Insurance Deductibles and Uninsured Claims - When Can the Strata Corporation Collect?

By Allyson Baker

A washing machine in a strata lot overflows, causing water damage to adjoining property. A bathroom pipe bursts within a strata lot, causing damage to the strata lot owner's unit. In either of these cases, can the strata corporation collect back the insurance deductible from the owner of the strata lot where the problem arose?

To date, there has been very little guidance from the BC Courts on the circumstances in which a strata corporation can collect back a deductible from an owner. The *Strata Property Act* merely says that the fact that the payment of an insurance deductible in respect of a claim on the strata corporation's insurance is a common expense does not limit the strata corporation's capacity 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.

In the 2000 decision of *Strata Plan VR 2673 v. Comissiona*, a case involving a faulty Crane toilet that leaked, the Court held that the Act did not create a right to make a claim and that whether a strata corporation could maintain an action against an owner for an insurance deductible had to be determined by all of the provisions of the relevant statute and the bylaws and rules of the strata corporation. As the case only considered whether the strata corporation could legally bring the claim, the issue of whether the Commissionas were in fact liable for the deductible was not addressed.

In 2006, the BC Provincial Court considered two cases in which strata corporations sued owners to collect amounts paid out by a strata corporation as a result of water damage arising from a strata lot:*Strata Plan LMS 2835 v. Mari* and *Strata Plan KAS 1019 v. Kieran*.

In the *KAS 1019* decision, a bathroom pipe burst causing damage to the owner's strata lot. The failure was due to the high acid levels in the water and there was no evidence of negligence on the part of the strata lot's owners. The cost of repairing the damage, which the strata corporation initially paid, was well under the deductible for water damage claims in the strata corporation's insurance policy. There was no damage to the common property or to other strata lots. It was conceded at the hearing that the pipe in question formed part of the strata lot and was not part of the common property.

Under the strata lot owner's own homeowner's insurance policy, the insurer agreed to pay up to a maximum of $2,500 for any insurance deductible levied against the strata lot owner. However, the insurer was not prepared to pay the additional repair costs over this amount. As a result, the strata corporation sued the owners and the owners in turn claimed against their insurers.

In ruling in favour of the strata corporation, the Court held that:

… because the damage occurred within the unit and not to the common property, this is a situation where the homeowner has the duty to repair and maintain and is therefore "responsible for 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.

In making its ruling, the Court specifically left aside the question of whether an owner can be held responsible for damage to common property or other areas subject to the strata corporation's duty to repair and maintain that is not caused by the owner's negligence as the issue was not raised on the facts of the case.

The Court then went on to consider whether the insurer had to pay the additional repair costs. Based on the wording of the policy, the Court concluded that the limit of $2,500 was intended to apply only where an insurance deductible had been triggered under the strata corporation's insurance policy. However, no deductible was applicable here and the damage arose in an area that the owner was responsible to repair and maintain. As the policy provided that the insurer would insure the strata lot "*if the Condominium*

Corporation has no insurance or its insurance is inadequate or inadequate or not effective", the Court held that the policy was intended to cover damage not otherwise insured under the strata corporation's insurance policy. As a result, the insurer was required to pay the additional amount, subject to the deductible payable under the homeowner's policy (which was much less than the deductible payable under the strata corporation's property damage policy).

Several months after the *KAS 1019* decision was released, the Provincial Court released its decision in the *LMS 2835* matter. In this case, the water level switch in the strata lot owner's washing machine was faulty, causing the machine to overfill. The cost to repair the arising damage exceeded the strata corporation's insurance deductible. The strata corporation's insurer paid the insured amount and the strata corporation in turn sought to claim the deductible amount back from the owner.

The central issue in the case was whether the owner was "responsible" in law for the damage arising from the washing machine overfill. There was no evidence to indicate that the owner was aware of the problem. However, the strata corporation argued that the word "responsible" has a broader meaning and did not require a finding of negligence on the part of the owner. The Court agreed by referring to two different sources: first, a law dictionary, which provided that "*responsible*" means "*liable; legally accountable or answerable*" and second, another court decision which had interpreted "*responsible*" to mean "*the person who brought about the operation in the sense of causing the operation to be carried on or carried out … but for the actions of that person, the operation would not have been carried on or carried out … being the primary cause*".

In this case, the Court found that, had the owner not allowed a guest to stay in their strata lot and to use the washer, the leakage would not have occurred. In addition, the Court noted that the damage was less extensive than it could have been because a neighbour alerted the guest to the problem. These factors were sufficient to conclude that the owner was "responsible" for the deductible. The Court likened the situation to one in which a driver hits another car because of a sudden failure of the steering mechanism. Even though the driver may not have been aware of the steering problem and therefore could not be charged with a driving offence, that driver would be legally responsible for the cost of repairing the other car.

While these cases do give strata corporations some comfort that, in appropriate circumstances, a strata corporation can claim a deductible or uninsured amounts against an owner, when those appropriate circumstances arise has yet to be fully explained by the Courts. We understand that these cases are both under appeal to the BC Supreme Court, and we are aware of at least one other similar case expected to be heard in the BC Courts later this year. As a result, we may expect to receive further guidance from the Courts on this issue. In the meantime, we recommend that any strata corporation that wishes to reserve the right to collect deductibles or other uninsured amounts from an owner adopt a properly worded bylaw setting out the circumstances in which a strata corporation expects to be indemnified.