



Civil Resolution Tribunal

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File: ST-2021-003371

Type: Strata

Civil Resolution Tribunal

Indexed as: *Meadows v. The Owners, Strata Plan KAS 1812*, 2022 BCCRT 70

B E T W E E N :

GARRY MEADOWS and CHRISTINE MEADOWS

APPLICANTS

A N D :

The Owners, Strata Plan KAS 1812

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about water damage caused by a shower drain backup in March 2021. The applicants are Garry Meadows and Christine Meadows. They jointly own a strata lot in the respondent strata corporation, The Owners, Strata Plan KAS 1812 (strata). The Meadows say the strata negligently failed to maintain the water drain lines it is

responsible for under the *Strata Property Act* (SPA) and bylaws. They claim \$12,000 as the estimated cost to repair the damage.

2. The strata disagrees. It relies on the fact that it augured and jetted the drain lines in 2019 in accordance with a plumber's recommended maintenance schedule.
3. Garry Meadows represents the Meadows. A strata council member represents the strata.
4. For the reasons that follow, I dismiss the Meadows' 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. 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 that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.
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 questions of the parties and witnesses 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.

ISSUE

9. The issue is whether the strata negligently failed to repair and maintain the drain line it is responsible for under the SPA and bylaws.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the Meadows as applicants must prove their claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
11. I begin with the undisputed background. The Meadows own strata lot 13 in the strata. It is located directly above a ground-level parkade. The parkade is common property.
12. In March 2021, the Meadows' shower drain backed up. Photos show this flooded their strata lot's hallway. The Meadows say a plumbing contractor, the Plumbinators, augured the drain and found there was a clog about 30 feet down that caused the flooding.
13. The strata held a hearing about the Meadows' request for it to pay for the damage. The strata refused to repair damage to the strata lot, as documented in its April 15, 2021 letter to the Meadows. It is undisputed that the damage was below the strata's insurance deductible for such claims.
14. In April and early May 2021, water subsequently backed up through the Meadows' utility sink and en-suite shower. I discuss these incidents below. The Meadows claim no damages for these incidents in this dispute.

Did the strata negligently failed to repair and maintain the drain line it is responsible for under the SPA and bylaws?

15. Under SPA section 72, the strata is responsible for repairs and maintenance to common property. The strata's bylaws also say what property it is responsible for. The strata registered a complete set of bylaws in the Land Title Office in April 2001, with later amendments that I find are irrelevant. Under bylaw 1, the strata must repair and maintain common assets and common property, including certain forms of limited common property. There is no dispute that the drain lines at issue are common property that the strata must repair and maintain.
16. A strata corporation is not an insurer. Courts have said that a strata corporation, in discharging its repair and maintenance obligations, must act reasonably, and is not liable for damage unless it has been negligent. See, for example, *Kayne v. LMS 2374*, 2013 BCSC 51, *John Campbell Law Corporation v. Owners*, Strata Plan 1350, 2001 BCSC 1342, and *Basic v. Strata Plan LMS 0304*, 2011 BCCA 231. The strata may create a bylaw to be responsible for strata lot repairs, but I find it has not done so here.
17. In order to succeed in a negligence claim, the Meadows must prove 1) the strata owed them a duty of care, 2) the strata breached the standard of care, 3) the Meadows sustained a loss, and 4) the loss was caused by the strata's negligence. See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3. The standard a strata corporation must meet in performing its duty to repair and maintain common property under SPA section 72 is reasonableness: *Weir v. Strata Plan NW 17*, 2010 BCSC 784. The standard is not one of perfection. So, a strata corporation will not be found negligent unless it has been unreasonable in its approach to repairing and maintaining common property.
18. I turn to the evidence. Overall, I find it supports the strata's submission that it reasonably repaired and maintained the drain lines. In particular, the Plumbinator's May 2019 invoice shows the following. At that time, the strata paid the Plumbinator's \$3,485.58 to clean drains throughout the strata. The Plumbinator's augured and flushed the plumbing stacks from the roof. It also flushed and jetted the drains in the

parkade. The Plumbinators did not identify any serious issues and did not recommend any further work.

19. The strata says the Plumbinators recommended maintenance every 4 years. The Meadows did not dispute this submission or provide contrary evidence to show that this maintenance schedule was unreasonable. So, I find the drain lines were not overdue for maintenance.
20. The Meadows also point out that the strata subsequently paid the Plumbinators 1) in April 2021 to investigate a clog affecting the Meadows' utility sink and 2) in May 2021 to inspect the en suite shower drain. The Meadows say this set a "precedent" that the strata would pay for the claims in this dispute. I find this to be an unreasonable interpretation of the strata's actions.
21. I also find the Plumbinators' evidence about the April and May 2021 visits provides no indication that the strata was negligent. In their invoices, the Plumbinators explained that they augured the utility sink drain to remove hair clogs. To inspect the shower drain, the Plumbinators removed sections of the drain in the parkade and found it was "in perfectly good condition" and "clear of obstructions". The Plumbinators noted a possible cause of water coming up was that a previous contractor had jetted the lines. It may have jetted too close to the shower drain, causing back pressure to blow water up out of the trap into the shower. As a general rule of law, a strata corporation is not liable for the actions of its independent contractors.
22. The Plumbinators did not identify any pre-existing problems. There is no indication that the strata knew of any drain line issues or ignored any advice from the Plumbinators. So, I find the strata acted reasonably in the circumstances and was not negligent.
23. The Meadows also provided little evidence to support their claim of damages. There are no invoices or estimates for repairs or the replacement of damaged items. The Meadows say that they submitted an insurance claim. However, they did not say if their insurer covered the damage, how much the deductible was, or how much their

insurance premiums increased, if at all. So, I find the claimed damages of \$12,000 are unproven by evidence.

24. For all these reasons, I dismiss the Meadows' claims.

CRT FEES AND EXPENSES

25. 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 see no reason in this case not to follow that general rule. I dismiss the Meadows' claims for reimbursement. The strata did not pay any CRT fees or claim for any specific dispute-related expenses, so I order none.

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

ORDER

27. I dismiss the Meadows' claims and this dispute.

David Jiang, Tribunal Member