

Headline: The Case of the Mouldy Crawlspace and Small Claims Court

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What strata corporation matters can be heard in Small Claims Court? This question is often asked by owners who are unable to resolve a dispute with a strata corporation but who do not wish, usually because of the cost, to resolve the matter in British Columbia Supreme Court.

In a recent decision¹, the Provincial Court of British Columbia considered the jurisdiction of the Small Claims Court as it related to a claim by an owner for repair costs she incurred for repairs that the owner alleged were the responsibility of the strata corporation.

During an inspection related to the sale of the owner's strata lot, mould was identified on the underside of floor sheathing above a crawlspace. After receiving the inspection report, the purchaser required, as a condition of the sale, that the owner remediate the mould. The owner informed the strata management company about the mould and demanded that the strata corporation deal with the problem. The owner had obtained a quotation in the amount of \$5,096 for a comprehensive remediation of the mould.

The evidence established that other strata lot owners had previously complained of mould, however, the strata council had determined that the strata corporation was not responsible to carry out the repair. The strata council had advised the owners that it was the owner and not the strata corporation that would be responsible for the cost of the remediation. No remediation was carried out by the strata corporation. Similar advice was provided to the owner in this case, however, after a number of telephone calls and emails between the owner and the strata council, the strata council agreed to obtain an assessment and recommendation from their own expert.

The strata corporation's expert recommended spraying the underside of the subfloor with an anti-fungal sealant. A quotation to remediate the mould was obtained by the strata management company based on the recommendation of the strata corporation's expert.

Because the closing date for the sale was imminent and because the strata corporation would not commit to a particular course of action, the owner arranged for her mould expert to proceed with the remediation. The owner then submitted a bill in the amount of \$5,096 to the strata corporation.

After the owner had carried out the remediation, the strata council met and considered the quotation obtained by the strata manager which was to complete the work recommended by the strata corporation's expert. The cost was \$1,612. The strata council ultimately approved a reimbursement to the owner in the amount of \$1,612.

¹ *Grantham v. The Owners, Strata Plan VIS 4116* 2013 BCPC 146 (Can LII)

The owner initiated legal action in Small Claims court for reimbursement of the \$5,096.

The Judge was required to determine whether the strata corporation was responsible to carry out the mould remediation, and if so, whether the manner of repair that the strata corporation was willing to approve was appropriate. Before considering these issues however the Judge was first required to determine whether the Provincial Court had jurisdiction to decide the claim.

The Judge noted that the Provincial Court has jurisdiction, as a consequence of section 3 of the *Small Claims Act*, to hear a claim for debt or damages and that the claim must be within the monetary jurisdiction of \$25,000 as established by the *Small Claims Act*.

The Judge then reviewed prior cases that considered the jurisdiction of the Small Claims Court in relation to matters involving strata corporations. The Judge noted that previous cases had confirmed that before the Provincial Court could make an order, the Court must be given the authority to do so, such as occurred through section 3 of the *Small Claims Act*. The Judge also noted that certain legislation may give the jurisdiction to make an order to another Court.

With respect to the *Strata Property Act* the Judge noted that certain provisions of the *Strata Property Act* provided jurisdiction to the Supreme Court. Specifically, if a dispute falls within sections 164 or 165 of the *Strata Property Act* for example, only the Supreme Court has jurisdiction to resolve the matter. Section 164 of the *Strata Property Act* permits an owner to apply to the Supreme Court to prevent or remedy a significantly unfair action or threatened action by the strata corporation. Section 165 permits an owner to apply to the Supreme Court for an order that the strata corporation fulfill a duty or comply with the *Strata Property Act* or bylaws.

The Judge cited examples of claims that must be heard by the Supreme Court such as disputes involving the strata corporation's governance of strata properties, and claims requiring the strata corporation to comply with its bylaws as matters that must be heard in Supreme Court.

In analyzing the owner's claim for compensation to remediate the mould, the Judge characterized the claim as relating to decisions of the strata council to deal with repair obligations. The Judge concluded that the claim involved issues of corporate governance. The Judge noted that although the owner purported to seek recovery of a debt, in essence, the owner was seeking a remedy for what she likely considered to be an unfair decision. Such a dispute was within the scope of section 164 of the *Strata Property Act*. In the alternative, the Judge characterized the owner to be seeking a monetary judgment as a consequence of the failure of the strata corporation to perform its repair duties under the bylaws. Such a characterization brought the dispute within the scope of section 165 of the *Strata Property Act*. As a consequence of the characterization of the dispute as relating to unfairness or compliance with the strata corporation's bylaws, the Judge concluded that only the Supreme Court had jurisdiction to resolve the matter.

Although the Judge reached the decision that the Provincial Court lacked jurisdiction to resolve the matter, the Judge proceeded to consider the claim in the event that, on appeal, it was determined that the Provincial Court did have jurisdiction.

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Based on an engineering report obtained by the owner, the Judge concluded that the floor sheathing above the crawlspace was part of the structure of the building. The Judge also found that the strata corporation's bylaws required the strata corporation to repair and maintain the structure of the building, even if the structure was part of a strata lot.

The Judge heard evidence in respect of the type of remediation carried out by the owner and the remediation recommended by the expert engaged by the strata corporation.

The remediation carried out by the owner involved scraping the wood to remove the fungal spores, following by spraying a specialized cleaning solution and an antifungal spray. The strata corporation's expert was of the view that the physical removal of the fungal spores was not necessary as the spores were dormant and that an application of an antifungal sealer would lockdown any fungal spores and reduce the likelihood that fungal growth would occur in the future. There was a significant difference in cost between the two approaches. The strata corporation's expert claimed that the work carried out by the owner's contractor was excessive and for the most part unnecessary.

With respect to the type of repair that was appropriate, the Judge used a car metaphor and asked whether "a Ferrari was really necessary when a Fiat will provide the required transportation from point A to point B".

The Judge considered that the approach taken by the strata corporation at a cost of \$1,612 was a middle of the road solution and was reasonable and adequate in the circumstances. The high end solution which was the solution chosen by the owner was, in the Judge's view, not necessary in the circumstances.

The Judge also considered the timeframe imposed by the owner for the strata corporation to deal with mould remediation which was governed by the closing date of the real estate sale to be unrealistic.

The Judge determined that, if the Provincial Court had jurisdiction in the matter, the strata corporation should reimburse the owner the amount of \$1,612 which is the amount that the strata corporation would have been required to spend to fulfill their duty to remediate the mould as required by the bylaws.

The *Grantham* decision reinforces the limited jurisdiction of the Provincial Court when attempting to resolve disputes involving strata corporations. The decision confirms that the fact that an owner may be claiming that monies are owing from the strata corporation, is not, in itself, sufficient to bring the case within section 3 of the *Small Claims Act* if the claim for the funds is based on events relating to strata governance or other matters addressed by sections 164 and 165 of the *Strata Property Act*. If a decision can be characterized as falling within sections 164 or 165 of the *Strata Property Act*, it must be heard by the Supreme Court.

Notwithstanding the determination that the Provincial Court lacked jurisdiction, the Judge also confirmed the obligation of the strata corporation to fulfill its duties to repair and maintain common property and other aspects of the development as required by the strata corporation's bylaws.