

Citation: *Burton v. Fleming*, 2026 YKSM 9

Date: 20260703
Docket: 26-S0008
Registry: Whitehorse

SMALL CLAIMS COURT OF YUKON
Before Her Honour Judge Cairns

SUSAN BURTON

Plaintiff

v.

SHERRY FLEMING AND
TRAVIS FLEMING

Defendants

Appearances:
Susan Burton
Travis Fleming

Appearing on her own behalf
Appearing on behalf of the Defendants

REASONS FOR JUDGMENT

[1] The Plaintiff, Susan Burton, claims reimbursement for condominium insurance she says she paid between 2019 and 2025 for both units of a two-unit condominium. Ms. Burton alleges that repayment in full is outstanding. Her claim is for \$3,326.50, plus costs.

[2] Travis Fleming and his mother, Sherry Fleming, are both named as Defendants. Mr. Fleming counterclaims, seeking the return of the \$3,000 he paid Ms. Burton to partially reimburse her for the insurance. He also seeks compensation for “grievance”

and undue stress, as well as costs for travel related to court. The total amount he seeks in the counterclaim is \$8,000.

[3] Both Ms. Burton and Mr. Fleming testified at trial, and each filed various documents. All of this evidence has been considered.

[4] Mr. Fleming did not provide any documentation to support his counterclaim for “grievance”, undue stress or travel costs, nor did he provide testimonial evidence to support that part of his counterclaim. I dismiss that part of the counterclaim.

Background

[5] Until early 2025, Susan Burton and Sherry Fleming were neighbours, each owning a unit in a two-unit condominium in Whitehorse. Ms. Burton owns Unit A, 1108 Holly Street and Ms. Fleming previously owned Unit B. Sadly, Ms. Fleming has dementia and no longer resides in her unit, having moved to a care facility.

[6] Ms. Burton explains that, when obtaining a mortgage for the purchase of Unit A in 2019, she was required to prove that the unit was protected by condominium insurance as required by the *Condominium Act*, RSY, 1986, c. 28. Since Ms. Fleming told her that she did not have sufficient funds, Ms. Burton made the payments in full. She says that she and Ms. Fleming orally agreed that repayment would occur, either when Ms. Fleming sold her unit or moved out of her unit. The agreement was never reduced to writing. She says she told Ms. Fleming every year about the insurance owing.

[7] Travis Fleming, Ms. Fleming's son, has been appointed in her Enduring Power of Attorney as her attorney to manage her affairs. He sold Ms. Fleming's unit in 2025. When the unit was sold, the insurance adjustment was paid to Mr. Fleming on behalf of his mother. Ms. Burton says that she paid the insurance and so the adjustment amount should have been paid to her.

[8] Following the sale of Ms. Fleming's unit, Ms. Burton asked Mr. Fleming to reimburse her for insurance payments. Mr. Fleming was initially agreeable and paid her \$3,000. However, when he later became aware that his mother had a home insurance policy, he refused to repay Ms. Burton anything more. He became suspicious, concerned that Ms. Burton was taking advantage of his mother's incapacity and scamming him.

[9] Mr. Fleming is in a difficult position. His mother is not in any condition to provide him with information about the oral agreement Ms. Burton describes. He says that, prior to his mother's incapacitation, he knew little about her financial affairs as he does not live in Whitehorse and only saw his mother infrequently. As such, he cannot confirm or deny whether there was an agreement between his mother and Ms. Burton.

[10] Mr. Fleming also explained that, because he lives in Alberta and has not owned property in Yukon, he is unfamiliar with the legislation that applies to condominiums.

Legal Issues

[11] There are several legal issues that must be addressed.

[12] First, Mr. Fleming disputes that the two units form a condominium; he says they are simply a duplex. However, Ms. Burton filed documents that establish that the two units are a condominium.

[13] Ms. Burton filed a Declaration, dated June 13, 2000, prepared by the developers of the duplex construction that is now Unit A and Unit B, 1108 Holly Street. The Declaration is explicit that the duplex construction is a condominium to be governed by the *Condominium Act*, RSY, 1986, c. 28. Pursuant to s. 10 of that legislation, the registration of the Declaration created a Condominium Corporation; in this case, it is Condominium Corporation No. 68.

[14] Ms. Burton also filed a Certificate of Title Condominium. The Certificate of Title Condominium refers to her unit, Unit A, but also to her undivided 50% interest in the common property. Based on these documents, I am satisfied that the two units are a condominium governed by Yukon's condominium legislation.

[15] Second, Mr. Fleming provided documents establishing that his mother has had a home insurance policy for Unit B with TD Insurance since June 16, 2021. The full policy was not filed; however, a summary of the policy coverage makes clear that the home insurance policy is not condominium insurance and does not cover the common property of the condominium.

[16] Turning to the issue of condominium insurance, section 170 of the *Condominium Act*, SY 2015, c. 4, requires a condominium corporation to maintain property insurance for any common property, any common assets, any fixtures that are part of the construction of the development, and the units (but not including any additions,

improvements or upgrades to a unit by its owners). A condominium corporation must also obtain and maintain general liability insurance for the specific issues listed at s. 171 of the statute. These requirements applied to the Holly Street condominium when the units were owned by Ms. Burton and Ms. Fleming.

[17] It is clear from a review of the legislation that obtaining condominium insurance is mandatory. A statutory duty to insure was previously found in s. 17 of the *Condominium Act*, RSY, 1986, c. 28; later in s. 17 of the *Condominiums Transitional Act*, RSY 2002, c. 36, and is now found in the current statute: *Condominium Act*, SY 2015, c. 4, ss. 170 to 181.

[18] I also note that s. 175 of the current *Condominium Act* specifies that, despite the terms of the insurance policy, the named insured in a condominium corporation's insurance policy includes the corporation and the owners of the units. In this case, the owners at the relevant time included both Ms. Burton and Ms. Fleming.

[19] Finally, a unit owner's insurance is addressed separately in the current statute, at s. 179, and is to apply to perils not insured by the condominium corporation. This is helpful to understand why both Ms. Fleming and Ms. Burton had their own home insurance policies in addition to condominium insurance. I find that the home insurance policy held by Mr. Fleming's mother did not fulfil the statutory obligation to have condominium insurance.

Facts

[20] Unit A and Unit B are a condominium, and condominium insurance is required by statute.

[21] Ms. Burton says she paid the required condominium insurance between 2019 and 2025. She has provided renewal payment notices, invoices, and some receipts going back to 2019. The insurance account is in the name of “Condo Corp 68”, which is the condominium corporation created for the units owned by Ms. Burton and Ms. Fleming. It is clear from the documents filed that the insurance paid by Ms. Burton was for condominium insurance for both Units A and B.

[22] The amounts Ms. Burton says she paid and the amounts she says are owed to her are as follows:

Date	Total Amount	50% payable by Ms. Fleming
March 20, 2019	\$ 1,435	\$ 717.50
March 12, 2020	\$ 1,752	\$ 876
March 5, 2021	\$ 1,923	\$ 961.50
March 22, 2022	\$ 2,218	\$1,109
March 22, 2023	\$ 2,554	\$1,277
March 19, 2024	\$ 2,771	\$1,385.50
March 11, 2025	\$ 3,414	\$1,707
Total	\$16,067	\$6,326.50

[23] I note that Ms. Burton appears to have miscalculated the 50% payable by the Defendants. Fifty percent of \$16,067 is \$8,033.50, not \$6,326.50. It seems that she

failed to include in her calculations the \$1,707 payment made in March 2025. Her calculations were not addressed at trial, and I am unable to determine if this omission was intentional or inadvertent. Ms. Burton did not apply to amend the *quantum* sought in her claim at any point before or during the trial. Without an explanation by Ms. Burton or an application to amend the *quantum* claimed, I find it would be unfair to Mr. Fleming to award Ms. Burton more than she claimed.

Conclusion

[24] I found both Mr. Fleming and Ms. Burton were credible witnesses who made reasonable efforts to provide the Court with the necessary information. As noted, Mr. Fleming is in a difficult situation as he is unable to ask his mother about the disputed agreement. Simply put, he does not have firsthand knowledge about whether the agreement existed or not.

[25] On the evidence presented, Ms. Burton has satisfied me on a balance of probabilities that she paid the condominium insurance for Condominium Corporation 68, Units A and B, 1108 Holly Street for the years 2019 to 2025. There is no dispute that Mr. Fleming paid Ms. Burton \$3,000 to partially reimburse her for the insurance payments. Accordingly, there will be judgment in favour of Ms. Burton, limited to the amount claimed, namely, \$3,326.50.

[26] Given that I have found that Ms. Burton paid the condominium insurance for both units as described in her claim, the Defendant's counterclaim for the return of the \$3,000 paid to reimburse her is dismissed.

[27] Ms. Burton is awarded \$150.00 for the costs of filing and service. She is awarded pre-judgement interest and post-judgement interest calculated pursuant to the *Judicature Act*, RSY 2002, c. 128,

CAIRNS T.C.J.