ms. Chen was unsuccessful, I find she is not entitled to any reimbursement. The strata did not pay CRT fees and neither party claims dispute-related expenses.

30. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Ms. Chen.

ORDER

31. I dismiss Ms. Chen's claims and this dispute.

Micah Carmody, Tribunal Member