Citation: ☼ Strata Corporation LMS 2723 v. Morrison 2012 BCPC 0300

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Registry: Sechelt

# IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

BETWEEN:

**STRATA CORPORATION LMS 2723**

CLAIMANT

AND:

**ANN SHARON MORRISON**

DEFENDANT

## EXCERPTS FROM PROCEEDINGS
## REASONS FOR JUDGMENT
## OF THE
## HONOURABLE JUDGE S. MERRICK

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|---|---|
| Appearing for the Claimant: | H. Drost |
| Counsel for the Defendant, appearing by teleconference: | T. Johannsen |
| Place of Hearing: | Sechelt, B.C. |
| Date of Judgment: | July 17, 2012 |

[1] THE COURT: Ann Sharon Morrison is the owner of a strata unit at 291 Periwinkle Lane in Sechelt. Ms. Morrison rented her suite to a tenant.

[2] On December 19, 2009, Ms. Morrison's tenant caused a fire by leaving a lit candle unattended. The fire caused damage to Ms. Morrison's suite and damage to common property. The Strata Corporation recovered from its insurer for the damage to the common property, except to the extent of the $2,500 deductible.

[3] The sole issue for determination is whether s. 158 of the *Strata Property Act*, [SBC 1998] Chapter 43, entitles a strata corporation to sue a strata owner to recover its insurance deductible for damage caused to common property where the damage to common property has been caused solely by the actions of the owner's tenant.

[4] Section 158(2) of the *Strata Property Act* reads as follows:

> 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.

[5] This case is to be decided upon whether Ms. Morrison is "responsible for" the damage which she did not cause.

[6] In two decisions Justice Burnyeat defined "responsible for". I am of the view that those decisions are binding upon me. See *Mari v. Strata Plan LMS 2835*, [2007] B.C.J. No. 1150, and *Wawanesa Mutual Insurance Company v. Keiran*, 2007 BCSC 727.

[7] Justice Burnyeat was clear that the Strata Corporation is not required to prove that an owner was negligent in order to rely on the provisions of s. 158(2). In determining that "responsible for" is to be interpreted broadly, Justice Burnyeat noted:

> 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.

He continued:

> 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.

See *Mari v. Strata Plan LMS 2835*, paras. 11 and 12.

[8] In *Wawanesa Mutual Insurance Company v. Keiran*, Justice Burnyeat noted in para. 12.

> It is clear that being responsible is not the same as being negligent: ... *Black's Law Dictionary* defines "responsible" as "liable; legally accountable or answerable". *The New Oxford Dictionary of English* defines "responsible" as "having an obligation to do something or having control over or care for someone", "answerable ... for one's actions", "morally accountable for one's behaviour". Owners of a strata unit are "responsible" for what occurs within their unit. If this was a single family dwelling and damage occurred within the dwelling, the owners of the dwelling would look to their own insurance for coverage but would be responsible for covering the cost of deductible under that insurance. The situation is no different when the dwelling is within a Strata Plan. Section 158(2) merely allows a Strata Corporation to look to an owner to recover the deductible portion of an insurance claim rather than having the claim generally assessable against all members of the Strata Corporation.

> ... [T]he term "responsible [for]" provide[s] the Strata Corporation with the option of allocating to a particular owner the cost of repairing damage which was not covered by the insurance policy which the Strata Corporation is obligated to maintain under s. 149(1) of the *[Strata Property] Act*.

See *Wawanesa Mutual v. Keiran*, para. 14.

[9] In my view, Justice Burnyeat determined that "responsible for" should be interpreted broadly because, one, owners of a strata unit are responsible for what occurs within their unit, and, two, unless there is a mechanism to direct the payment of the deductible by an owner, an owner is free to act without consequence that affects homeowners in a single family home, where the homeowner's insurance will repair the damage but the homeowner will be responsible for the amount of the deductible.

[10] Applying those principles to this case, like the presence of washing machines, dishwashers, air conditioners, and water dispensing refrigerators, tenants pose a risk. While I appreciate that Ms. Morrison had no control over the candle, the owner is responsible for what occurs within their unit. Finally, 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.

[11] Accordingly, Ms. Morrison must reimburse the Strata Corporation for the deductible.

[12] There will be judgment in favour of the claimant in the amount of $2,500, plus filing and service fees of $120, pre-judgment interest from October 29, 2010, to today's date, and post-judgment from July 18th on.

[13] Ms. Johannsen, I will hear you with respect to any time to pay, but I was going to suggest payment in full by September the 4th.

[14] MS. JOHANNSEN: The principal has already been paid to the Strata Corporation in trust. Could Your Honour please repeat your ruling on interest?

[15] THE COURT: Pre-judgment interest from October 29th to today's date, and then there would not be any post-interest because the amount is in trust and it can be paid immediately.

(JUDGMENT CONCLUDED)