

Strata Property: Insurance Considerations for Liability & Coverage

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Defined Terms

“SPA” means the *Strata Property Act*, SBC 1998, c 43

“Regulations” means *Strata Property Regulation, BC Reg 43/2000*

Mohan v Strata Plan LMS 1622, 2016 BCSC 822

Case Summary:

A strata owner rented their unit to a tenant. The tenant was involved in illegal activities, on and off of the strata property. A resident of the unit next door to the tenant was killed, allegedly as a result of the tenant's criminal activity.

Relevant Issues:

Can the Strata Corporation be liable for damages flowing from the criminal activities of an owner's tenant?

What do we take from this case?

It is possible for a Strata Corporation to be liable in negligence for damages flowing from the criminal activities of an owner's tenant if:

1. The damages were caused by the conduct of the tenant (this is legal finding of fact; i.e., a criminal prosecution finds the damages were caused by the conduct of the tenant);
2. The Strata Corporation believed, or reasonably suspected, the tenant was taking part in criminal activity on the strata property;
3. The Strata Corporation was negligent by breaching their standard of care to the owners and causing or materially contributing to the loss.

Louie v Strata Plan VR-1323, 2015 BCSC 1832

Case Summary:

A strata owner rented their unit to a tenant. The tenant ran an illegal drug laboratory in the unit. The drug laboratory caused a fire that damaged the unit and the ducts attached to the unit. The Strata Corporation's insurance policy had a \$50,000 deductible for losses arising from illegal drug laboratories. The Strata Corporation investigated the cause of the fire and remediated the damage to common property; however, it did not remediate the damage to the owner's unit. The owner lost nine-months rental income as a result of the alleged failure of the Strata Corporation to repair the damage in the owner's unit. The owner had a property manager for the rental unit.

Relevant Issues:

1. Is ducting common property that must be repaired by the Strata Corporation under s. 149(1) and s. 1 of the *SPA*?
2. What role does a property manager play when the owner litigates against the Strata Corporation?
3. Does the Strata Corporation have an obligation to pay the insurance deductible and begin remediation on a unit under s. 158 of the *SPA*?
4. Did the Strata insurers cause the owner damage by failing to provide insurance coverage?
5. Does s. 158(2) of the *SPA* allow the Strata Corporation to counterclaim for the cost of the investigation into the cause of the damage and the remediation of common property?

What do we take from this case?

1. Where there is sufficient evidence that ducting is exclusively for the use of a single unit, that ducting is limited common property under s. 1 of the *Strata Property Act*. Unless there is an express, contrary statement, damage to limited common property must be repaired by the unit owner with the exclusive right to use that property.
2. A property manager who is “at all times” relied upon by the owner “to make decisions on all matters concerning the unit” can testify in court as a ‘stand-in’ for the owner. The knowledge, evidence and testimony of the manager can be imputed onto the owner.
3. Section 158 of the *SPA* does not oblige the Strata Corporation to begin remediation of damage and pay the insurance deductible. Sections 158 and 159 of the *SPA* do not require the Strata Corporation to pay the insurance deductible in all cases, giving the Strata Corporation “an option to repair or not to repair depending on the circumstances.”
4. In this case, any lost rental income incurred by the owner could not be claimed against the Strata’s Insurers because the amount was still within the deductible. Therefore, damages incurred by an owner due to a failure of Strata Insurers to provide adequate insurance coverage cannot be claimed from the Strata Insurers if the total damages are still within the deductible.
5. Section 158(2) of the *SPA* allows the Strata Corporation to counterclaim in order to recover the cost of the investigation into the cause of the damage and the remediation of common property from that damage.

Pham v Strata Plan NW 2003, 2007 BCSC 519

Case Summary:

An illegal grow-op in a unit (the “Unit”) caused damage to the unit and to a neighbouring unit. The Strata Corporation had not authorized the Unit as a rental. The Unit owner claimed that the grow-op was her unregistered tenant’s; the Strata Corporation claimed that the grow-op was the owner’s. The Unit owner failed to remediate the damage, so the Strata Corporation paid for the necessary remediation and put a lien on the Unit. The Unit owner sold the Unit for profit.

Relevant Issues:

1. If damage flows from the activities of a tenant occupying an unauthorized rental unit, is the owner of the unit liable for the damage?
2. Can an owner accept a lien imposed by the Strata Bylaws instead of remediating the damage that they caused, where the remediation was more expensive than the lien?

What do we take from this case?

1. When the owner of a unit rents their unit without authorization from the Strata Corporation, that owner is responsible for all damage that emanates from their unit, regardless whether that damage was caused by the owner or the tenant.
2. Where an owner does not remediate the damage they caused to the Strata Property, that owner cannot profit from the sale of their unit until the Strata Corporation has been compensated for the loss – including costs for trial. If the Strata Corporation imposed a lien on the property, and the lien was paid during the sale of the unit, the owner still must

compensate the Strata Corporation for the loss they caused before they are allowed to profit from the sale of the remediated unit.

Strata Plan KA 1019 v Keiran, 2007 BCSC 727

Case Summary:

A pipe burst behind the bedroom wall of a unit, causing damage to the unit. “The failure was due to high acid levels in the local water and not to any negligent act or omission of the owners [of the unit]” (para 2). The Strata Corporation paid to repair the damage, but the damages were within the insurance deductible, so the Strata Corporation could not recover the cost under its insurance coverage. The Strata Corporation sued the unit owners for the full cost of repairs.

Relevant Issues:

Does s. 158(2) of the *SPA* require negligence from the unit owner for the Strata Corporation to recover an insurance deductible? In other words, can a unit owner be responsible for damage without negligence?

What do we take from this case?

An owner can be responsible for damage without negligence. The word ‘responsible’ is not the equivalent of the word ‘negligent.’ This judgement states that:

Owners of a strata unit are ‘responsible’ for what occurs within their unit. If this were 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 any deductible under that insurance. The situation is no different when the dwelling is within a Strata Plan. (para 12)

Section 158(2) of the *SPA* allows the Strata Corporation to recover the deductible from the unit owners for damage that occurred within their unit in the same way that single-family dwelling owners would be responsible for the deductible if damage occurred within their dwelling. No negligence is required for unit owners to be 'responsible' for damage under s. 158 of the *Strata Property Act*.

John Campbell Law Corporation v Strata Plan 1350, 2001 BCSC 1342

Case Summary:

Unbeknownst to anyone, the roots of a tree from the neighbouring property invaded and blocked a pipe that takes sewage away from the strata. This underground pipe was the common property of the strata. The blockage of this pipe caused a backup of sewage and resulted in flooding in one of the units.

Relevant Issues:

Does s. 149 of the *SPA*, which states that Strata Corporations maintain and repair common property, impose strict or absolute liability on the Strata Corporation?

What do we take from this case?

The *SPA* does not impose strict liability on the Strata Corporation under s. 149. The Strata Corporation has a responsibility to act reasonably regarding the maintenance and repair of common property. If there was no negligence (i.e., if the standard of care was met) then the Strata Corporation is not liable for flood damage that results from a problem with the common property.

Economical Mutual Insurance Co v Aviva Insurance Co of Canada, 2010 BCSC 783

Case Summary:

An owner hosted a social gathering in his strata unit. A guest left the gathering after consuming alcohol and, allegedly, caused a motor vehicle accident that injured three minors.

Relevant Issues:

Under s. 150 and s. 155 of the *SPA*, does the Insurer of the Strata Corporation have a duty to defend the owner in actions arising from the motor vehicle accident that the owner's guest allegedly caused?

What do we take from this case?

Unless it is specifically stated in the insurance contract, the Insurer of the Strata Corporation does not have a duty to defend an owner from motor vehicle accidents allegedly caused by guests that consumed alcohol on the strata property under s. 150 and s. 155 of the *SPA*.

If an action is brought against a strata owner for an act or omission that occurred while the owner was acting on behalf of the Strata Corporation, the insurer may have a duty to defend the owner.

Mari v Strata Plan LMS 2835, 2007 BCSC 740

Case Summary:

The owners allowed another person to stay in their unit. That person used the washing machine. No one knew the washing machine was broken. The use of the broken washing machine resulted in water damage to the strata property.

Relevant Issues:

1. Does s. 149(1) of the *SPA* require the Strata Corporation to insure washing machines in units?
2. Can the Strata Corporation recover the deductible from the owners under s. 158(2) of the *SPA*? In other words, are the owners responsible for the damage?

What do we take from this case?

1. Section 149(1) does not require the Strata Corp to insure washing machines in units.

The appeal judge cited the trial judge's reasons:

[T]he appliances, furniture and personal belongings of the individual strata owners will not be covered under the insurance of the strata corporation and... the individual owners will and should all have to purchase their own insurance. (para 4)

2. Here, the owners were responsible for the damage. The owners allowed another person to stay in their unit and use the washing machine – ultimately, these actions caused the damage. As the appeal judge stated:

The choice of term 'responsible' provides the owners with the opportunity to allocate to a particular owner the cost of an insurance deductible in cases where the owner was thought to be responsible for a loss. (para 12)

The summary on *Strata Plan KA 1019 v Keiran*, 2007 BCSC 727, addresses the meaning of the term 'responsible' in s. 158(2) of the *Act*.

Ward v Strata Plan VIS #6115, 2011 BCCA 512

Case Summary:

Without authorization from the Strata Corporation, the unit owner removed the carpet in the unit and replaced it with a floating hardwood floor. The owner claimed that neither were a fixture under s. 149 of the *SPA* because the carpet only had a couple of attachment points and the floating hardwood had no attachments to the floor.

Relevant Issues:

Is carpeting with minimal attachments to the floor or a floating hard floor that has no attachments to the floor a “fixture” under s. 149(d) of the *SPA*?

What do we take from this case?

The definition of a “fixture” in s. 149(d) of the *SPA* was clarified by s. 9.1 of the *Regulations*, which state:

[F]ixtures means items attached to a building, including floor and wall coverings and electrical and plumbing fixtures, but does not include, if they can be removed without damage to the building, refrigerators, stoves dishwashers, washers, driers, or other items.

The purpose of this regulation is “to bring all ‘floor coverings’ into the term ‘fixtures’ and require strata corporations to insure them” (para 51). Therefore, it does not matter whether the floor covering is attached to the floor, it is still a fixture under s. 149 of the *Act*. A floating hardwood

floor and a carpet with a few attachments are both “fixtures” under s. 149 of the *Act* because they are both “floor coverings” under s. 9.1 of the *Regulation*.

Liability of Strata Corporations for Damages Flowing from Behaviour of Residents

In *Owners Strata Plan LMS 2768 v Jordison*, 2013 BCCA 484 [Jordison], British Columbian courts recognized that Strata Corporations have the right to petition the court for an Order of Sale in cases where the tenants display 'bad behaviour.' In other words, Strata Corporations can apply to the court for an order that will force the sale of a strata unit if there is sufficient conflict between the owners of a strata unit and the rest of the strata owners. An application for an Order of Sale can only be made if:

1. The Strata Corporation has already received a superior court order that the owner must do or stop doing something;
2. The owner has failed to comply with the court order; and
3. The application is made to a superior court (ie. Supreme Court of British Columbia)

If the above conditions are met, an Order of Sale may be granted under *SPA* s. 173(1)(c) where only an Order of Sale will resolve the problem.

Now that Strata Corporations have this ability to control the behaviour of residents, do those Strata Corporations have a responsibility to control their behaviour? If damages flow from the bad behaviour of a resident, is the Strata Corporation liable because they did not adequately control the resident's bad behaviour? In *Mohan v Strata Plan LMS 1622*, 2016 BCSC 822, a door was opened for the Strata Corporation to be found liable in negligence for damages flowing from the criminal activity of a resident. The judge decided that it was possible for a Strata Corporation to be liable in negligence for damages that flow from the criminal activities of a resident if:

1. A criminal prosecution finds that the loss was, in fact, caused by the conduct of the resident;
2. The Strata Corporation believed, or reasonably suspected, the resident was taking part in criminal activity on the strata property;
3. The Strata Corporation was negligent by breaching their standard of care to the owners and that breach caused or materially contributed to the loss.

In light of *Jordison* and *Mohan*, the Strata Corporation's standard of care may include maintaining a standard of reasonably good behaviour by all welcomed people on the strata property. If this standard is not met and the Strata Corporation has not taken sufficient steps to remedy the 'bad' behaviour, the possibility remains that the Strata Corporation could be liable in negligence for any damage or loss that flows from the 'bad' behaviour of a resident.

If a Strata Corporation is held responsible in negligence for failing to sufficiently reduce the risk of harm to residents from the criminal activity of another resident, and the Strata Corporation can obtain an Order for Sale, perhaps the only way for the Strata Corporation to sufficiently reduce the risk of harm to residents is to apply for an Order of Sale. It is possible that it may become the duty of the Strata Corporation to apply for an Order of Sale where one activity or behaviour of one resident creates a risk of physical or psychological harm to others. If that is true, then a Strata Corporation that does not apply for an Order of Sale could be held responsible in negligence for damages that flow from the activities or behaviour of a resident.