

Case Name:

## **Strata Plan KA 1019 v. Keiran**

Between

Strata Plan KA 1019, Claimant, and  
Agnes Keiran, Tina Simkus, Defendants, and  
The Wawanesa Insurance Company, Third Party

[2006] B.C.J. No. 1788

2006 BCPC 360

North Vancouver Registry No. 05185

**British Columbia Provincial Court  
North Vancouver, British Columbia  
Baird Ellan Prov. Ct. J.**

Heard: June 22, 2006.

Judgment: August 2, 2006.

(23 paras.)

*Insurance law — Co-insurance — Primary or excess insurance — The owner's insurance company was required to pay \$787 for damages sustained to the strata unit when a water pipe burst, as it was an insured peril — The provisions of the policy provided for excess coverage over and above what was covered by the strata corporation's policy.*

*Insurance law — Property insurance — Household or homeowner's policies — The owner's insurance company was required to pay \$787 for damages sustained to the strata unit when a water pipe burst, as it was an insured peril — The provisions of the policy provided for excess coverage over and above what was covered by the strata corporation's policy.*

*Real property law — Condominiums — Unit holders — Liability of — The owner of the strata unit was ordered to pay the \$500 deductible for the insurance policy directly to the strata owner for the damage caused to the unit by the burst water pipe.*

*The owners would pay the \$500 deductible for the damage to the strata unit, while the insurer would pay the remaining \$787 — The claimant strata corporation claimed against the owners of a strata unit for water damages incurred as a result of a burst pipe — The failure was due to high acid levels of the local water, and not to a negligent act or omission of the owner — The owners in turn claimed against their household insurer, Wawanesa, for coverage under their policy for liability to the strata plan — HELD: The insurer would pay \$787 while the owners would cover the \$500 deductible — There was no damage to the common area, and it was clear that the damage was of the type for which the owner was responsible — The damage to the unit was covered under the Wawanesa policy as an insured peril, as the provisions allowed for excess coverage for things not covered by the strata corporation's policy — Hence the third party insurance company was ordered to pay \$787 to the claimant — The owners were to pay the \$500 deductible to the strata corporation.*

**Statutes, Regulations and Rules Cited:**

Strata Property Act, S.B.C. 1998, c. 41, s. 149, s. 158, s. 161

**Counsel:**

Appearing for the Claimant: B. Burko

Appearing for the Defendants: T. Simkus

Counsel for Wawanesa: J. McDonald

---

¶ 1 **BAIRD ELLAN PROV. CT. J.**— The claimant, Strata Plan KA 1019, claims against the owners of a strata unit for damages incurred as a result of a burst pipe behind the bathroom wall in their unit. The owners, Ms. Keiran and Ms. Simkus, in turn claim against their household insurer, Wawanesa, for coverage under their policy for liability to the strata plan. The issues are whether the damage is the responsibility of the owners, and if so, to what extent it is covered by their household policy.

1. Relevant Facts

¶ 2 Water damage was caused to the defendant's strata unit by the failure of a coupling within the wall of the unit. The failure was due to high acid levels of the local water, and not to a negligent act or omission of the owner. There was no common property damage. The damage was repaired at the expense of the strata corporation. Although it was determined to relate to a loss insured under the strata corporation's insurance coverage, at a total of \$3,787.80, it fell below the \$10,000 deductible.

¶ 3 The amount of \$2,500 was covered by the owners' household insurance policy, which represented the policy maximum for coverage in the case of liability of a strata owner, for an assessment in respect of the strata corporation's insurance deductible. The strata corporation seeks to recover the balance, \$1,287.80, plus costs. (This amount was stated erroneously in the Notice of Claim, which I find to be a misprint. All parties had notice that the unpaid balance of the repairs was in fact the noted figure.)

2. Owners' Liability

¶ 4 Under the bylaws of the strata corporation, the corporation is responsible to repair and maintain common assets, common property, building structures and exteriors. This provision corresponds with the obligations of a strata corporation under the *Strata Property Act*, S.B.C. 1998, c. 41. The bylaws hold owners responsible for repair and maintenance of their strata lot, other than repair and maintenance for which the strata corporation is responsible.

¶ 5 Admissions were filed establishing that the pipe coupling and the damage in this matter do not fall within an area for which the strata corporation is responsible to repair and maintain. They are therefore within the owners' realm of responsibility, as would be the case with any homeowner.

¶ 6 The bylaws also provide, however, that the corporation must obtain and maintain property insurance on fixtures within a strata lot. This provision of the bylaws also corresponds with the *Strata Property Act*, s. 149. Fixtures are defined to include floor and wall coverings and electrical and plumbing fixtures, again, in accordance with the *Strata Property Act*. The pipe and nature of damage caused to the unit bring the problem within the definition of fixtures under the bylaws.

¶ 7 The strata corporation holds an insurance policy with a deductible of \$10,000. The bylaws do not impose any maximum deductible. Presumably the council has decided on the amount of \$10,000 or the insurers have imposed it.

¶ 8 The *Strata Property Act*, S.B.C. 1998, c. 43, provides in section 158 that the deductible is a common expense, but that a strata corporation is not barred from recovering the cost from an owner who is "responsible for the loss". As I have noted, because the damage occurred within the unit and not to common property, this is a situation where the homeowner had the duty to repair and maintain and is therefore "responsible for the loss," regardless of the absence of fault or negligence on their part. In this sense, the matter may be viewed as if there were no strata corporation involved. Whether the repairs were paid as part of the deductible under the policy, or otherwise, they relate to damage for which in my view, under the *Act* and bylaws, the owner is responsible. There would arguably have been no legal obligation on the strata corporation to pay for the repairs, absent the duty under the bylaws to insure against it.

¶ 9 Mr. Burko has pointed to another section of the bylaws, section 3(2)(b), which specifically requires an owner to indemnify the strata corporation for any portion of repairs to a strata lot not covered by an insurance policy, but in my view it is not necessary for the corporation to rely upon that provision, as it is clear in this case that the damage is of a type for which the owner is responsible. The question of whether an owner can be held responsible for damage to common property or other areas subject to the corporation's duty to repair and maintain that is not caused by the owner's negligence will be left for another day.

### 3. Wawanesa's Liability

¶ 10 Wawanesa has provided a copy of the insurance certificate for the owners' unit, and a booklet containing standard personal insurance terms, including those applicable to this policy. Ms. MacDonald relies upon a term entitled "loss assessment coverage", which is found in the section of the booklet dealing with property coverage. It reads as follows:

We will pay up to \$2,500 for that part of an assessment made necessary by a deductible in the insurance policy of the Condominium Corporation.

¶ 11 That term falls under a section headed, "Additional Coverages," and is preceded by a term that reads:

If you are a condominium unit owner, we will pay for an additional amount of up to 250% of the amount of insurance on Coverage C personal property (Coverage C here is \$33,500) *of your share of any special assessment if:*

- (1) the assessment is valid under the Condominium Corporation's governing rules; and
- (2) it is made necessary by a direct loss to the collectively owned condominium property caused by and Insured Peril in this policy.

(Emphasis added.)

¶ 12 A very similar term is also contained in the section of the booklet dealing with liability coverage.

¶ 13 Ms. MacDonald takes the position, as did the adjuster, Mr. Dalgleish, that the policy limitation applies here because the cost of repairs that the strata corporation seeks from the owners is "made necessary" by a deductible in the insurance policy of the corporation.

¶ 14 In my view, the limitation provision must be read in conjunction with the preceding term, and the heading of the section. It relates to special assessments for losses to common property, additional coverage, not to perils otherwise covered under the policy. The limitation seeks to spread the liability for deductible in such circumstances among owners, rather than one owner's policy paying a disproportionate amount of a common expense.

¶ 15 Ms. MacDonald made the submission in argument that assessment by the strata corporation of one owner for the whole of the \$10,000 deductible would be onerous, and the intention of the *Act* and bylaws could only reasonably be to have the cost spread among the owners. In the case of an assessment for damage to common property, this would be a reasonable proposition, absent negligence on the part of the owner. This would be a type of damage for which the strata corporation was responsible under the *Act* and bylaws, and it is reasonable that it be spread among the owners and that their personal insurance policies be permitted to limit liability for the uninsured portion of that damage, the deductible.

¶ 16 As noted above, however, this is not an assessment for damage or loss to common property, but for damage in respect of which an owner is personally and primarily responsible. It is not "made necessary" by the strata corporation's deductible, rather by the fact of the owner's primary responsibility for damage to the owner's unit. It would therefore be an insured peril, under Coverage C, section (8) "Water escape, rupture, freezing ..." of the Wawanesa Policy, rather than "additional coverage" for a deductible assessment.

¶ 17 Does the fact that the strata corporation was required to insure for fixtures change the nature of the coverage? Section 161 of the *Strata Property Act* provides as follows.

**161 (1)** Despite the *Insurance Act* or any other law, an owner may obtain and maintain insurance for any or all of the following:

- (a) loss or damage to the owner's strata lot and the fixtures referred to in section 149 (1) (d)
  - (i) against perils that are not insured by the strata corporation, and
  - (ii) for amounts that are in excess of amounts insured by the strata corporation;
- (b) fixtures in the owner's strata lot, other than the fixtures referred to in section 149 (1) (d) ...

¶ 18 Section 149(1)(d) provides that the strata corporation must maintain insurance on, among other things:

- (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.

¶ 19 As I read these provisions, they specifically permit an owner to obtain insurance for fixtures within and damage to their strata lot that is not covered by the strata corporation's policy. This supports the view that the damage here is an insured peril. As it is not covered by the strata corporation's policy,

it is an amount "in excess" of that insured by the strata corporation, and the owners' insurance should cover it.

¶ 20 In addition, the owners' policy includes a term under Additional Coverages, headed, "Condominium Additional Coverage," which reads:

If you are a condominium unit owner ..., we insure your unit ... if the Condominium Corporation has no insurance or its insurance is inadequate or not effective. ... Special Forms perils apply to this coverage.

¶ 21 This term is another indication that the owners' policy is intended to cover damage not otherwise insured by the corporation's policy. I therefore find that the damage to the unit is covered by the Wawanesa policy as an insured peril.

¶ 22 The policy deductible for property coverage of insured perils of this type is \$500. Wawanesa must pay the balance of the loss of \$787.80, which while payable to the owners under the policy may be paid directly to the strata corporation, as was done with the initial \$2,500. The owners must pay the balance of \$500 to the strata corporation.

#### 4. Costs

¶ 23 Costs of \$130 are recoverable by the strata corporation against the owners, however, Wawanesa must indemnify the owners for these costs. The owners' cost of filing a reply and a third party notice, \$50 in total, are also payable by Wawanesa.

#### 5. Order

1. The third party must pay to the claimant (on behalf of the defendants) the amount of \$787.80, with court order interest, from July 1, 2004.
2. The third party will pay costs of \$130 to the claimant, and \$50 to the defendants.
3. The defendants will pay \$500 to the claimant.
4. All amounts are payable forthwith.

BAIRD ELLAN PROV. CT. J.

cp/i/qw/qlrds/qlmll @1