

**BEFORE THE
COMMISSION ON COMMON OWNERSHIP COMMUNITIES
FOR MONTGOMERY COUNTY, MARYLAND**

CAROLA ORTEGA)	
)	
)	
Complainant)	
)	
v.)	Case No. 07-12
)	January 9, 2013
KEY WEST CONDOMINIUM ASSOCIATION)	
)	
)	
Respondent)	
)	

DECISION AND ORDER

The above-captioned case came before the Commission on Common Ownership Communities for Montgomery County, Maryland for hearing on November 15, 2012, pursuant to Chapter 10B of the Montgomery County Code. Based on the parties' submissions and argument and the record herein, the Hearing Panel finds, concludes and orders as follows.

I. BACKGROUND

Respondent Key West Condominium Association ("Respondent" or "Key West") charged Complainant Carola Ortega ("Complainant" or "Ms. Ortega") \$891.00 for replacement of a leaking water pipe in the laundry room of her condominium unit and repair of a section of drywall in her ceiling which was removed to gain access to the pipe. Ms. Ortega objects to the charge because in her view it is unreasonably high and she was not given a prior estimate or an opportunity to hire her own contractor.

Ms. Ortega testified in her own case-in-chief. She did not call any other witnesses or offer any documentary evidence.

Key West called Dan Roan as its sole witness. Mr. Roan works for Key West's property manager, Main Street Property. He has been involved with Key West for the

past five years. Key West also offered the following exhibits, which were admitted in evidence without objection:

- Rspt. Ex. 1– \$448 invoice from Bright Paint Decor for drywall repair.
- Rspt. Ex. 2 – drywall repair estimates from SI Restoration and the Minkoff Company.
- Rspt. Ex. 3 – excerpts from Key West’s recorded Declaration and Bylaws.

The Panel also received in evidence without objection CX1 and CX2 – the Commission’s administrative file in this case.

At the conclusion of the Complainant’s case, Respondent moved to dismiss on the ground that Complainant had the burden of proving the charge was unreasonably high but she failed to offer any evidence in support of that claim. The Panel took the motion under advisement.

II. FINDINGS OF FACT

Based on the sworn testimony at the hearing and the exhibits admitted in evidence,
the Panel finds the following facts:

1. Key West is a condominium as defined in Md. Code, Real Prop. § 11-101 and it is a common ownership community as defined in Mont. Cnty. Code § 10B-2(b).
2. Ms. Ortega owns and resides in a unit within the Key West condominium and she is subject to Key West’s governing documents.
3. Ms. Ortega contacted Mr. Roan and notified him of a leak in the ceiling of her laundry room. In her complaint, Ms. Ortega fixes the date of her contact as September 30, 2011. However, based on the dates of invoices described below, the Panel finds it more likely that Ms. Ortega contacted Mr. Roan in late August or early September 2011.
4. Mr. Roan responded by first inspecting the unit directly above Ms. Ortega’s unit and determining that the leak was not coming from the above unit.
5. Mr. Roan then hired a dry wall company – Bright Paint Decor – to open the dry wall in the ceiling of Ms. Ortega’s laundry room in an effort to find the source of the leak. This resulted in a hole no more than one foot square in the ceiling.

6. Through inspection and by turning off the water supply to Ms. Ortega's unit, it was determined that the leak was coming from a pipe within Ms. Ortega's unit.

7. Mr. Roan then hired a plumbing company – R. V. Carey's Plumbing & Heating – to replace the leaking pipe.

8. The dry wall company then returned, replaced the hole in the ceiling, and painted the ceiling.

9. The dry wall company charged Key West \$448.00, which Key West has paid. Invoice dated 9-12-11 (Rspt. Ex. 1).

10. The plumbing company charged Key West \$453.00 which Key West has since paid. Invoice dated 10-7-11 (CX1 at 14) and work orders dated 9-7-11 (CX1 at 15, 16).

11. The plumbing company invoice included a \$200 charge for a missed appointment. CX1 at 16. According to the plumbing company's invoice, the plumber had to make two trips because Ms. Ortega was not home at the agreed time. In contrast, Ms. Ortega testified that she had arranged to be at her unit at 3:30 p.m. on the day in question, but the plumber arrived early.

12. Key West charged Ms. Ortega \$891.00 for the plumbing and drywall work. Although the plumbing and drywall invoices add up to \$901.00, the \$10.00 discrepancy was not explained at the hearing.

13. The after-the-fact estimates (Rspt. Ex. 2) obtained by Respondent from two other companies for the drywall work alone average about \$831.00.

14. Key West's Declaration (Rspt. Ex. 3 at Article Thirteen A) imposes on each unit owner the duty to maintain that owner's unit, including "any and all equipment, appliances or fixtures therein situate" and they require the unit owner, "at his own expense, [to] maintain, repair or replace any plumbing . . . fixtures."

15. Key West's Bylaws (Rspt. Ex. 3 at Article VIII, Section 1(g)), authorize Key West to pay for the

cost of the maintenance or repair of any condominium unit . . . in the event such maintenance or repair is reasonably necessary in the discretion of the Board of Directors to protect the general common elements

and to assess the cost thereof against the unit on which such maintenance and repair was performed. However, such maintenance and repair may not be undertaken “without a resolution of the Board of Directors and . . . without reasonable written notice to the owner.”

III. CONCLUSIONS OF LAW

Two issues are presented for the Panel’s resolution: whether Key West may charge Ms. Ortega for the reasonable cost of plumbing and drywall repairs to her unit; and, if so, whether the charges imposed here were reasonable.

A. Right to Charge

There was no dispute that the leaking pipe was within Ms. Ortega’s unit and it was therefore her responsibility to repair it. Further, it is clear that a water leak in one unit, if not repaired, would pose a risk of damage to the condominium project generally.

Key West’s Bylaws authorize the condominium association to undertake repairs within a unit if reasonably necessary to protect the general common elements, but only after a Board resolution and notice to the unit owner. There was no evidence that the Board authorized the repair at issue or gave prior notice to Ms. Ortega that it would charge her for the repair. Arguably, Ms. Ortega waived the resolution and notice requirements by calling Key West’s property manager directly. That issue need not be resolved here in light of controlling provisions of the Maryland Condominium Act, Md. Code, Real Prop. § 11-101 and following (“Act”).

Section 11-114(g) of the Act requires the council of unit owners of a condominium to repair or replace any damaged or destroyed portion of the condominium. Further, if the cause originates within a unit and the Bylaws impose liability on the unit owner for the repair or replacement cost, then the unit owner must pay the cost up to the deductible under the condominium’s insurance policy, not to exceed \$5,000.

Here, Ms. Ortega called Key West’s property manager to report a leak. Key West promptly responded, determined that the source of the problem was a leaky pipe within Ms. Ortega’s unit, replaced the pipe, and repaired damage to Ms. Ortega’s drywall ceiling. Ms. Ortega offered no objection at any time during the process, she did not request any pre-work estimates, and she did not insist on using her own contractor. The only time she complained was after the work was completed and Key West invoiced her for its out-of-pocket costs.

The Panel concludes that Key West had a right to charge Ms. Ortega for the reasonable costs it incurred in addressing the leak.

B. Reasonableness of Charges

Ms. Ortega attacked the reasonableness of the charges on two grounds: that the drywall charge was too high because only a small hole needed to be repaired; and that the plumbing company should not have charged her for a second trip because the plumber mistakenly came earlier than the agreed time.

As to the drywall charge, the only competent evidence presented at the hearing supported the reasonableness of the charge. Key West offered estimates from two other companies in addition to Bright Paint Decor who actually did the work. Both estimates were higher than Bright Paint's. One of the estimates refers to a 45 square feet area; the other refers to a bathroom ceiling. While these discrepancies detract from the weight of the estimates, they nevertheless stand as the only direct evidence of reasonableness.

More generally, Mr. Roan testified that he had used Bright Paint before at Key West and found that company to be reasonable.

Ms. Ortega expressed her own opinion that the drywall charge was too high, given the limited amount of work that was needed. In the absence of a showing that Ms. Ortega had any expertise in home repair costs, the Panel did not rely on her testimony. Md. Rule 5-702 (opinion testimony may be admitted "if the witness is qualified as an expert by knowledge, skill, experience, training, or education"). See *Exxon Mobil Corp. v. Ford*, 40 A.3d 514, 541 (Md.App. 2012) ("Valuation of real property is one of the few areas of the law where [the owner's] lay opinion testimony is admissible").

As to the plumbing charge, the plumbing company's invoice (CX1 at 14) says: "Technicians had to make (2) trips to complete this job. Unit owner was not home when promised. Had to return at 3:00 to gain access to unit."

The weight of the evidence, however, does not support that claim. Ms. Ortega, who was a credible witness, testified that she and the plumber had agreed to a 3:30 appointment. Further, the underlying work order on which the charge was based (CX1 at 16), says, "Ms. Ortega stated that she would be home @/after 3:30 pm," yet it shows a dispatch time of 2 pm and a departure time of 4 pm. The work order that includes the actual plumbing repair shows a dispatch time of 3:00 and a departure time of 5:00, indicating that Ms. Ortega was in fact home as promised.

In the absence of any credible witness testimony from the plumbing company confirming its version of events or explaining the apparent discrepancies in the work orders, the Panel concludes that it was unreasonable to charge Ms. Ortega \$200 for a missed appointment.

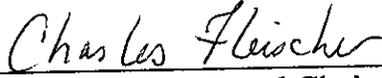
IV. ORDER

Accordingly, it is, this 9th day of January, 2013, ORDERED as follows:

1. Of the \$891.00 charge by Respondent Key West Condominium Association to Complainant Carola Ortega, \$200.00 is abated as unreasonable.
2. Within 30 days after the date of this Order, Complainant Carola Ortega must pay Respondent Key West Condominium Association \$691.00 in full satisfaction of Complainant's obligation for the cost of replacing a leaking pipe in the ceiling of Complainant's laundry room and related drywall repairs.
3. Respondent's motion to dismiss, made at the hearing, is denied as moot.

Panel members Jim Coyle and Barbara Gwendolyn Henderson concur in this Decision and Order.¹

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court for Montgomery County, Maryland within thirty days after this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.



Charles H. Fleischer, Panel Chair

¹ Commissioner Henderson did not attend the hearing but she thereafter certified, pursuant to Mont. Cnty. Code § 2A-10(c), that she read a transcript of the hearing and reviewed the evidence of record. At the hearing the parties agreed to Commissioner Henderson's participating on that basis.