

Citation: Hallport v. Strata Plan NW 2471 ☼
2014 BCPC 0299

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Registry: Richmond

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
(Small Claims)

BETWEEN:

JOHN HALLPORT AND SHIRLEY HALLPORT

CLAIMANT

AND:

THE OWNERS, STRATA PLAN NW2471 AND LYN CO.

DEFENDANTS

**REASONS FOR JUDGMENT
OF HIS WORSHIP DONALD YULE**

Appearing on their own behalf:	J. & S. Hallport
Appearing for the Defendants:	Elizabeth Viana, Noemi Isidro, Alfeo Canave, Lyn Co
Place of Hearing:	Richmond, B.C.
Date of Hearing:	May 30, 2014
Date of Judgment:	June 16, 2014

INTRODUCTION

[1] The Claimants are owners of Unit 10 in a strata development located at 10980 No.2 Road, Richmond, B.C. In November 2013 they noticed excessive heat and condensation inside their Unit. Investigation revealed that the cause was a broken water pipe connecting their hot water tank with the internal hot water lines in their unit. Their hot water tank and furnace were located in a shed physically attached to their unit. The broken water pipe was located beneath a concrete slab. The Claimants had the water pipe replaced by Hillcrest Plumbing and Heating Ltd. in early December 2013 at a total cost of \$1,909.11. They sought reimbursement of this amount from the Defendants but the strata council declined to provide reimbursement. This lawsuit seeks to compel reimbursement. The parties disagree as to which of them has the responsibility to maintain and repair this broken water pipe.

[2] The Notice of Claim and Reply include Lyn Co as a Defendant. Ms. Co was at all material times a member of the strata council. Her name is not included in the style of cause of the Trial Statement of either party. There is no filed Notice of Discontinuance of the claim against her. On the evidence at the hearing, there was nothing to indicate personal liability on the part of Ms. Co. Accordingly the action against her is dismissed. Hereafter the reference to the Defendant refers to the strata corporation.

[3] This strata development is approximately 25 years old. In recent years six other unit owners have experienced a similar failure of the water delivery system between their sheds and individual units. These prior failures involved Units 3, 4, 6, 8, 13 and 15. The first failure occurred in 2009; three of the failures occurred in 2013. In

connection with these failures the issue arose as to whether the responsibility for repair fell on the individual unit owner or the strata corporation. Council's view was that the responsibility was on the individual unit owner and these six unit owners have paid between \$250 and \$3,000 to effect repairs.

[4] The Claimants' view was that the shed and broken pipe were on limited common property and the obligation to maintain and repair common property under the *Strata Property Act* (the "*Act*") lay with the strata corporation. The Hallports reported the failure to their own insurer, Dominion, whose adjuster declined the claim on the basis that "The pipe under the concrete slab is common property and under the *Act* you should discuss the plumbing costs to repair the pipe with your strata directly."

[5] The Hallports subsequently retained a lawyer who by registered letter dated February 24, 2014 addressed to the strata corporation cited the repair obligations in section 72 of the *Act* and the definition of "common property" in the *Act* and concluded that "the Strata Corporation is responsible for the repair of the broken pipe and for payment of the Hillcrest invoice."

[6] The strata corporation also reported the pipe failure to its insurer. By email dated December 18, 2013 Mr. Duchaine, VP Claims, Real Estate Division, BFL Canada Insurance Services Inc. advised that the strata corporation's policy excluded loss or damage due to wear and tear or gradual deterioration. The policy would cover resultant damage by water subject to a \$5,000 deductible. In this case there was no interior water damage to the Hallport's unit. The "loss" was the cost to replace the broken pipe.

Mr. Duchaine also quoted excerpts from s.72 of the *Act* and the definition of “common property” without expressing any further opinion regarding responsibility for repairs.

[7] The issue of reimbursing the Hallports was considered at a strata council meeting on March 22, 2014 at which 80% of unit owners were present. They voted unanimously against reimbursement. The Hallports did not attend the meeting. The Minutes record two reasons expressed for voting against reimbursement. One reason was fairness to prior unit owners who had not been reimbursed for a similar repair and the second reason was a desire to maintain the current level of strata fees. A document entitled “Certification” forming part of the Defendant’s Trial Statement, expressed to be issued “to update the property appraisal for insurance purposes”, further recites that the prior failures of the waterline connecting hot water tanks to individual units had failed due to ordinary wear and tear and the strata council had declined to pay the cost of prior repairs because the pipe was not common property “as it is located within the unit’s premises as per strata plan and that the pipe is only serving the individual unit and not shared.”

[8] The unchallenged evidence from the Defendant is that there is nothing in the Bylaws of the strata corporation that addresses the subject matter of responsibility for maintenance and repair of a water pipe in this location.

[9] The parties are agreed that the shed containing the Claimants’ hot water tank and furnace is limited common property. The shed is physically attached to the Claimants’ unit but does not form part of the Claimants’ unit. On the shed side of the unit there is also a concrete patio and beyond the shed and the patio there is a wooden

deck leading up to a fence. The whole area from the exterior side of the unit up to the fence is limited common property. The area is also fenced on both sides and its use is for the benefit of the Claimants only.

[10] The pipe that failed connected the Claimants' hot water tank to the piping in the interior of the Claimants' unit. It did not connect to water piping to any other unit.

Discussion and Analysis

[11] The starting point for the analysis is s.72 (1) of the *Act* which provides as follows:

"72(1) Subject to subsection (2), the strata corporation must repair and maintain common property and common assets."

[12] Section 1 (1) of the *Act* defines "common property" to mean as follows:

"(a) that part of the land and buildings shown on a strata plan that is not part of a strata lot, and

(b) pipes, wires, cables, chutes, ducts and other facilities for the passage or provision of water, sewage, drainage, gas, oil, electricity, telephone, radio, television, garbage, heating and cooling systems, or other similar services, if they are located

(i) within a floor, wall or ceiling that forms a boundary

(A) between a strata lot and another strata lot,

(B) between a strata lot and the common property, or

(C) between a strata lot or common property and another parcel of land, or

(ii) wholly or partially within a strata lot, if they are capable of being and intended to be used in connection with the enjoyment of another strata lot or the common property;"

[13] The shed itself is potentially common property under subsection (a) in that it is a building presumably shown on a strata plan that is not part of a strata lot. In this case

however, it is not the shed itself that has required repair but rather the water pipe running from beneath the shed.

[14] Pipes, including water pipes, may be a common property under subsection (b) if they are located (1) within a floor, wall or ceiling that forms a boundary as further described or (2) if they are wholly or partially within a strata lot, if capable of being and intended to be used in conjunction with the enjoyment of another strata lot or the common property. In this case the failed water pipe extends to within strata lot 10, and so is partially within a strata lot, but it is not used in conjunction with the enjoyment of another strata lot or the common property.

[15] The foregoing analysis suggests that the failed water pipe is not “common property” as defined. The parties have agreed that the shed is on land that is limited common property. The *Act* defines “limited common property” in section (1) to mean “common property designated for the exclusive use of the owners of one or more than one strata lots.”

[16] Section 119 of the *Act* requires the strata corporation to have bylaws. Section 120 of the *Act* provides that “the bylaws of the strata corporation are the Standard Bylaws except to the extent that different bylaws are filed in the Land Title Office.” A Schedule of Standard Bylaws is annexed to the *Act*. Section 2 addresses repair and maintenance of property by owner. Section 2 (2) provides that:

“an owner who has the use of limited common property must repair and maintain it, except for repair and maintenance that is the responsibility of the strata corporation under these bylaws.”

[17] Section 8 of the Standard Bylaws addresses repair and maintenance of property by the strata corporation. It provides as follows:

“8 The strata corporation must repair and maintain all of the following:

- (a) common assets of the strata corporation
- (b) common property that has not been designated as limited common property;
- (c) limited common property, but the duty to repair and maintain it is restricted to
 - (i) repair and maintenance that in the ordinary course of events occurs less often than once a year...”

[18] Based on the evidence, the failed water pipe is limited common property. The obligation to maintain and repair it is on the claimants as the owners of unit 10 except for maintenance and repair that ordinarily occurs less often than once a year. The evidence is that this development is approximately 25 years old. Similar water piping to several other units has failed in the last few years. The agreed cause has been wear and tear and gradual deterioration. Clearly inspection, maintenance, or replacement of this water pipe is not something that would occur annually in the ordinary course of events. Accordingly my conclusion is that the obligation to maintain and repair this water pipe does fall upon the strata corporation. My understanding of the scheme of the Standard Bylaws for repair and maintenance of limited common property is that the unit owner with entitlement to use of the limited common property is responsible for repair and maintenance of things that need to be checked annually but the strata corporation is responsible for repair and maintenance of items with a longer life expectancy. If the strata council does not agree with this statutorily imposed division of responsibility, I note that section 72 (2) (a) of the Act provides that:

"72 (2) The strata corporation may, by bylaw, make an owner responsible for the repair and maintenance of limited common property that the owner has a right to use..."

CONCLUSION

[19] I conclude that the strata corporation had the responsibility under the Standard Bylaws to repair the broken water pipe that was limited common property in these circumstances. Accordingly the Claimants are entitled to judgment against the Defendant for \$1,909.11. The Claimants are entitled to Court Order Interest on that sum from December 3, 2013 to the date of judgment. I decline to make any award for costs. The issue was a matter of principle, in an area where there is not a lot of guidance, and the parties had received conflicting information from others.

[20] The strata council will have to decide whether now to honour the claims of other unit owners, assuming those claims are re-advanced and are the same in all material aspects as the claim of the Hallports.

[21] Judgment accordingly.

Justice of the Peace,
Donald W. Yule, Q.C.