IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Owners of Strata Plan NWS 254 v. Hall,* 2016 BCSC 2363

Date: 20161216
Docket: S178017
Registry: New Westminster

2016 BCSC 2363 (CanLII)

Between:

The Owners of Strata Plan NWS 254

Appellants

And

Josh Hall

Respondent

Before: The Honourable Mr. Justice Pearlman

On appeal from: An order of dated January 20, 2016 in *The Owners of Strata Plan NWS 254 v. Hall*, Provincial Court of British Columbia Action No. 77288

Reasons for Judgment

For the Appellants:	Ian MacLennan (Representative)
The Respondent:	Appeared on his own behalf
Place and Date of Hearing:	New Westminster, B.C. December 9, 2016
Place and Date of Judgment:	New Westminster, B.C. December 16, 2016

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INTRODUCTION

[1] The appellant, The Owners of Strata Plan NWS 254 (the "Strata Corporation"), appeals from the judgment of the Honourable Judge Oulton of the Provincial Court of British Columbia pronounced January 20, 2016. Judge Oulton ordered the Strata Corporation to pay the respondent $3,950, together with court filing and service fees and court-ordered interest, to compensate Mr. Hall for the cost of replacing four windows and the patio door of his strata unit.

[2] It is common ground that since the enactment of the *Strata Property Act*, S.B.C. 1998, c. 43 ("*SPA*"), the Strata Corporation has had the obligation to repair and maintain common property, and that the four windows and patio door in issue were common property.

[3] After observing condensation, leaks and mould around all of the windows and the patio door in October, 2013, Mr. Hall negotiated with the Strata Corporation for 10 months concerning the repair or replacement of the affected windows and door. The Strata Corporation offered to pay $742 to clean and re-seal the four windows and the patio door. The respondent, relying upon the advice received from four contractors from whom he sought bids for remedial work, insisted that only replacement would provide a permanent solution.

[4] In August 2014, after notifying the Strata Corporation of his intention to do so, Mr. Hall had the four windows and patio door replaced by the contractor who had provided the lowest bid for that work.

Grounds for Appeal and Standard of Review

[5] The Strata Corporation raises the following grounds for appeal:

(a) the trial judge erred in holding that the Strata Corporation's duty to repair and maintain included the duty to replace the four windows and patio door;

(b) the trial judge failed to consider that both the Schedule of Standard Bylaws (the "Standard Bylaws") made pursuant to the *SPA* and the Registered Bylaws of the Strata Corporation prohibited the respondent from making an alteration to common property without the written approval of the Strata Corporation;

(c) the respondent, in breach of s. 7 of the Standard Bylaws, refused to permit contractors authorized by the Strata Corporation to enter his strata unit and make the repairs approved by the Corporation; and

(d) the trial judge erred in law by refusing to admit in evidence the insurance policy of the Strata Corporation, which the Strata Council used to determine the extent of its obligation to repair or replace common property.

[6] This appeal is brought pursuant to s. 12 of the *Small Claims Act*, R.S.B.C. 1996, c. 430, which provides for the review of the order under appeal on questions of fact and on questions of law. Section 13(1) authorizes this Court to:

> (a) make any order that could be made by the Provincial Court;
>
> …
>
> (c) make any additional order that it considers just;
>
> (d) by order award costs to any party to the appeal in accordance with the *Supreme Court Rules*.

[7] The standard of review under s. 12 of the *Small Claims Act* is the same as on an appeal to the British Columbia Court of Appeal from a judgment of this Court. As MacKenzie J., as she then was, stated in *Smithers Parts Ltd. v. Hudson*, 2009 BCSC 1645 at para. 26:

> The standard of review on pure questions of law is one of correctness, but the standard of review for findings of fact is they cannot be reversed unless the trial judge has made a palpable and overriding error. A palpable error is one that is plainly seen: *Housen v. Nikolaisen*, 2002 SCC 33. An appeal court should only intervene when there is a material error, a serious misapprehension of the evidence, or an error in law: *Hickey v. Hickey*, [1999] 2 S.C.R. 518 at paras. 11-12; *R. v. Clark*, 2005 SCC 2. This court will only intervene in an appeal from Small Claims Court where the trial judge was

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> clearly wrong in his apprehension of the law or the facts: *Priority Buildings Services Ltd. v. Ali*, [1999] B.C.J. No. 2820 at para. 10, and *Stewart v. Strutt*, [1998] B.C.J. No. 636 at para. 10, both being Provincial Court decisions.

[8] Rather than re-arguing issues that were before the trial judge, the appellant bears the onus of establishing either an error of law or that the trial judge made findings of fact for which there was no reasonable evidentiary foundation: *Berg v. Harbour City Diesel and Offroad Ltd.*, 2012 BCSC 710 at para. 58.

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[9] Before considering the appellant's grounds for appeal, I will summarize the findings of the trial judge and set out the relevant legislative framework.

THE TRIAL JUDGMENT

[10] The trial judge made the following findings of fact, which are not contested on this appeal:

- The Strata Corporation manages and maintains the common property of The Dorchester, a 44-unit complex built in 1974.
- When the respondent purchased unit 304 in June 2013, his unit had the original single-pane glass windows, which were then almost 40 years old. Mr. Hall began communicating with the Strata Council in October 2013 when he first noticed condensation, leaking, and mould around all of his windows and the patio door (para. 3).
- Between October 2013 and August 2014 the respondent had a protracted negotiation with the Strata Corporation concerning the repair or replacement of the four windows and patio door in dispute. Mr. Hall had four glass repair companies come to his unit and provide estimates of the work required to address the problem. All four companies provided estimates to replace the windows and door. One of the companies, A & R Glass, suggested the application of sealant to the window and door frames at an estimated cost of $742 as a short-term solution. A & R also

estimated, in December 2013, that the cost of replacing the four windows and patio door was $2,925.65 (paras. 4–9).

- On June 13, 2014, representatives of A & R Glass attended at Mr. Hall's unit. The respondent was absent as was the Strata Corporation's representative, Mr. MacLennan. The respondent's roommate let the contractors into the unit. Nothing was done that day to resolve the matter (para. 10).

- On July 3, 2014, Mr. Hall, a representative of A & R Glass and three members of the Strata Council met. Although the respondent understood the Strata Corporation had decided to replace the windows and door, Mr. MacLennan denies any such decision (para. 11).

- On July 8, 2014, Mr. MacLennan received an estimate from A & R Glass to replace the fours windows and patio door. A & R Glass's estimate for the cost of replacing the windows and door had increased from $2,925.65 in December, 2013 to $6,807. On July 14, 2014 Mr. MacLennan informed Mr. Hall that the A & R Glass estimate was up by several thousand dollars and that the Strata Corporation had decided to pay only the cost of repair, in the amount of $742 (para. 12).

- On August 6, 2014, the respondent arranged for the contractor who had provided the lowest bid to replace the four windows and door at his own cost. Mr. Hall later sued to recover the replacement cost from the Strata Corporation (para. 13).

[11] The trial judge also made findings that the windows and door were in their original state and had not been replaced since 1994; that the windows were no longer fulfilling the function for which they were intended; and that the deficiencies with the windows and door included leaking, ice formation, condensation and black mould (para. 20).

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[12] Further, the trial judge found that the windows and door were neither maintained nor repaired in October 2013 when the respondent first raised the issue with the Strata Council (para. 21).

[13] The trial judge held that the obligation to repair and maintain in this case extended to the cost of replacing the windows. Because their condition was so poor, the proposed repair would not fix the problems. Under these circumstances, Judge Oulton reasoned that the Strata Council's obligation to repair and maintain could only be fulfilled by replacing the windows and the door (para. 23).

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LEGISLATIVE FRAMEWORK

[14] Sections 3 and 72 of the *SPA*, provide:

> **Responsibilities of strata corporation**
>
> **3** Except as otherwise provided in this Act, the strata corporation is responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners.
>
> ...
>
> **Repair of property**
>
> **72**(1) Subject to subsection (2), the strata corporation must repair and maintain common property and common assets.
>
> (2) The strata corporation may, by bylaw, make an owner responsible for the repair and maintenance of
>
> > (a) limited common property that the owner has a right to use, or
> >
> > (b) common property other than limited common property only if identified in the regulations and subject to prescribed restrictions.
>
> (3) The strata corporation may, by bylaw, take responsibility for the repair and maintenance of specified portions of a strata lot.

[15] The following provisions of the Standard Bylaws are also relevant to this appeal:

> **5**(1) An owner must obtain the written approval of the strata corporation before making an alteration to a strata lot that involves any of the following:
>
> > …
> >
> > (d) doors, windows or skylights on the exterior of a building, or that front on the common property;

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…

(2) The strata corporation must not unreasonably withhold its approval under subsection (1), but may require as a condition of its approval that the owner agree, in writing, to take responsibility for any expenses relating to the alteration.

(3) This section does not apply to a strata lot in a bare land strata plan.

Obtain approval before altering common property

6(1) An owner must obtain the written approval of the strata corporation before making an alteration to common property, including limited common property, or common assets.

(2) The strata corporation may require as a condition of its approval that the owner agree, in writing, to take responsibility for any expenses relating to the alteration.

Permit entry to strata lot

7(1) An owner ... must allow a person authorized by the strata corporation to enter the strata lot ...

> (b) at a reasonable time, on 48 hours' written notice, to inspect, repair or maintain common property ...

(2) The notice referred to in subsection (1) (b) must include the date and approximate time of entry, and the reason for entry.

Repair and maintenance of property by strata corporation

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

> …
>
> (b) common property that has not been designated as limited common property;
>
> …
>
> (d) a strata lot in a strata plan that is not a bare land strata plan, but the duty to repair and maintain it is restricted to ...
>
> > (iv) doors, windows and skylights on the exterior of a building or that front on the common property, and ....

[16] Section 3 of the Registered Bylaws of the Strata Corporation provides:

3. Any alterations or changes to the structure of an owner's strata lot or to the balcony must be approved by council.

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DISCUSSION AND ANALYSIS

Did the trial judge err in finding that the Strata Corporation's duty to repair and maintain included the duty to replace the four windows and patio door?

[17] Both s. 72 of the *SPA* and s. 8 of the Standard Bylaws require the Strata Corporation to maintain common property.

[18] Neither party provided the trial judge with any case law on the meaning of “repair and maintain".

[19] In the absence of authority, the trial judge referred to the definition of "maintain" in *Black's Law Dictionary, Fifth Edition*:

> The term is variously defined as acts of repair and other acts to prevent a decline, lapse or cessation from existing state or condition; bear the expense of; carry on; commence; continue; furnish means for subsistence of existence of; hold, hold or keep in an existing state or condition; hold or preserve in any particular state or continuance; keep from change; keep from failing, declining, or ceasing; keep in existence or continuance; keep in force, keep in good order; keep in proper condition; keep in repair; keep up, preserve; preserve from lapse, decline, failure or cessation; provide for; rebuild; repair; <u>replace</u>; supply with means of support; supply with what is needed; support; sustain; uphold. (emphasis added)

[20] The trial judge concluded that the state of the windows and patio door was so poor that the Strata Corporation could only fulfil its obligation to repair and maintain the windows and door by replacing them.

[21] In my view, the trial judge made no error of law, or mixed fact and law, in concluding that the Strata Corporation's obligation to repair and maintain extended to the cost of replacing the windows and door in this case.

[22] The word “repair” as used in the *SPA* includes the operation of making an article good, regardless of whether the article had been sound or good before: *Taychuk v. Owners, Strata Plan LMS 744,* 2002 BCSC 1638 at para. 29.

[23] The duty to repair and maintain can involve a duty to replace. In *Fudge v. Owners, Strata Plan NW 2636,* 2012 BCPC 409, the plaintiff’s strata unit flooded as

a result of a backup in the strata corporation's wastewater pipeline infrastructure (“WPI”). The court found the strata corporation had failed to “make good” deficiencies in the WPI. There, by failing to replace the four-inch piping that comprised much of the WPI with six-inch piping, the strata corporation had failed in their statutory duty to “maintain” the WPI. The court found that replacement was necessary to enable the wastewater system to properly function.

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[24] The strata corporation's obligation to repair and maintain is measured against a test of what is reasonable in all of the circumstances: *Taychuk* at para. 30; *Wright v. The Owners, Strata Plan No. 205* (1996), 20 B.C.L.R. (3d) 343 (S.C.), aff’d (1998), 43 B.C.L.R. (3d) 1 (C.A.).

[25] In *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784, Josephson J., after stating at para. 23 that the starting point for the analysis should be deference to the decision of the Strata Council as approved by the owners, observed at paras. 28 to 29:

> [28] In resolving problems of this nature, there can be “good, better or best” solutions available. Choosing an approach to resolution involves consideration of the cost of each approach and its impact on the owners, of which there is no evidence before the court. Choosing a “good” solution rather than the “best” solution does not render that approach unreasonable such that judicial intervention is warranted.
>
> [29] In carrying out its duty, the respondent must act in the best interests of all the owners and endeavour to achieve the greatest good for the greatest number. That involves implementing necessary repairs within a budget that the owners as a whole can afford and balancing competing needs and priorities: *Sterloff v. Strata Corp. of Strata Plan No. VR 2613*, 38 R.P.R. (3d) 102, [1994] B.C.J. No. 445 and [*Browne et al. v. The Owners, Strata Plan 582*, 2007 BCSC 206].

[26] The petitioners in *Weir* contended the strata corporation should completely replace their building's drainage system in order to cure drainage and water ingress problems. The strata corporation, acting on the advice of a professional engineer, adopted a more cautious and less expensive plan which was limited, in the first instance, to the repair of perimeter drains. In finding that the course of action chosen by the strata corporation was not unreasonable, the Court noted the work might or might not resolve the problems. The Court also took into account the fact that the

strata corporation was prepared to perform further remedial work, if that proved reasonably necessary.

[27] In this case, the Strata Corporation conceded the windows and patio door should be replaced, but maintained it had no duty to pay for the replacement.

[28] The trial judge found that the cleaning and sealing repairs, which the Strata Corporation was prepared to fund in the amount of $742, would only provide a temporary solution. Also, the use of the bleach solution on the mould would not resolve that problem for the long term.

[29] Further, the Strata Corporation, in the exercise of its duty to repair and maintain common property, had previously replaced at least one owner's windows, as well as the windows in the laundries and stairwell.

[30] Here, where, as the trial judge found, the state of the windows was so poor that the proposed repair would not fix the problem, the Strata Corporation's obligation to take reasonable measures to repair and maintain extended to the cost of replacing the four windows and patio door in the respondent's unit.

Did the trial judge err in failing to consider that both the Standard Bylaws and the Registered Bylaws of the Strata Corporation prohibited the respondent from making an alteration to common property without the written approval of the Strata Corporation?

[31] The appellant argues that ss. 5(1) and 6(1) of the Standard Bylaws and s. 3 of the Registered Bylaws prohibit the respondent from making an alteration to common property without the prior written approval of the Strata Corporation. According to the appellant, these provisions barred the respondent from replacing the four windows and patio door without first obtaining the approval of the Strata Corporation in writing.

[32] This issue was not raised before the trial judge.

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[33] In *Ulmer v. British Columbia Society for the Prevention of Cruelty to Animals*, 2010 BCCA 519 at para. 27, the Court summarized the law concerning fresh arguments on appeal:

> It is well recognized that an appellate court must be cautious in permitting arguments to be advanced that were not addressed in the court below. In *R. v. Winfield*, 2009 YKCA 9, the Court stated:
>
> > [18] Although appellate courts have discretion to permit a new issue to be raised, that discretion is one to be exercised sparingly. To take a less stringent approach would allow an appellant to transform an appeal into a new, and entirely different, proceeding, one divorced from how the trial was conducted. This is particularly so when the new issue is one that cannot be finally resolved without another trial. Apposite is the following from the judgment of Madam Justice Weiler in *Kaiman v. Graham*, 2009 ONCA 77, 245 O.A.C. 130:
> >
> > > [18] The general rule is that appellate courts will not entertain entirely new issues on appeal. The rationale for the rule is that it is unfair to spring a new argument upon a party at the hearing of an appeal in circumstances in which evidence might have been led at trial if it had been known that the matter would be an issue on appeal: *Ontario Energy Savings L.P. v. 767269 Ontario Ltd.*, 2008 ONCA 350, at para. 3. The burden is on the appellant to persuade the appellate court that “all the facts necessary to address the point are before the court as fully as if the issue had been raised at trial”: *Ross. v. Ross* (1999), 181 N.S.R. (2d) 22, at para. 34 (C.A.), per Cromwell J.A.; *Ontario Energy Savings* at para. 3. This burden may be more easily discharged where the issue sought to be raised involves a question of pure law: see e.g. *R. v. Vidulich* (1989), 37 B.C.L.R. (2d) 391 (C.A.); *R. v. Brown*, [1993] 2 S.C.R. 918, per L’Heureux-Dubé J., dissenting. In the end, however, the decision of whether to grant leave to allow a new argument is a discretionary decision to be guided by the balancing of the interests of justice as they affect all parties: *R. v. Warsing*, [1998] 3 S.C.R. 579, per L’Heureux-Dubé J., dissenting; *R. v. Sweeney* (2000), 50 O.R. (3d) 321 (C.A.); *Vidulich* at 398-99.
> >
> > [Emphasis in original]

[34] Here, the issue which the appellant seeks to raise is whether "an alteration to common property" within the meaning of s. 6(1) of the Standard Bylaws includes "replacement". That is a question of law. It is common ground that Mr. Hall did not obtain the Strata Corporation's prior written approval for the replacement of the

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windows and door. This is not a case where additional evidence might have been led at trial if it had been known the appellant would raise this issue on appeal.

[35] Accordingly, I am prepared to consider this ground on its merits.

[36] In *Wentworth Condominium Corporation. No. 198 v. McMahon*, 2009 ONCA 870, where the unit owner had installed a hot tub on his backyard patio without the condominium corporation's approval, the Ontario Court of Appeal interpreted the terms "addition", "alteration", and "improvement" as they then appeared in s. 98(1) of the *Ontario Condominium Act*, S.O. 1998, c. 19. That section required an owner to obtain the approval of the condominium corporation's Board of Directors if the owner sought to "make an addition, alteration or improvement to the common elements" of the corporation.

[37] At para. 22, MacPherson J.A., writing for the Court, adopted the trial judge's interpretation that:

> An addition builds on or supplements what is already there. An alteration can add to or subtract from what is already there. And an improvement introduces a qualitative factor into the analysis, one not required by the words "addition" and "alteration".

[38] In *Wentworth* at para. 11, the Court also cited the following passage from the trial judge's interpretation of s. 98(1) of the Ontario legislation:

> Therefore, I find that the word "addition" means something that is joined or connected to a structure, and the word "alteration" means something that changes the structure.

[39] The Ontario Court of Appeal upheld the trial judge's conclusion that the hot tub was neither an "addition" joined to or connected with the structure of the owner's unit, nor an "alteration" that changed the structure of the property.

[40] The decision of the Ontario Court of Appeal in *Wentworth* is persuasive authority for the proposition that the term "alteration", as it is used in the Standard Bylaws, applies where there is a change to the structure of the common property or a strata unit.

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[41] Here, the work involved the removal and replacement of four windows and the patio door. The replacement of the windows and door did not change the structure of the respondent's unit, or the common property. I conclude that the replacement of the four windows and the patio door was not an "alteration" within the meaning of ss. 5(1) or 6(1) of the Standard Bylaws requiring the prior approval in writing of the Strata Corporation.

[42] Similarly, because the replacement of the windows and patio door did not involve an alteration or change to the structure of the respondent’s strata lot, s. 3 of the registered Bylaws of the Strata Corporation does not apply in the circumstances of this case.

Did the respondent, in breach of Section 7 of the Standard Bylaws, refuse to permit contractors authorized by the Strata Corporation to enter his strata unit and make the repairs approved by the Corporation?

[43] The representatives of A & R Glass attended at the respondent’s unit on two occasions.

[44] First, the Strata Corporation arranged for representatives of A & R Glass to attend on June 13, 2014 to repair and re-seal the windows and patio door. The respondent had notified the Strata Council that he would be absent at that time but arranged for his roommate to admit the contractors. Mr. Hall also informed the Strata Council that he required a letter signed by both the contractor and the Strata Corporation that the work to be completed was to eliminate the mould, condensation and freezing. The respondent’s roommate admitted the contractors to the unit. However, they left without performing any remedial work. Mr. MacLennan did not attend with the contractors on June 13, 2014.

[45] Although A & R Glass submitted an invoice to the Strata Corporation for the June 13, 2014 attendance with a notation that access had been denied, no representative of A & R Glass present on that occasion gave evidence that the contractor had been refused access to the respondent’s unit.

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[46] In any event, A & R Glass attended again on July 3, 2014. The respondent met in his unit with a representative from A & R Glass and Mr. MacLennan. Two other members of the Strata Council participated in that meeting, either in person, or by telephone. The Strata Council had arranged for A & R Glass to attend to repair, rather than replace the windows and patio door. However, during the meeting of July 3, 2014, the contractor advised that the only way to remedy the mould, condensation and icing problems would be to replace the windows and patio door.

[47] On July 3, 2014, A & R Glass measured all of the windows and the patio door. Several days later, A & R Glass provided the Strata Corporation with an estimate for the cost of replacing the windows and patio door.

[48] It is apparent that during the meeting of July 3, 2014, the representatives of the Strata Corporation were prepared, at the very least, to consider the replacement of the four windows and the patio door. It was only after the Strata Corporation received A & R Glass's increased estimate of the cost of replacement that Mr. MacLennan informed the respondent that the Strata Corporation was only prepared to pay $742 for the cost of repairs.

[49] As the trial judge found, the repairs proposed by the Strata Corporation did not address the underlying problem. The Strata Corporation conceded the windows should be replaced.

[50] The appellant has not shown that the respondent refused to allow its contractor to enter his unit to inspect, repair or maintain common property. There was no breach by the respondent of his obligations to allow entry under s. 7(1)(b) of the Standard Bylaws.

Did the trial judge err in law by refusing to permit the Strata Corporation to adduce in evidence its insurance policy?

[51] The appellant contends the trial judge erred in law by refusing to admit relevant and material evidence of the Strata Corporation's insurance policy. The Strata Corporation argued that it based its decision to repair rather than replace the

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windows in the respondent's unit on an analogy to its insurance contract, which limited the insurer's liability to replace broken glass to "the same with same". Because the windows which failed were single paned, the Strata Corporation took the position that its obligation was limited to payment of the amount required to repair those windows, rather than to replace them with the double-pane windows currently required by the *Building Code*.

[52] The trial judge refused to admit the insurance policy on two grounds. First, the appellant had failed to disclose that document before trial, contrary to an order of the court requiring the parties to exchange all documents upon which they intended to rely at trial. In discharging her duty to ensure a fair trial, Judge Oulton was entitled to exercise her discretion to exclude the insurance policy for non-disclosure.

[53] Judge Oulton also ruled that the terms of the insurance policy were irrelevant to the determination of the Strata Corporation's statutory duty to repair and maintain common property. Although the trial judge did not admit the insurance policy in evidence, she did consider the Strata Corporation's practice, as derived from the insurance policy, regarding the repair or replacement of windows. At para. 17 of her Reasons, the trial judge said:

> ... Prior to 1998, owners were responsible for replacing or repairing their own windows in The Dorchester. As I understood Mr. McLennan's evidence, the Strata Council of The Dorchester had a practice. There is no written policy, but the practice they had, which they applied on a case-by-case basis, was that whatever state the windows were in in 1998 when the *Strata Property Act* came into effect, that is the state they would repair and maintain. So, if an owner incurred personal expense to replace a single pane window with double paned windows before 1998 and then there was a problem with those windows after 1998, the Strata Council would repair and replace those windows. If an owner had not replaced their single pane windows at their own expense before 1998, the Strata Council had a practice of repairing only. The basis for this practice was based on an analogy to insurance company contracts where insurance companies will replace "same with same" in the event that replacement is required.

[54] At para. 18, the trial judge continued:

> In my view, the analogy to insurance contracts is inapt. The context is different. The matter is an insurance contract, whereas this case concerns

> the meaning of s. 8(ii)(D) of Division 2 of the Schedule of Standard Bylaws of the *Strata Property Act* ...

[55] Judge Oulton went on to observe that "it was difficult to reconcile" the Strata Corporation's practice with its repeated admission of responsibility to repair and maintain the windows and doors. Ultimately, the trial judge concluded that in this case the statutory obligation of the Strata Corporation to repair and maintain extended to the cost of replacing the windows and patio door.

[56] In my view, the trial judge was correct in ruling that the insurance policy was irrelevant to her determination of the scope of the Strata Corporation's statutory obligation. In short, the trial judge made no error of law in excluding the insurance policy.

CONCLUSION

[57] The appeal of the Strata Corporation is dismissed.

[58] The monies paid into Court, in satisfaction of the judgment below, in the amount of $4,622.52, together with any accrued interest, will be paid out to the respondent.

[59] The respondent, as the successful party, will have the costs of this application, to be assessed at Scale B.

“PEARLMAN J.”

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