

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

JULIA TATE

PLAINTIFF

- and -

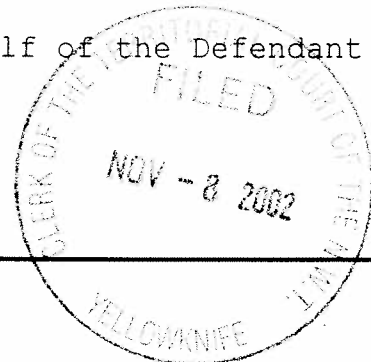
YK CONDO CORP #6

DEFENDANT

Transcript of the Reasons for Judgment delivered by The Honourable Judge R.M. Bourassa, in Yellowknife, in the Northwest Territories, on the 4th day of November, A.D. 2002.

APPEARANCES:

Mr. B. Thompson: Counsel on behalf of the Plaintiff
Ms. J. Olson: Counsel on behalf of the Defendant



1 THE COURT:

2 When it started in the 70's,
3 condo living was often touted as worry-free living,
4 but it hasn't quite lived up to its billing. One
5 can't help but think of the leaky condos in the
6 Vancouver area where tenants are faced with horrendous
7 assessments as a result of improper construction and
8 design, and all of the unit owners have to bear those
9 costs.

10 This condo corporation, which came into being I
11 think in 1990, seems to have had an unusual history of
12 loss relating to its plumbing construction. Thousands
13 of dollars were paid out by the Condominium
14 Corporation over the years as a result of one claim
15 after another, most of which had to do with the water
16 system. I'm reading from Exhibit 4: A claim in
17 January of 1999 for a frozen pipe, \$7,000 in damage -
18 I'm rounding; February 1st, 1999, a water meter break,
19 \$5,000 in damage; June 28th, fire; March 22nd, a
20 frozen water line, \$219; March 1st, an overflowed
21 toilet, \$9,000; May 25th, a sewer line break; August
22 7th, a water pipe broken in the basement and the main
23 floor, \$6,000; 1992, unspecified water damage; 1993,
24 another sewer line broken under a unit; 1994, another
25 burst pipe; 1994, another water line breaking; in
26 1997, a spilt cleaner throughout house.

27 Buying a condominium is not much different than
buying a house. One gets what one sees. Some people,

1 when they buy a house, have it inspected by a
2 qualified building inspector, and other people just
3 buy a house and move in without really being aware of
4 the situation with respect to the plumbing, the
5 heating, and the wiring. The same thing happens with
6 condominiums.

7 The plaintiff here bought her unit from the
8 defendant. I have no evidence before me that it was
9 inspected by an independent building inspector prior
10 to her moving in. In other words, whatever latent
11 defects were present, they went with the package.

12 It appears that the plumbing problem is one
13 that's common to the whole complex. Certainly from
14 the claims that have been filed, the claims have been
15 so serious and so extensive that on August 28th, 2001,
16 the Condominium Corporation's Board of Directors was
17 advised that the insurance would not be renewed past
18 September 16th, 2001, as a result of all the losses
19 that have been sustained.

20 The responsibilities and obligations for living
21 in a condominium corporation are provided for by the
22 *Condominium Act* as well as the bylaw that applies and
23 is passed with respect to every condominium and the
24 declaration that is filed at the time of
25 incorporation.

26 The consolidation of the *Condominium Act* states
27 in Section 22:

1 The corporation shall insure its
2 liability
3 (a) to repair the units and
4 common elements...

5 and then provides for making exceptions by way of
6 declaration. No such exceptions were made in any
7 declaration that have been placed before me or in
8 evidence.

9 In subsection 23(3), it states:

10 Subject to section 24, the corporation
11 shall repair the units and common
12 elements after damage.

13 Section 24 provides for a determination of damage
14 essentially to see if the cost of repair exceeds 25
15 percent, in which case certain provisions apply that
16 don't concern this case.

17 With respect to the condominium bylaws that are
18 in place for this condominium: Section 7.1 states
19 that the board, on behalf of the corporation, shall
20 obtain and maintain - I'm paraphrasing - insurance on
21 all units and on all insurable common elements and
22 insurable property, both real and personal.

23 It goes on further to say that:

24 Such policies may not be cancelled
25 or substantially modified without
26 at least thirty (30) days' prior
27 written notice to all of the
owners and of the corporation
including all registered
mortgagees of the units.

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I have nothing before me to indicate that written notice was served or given to all of the unit holders. A letter was circulated a short time after the events that bring this matter to court, and I make no determination if that is in compliance with the insurance.

The deductible that is provided for in the bylaw, it states quite clearly:

The corporation shall pay the deductible for any claims regarding any damage to common elements, or of other property of the condominium corporation, except where the loss arises by an act or omission of an owner. An owner shall pay the insurance deductible for losses claimed when the owner or occupier causes the damage.

The damage here came from a water supply pipe where a joint had separated. It appears on the evidence before me that it separated as a result of faulty construction.

In my view, there was absolutely no fault, error or omission on the part of the plaintiff. There is no way that she could have determined, short of commissioning a building inspector to examine every joint or requiring a pressure test at the time she purchased; there is no way she could determine what the status of the plumbing was, any more than the wiring or the quality of the studs used in the walls.

1 As I indicate, the damage did not arise from any
2 act of hers or any omission of hers in my view.
3 Moreover, it seems that the water leakage or breakage
4 problem is endemic to the whole condominium structure.

5 It certainly flows from the evidence that there
6 was no negligence that can be attributed to the
7 plaintiff, and while she has an obligation to
8 maintain, I have nothing before me to indicate how one
9 maintains pipes hidden in a wall. In my view, the
10 obligation to maintain does not include built-in
11 plumbing.

12 Reading the *Condominium Act*, the bylaws for the
13 corporation, and the evidence before me, the only
14 conclusion I can come to is that the corporation is
15 liable for the amount that is claimed, which is not in
16 dispute.

17 It is an unfortunate situation. Obviously, the
18 board of directors are doing what they can. The fact
19 that apparently only five of eleven have an interest
20 in participating in these very important matters
21 leaves the executive officers of the condominium
22 corporation in a difficult position. I won't say any
23 more.

24 In my view, the claim is made out on a balance of
25 probabilities. There will be an order in favour of
26 the plaintiff for the amount claimed, \$4,499.81,
27 together with costs of an entry fee of \$30.

1 Are there other costs you're claiming?

2 MR. THOMPSON: No, Your Honour.

3 THE COURT: Thank you.

4 MR. THOMPSON: Your Honour, respectfully, I
5 believe that the claim \$4,499 included the entry fee.

6 THE COURT: The what?

7 MR. THOMPSON: I believe that the damages
8 claimed included the entry fee.

9 THE COURT: Yes.

10 That's everything?

11 MR. THOMPSON: Yes. Thank you, sir.

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Certified pursuant to Rule 723 of
the Rules of Court

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Annette Wright
Annette Wright, CSR(A), RPR
Court Reporter

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