IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Kuta-Dankwa v. Strata Council/Corporation,* 2015 BCSC 1547

Date: 20150504
Docket: S151976
Registry: Vancouver

Between:

Christopher Kuta-Dankwa

Appellant

And

The Strata Council/Corporation, Strata Plan VR 365, Garden Court

Respondents

Before: The Honourable Madam Justice Gray

On appeal from: A decision of the Provincial Court of British Columbia, dated January 30, 2015 (*Kuta-Dankwa v Strata Council/Corporation*, Vancouver File No. 1346072)

Oral Reasons for Judgment

In Chambers

The Appellant, Christopher Kuta-Dankwa:	In Person
Counsel for the Respondents:	B. Carter
Place and Date of Hearing:	Vancouver, B.C. May 4, 2015
Place and Date of Judgment:	Vancouver, B.C. May 4, 2015

[1] **THE COURT:** I will give my reasons for judgment. This is an appeal of a decision from Provincial Court Judge MacLean. His reasons for judgment are dated January 30, 2015 and arise from a trial on December 18 and 30, 2014.

[2] Mr. Kuta-Dankwa is a lawyer. I understand he lives in London, England. He acted for himself in this hearing. He told me he practices in the area of international law rather than in litigation. His interest in this case arises from his ownership of a condominium in Vancouver. His claim arose from two problems with the condominium. One was a leak in the ceiling and the other was a patio door problem.

[3] The reasons for judgment of Judge MacLean are 15 pages and 48 paragraphs long. I will not read them all, but I will summarize some of the key aspects.

[4] Mr. Kuta-Dankwa purchased the condominium in question, taking possession of it on June 29, 2012. There was a problem with a leak in the ceiling. The ceiling repairs were started on July 18 and 19, 2012. The strata corporation, through a strata management company named “Strataco”, retained a restoration company called “All Elements” to make this repair, and wanted to leave some equipment to dry out the area in question. Mr. Kuta-Dankwa wanted the equipment removed from the condominium because he was leaving Vancouver. As a result, the strata corporation and All Elements did not do anything further regarding the ceiling.

[5] It appears that Mr. Kuta-Dankwa arranged and paid for ceiling repairs at some point between July 19, 2012 and November 19, 2012. The precise date is not clear to me on the evidence.

[6] There was a problem with a patio door and a new door was ordered. It was ready for installation around August 6, 2012. It was not in fact installed until November 28, 2012, and then there was a further problem with the lock. I understand from counsel that the door was fully installed on December 6, 2012.

[7] Mr. Kuta-Dankwa sued the strata corporation seeking three things. First, he wanted payment of what he said was lost rent of $1,500 per month for the period

that the condominium was not occupied. He says it was empty because of these problems with the ceiling and the door, and so claimed roughly six months' rent. Second, he wanted the cost of the repair for the ceiling. Third, he said he had to rearrange flights for returning to London and he asked for those costs as damages. All his claims were dismissed.

[8] Essentially, Judge MacLean held that the strata corporation acted reasonably in connection with the ceiling repair and patio door replacement. I am going to read briefly from the reasons for judgment. On paragraph 34, Judge MacLean wrote as follows:

> It is clear on the evidence that the installation of the patio door could have been done sooner. However the evidence does not establish on a balance of probabilities that the delay was the fault of the Strata Corporation. The Strata Corporation acted reasonably in retaining Strataco and through it All Elements, to install the door. In any event on the evidence as a whole both Strataco and All Elements acted reasonably in effecting the repairs to Mr. Kuta-Dankwa's condominium including installation of the patio door.

[9] Mr. Kuta-Dankwa has appealed. He filed a written statement of argument which I have read and which, for the most part in my view, asks the Court to reconsider and reweigh the evidence.

[10] I do not have the ability to do that on this appeal. I am bound by the law relating to an appellate court. I refer to the Supreme Court of Canada decision, *Housen v. Nikolaisen*, [2002] 2 S.C.R. 235, 2002 SCC 33, as follows:

> [36] To summarize, a finding of negligence by a trial judge involves applying a legal standard to a set of facts, and thus is a question of mixed fact and law. Matters of mixed fact and law lie along a spectrum. Where, for instance, an error with respect to a finding of negligence can be attributed to the application of an incorrect standard, a failure to consider a required element of a legal test, or similar error in principle, such an error can be characterized as an error of law, subject to a standard of correctness. Appellate courts must be cautious, however, in finding that a trial judge erred in law in his or her determination of negligence, as it is often difficult to extricate the legal questions from the factual. It is for this reason that these matters are referred to as questions of "mixed law and fact". Where the legal principle is not readily extricable, then the matter is one of "mixed law and fact" and is subject to a more stringent standard. The general rule, as stated in *Jaegli Enterprises*, [*Jaegli Enterprises Ltd. v. Taylor*, [1981] 2 S.C.R. 2, rev'g (1980), 112 D.L.R. (3d) 297 (sub nom. *Taylor v. The Queen in Right of*

> *British Columbia*), rev'g (1978), 95 D.L.R. (3d) 82], is that, where the issue on appeal involves the trial judge's interpretation of the evidence as a whole, it should not be overturned absent palpable and overriding error.
>
> [37] ... In our view, it is settled law that the determination of whether or not the standard of care was met by the defendant involves the application of a legal standard to a set of facts, a question of mixed fact and law. This question is subject to a standard of palpable and overriding error unless it is clear that the trial judge made some extricable error in principle with respect to the characterization of the standard or its application, in which case the error may amount to an error of law.
>
> [38] ... The trial judge applied all the elements of the *Partridge* standard [*Partridge v. Rural Municipality of Langenburg*, [1929] 3 W.W.R. 555] to the facts, and her conclusion that the respondent municipality failed to meet this standard should not be overturned absent palpable and overriding error.
>
> [Underling Added]

[11] In this case, the judge asked the question of, "did the strata corporation act reasonably in trying to effect these repairs?", and he concluded that it did.

[12] Mr. Kuta-Dankwa did not appeal the legal question, being the standard of whether the strata corporation acted reasonably. I asked Mr. Kuta-Dankwa about that at the outset of the argument, and he agreed that the law governing his claim is whether the strata corporation acted reasonably.

[13] This is a case in which the evidence apparently did not include expert evidence. There was no one giving an opinion, for example, that a reasonable strata corporation would have hired someone other than Strataco or not permitted Strataco to hire someone like All Elements or taken other steps on the facts in this case.

[14] The trial judge was faced with the question of what occurred, and whether the strata corporation had acted reasonably in the actual situation.

[15] There were many submissions before me arising from paragraph 32 of Judge MacLean's reasons for judgment which I will summarize as follows. Based on the email exchange and on the evidence, it is apparent that Mr. Kuta-Dankwa was very reluctant to contact All Elements directly to arrange a date for the replacement of the door. Mr. Kuta-Dankwa repeatedly asked Strataco or the strata corporation for dates on which All Elements could replace the door. There was no reasonable explanation

from Mr. Kuta-Dankwa as to why he did not simply telephone All Elements and arrange a convenient installation date with them.

[16] There was this period of delay between the time the door was ready, on August 6, 2012, and the time it was installed about three and one-half months later, at the end of November, 2012. I will not go through the evidence at any length, but there is evidence that a number of phone calls were made to a cellphone number of Mr. Kuta-Dankwa's. At least some voice messages were left for him, although his voice message box was sometimes full.

[17] What appeared to be occurring was that All Elements made some phone calls to try to contact Mr. Kuta-Dankwa and they could not reach him in August or September or October. The dates of the phone calls was not clear to me. Mr. Kuta-Dankwa did write requesting door installation dates, but his requests were to the strata corporation and to Strataco as I understand it.

[18] Judge MacLean wrote this in paragraph 29. He wrote:

> … In retrospect it may have been better to arrange a date for the installation of the door in response to this e-mail …

Judge MacLean was referring to an email of September 12, 2012, from Mr. Kuta-Dankwa to Strataco. Judge MacLean continued:

> … but Mr. Grandy testified that in these circumstances he directs the owner to deal directly with the contractor to arrange a mutually convenient date.

[19] It is clear that Mr. Kuta-Dankwa did not contact All Elements directly. He relies on his persistent requests for an installation date. It seems that the way that All Elements worked is that they wanted to have a phone number and to contact someone to arrange the installation.

[20] In these circumstances, the trial judge concluded that the strata corporation acted reasonably. My task is to determine whether the trial judge made a palpable and overriding error in determining the facts, or in applying the standard of "acting reasonably" to the strata corporation's conduct.

[21] The judge correctly set out the legal standard being what is “reasonable”. He correctly set out the facts. The real issue on appeal relates to the judgment exercised by the judge in applying the legal standard to the facts.

[22] In my view, Judge MacLean’s comments that Mr. Kuta-Dankwa could have contacted All Elements directly arose simply from Judge MacLean’s consideration of how the problem might have been solved. As a legal matter, the question is whether the strata corporation acted reasonably, not whether Mr. Kuta-Dankwa acted reasonably.

[23] The strata corporation hired a manager, Strataco. That manager hired All Elements, and All Elements effected the repair. The repair could have been done more quickly, but that does not demonstrate that the strata corporation breached its obligation to act reasonably.

[24] It is a matter of judgment whether Strataco ought to have responded to the requests for a date in a more vigorous fashion.

[25] The trial judge concluded that the strata corporation acted reasonably. He wrote at paragraph 47 as follows:

> The Strata Corporation cannot be held responsible if a party it hires fails to carry out its work effectively as long as it acted reasonably in the circumstances. That is what the Strata Corporation did here. The Strata Corporation acted reasonably in [the] hiring [of] competent contractors to effect the repairs that were needed to the common property. In this case the contractors the Strata Corporation retained discharged their obligations in a reasonable manner.

[26] I have already read out paragraph 34 of Judge MacLean’s reasons for judgment. Again, Judge MacLean concluded the strata corporation acted reasonably.

[27] It was a question of judgment of whether, in all the circumstances, the strata corporation acted reasonably. The trial judge considered the proper legal test. I cannot say that he made a palpable and overriding error in concluding that the strata corporation acted reasonably. As a result, I must dismiss the appeal.

[28] Ms. Carter has asked for an order dismissing the appeal and also, in respect of costs, she asks for costs of the appeal and the trial. I take it what you mean, Ms. Carter, is that whatever award is made by the Provincial Court regarding trial costs would continue to apply. Is that what you mean?

[29] MS. CARTER: That's it, that's correct.

[30] THE COURT: And you are seeking an order that the money that was paid into court to pursue this appeal will be paid out towards those costs, is that right?

[31] MS. CARTER: Towards those costs and the aggregate of those costs and the appeal costs, and if there's any additional to be paid by the appellant.

[32] THE COURT: And what -- do you have any submissions about that, Mr. Kuta-Dankwa?

[33] MR. KUTA-DANKWA: No, Your Honour.

[34] THE COURT: No? All right. That is the usual order so I will make that order. Thank you. We can adjourn.

"Gray J."