MONTGOMERY COUNTY, MARYLAND
COMMISSION ON COMMON OWNERSHIP COMMUNITIES

In the matter of:

Asadur Ozkanian
11925 Parklawn Drive #303
Rockville, MD 20852
Complainant,

v.

Case #22-15
February 26, 2016

Walnut Grove Condominium Association
c/o John McCabe, Esq.
7101 Wisconsin Ave. #1201
Bethesda, Maryland 20814

Decision and Order

(Before Winegar, Coyle and Fine)

This matter came before the Commission pursuant to Sections 10B of the Code of Montgomery County, Maryland. The hearing panel has considered the testimony and evidence presented and finds, determines and orders as follows:

Background

The Complainant, Asadur Ozkanian (hereafter referred to as "Complainant") filed this complaint with the Commission on May 29, 2015 against Walnut Grove Condominium (hereafter referred to as "Respondent"). The Complainant owns two units within the Respondent. He lives in one and rents out the other. The second unit is the one involved in this dispute. In his complaint, he alleged that his unit at Unit 101, 11923 Parklawn Drive in Rockville, Maryland (the "Unit") had suffered two separate incidents of damage from a clogged condensate drain riser. Damage occurred on or about October 22, 2013 and again on July 16, 2014. The Respondent concurred that the damage was the result of an improperly functioning common element, which the Respondent is responsible for maintaining.

The Complainant reported that damage was done to hardwood flooring in his unit, carpeting, and walls. The Complainant requested compensation to repair the damage, as well as rental income loss, and compensation for stress and aggravation. Complainant requested compensation in the amount of $26,400 in damages, which Complainant requested be augmented out of consideration for an unspecified amount of nonmaterial damages.

Respondent reported that the Association has never denied an obligation to make repairs to the damaged portions of the floor, and has attempted on several occasions to gain access to Complainant's unit. Respondent reported that access had not been granted upon request.

Respondent further denied the request to replace carpet in Complainant's unit, as the carpeting is considered a betterment and improvement under Section 11-114 (a)(1) of the Real Property Article of the Maryland Code ("Maryland Condominium Act").

While the Respondent stated that the walls had been repaired, Complainant reported that additional repair was needed.

The case was mediated on August 11, 2015. The mediation was not successful and the complaint was heard by a panel of the Montgomery County Commission on Common Ownership Communities on November 12, 2015.

Prior to the hearing, the board of directors for the Respondent met in special closed session, pursuant to Section 11-109.1(a) (4) of the Maryland Condominium Act, which authorizes a condominium's board of directors to hold a closed session for consultation with staff personnel, consultants, attorneys, board members, or other persons in connection with pending or potential litigation or other legal matters. As a result of that closed session, the Board adopted a resolution to award Complainant $14,641.75 for the claims outlined in CCOC 22-15 Commission Exhibit 1. A certified check in that amount was offered to Complainant at the opening of the hearing. Complainant declined the offered payment. As a result of the declined payment, counsel for the Respondent requested the hearing panel to find that the complaint was frivolous as of the time the offer was refused.

Counsel for the Respondent moved to dismiss the case; the hearing panel declined to rule on the motion until after the presentation of testimony at the hearing. The Complainant presented testimony as to the impact of the unrepaired floor on him. The Respondent declined to present any witnesses or testimony in addition to Commission Exhibit 1.

Findings of Fact

1. Complainant is the owner of Unit 101, 11923 Parklawn Drive, Rockville, Maryland 20852 pursuant to a deed dated April 18, 2011.
2. Respondent is a condominium association as defined by the Maryland Condominium Act.
3. In October, 2013 and July, 2014, damage was caused to the Unit by a clogged condensate riser.
4. As a result, portions of the drywall and flooring of the Unit were damaged.
5. Respondent made repairs to the wall(s) shortly after the July 2014 damage. Complainant feels that the repairs were inadequate. Respondent contends that, through its agent/contractor, it properly

repaired the walls. Respondent expressed a commitment to fulfilling its repair obligation pursuant to Section 11-114(g)(1) of the Maryland Condominium Act, which says the following:

> Any portion of the condominium common elements and the units, exclusive of improvements and betterments installed in the units by unit owners other than the developer, damaged or destroyed shall be repaired or replaced promptly by the council of unit owners.

6. The original flooring in the Unit was parquet. Carpeting was installed later in time by the Complainant and is considered a betterment. Respondent has stated that only a portion of the floor was damaged.

7. Respondent provided evidence to the effect that it had been denied access to the unit in order to assess the floor damage and to make repairs.

8. Complainant requested reimbursement of lost rental income. Respondent provided evidence to the effect that Complainant had not complied with Paragraph 14 of the Respondent's General Rules and Regulations dated June 28, 1984:

> 14. RENTAL PROPERTY: All unit owners who rent one or more units to a tenant shall: ... (4) provide the Board of Directors with a copy of the lease agreement, and (5) provide to the management agent or the Board of Directors the name of any agent retained by the unit owner to manage the unit for the owner.

9. Prior to the commencement of the hearing, the Respondent offered to settle this dispute for $14,641.75 and avoid the need for the hearing. Complainant affirmed that he had declined the offer of $14,641.75.

10. The panel concludes that the evidence offered by the Complainant supports his assertion that portions of the Unit were damaged as a result of a common element for which the Respondent is responsible, and the panel so finds.

11. The panel concludes that there is evidence to the effect that Complainant had not provided access to the unit in response to one or more requests from Respondent for the purposes of ascertaining damage and performing prompt repair, and the panel so finds.

12. The panel finds credible the Respondent's estimates of repairs to the parquet floor (based on an estimate of 650 square feet) of $9063.10. The panel also accepts the Respondent's estimate of $300 to repair damaged walls.

13. The panel finds that the Respondent has offered the sum of $1,678.65 for repairs to the carpet.

Conclusions of Law

1. The panel finds that the carpet is a "betterment" for which the Respondent is not liable under Section 11-114(g)(1) of the Maryland Condominium Act (Real Property Article of the Maryland Code).

2. The panel finds that the Complainant had not properly notified Respondent of the rental status of the Unit, as required in Paragraph 14 of the Respondent's General Rules and Regulations.

3. The panel finds that awards for lost rental income, stress and aggravation cannot be awarded. The general rule for liability for consequential, or "special" damages has recently been summarized by the Court of Appeals in *Burson v. Simard,* 35 A.3d 1154 (Md. 2012), where the Court wrote:

> The general rule [regarding remedies] is enumerated in *Hadley v. Baxendale*, 9 Ex. 341, 156 Eng. Rep. 145 (1854): "the damages for a breach of contract should be such as may fairly and reasonably be considered, either as arising naturally, i.e. according to the usual course of things from such breach of the contract itself; or such as may reasonably be supposed to have been in contemplation of both parties, at the time they made the contract, as the probable result of the breach of it."
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> *Lloyd v. Gen. Motors Corp.*, 397 Md. 108, 162 n. 25, 916 A.2d 257, 288 n. 25 (2007).

The panel has used the terms "general damages" and "special damages" to describe this rule. *Addressograph–Multigraph Corp. v. Zink,* 273 Md. 277, 286, 329 A.2d 28, 34 (1974) ("[D]amages which a plaintiff may recover for breach of contract include both those which may fairly and reasonably be considered as arising naturally from the breach (general damages) and those which may reasonably be supposed to have been in the contemplation of both parties at the time of making of the contract (special damages)."). "Special damages" are sometimes called "consequential damages," see *Hinkle v. Rockville Motor Co.,* 262 Md. 502, 510–511, 278 A.2d 42, 46–47 (1971), and courts may award "incidental damages" as well, *Lloyd,* 397 Md. at 162, 916 A.2d at 288; Powell on Real Property § 81.04[2][c]; Corbin on Contracts § 60.12 (2005).

This is especially applicable here because the Respondent could not know how much rent the Complainant was charging because Complainant failed to register a copy of his lease with the Respondent.

4. By failing to accept a reasonable offer of settlement that actually exceeded damages which could be verified by stipulation or evidence, or which are within the Commission's authority to grant, Complainant unreasonably delayed or hindered the dispute resolution process without good cause. The panel finds that by declining the offer of compensation made by the Respondent, the Complainant maintained a frivolous dispute... or substantially delayed or hindered the dispute resolution process without good cause (see Section 10B-13(d) Montgomery County, Maryland Code). This finding permits the award of certain attorney's fees. See *Soliman v. Madison Park Condominium,* CCOC #12-09 (2010), *affirmed,* Civ. No. #329202V (Circuit Court of Montgomery County (2010), holding that by refusing an offer of settlement which was significantly greater than that which the evidence was likely to support, the Complainant substantially delayed the dispute resolution process and pursued a frivolous complaint.

Order

1. The Respondent's motion to dismiss the complaint is DENIED.

2. Not later than 60 days from the date of this order, Complainant must properly register the Unit as a rental unit with the Respondent and provide all required documentation called for by the governing documents.

3. Not later than 60 days from the date of this order, Respondent must establish and publish a proactive periodic inspection and maintenance plan for the condensate riser in order to reduce the chance that further damage will occur from this equipment. Complainant is required to provide reasonable access to the unit for routine inspection and maintenance.

4. Not later than 60 days from the date of this order, Respondent must complete repairs to the Unit, to include additional wall repair, repairs to carpet damaged by the mitigation contractor, and repairs to up to 650 sf of parquet floor at a combined cost not to exceed $11,041 pursuant to various proposals from CMI and Carpet and Floor Express.

5. Complainant must provide access to the unit upon reasonable request from Respondent to assess the floor and make needed repairs. If the amount of damaged parquet is determined to be significantly less or greater than the stipulated 650 sf, the Respondent may report the measurements to the hearing panel and request an adjustment to the amount of repairs to be performed.

6. The hearing panel awards four hours of attorney's fees to the Respondent, with three hours to be billed at a rate the panel feels to be reasonable for work performed during regular business hours ($250 per hour) and one hour of after-hours work at the stated rate of $395 per hour, for a total of $1,145. Complainant is ordered to reimburse the Respondent within 60 days of the date of this order. That requirement notwithstanding, if the parties wish to settle matter by mutual payment and agreement with a net payment due to the Complainant in the amount of $9,896, the Respondent may submit payment to the Complainant in that amount. If the parties agree that the Respondent may pay the required amount rather than perform the work, the Complainant is required to sign a settlement agreement releasing the Respondent from further liability associated with the July 2013 and October 2014 incidents of damage from the clogged condensate riser. If the parties agree to a cash settlement, the Complainant must repair the unit to generally-accepted standards and to allow the Respondent to inspect it on reasonable notice to confirm that the repairs have been made.

Any party aggrieved by this Decision and Order may appeal it by filing a petition for judicial review with the Circuit Court for Montgomery County, Maryland, within 30 days after the date of this order, under the Maryland Rules for judicial review of administrative agency decision.

Commissioners Fine and Coyle concur.

Aimee Winegar

Aimee Winegar, Panel Chair