Citation: ☼ Menzies v. Owners, Strata Plan NW2924 2014 BCPC 0216

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File No: C015305
Registry: New Westminster

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

BETWEEN:

ELIZABETH R.V. MENZIES

CLAIMANT

AND:

OWNERS, STRATA PLAN NW2924

DEFENDANTS

REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE T.S. WOODS

Appearing in person:	E.R.V. Menzies
Appearing for the Defendants:	S.M. Smith & H. Dimh
Place of Hearing:	New Westminster, B.C.
Date of Hearing:	August 19, 2014
Date of Judgment:	September 25, 2014

INTRODUCTION

[1] The claimant in this proceeding, Elizabeth R.V. Menzies ("Ms. Menzies"), owns and resides at #107 – 1210 Quayside Drive, New Westminster, B.C., a unit in a condominium complex to which I shall refer as the "Tiffany Shores Complex".

[2] A strata council administers the business of the Tiffany Shores Complex on behalf of all of its owners. Those owners constitute, at law, a strata corporation under the ***Strata Property Act***, S.B.C. 1998, c. 43 and they are legally styled the "Owners, Strata Plan NW2924". I shall refer to them, collectively, as the "Owners".

[3] Ms. Menzies has brought action against the Owners as defendants in this proceeding. She alleges that they have caused her to suffer losses and damages in connection with a project entailing building envelope and balcony repairs and window replacement work (collectively, the "Building Envelope Project") at the Tiffany Shores Complex, which the Owners authorised and, through contractors, carried out, commencing in August of 2008.

[4] In broad outline, Ms. Menzies' Notice of Claim asserts that various forms of damage to the interior walls and ceilings of her unit appeared concurrently with, and (implicitly) are causally linked to, the carrying out of the Building Envelope Project. She alleges that that damage took the form of, among other things, "stress cracks, crushed drywall, compression between sheets of drywall and bowing and bulging of walls". In equally broad outline, the Owners defend Ms. Menzies' claim saying, among other things, that if any of the problems and damage to which she refers in her Notice of Claim exist (which they deny), "… they are the result of normal settling and not the

result of problems or defects with the structure of the building or resulting from the building envelope repairs undertaken by the Defendant". The Owners also take the position that "[t]o the extent that [Ms. Menzies'] strata lot suffered damage as a result of the building envelope repairs, any such damage has been repaired."

[5] Both Ms. Menzies' claims, and the Owners' defences, entail other aspects and dimensions but what I have referred to above are the core elements of their pleadings.

[6] This proceeding has come before me by way of a preliminary application, brought by the Owners, seeking dismissal before trial of Ms. Menzies' claim on jurisdictional grounds. The Owners contend that she "… is seeking an order which can only be made by the Supreme Court of British Columbia" because it is "… in pith and substance, a challenge to the decisions and actions of [the Owners] in refusing to investigate and repair the alleged structural deficiencies". They also argue that what Ms. Menzies is, in fact, seeking is "an order that [the Owners] comply with [their] duties under the ***Strata Property Act*** ... and bylaws and investigate and repair the alleged deficiencies", submitting that "claims of this nature are solely within the jurisdiction of the British Columbia Supreme Court".

[7] For the reasons that follow, I have reached the conclusion that the Owners' application for dismissal of Ms. Menzies' claims on jurisdictional grounds must fail.

CHARACTERISATION OF MS. MENZIES' CLAIM AND THE APPLICABLE STANDARD OF PLEADING

[8] The characterisation of Ms. Menzies' claim lies at the centre of the Owners' jurisdictional defence to it. As I have noted, the Owners say that:

(a) her claim constitutes an attack against their decision-making (a governance issue); and

(b) the relief she seeks is, in essence, an order compelling compliance by the Owners with legislative and bylaw-derived duties that bind them.

[9] If this were so, then the Owners' application may have some merit. But fairly and generously interpreted, Ms. Menzies' claim does not conform to the characterisation that the Owners have given to it. Rather—while not expertly pleaded—Ms. Menzies' Notice of Claim asserts a claim for negligence.

[10] Getting the characterisation of the claimant's cause of action right is an important threshold step in the analysis of this court's jurisdictional competence that I must carry out in order to rule on the Owners' application. As Yule J. P. expressed the point in ***Armakowski v. Strata Corp. Strata Plan 2151***, 2011 BCPC 271:

> "In order to decide properly the jurisdictional issue, it is necessary to consider the proper characterization of the Claimant's claim. This necessitates some review of the underlying allegations, without in any way addressing the merits of the Claimant's allegations or the Defendant's response" (at para. 4)

[11] Ms. Menzies has brought her action as a lay litigant and, as such, her originating process (that is, her Notice of Claim) must be treated liberally, particularly in relation to characterising the cause or causes of action she has raised. In this regard I respectfully adopt the reasoning of Green J.A. (Mahoney and Marshall, JJ.A., concurring) in ***Popular Shoe Store Ltd. v. Simoni*** (1998) 24 C.P.C. (4th) 10 (Nfld. S.C. – A.D.) who stated, at paras. 24-25, the following:

> "Particularly in Small Claims Court, where claimants, as here, are often unrepresented, a liberal approach ought to be taken to the pleadings that are presented so as to ensure that access to proper adjudication of claims is not prevented on a technicality. Even in superior court, the basic rule of pleading is that a party must plead material facts and is not required, as a condition of relief, to be correct in fitting those facts, as a matter of pleading, into a particular legal pigeon-hole. This is particularly appropriate for litigation in the Small Claims Court where technicalities are to be avoided and unrepresented parties (as Popular and Mrs. Claeys were in this case) are required to express their claims in their own words. If a claimant by his or her pleading or evidence states facts which, if accepted by the trier of fact, constitute a cause of action known to the law, the claimant should prima facie be entitled to the remedy claimed if that is appropriate to vindicate that cause of action. The only limitation would be the obvious one that if the case takes a turn completely different from that disclosed or inferentially referenced in the Statement of Claim, thereby causing prejudice to the other side in being able properly to prepare for or respond thereto, the court may either decline to give relief or allow further time to the other side to make a proper response.
>
> A Small Claims Court judge has a duty, on being presented with facts that fall broadly within the umbrella of the circumstances described in the Statement of Claim, to determine whether those facts constitute a cause of action known to the law, regardless of whether it can be said that the claimant, as a matter of pleading, has asserted that or any other particular cause of action. Subject to considerations of fairness and surprise to the other side, if a cause of action has been established, the appropriate remedy, within the subject-matter jurisdiction of the court, ought to be granted."

[12] In the present case, Ms. Menzies cannot and should not be held in this court to the standard of pleading to which a litigant represented by counsel here or before the Supreme Court of British Columbia would ordinarily be held. Other similarly situated lay litigants have not been held to such a standard: see, for example, ***Rosic v. Mayer***, [2005] O.J. No. 3529 at paras. 7*ff* (S.C.J.), ***Oasis Motor Home Rentals v. Thomas***, [2001] N.S.J. No. 112 (S.C.), ***Arndt v. Vancouver International Primary and Secondary School Society (coba Greybrook Academy)***, [2014] B.C.J. No. 1100 at paras. 21-22 and 36 (Prov. Ct.), ***Fudge v. Strata Plan NW 2636***, [2012] B.C.J. No.

2358 at paras. 4-6 (Prov. Ct.) and ***High Country Outfitters Inc. v. Pitt Meadows (City)***, [2012] 71 C.E.L.R. (3d) 190 at paras. 12*ff* (B.C. Prov. Ct.).

[13] It is true that one does not find the word "negligence" anywhere in Ms. Menzies' Notice of Claim. But the inquiry does not end there. In substance her pleading portrays her as someone who suffered losses as the result of the actions of others whose performance did not meet a standard of reasonableness. She refers to various "deficiencies" in the performance of the Building Envelope Project manifesting themselves in "damage" within her unit and she links the manifestation of that damage temporally and causally to the project. She refers to an expert she has retained having "suggested that the damage [to exterior and interior walls] may be the result of the building reconstruction". And Ms. Menzies alleges that the manner of execution of the Building Envelope Project has led to the loss of "the use and enjoyment of [her] home for an extended period" and also to her having had to incur "the costs of repair," "engineering [costs]" and "significant costs associated with offsite storage"

[14] I need not go on. One can see in her layperson's pleading intimations of proximity, a duty to take care, a failure to perform up to a reasonable standard and compensable losses allegedly resulting from that failure. These kinds of assertions can be taken to have conveyed to the Owners (when the Notice of Claim was served upon them) that Ms. Menzies seeks redress for losses she says she has suffered owing to the allegedly negligent manner in which building envelope repairs were carried out at the Tiffany Shores Complex.

[15] Moreover, that the Owners understood that they were defending a claim which sounds in negligence (and possibly in other causes of action) is left in no doubt by the way their Reply is framed, including the cross-assertion that the losses Ms. Menzies complains of were "not the result of the building envelope repairs undertaken by the Defendant". In short, this case is being pursued, and defended, as a negligence action.

[16] I recognise that Ms. Menzies does refer in her Notice of Claim—which reads in some ways as a chronological narrative outlining what she has found to be a frustrating experience—to her efforts to have the Owners, through their strata council, investigate and act upon her complaints and their alleged unreasonable refusal to do so. But these references do not constitute the core content of her claim, any more than does the Owners' alleged inattentiveness emerge as a primary cause of the losses she says she has suffered.

[17] Read fairly, Ms. Menzies' Notice of Claim presents a claim for negligence, supplemented by content that refers to what could be seen as aggravating factors associated with the alleged failure of the Owners to take steps in a timely way to limit the harmful effects of what she portrays as an ineptly executed Building Envelope Project. These latter-mentioned elements of her pleading are plainly secondary in nature. The present case is thus distinguishable from ***Grantham v. Owners, Strata Plan VIS 4116***, 2013 BCPC 0146 where the claimant and the Owners had different views regarding the duties of the Owners to intervene when a mould problem was found to exist in the crawl space of the condominium complex at issue there. The claimant's action in ***Grantham*** was founded principally on the alleged failure of the defendant owners to act to remedy the mould problem despite what the claimant argued was a

mandatory requirement that they do so cast upon them by the complex's governing bylaws. Ms. Grantham's claim did have a debt dimension, as well, but as MacCarthy P.C.J. stated, that dimension was secondary to the "governance issue" that was at the centre of controversy in that case: see paras. 83-87. Here, Ms. Menzies' references to questionable decision-making are plainly secondary to the mainspring of her claim which is her assertion that the Owners, through contractors, carried out the Building Envelope Project in a negligent fashion and thereby caused damage to her unit.

DISPOSITION

[18] Having reached the conclusion I have on the threshold question of characterisation of Ms. Menzies' cause of action as being in negligence, there is no need for me to undertake a detailed review of the many authorities placed before me that deal with those governance-based causes of action that, under the terms of certain sections of the ***Strata Property Act***, *do* fall within the exclusive jurisdiction of the Supreme Court of British Columbia to decide. As did Chen P.C.J. in ***Valana v. Law et al.***, 2005 BCPC 0587, I have concluded that the present action:

> "… is not an action seeking relief from a significantly unfair decision or action by the strata corporation. It is simply an action in negligence alleging a breach of a duty of care."

[19] For all of the foregoing reasons, the Owners' application to have Ms. Menzies' action against them dismissed for want of jurisdiction is denied.

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Thomas S. Woods, P.C.J.