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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Mari v. Strata Plan LMS 2835,*** 2007 BCSC 740

Date: 20070530
Docket: S070120
Registry: Vancouver

Between:

Carlo Mari and Cathy Mari

Appellants

And

The Owners of Strata Plan LMS 2835

Respondent

Before: The Honourable Mr. Justice Burnyeat

Reasons for Judgment (In Chambers)

Counsel for Appellants	M.D. Carnello and J. MacDonald
Counsel for Respondent	A.M. Murray
Date and Place of Hearing:	May 11, 2007 Vancouver, B.C.

[1] Carlo and Cathy Mari appeal the decision made in Provincial Court that they pay $5,000.00 to the Strata Corporation of the condominium building where they are the owners of one of the units. On July 2, 2004, water damage totalling $9,888.86 was sustained to the building located in the City of Vancouver. It is conceded that the damage was caused by a faulty water level switch in the washer contained within the unit owned by Mr. and Ms. Mari. The Strata Corporation sought to recover $5,000.00 from Mr. and Ms. Mari. This amount was the deductible payable by the Strata Corporation relating to the damage which was caused, the balance of the water damage having been paid pursuant to the insurance policy maintained by the Strata Corporation. The Strata Corporation was successful at the June 28, 2006 Trial before Provincial Court Judge Yee.

APPLICABLE PROVISIONS OF THE ***STRATA PROPERTY ACT***, R.S.B.C. 1998, c. 43 ("***Act***")

[2] Section 149(1) of the ***Act*** requires the Strata Corporation to obtain and maintain property insurance on: "(a) common property, (b) common assets, (c) buildings shown on the strata plan, and (d) fixtures built or installed on a strata lot, if the fixtures are built or installed by the owner developer as part of the original construction on the strata lot." Section 258 of the ***Act*** provide:

> (1) Subject to the regulations, the payment of an insurance deductible in respect of a claim on the strata corporation's insurance is a common expense to be contributed to by means of strata fees calculated in accordance with section 99(2) or 100(1).
>
> (2) Subsection (1) does not limit the capacity of the strata corporation to sue an owner in order to recover the deductible portion of an insurance claim if the owner is responsible for the loss or damage that gave rise to the claim.

REASONS FOR JUDGMENT OF THE HONOURABLE JUDGE W.F.W. YEE

[3] The only question which was before Judge Yee was the interpretation of the word "responsible" used in s. 158(2) of the Act. After making reference to the definition in Black's Law Dictionary which defined "responsible" as: "Liable; legally accountable or answerable. Able to pay a sum for which he is or may become liable or to discharge an obligation which he may be under." and after referring to the judgment of Tysoe J. in ***Beazer East Inc. v. B.C. (Assistant Regional Waste Manager) et al*** (2000), 84 B.C.L.R. (3d) 88 (B.C.S.C.), His Honour described the submissions made on behalf of the parties as follows:

> (13) Counsel for the strata corporation insists that the word be interpreted in its ordinary grammatical sense. On the other hand, counsel for the strata owner maintains that the word requires a finding of fault and since the water leakage was caused by the broken level switch in the washer, section 158(2) of the *Act* and the bylaw are not applicable.

[4] His Honour Judge Yee then concluded:

> As I see it, the meaning of the word "responsible" as defined in Black's Law Dictionary as "legally accountable or answerable" only refers to a conclusion or determination with no consideration to either the type of action or non-action or the degree of fault involved. This can best be illustrated with a hypothetical situation where a driver of a brand new vehicle caused damage to another vehicle parked on the side of the road as a result of the driver losing control of his vehicle which slid into the parked vehicle due to the sudden failure of the steering mechanism. Assuming that the driver had no knowledge of the steering failure or reasonable basis to suspect the existence of this mechanical problem, it would be most unlikely that he can be charged for causing the accident. However, despite that, there is no question that the driver would be held responsible or legally accountable for damages to the other vehicle. While the driver would likely not be at fault under the *Motor Vehicle Act* or the *Criminal Code* for causing the

> accident, the repair costs to the other vehicle will come from the driver's insurance.
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> The meaning of the word "responsibility" given by Tysoe J. in the *Beazer* case (supra) defines clearly the legal basis for the conclusion in the hypothetical situation. In the circumstances of this case, the defendants were clearly the people who allowed or "caused" the washer to be used. While they did not know that the water level switch was broken, the leakage would not have occurred had they not let Ms. Norlyn Rigor stay in the unit and use the washer. In addition, the resulting damage could have been a lot more serious if the owner downstairs did not alert Ms. Rigor to the problem. Pursuant to by-law 124 governing this condominium building, the Maris are obliged to pay for the costs of the insurance deductible.
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> Finally, it is noted that Section 149 of the *Act* requires the strata corporation to obtain and maintain property insurance for the common property and assets. Obviously this would mean that the appliances, furniture and personal belongings of the individual strata owners will not be covered under the insurance of the strata corporation and that the individual owners will and should all have to purchase their own insurance. Given the requirements of the bylaw in this case, it would be very simple for the individual owners to have the amount of deductible covered in the third party liability coverage along with their insurance covering the contents.
>
> Decision
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> On the basis of the above analysis, I am satisfied by bylaw 124 of the Strata Plan General Index governing the strata corporation in this case is consistent with the provisions of the *Strata Property Act*. I further find that the defendants were responsible as defined under section 128(2) of the *Act* for the water damage that gave rise to the insurance claim of the strata corporation. Consequently, I make a payment order in the amount of $5,000.00, together with costs, against the defendants in favour of the strata corporation.
> (at paras. 15-18)

CASE AUTHORITIES AND DISCUSSION

[5] In order to allow the appeal, I must find that His Honour made an error in principle or that his decision was clearly wrong. I can find neither.

[6] In ***Beazer***, *supra*, Tysoe J. dealt with a judicial review of the decision of the Environmental Appeal Board which upheld the decision of the Assistant Regional Waste Manager to name Beazer East, Inc. ("Beazer") as "the responsible" person under the ***Environment Management Act***, R.S.B.C. 1996, c. 118, on the basis that Beazer was a previous owner and operator under s. 26.5(1)(b) of the ***Act***. That ***Act*** defined an "operator" to mean: "... a person who is or was in control of or responsible for any operations located at a contaminated site ...." Tysoe J. concluded that Beazer was an operator within that definition. Tysoe J. referred to the definition of "responsible" in Black's Law Dictionary, 6th Ed., 1992, defining it as "legally accountable or answerable" and the definition of responsible as contained in the concise Oxford Dictionary being "liable to be called to account (to a person or a thing); being the primary cause". In concluding that Beazer was liable, Tysoe J. stated:

> In general terms, it is my view that the intention of the Legislature was to include persons who made decisions or had the authority to make decisions with respect to any operation on the site. These are the persons who are potentially culpable because they were the ones who made or could have made decisions in relation to operations on the site, which may have included operations that caused or contributed to the contamination. A person who makes the decisions with respect to an operation is "in control" of the operation and a person who has the authority to make the decisions with respect to an operation is "responsible" for the operation. In my opinion, a person who is responsible for an operation is one who is accountable for the operation but the accountability is not necessarily legally enforceable.
>
> I also believe in using the word "responsible", the Legislature intended to include persons who brought about an operation in the sense of causing the operation to be carried on or carried out. Such a person would be responsible for the operation because, but for the actions or decision of that person, the operation would not have been carried on or carried out. This is consistent with the second definition of

> the word "responsibility" which I quoted above from the Concise Oxford Dictionary (namely, "being the primary cause"). (at paras. 110-1)

[7] Mr. and Ms. Mari submit that the phrase "responsible for the loss or damage" refers to a finding of negligence and is not a phrase which establishes strict liability. Mr. and Ms. Mari point out the fact that s. 158(2) of the ***Act*** does not contain a reference to "control" as was the case in ***Beazer***. In this regard, Mr. and Ms. Mari rely upon the decision in ***Reilly v. Freedom Gardens Condominium Assn.***, [2001] A.J. (Q.L.) No. 1703 (Alta.Q.B.) where Lee J. dealt with a ruptured water line supplying a toilet tank which caused flooding confined to the particular unit with no water escaping into any of the adjacent units. The Learned Provincial Court Judge had found that the water supply line rupture was a result of a pet dog chewing on the line. Lee J. allowed the appeal and held that negligence on the part of the owner had not been proven and that the loss was entirely an accident so that the Condominium Association had to pay the deductible with the balance to be claimed from the insurance company.

[8] In accepting the submissions of the Strata Corporation that the decision in ***Reilly***, *supra*, was distinguishable, Judge Yee noted that the Alberta legislation did not contain any provisions similar to s. 158(2) of the Act, that s. 158(2) permits a strata corporation to impose liability on the strata owners who were responsible for the loss or damage without a finding of negligence, and that the bylaw of the Condominium Association in ***Reilly*** established a liability scheme for repayment of the deductible on the basis that the Association could look to the owner if "... the cause of the loss for which the claim is made is due to an act or omission of an

Owner, occupier or tenant of an Owner or member of their families or of guests, invitees or licensees of such Owner ....". I agree with the interpretation of His Honour. The Alberta legislation and, therefore, the decision in ***Reilly***, *supra*, requires a finding of negligence by virtue of the use of the phrase "act or omission". Because that is the case, the decision in ***Reilly***, *supra*, is distinguishable.

[9] In ***Stevens v. Simcoe Condominium Corp. No. 60***, [1998] O.J. (Q.L.) No. 5843 (O.C.J. – G.D.), where the motions court judge had found that the condominium could not recover a $1,000.00 deductible from Mr. and Ms. Stevens. By endorsement, the Divisional Court allowed the appeal so that the condominium corporation was entitled to recover the deductible amount of $1,000.00. In that case, there was a specific rule adopted as a bylaw with respect to air conditioners which provided:

> "Any damage resultant from the installation or use of an air conditioner will be the liability of the unit owner or occupant, whether damage is limited to the owners', occupant's "unit or effects other units in the complex."

[10] In allowing the appeal, the Court stated:

> Finally, we would observe that from a policy point of view, we would reject the analysis of the motions court judge which has the effect of imposing a particular regime upon all condominiums. A significant feature of that scheme is the imposition of shared liability by the owners for all deductibles as the condominium corporation itself can only satisfy a liability imposed upon it by requiring the owners to contribute to the common expenses. The forced sharing of the deductible deprives the owners as a group of the disciplining effect a deductible has upon claims. While the effect of the result we reach is to open the possibility that claims will be made as between owners for the deductible, a condominium may avoid that result if it wishes to do so by making appropriate provision in its declaration, bylaws or rules. It

> seems to us preferable to leave the question of liability for deductible to be determined in this way so that condominium owners are able to design a scheme appropriate to their particular needs.
>
> In the present case, the Motion's Court Judge made a finding that the damages in question were caused by the applicants' air conditioner. That finding, combined with the air conditioner rule referred to above, is sufficient to constitute a finding of liability against the applicants for the deductible. (at paras. 9 and 10)

[11] The rationale set out in ***Stevens***, *supra*, is mirrored in the British Columbia legislation. It would be unfair to impose liability on all owners for what would ordinarily be insured by an owner of a particular unit if that owner owned the unit as a single family dwelling. The forced sharing of deductible deprives all owners as a group of imposing discipline on a particular owner and also allows the Strata Corporation to sue an owner to recover the deductible portion in order that all of the owners do not have to bear that cost. That rationale is reflected in the decision of Judge Yee and I can not find that Judge Yee made an error in principle or that his decision was clearly wrong in that regard. In fact, I find His Honour correct in arriving at the decision he did.

[12] I am satisfied that the legislation is clear and that no finding of negligence is required. The Legislature used the term "responsible for" in s. 158(2) rather than terms such as "legally liable, liable, negligent". The choice of the term "responsible" provides the owners with the opportunity to allocate to a particular owner the cost of an insurance deductible in cases where an owner was thought to be responsible for a loss. The presence of washing machines, dishwashers, air conditioners, and water dispensing refrigerators are examples of items that pose a risk for water escape. Unless there is a mechanism to direct the payment of the deductible by an

owner who keeps or installs an appliance that has the potential for water escape, owners are free to act without the consequence that affects homeowners in single family homes where the homeowner's insurance will repair the damage but the homeowner will be responsible for the amount of the deductible. The owner will be responsible for the deductible notwithstanding that the owner was not negligent. Section 158(2) simply allows the Strata Corporation to set the same standard for the payment of a deductible as would exist in a single family residence.

DECISION

[13] I dismiss the Appeal from the December 7, 2006 decision of the His Honour Judge Yee. I declare that The Owners of Strata Plan LMS 2835 are entitled to receive the sum of $5,000.00 in accordance with s. 158(2) of the Strata Property Act. The payment of the sum of $5,186.00 set out in the Payment Order dated December 7, 2006 will be paid to the Strata Corporation and the Strata Corporation will be entitled to its costs on a scale "B" basis against the Appellants, Carlo Mari and Cathy Mari.

"The Honourable Mr. Justice Burnyeat"

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