



# Civil Resolution Tribunal

Date Issued: August 23, 2017

File: ST-2017-00230

Type: Strata

Civil Resolution Tribunal

Indexed as: *Hodgson v. The Owners, Strata Plan LMS 908*, 2017 BCCRT 66

B E T W E E N :

Trevor Jolyon Hodgson

**APPLICANT**

A N D :

The Owners, Strata Plan LMS 908

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Bonnie Elster

## INTRODUCTION

- 1) The applicant, Trevor Hodgson (applicant) is an owner of strata lot 10 in the respondent strata corporation, The Owners, Strata Plan LMS 908 (strata), located in the lower mainland. There are 187 strata lots in two low-rise buildings,

constructed in two phases in 1993. A landscaped courtyard separates the two buildings.

- 2) The applicant claims that the strata is spending money from the contingency reserve fund (CRF) without proper authority, contrary to the *Strata Property Act* (SPA). The applicant seeks an order that the strata comply with the SPA regarding CRF expenditures. The applicant further claims that the strata did not pay certain benefits to the building manager.
- 3) The strata says it followed the SPA at all times, including the SPA provisions on spending from the CRF. The strata says that the benefits to the building manager are discretionary.
- 4) The applicant is self-represented. The strata council president represents the strata.

## **JURISDICTION AND PROCEDURE**

- 5) These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 3.6 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
- 6) The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
- 7) The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in

a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

- 8) The applicable tribunal rules are those that were in place at the time this dispute was commenced.
- 9) Under section 48.1, in resolving this dispute, the tribunal may make one or more of the following:
  - a. order a party to do or stop doing something;
  - b. order a party to pay money;
  - c. order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

- 10) The parties reached agreement on one issue prior to this adjudication and that issue is not before me in this decision.
- 11) The issues in this dispute are:
  - a) Is the strata authorized to spend money from the CRF in 2016/2017 that the owners authorized in prior years?
  - b) Did the strata install security gates at certain entrances to the parkade without proper authorization?
  - c) Did the strata approve the remediation of a balcony and balcony guardrail contrary to the SPA?
  - d) Did the strata approve the investigation of the courtyard drainage problem contrary to the SPA?
  - e) Is the strata obliged to contribute to the building manager's RSP?
  - f) Are council members in breach of their duty under the SPA?

## BACKGROUND AND EVIDENCE

### The Earlier CRF Authorizations

- 12) The council convened a special general meeting on May 7, 2015 (May 2015 SGM). One hundred and nine owners were present in person or by proxy. One hundred and four owners voted in favour of the following resolution (Resolution #6):

**MAJORITY VOTE RESOLUTION #6:** To complete the 2015 recommended repairs and replacements in the Depreciation Report.

“RESOLUTION #6: “The Owners, strata plan LMS 908, resolve by Majority vote to complete the following repairs by withdrawing money from the Contingency Reserve Fund in 2015 to:

|                                       |                          |
|---------------------------------------|--------------------------|
| Repair balcony decks                  | \$50,000                 |
| Repair drywall cracks in the hallways | \$20,000                 |
| Replace exterior joint sealants       | \$55,000 (in 2015)       |
| Repair windows and doors              | \$20,000                 |
| Repair balcony guardrails             | \$ 5,000                 |
|                                       | Total - \$150,000 + tax” |

- 13) Council minutes of May 28, 2015 show that the strata (1) hired a professional engineering firm to evaluate balcony deck repairs; (2) directed the strata manager to get quotes to repair drywall cracks; (3) accepted a quote from a professional engineering firm to prepare a project manual for exterior joint seals; and (4) sought to obtain quotes for repairs to the windows and doors, together with the balcony guardrails.
- 14) Council minutes of June 25, 2015 refer to the strata’s Depreciation Report (DR) that identified the need to repair the balcony guardrails for the balcony above the common property pub/lounge. The council was looking for 2 or 3 quotes for this repair.

15) The July 30, 2015 council minutes show repairs in multiple areas of the building were underway, however, quotes for the balcony guardrails were still outstanding. Similarly, council minutes of September 2015 show that repairs to balconies, drywall, exterior joints, defective window and doors were all in progress. However, the balcony guardrail repairs remained unaddressed.

16) On October 24, 2015, the strata held its annual general meeting (2015/2016 AGM). One hundred and thirty-two eligible voters were present in person or by proxy. At the 2015/2016 AGM, the owners approved the following resolution:

**“MAJORITY VOTE RESOLUTION “D”:** To complete the 2016 recommended repairs and replacement in the Depreciation Report. ...

“The Owners, strata plan LMS908 resolve by Majority vote to complete the following repairs, scheduled in the Depreciation Report by withdrawing money from the Contingency Reserve Fund in 2015/2016 to:

|                                    |                 |
|------------------------------------|-----------------|
| Repair windows and doors           | \$20,751        |
| Renew the Depreciation Report      | \$ 5,384        |
| Sealants                           | \$10,000        |
| Supplementary for improved Dep. R. | \$11,156        |
| Total                              | \$47,291 + Tax” |

17) The resolution passed with 122 votes in favour and 10 opposed.

18) However, at the same AGM, the owners defeated a  $\frac{3}{4}$  vote resolution to spend up to \$50,000 from the CRF for membrane investigation and drainage correction for the courtyard. As well, the owners defeated two other resolutions to spend money from the CRF for other repairs. Council meeting minutes of October 28, 2015 show that the council was still pursuing a quote for the repair of balcony guardrails.

19) In mid-January 2017, some council members met with executives of the strata management company. They wanted to clarify CRF matters, encumbered CRF money and reporting to owners. At the meeting, the strata management company confirmed that CRF funds, previously approved by the owners for use on specific

projects, remain available. Council members asked the strata management company to provide an analysis of the CRF on a project-by-project basis, dating back to the time that the owners approved each CRF project, with details of the amount approved, costs incurred to date and the remaining balances as of the date of the analysis.

- 20) The minutes explained that once a project is considered complete, either because the work is finished or the project is cancelled, then council would go back to the owners for a vote to return any unspent balance to the CRF. As of January 2017, the unspent balances for owner-approved CRF projects were as follows:

|                         |             |
|-------------------------|-------------|
| Repair Balcony Decks    | \$29,227.85 |
| Drywall Cracks          | \$ 6,378.00 |
| Exterior Joint Sealants | \$52,944.01 |
| Windows and Doors       | \$ 2,627.00 |
| Balcony Guardrails      | \$ 4,523.67 |
| Total                   | \$95,700.53 |

- 21) On February 28, 2017, the applicant attended a hearing before council to request closing project-based CRF accounts because it was the applicant's position that these project funds were no longer available. Council told the applicant that the strata management company advised council that all CRF funds, previously approved by owners for use in specific projects, remain available as encumbered funds for use in those projects until such time as council considers the project complete. The applicant took the position there is no surviving encumbrance on these project funds after the end of the fiscal year in which the owners voted for the resolution. The council took the position that these funds would be reported in monthly financial statements project-by-project in the interests of transparency to

the owners. The council summarized their decision from February 28, 2017 in a letter to the applicant dated March 3, 2017.

### Refuge Gates and Building Security

- 22) The strata has a bylaw that requires at least one resident of a strata lot to be over the age of 55, thus creating a seniors' community. In addition, there are bylaws that authorize video surveillance cameras in the main entranceway, throughout the parkade and in the workshop. Residents of both buildings access the common property using a key fob system.
- 23) The evidence shows that at least one resident expressed security concerns in a letter to council in September 2014. Later council minutes refer to security patrols by owners, who walk about the buildings each evening and check that exit doors are properly closed. The council minutes of January 21, 2016 refer to adding a "security group" to the existing committees of the strata. In February 2016, council authorized AISS, a security firm, to conduct a security audit of both buildings; assess all doors and building entry points; and make recommendations. March 2016 council minutes show that AISS performed the audit and quoted \$15,145.20 to make specific security-based improvements to the buildings. Council reconsidered and asked AISS for a revised quote that addressed only the replacement of the lobby front doors and frames at this time. In addition, the March 2016 council minutes provide detail for the owners as to the purpose, goals and membership of the new security group.
- 24) Evidence shows that there are five outside entry points to the parkade from ground level; each has a staircase. Some staircases have a refuge area at the bottom of the stairs that is not visible from the top of the stairs. From time to time, council minutes make note of graffiti and cigarette butts in or near these refuge areas.
- 25) In November 2016, the council president requested the RCMP to perform a security overview of the buildings and make recommendations. The council included the recommendations of the RCMP overview with the November, 2016

council minutes. Among the recommendations, the RCMP noted two parkade emergency exit doors with refuge areas. The RCMP report said these refuge areas are not visible from the top of the stairs. The RCMP said this makes the refuge areas suitable as a hiding place and an opportunity for illegal activity. The RCMP recommended the installation of a one-way gate at the top of each of these stairwells.

- 26) The strata submits that the RCMP verbally recommended that the parkade would be safer and the possibility of serious harm to owners would be mitigated by the installation of gates at the parkade exits. These gates would be a physical and visible deterrent. The November 2016 minutes conclude that the RCMP recommendation for one-way gates should be left for the new, incoming strata council after the December 2016 AGM.
- 27) At the December 2016 AGM, those present in person or by proxy, unanimously approved the establishment of a security group within the strata. Following the December 2016 AGM, the council meeting minutes of December 22, 2016 indicate that council asked the strata manager to seek quotes for one-way gates at several exterior stairwells where there is a refuge area that might serve as a hiding place. The strata manager identified two companies that did this type of work.
- 28) The evidence shows that there was a break-in into the parkade on December 30, 2016. The thieves stole numerous items from storage lockers and vehicles, as well as four bicycles. On January 15, 2017 there was another break-in into storage lockers and vehicles. The minutes of January 25, 2017 report vigilant evening patrols intended to counter unauthorized entries into the buildings. The minutes list the items stolen and the fact that bicycle storage areas have been rekeyed. The minutes note that security systems already in place throughout the complex are under review for possible upgrading. The evidence shows that at the January 25, 2017 council meeting, the council approved an expenditure to upgrade parkade exit doors with security gates. The five gates would have self-closers and one-way, emergency exit push bars. The gate installation took place during the last two



weeks of February and the first week of March, 2017. Ultimately, the cost to install the security gates was over \$10,000.00.

- 29) On February 8, 2017 a third break-in took place. This time the thief (or thieves) shattered an owner vehicle window and stole a wallet. At its February 28, 2017 meeting, council discussed a letter from the applicant regarding the installation of the security gates to the parkade emergency exits. The applicant told council that the installation of security gates was an unapproved expenditure from the CRF and that the design of the gates constituted a significant change to the use or appearance of common property. The applicant requested council to call an SGM to ratify the expenditure, to present proposals for modifications to the gates and to approve related expenses for carrying out the modifications. The February 28, 2017 council minutes show that the council considered the project to secure the parkade exits as an “emergency necessity”. The minutes of February 28, 2017, indicate that the installation of the five gates to secure the exit doorways to the parkade was nearing completion. Council acknowledges in those minutes that more work is necessary to improve the appearance of the gates.
- 30) On March 15, 2017, an owner sent an email to the City of Coquitlam (City) regarding safety concerns with respect to the new security gates. The owner attached photos of the newly-installed security gates. On March 16, 2017, the City responded that the gates were a building code violation.
- 31) On each of March 20, March 30, April 12, and April 13, 2017, there were break-ins into vehicles. The March 30, 2017 council minutes state that the building inspector reviewed the new security gates and found some were not in compliance with the building code. Council ordered the removal of three of the gates. The evidence shows that council’s plan was to make modifications and reinstall the gates. As of April 27, 2017, council minutes explain the gates remain in storage pending approval by the building inspector. The evidence shows that owners reported to council that the stranger were using the refuge areas for “smoking, littering and other activities,” since the removal of the security gates.

- 32) The evidence shows that the break-ins/thefts have caused the strata expense: (1) repair of nine lockers; (2) re-keying 17 locker room doors; and (3) installation of new locks on bicycle lockers. At the council meeting held April 27, 2017, the building committee reported that the most recent, three break-ins to the building were most likely the result of entry through fire exit doors, directly into the building, and the council was urging owners to use only the front door of the building. The minutes of the council meeting held June 29, 2017 indicate that each of the five security gates required a different degree of remediation.

### Balcony Guardrails

- 33) Council minutes of September 17, 2014 refer to a letter from an owner regarding an exterior handrail. Council minutes of April 30, 2015 also refer to correspondence from an owner about patio/balcony repairs. The applicant says that both of these references are to the same balcony and guardrail issue for which the owners approved repairs at the May 2015 SGM. While it is not at all clear from the minutes that these references are to the same balcony and balcony guardrail at issue, I find the applicant's explanation to be credible because the applicant was on council at the time.
- 34) At the May 2015 SGM, the owners approved CRF expenditures, set out in the DR, of \$50,000 for general balcony repairs and \$5,000 for balcony guardrails. The specific balcony guardrails are located above a common property pub/lounge. In May 2015, council instructed the strata manager to obtain quotes for the repair of the balcony guardrails and various windows and doors. The minutes of almost every council meeting after the May 2015 SGM refer to the repair of the balcony guardrails.
- 35) In September 2016, council approved a contract with SE, an engineering firm, to develop a plan for repairs to the balcony and balcony guardrails above the common property pub/lounge. SE submitted its report to council in October 2016. SE found the balcony railings to be unsafe due to the existence of significant

damage. [My emphasis] SE said that the guardrails were no longer in compliance with the BC Building Code. SE stated in its report:

“Based on our observations, the guardrail is not able to provide the resistance to lateral forces required by the BC Building Code. The compromised structural integrity would likely not be able to resist impact if someone was to fall onto the guardrails, and we recommend not accessing the roof deck area (or stay a minimum of 6’ away from the perimeters) until repairs are completed.”

- 36) SE estimated the repair cost to be \$36,100 because the design of the pillar for the guardrail was highly integrated into the balcony deck. As a result, the balcony itself required significant repairs in order to properly repair the balcony guardrails. Council decided to take this matter to the upcoming December 2016 AGM.
- 37) At the AGM, held December 19, 2016, the owners defeated Resolution “E” which authorized, by  $\frac{3}{4}$  vote, an expenditure from the CRF of up to \$50,000 to repair balcony railings (guardrails) and the deck above the pub/lounge. Only 22 owners voted in favour of this expenditure. One hundred and thirteen owners opposed the resolution.
- 38) At the first council meeting held a few days after the December 2016 AGM, all council members were newly-elected, except one. Council minutes of January 25, 2017 refer to the balcony and guardrail repairs above the pub/lounge as an emergency. At the council meeting on February 28, 2017, the council discussed the condition of the balcony and guardrails, as described by SE. Council decided unanimously that the situation was now an emergency and “will be treated as such.” At its March 30, 2017 meeting, council reviewed assessments from two engineering companies and decided to seek a third quote. On April 27, 2017, the strata council approved SE to prepare project specifications and oversee the repairs at a cost of \$8,900. SE estimated the actual repair costs at \$36,100. The May 25, 2017 minutes confirm that SE expected to start work on the balcony and guardrails in early July 2017.

### Courtyard Drainage

- 39) In April 2016, an engineering consulting firm conducted a visual assessment of the underground parking slab waterproof membrane at multiple locations under the landscaping in the courtyard. The engineering firm provided a written report to council in May 2016.
- 40) The strata has an in-house technical committee. The council minutes of October 27, 2016 includes a report of the technical committee. It refers to problems of standing water in the courtyards. The technical committee recommends that council: (1) retain the services of an independent consultant to assist the technical committee; (2) oversee the repairs to the courtyard membrane, including the concrete podium, drainage and landscaping; and (3) retain a firm to map all drainage outlets in the podium and restore drainage to all outlets to prevent standing water in the courtyards, on an urgent basis.
- 41) At the November 23, 2016 meeting, the council approved up to \$5,000 for professional advice and specifications to remediate the standing water at specified locations in the courtyard. At the AGM held in December 2016, the owners defeated a  $\frac{3}{4}$  vote resolution to spend up to \$50,000 from the CRF for overall membrane investigation and drainage correction. This was the proposal of the strata's technical committee, as a preliminary step before undertaking a full repair. Since the owners defeated the membrane investigation cost, in January 2017, the council moved forward on its interim step to spend up to \$5,000 to identify and fix the drainage problems in the courtyard of phase 1 in three specific, landscaped areas where water was currently pooling.
- 42) The applicant attended a hearing before council regarding the podium membrane replacement project on February 28, 2017. The applicant asked council to call a special general meeting to vote on two options related to the membrane project. Council told the applicant that a special general meeting was premature, as more information was necessary after an inspection and assessment of the membrane and the podium. Council responded, in writing, to the applicant on March 3, 2017 that some work would be done to improve drainage in select areas of the

courtyard. According to council, this work would assist further data gathering and assessment of the membrane and other components. Once the information is gathered, council said it would consider calling a special general meeting.

- 43) The minutes of May 25, 2017 show that a plumbing company excavated two areas of the courtyard to expose the membrane and podium. The council decided to refer this matter to the owners, the technical committee and professionals for recommendations to deal with the excavated area specifically and as part of the entire courtyard drainage improvement and membrane issue. Council minutes show that it is considering retaining professional project management to oversee this project.
- 44) The minutes of June 29, 2017 indicate that council is now planning to call a special general meeting to approve the use of CRF funds to further investigate and make a full assessment of the courtyard membrane, drainage and podium issues.[My emphasis]

#### Building Manager Registered Savings Plan

- 45) The statements of income and expenses for fiscal years 2014/2015 and 2015/2016 show a line-by-line breakdown of the costs to the strata for the building manager. These statements show separate expense categories for wages, CPP, EI, medical premiums, bonuses, WCB, telephone, a relief caretaker and RSP contribution. The budget for 2014/2015 allocated \$2,000 as an employer contribution to the building manager's RSP. The financial statements for that year indicate that the strata made the RSP contribution. The budget for 2015/2016 had a budget line for an RSP contribution of \$2,500 for the Building Manager.
- 46) When the strata changed their management company in September 2015, the new management company did not breakout the detailed costs of the building manager. The new management company prepared the 2016/2017 financial statements and the proposed budget for the 2016/2017 AGM (held in December

2016). The owners voted to approve the 2016/2017 budget. This budget showed a single budget line for the total cost of the building manager.

- 47) On January 22, 2017, council members met with executives of the strata management company and asked if the financial statements could show a more detailed breakdown of the building manager's compensation and benefits to provide more transparency to the owners. In a letter dated February 22, 2017, the applicant requested a hearing of the council to discuss (a) the strata's RSP contribution of \$2,500 for the building manager, as approved in the budget for 2015/2016; (b) an RSP contribution of \$2,550 for the building manager for 2016/2017; and (c) whether council would return to a detailed breakdown of the building manager expenses, as was done in the 2014/2015 financial statements.
- 48) The applicant attended a hearing with council on February 28, 2017. The applicant said the approval of the annual budget for 2015/2016 was a directive by the owners to contribute \$2,500 to an RSP for the building manager. The council responded that they could not find any record of any specific motion or resolution in any prior minutes that approved an RSP benefit to the building manager. Council said they had not been "directed by the Owners" to contribute to the building manager's RSP, just because there was a line-item in the 2015/2016 budget for an RSP contribution.
- 49) Council told the applicant that council approved a strata contribution to the RSP of the building manager at its January 2017 council meeting, but council made its decision 'in camera' and did not report the amount in the January 25, 2017 minutes. The evidence shows that the strata decided in January 2017 to contribute \$1,000 to the building manager's 2017 RSP. With regard to an increase from \$2,500 to \$2,550 RSP contribution for 2016 tax year, the council told the applicant that this was a discretionary expenditure for future consideration in the current fiscal year.
- 50) At the hearing, the applicant asked if future financial statements and annual budgets would show specific details of payments made to and on behalf of the

building manager as was done in the past. The council told the applicant that council's discussions about showing payment details were still ongoing. Council responded to all of the issues raised by the applicant in the hearings in the minutes of the February 28, 2017 council meeting and also in a letter to the applicant dated March 3, 2017.

## **POSITION OF THE PARTIES**

51) The applicant argues that the strata:

- (a) has made and intends to make expenditures in 2016/2017 from the CRF contrary to the SPA;
- (b) installed security gates contrary to the SPA;
- (c) declared an emergency with regard to a balcony and balcony guardrail repairs contrary to the SPA;
- (d) made expenditures to investigate drainage issues in the courtyard contrary to the SPA; and
- (e) failed to contribute to an RSP for the building manager, as provided in the annual budget.

52) The strata argues that it has not contravened the SPA with regard to CRF expenditures and that any contributions to the building manager's RSP are at its discretion.

## **ANALYSIS**

**Is the council authorized to spend money from the CRF in 2016/2017 that the owners authorized in prior years?**

53) I find that, based on the wording of the approved resolutions, council is authorized to spend money from the CRF in 2016/2017 that the owners authorized in prior

years for the purposes set out in the resolutions, until the funds are fully spent or the project is officially completed or abandoned or the owners direct the council otherwise by passing a new resolution at a general meeting. My reasons are as follows:

- 54) A strata council exercises the powers and performs the duties of the strata corporation, subject to the SPA, the SPA regulations and the strata's own bylaws and rules. (SPA s. 26) The strata corporation may direct or restrict the council's exercise of powers and performance of duties by a resolution passed by a majority vote at a general meeting, subject to certain restrictions. (SPA s. 27(1)) An expenditure is properly made from the CRF, if the expense occurs less often than once per year or does not usually occur. (SPA s. 92(b)) If a depreciation report recommends an expense, the expenditure first must be approved by a majority vote at a general meeting. (SPA s. 96(b)), otherwise an expenditure from the CRF requires approval by a  $\frac{3}{4}$  vote at a general meeting. (SPA s. 96(B))
- 55) At the May 2015 SGM, the owners passed Resolution #6 which reads: "The Owners, strata plan LMS 908, resolve by Majority vote to complete the following repairs by withdrawing money from the Contingency Reserve Fund in 2015... ."
- 56) On October 24, 2015, the strata held the 2015/2016 AGM. The owners approved the following resolution:  
  
"The Owners, strata plan LMS908 resolve by Majority vote to complete the following repairs, scheduled in the Depreciation Report by withdrawing money from the Contingency Reserve Fund in 2015/2016 ... ."
- 57) The applicant argues that the funds authorized in Resolution #6 must be withdrawn from the CRF in 2015 and what is implied is: a withdrawal only in 2015 and not in future years. [My emphasis] The applicant says the funds authorized by the resolution at the 2015/2016 AGM must be withdrawn from the CRF in 2015/2016 and what is implied is: "not in future years".
- 58) I disagree. Both of these resolutions direct council to take the funds from the CRF. Neither of these resolutions sets a time limit for expenditures, prescribes an end



date; or describes what happens to any unspent funds. Therefore, the amounts set out in these resolutions become earmarked or encumbered in the CRF and remain available in future years for the specific purposes set out in the resolutions.

- 59) The applicant attended a council hearing to request that the provision of details in financial statements regarding project-based CRF balances be stopped and all funds be shown as part of the CRF generally. The council works with a professional strata property management company. To prepare for the applicant's hearing, council members met with senior executives of the strata management company. The strata management company explained that CRF funds, previously approved by owners for use in specific projects, remain available as encumbered funds for those designated projects until such time as council considers the project complete.
- 60) The specific wording of these resolutions set no limits, provides no end dates or otherwise direct council when to spend these funds. This means that these CRF funds remain encumbered and earmarked for the specific projects specified in the resolutions. A resolution is a direction to council as to the will of the owners.
- 61) I find that council is authorized to spend these CRF funds approved in prior years, in subsequent years, for the specific purposes set out in the resolutions, until the funds are fully spent or the project is officially completed or abandoned or the owners direct the council otherwise by passing a new resolution at a general meeting. [My emphasis]

**Did the council install security gates at certain entrances to the parkade without proper authority?**

- 62) I find that the council made its decision to install the security gates based on reasonable grounds that an immediate expenditure was necessary to ensure safety or prevent significant loss or damage and, therefore, authorized by section 98(3) of the SPA. My reasons are as follows:

- 63) As noted earlier, an expenditure is properly made from the CRF, if the expense occurs less often than once per year or does not usually occur. (SPA s. 92(b)) An expenditure from the CRF requires approval by a  $\frac{3}{4}$  vote at a general meeting. (SPA s. 96(B)) There is an exception. A council may spend money from the CRF, if there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage, whether physical or otherwise. (SPA s. 98(3))
- 64) The applicant submits that the gates are a waste of money and intended to deny the owners their right to direct council. The applicant says that council, belatedly, used the break-ins to claim that the expense for gates was an emergency. The applicant also claims that installation of the gates is a significant change in the use or appearance of common property and, under the SPA, requires a  $\frac{3}{4}$  vote.
- 65) The evidence shows that the strata is a seniors' community with a bylaw setting a minimum 55 age limit. Council minutes from September 2014 refer to security issues. The bylaws authorize existing video surveillance at the front entrances and in the parking garage and the workshop. The evidence shows there are daily, evening patrols by residents to check exit doors throughout the buildings. Recently, the owners voted to approve the creation of a security committee to advise and report on security matters. The council retained a security company to assess entry and exit doors. The evidence shows owners report strangers utilizing the refuge areas for smoking and hanging out. Sometimes there is graffiti in the refuge areas. The strata went to the RCMP and requested the RCMP to study the buildings and make recommendations to council. The RCMP made many recommendations, including the installation of one-way security gates at two, exterior garage entry stairwells with refuge spaces. In November 2016, council reported the RCMP recommendations to all owners. Since the 2016/2017 AGM was only a few weeks away, the departing council decided that the new council should decide whether to go install the security gates. All members of the council, except one individual were new council members. Then, there were two break-ins, one on December 30, 2016 and another two weeks later. Both of these break-ins

took place immediately prior to the council's decision to install the security gates. There was damage to common property, but the thieves targeted owner vehicles as well.

- 66) Council submits that the decision to install the security gates was based on the reasonable belief that an immediate expenditure was necessary to ensure the owners' safety and to prevent significant loss and damage to the owner's vehicles and other property. At the time of the site visit by the RCMP, the constables verbally recommended that the strata should install gates at certain, identified refuge points as a visible and physical deterrent. The RCMP said that the security gates would make the parkade emergency exits safer and mitigate the possibility of serious harm to owners caused by a person hiding in the refuge area.
- 67) The strata states that they based their reasonable belief that an immediate expenditure was necessary on multiple conversations with the RCMP, the guidance the RCMP provided and the RCMP report following the site visit to the property. The strata says that all of the five exits have refuge areas which are very low visibility and these areas raised safety concerns for the owners, particularly due to the fact that the majority of the owners are seniors. Council reviewed two quotes to install the security gates after the second break-in that occurred on January 15, 2017. At the January 25, 2017 council meeting, council passed a motion to approve the installation of the security gates. Council says its decision to install the gates was in response to an emergency situation involving security and safety in the building in response to break-ins.
- 68) I agree. I find that, at the time of council's decision, there were reasonable grounds to believe that an immediate expenditure was necessary to ensure safety or prevent significant loss or damage. At the time of council's decision, members did not know that the next 5 break-ins would be from the exit/entry doors to the building itself, rather than through the parkade stairwell exits. Based and relying on all the information available at the time of council's decision, installing the gates to restrict entry to the refuge areas was a reasonable, immediate response by the

strata council to ensure safety or prevent significant loss or damage. [My emphasis]

- 69) Since I have found there were reasonable grounds to believe that an immediate expenditure was necessary to ensure safety or prevent significant loss or damage under section 98(3) of the SPA, I do not need to consider the applicant's claim that the gates were a significant change to the use or appearance of common property. Section 71(b) of the SPA states that if there are reasonable grounds to believe that immediate change to the common property is necessary to ensure safety or prevent significant loss or damage, a  $\frac{3}{4}$  vote is not required. [My emphasis]

**Did the council approve the remediation of the balcony and the balcony's guardrail contrary to the SPA?**

- 70) I find that the council made its decision to repair the balcony and balcony guardrails based on reasonable grounds that an immediate expenditure was necessary to ensure safety or prevent significant loss or damage and, therefore, authorized by section 98(3) of the SPA. My reasons are as follows:
- 71) The evidence shows the first reference to the need to repair the balcony guardrails above the common property pub/lounge was in September 2014. Since that time, the repair has been mentioned in numerous council minutes. The DR recognized the deficiencies in the balcony guardrails. A majority vote resolution at the May 2015 SGM allocated \$5,000 for their repair. From that date, the minutes repeatedly referenced the guardrails as an outstanding repair. Council could not find a contractor to tackle the problem because of the complicated design that integrated the guardrail and the balcony structure. The evidence shows that the guardrail is actually a massive stucco-covered pillar. In September 2016, SE studied the problem and declared the balcony as dangerous in the area six feet from the perimeter of the guardrail because the balcony guardrail was not functioning. SE stated that the balcony no longer met the standards of the BC Building Code.

- 72) The evidence shows that the balcony has no roof and no overhang. It is completely exposed to the weather. It is 2.5 years since the owner first raised the guardrail to council and even longer since the DR identified the guardrail as a repair issue. Council brought the issue of the repair to the owners at the December 2016 AGM and it was voted down. The applicant states that there has been no further damage to the balcony in the two years now gone by, however, he provides no evidence to support this statement. The DR estimated the repair cost at approximately \$5,000, but no contractor would do the work until SE agreed to prepare drawings and oversee the repair. The cost to repair the balcony and guardrail was \$8,900 for engineering and \$36,100 for the repair itself.
- 73) The report of SE refers to widespread, concealed deterioration at the guardrail curb. It says sheathing is crumbling apart. The investigative opening spanned 6' from the guardrail post and SE observed deterioration throughout and the deterioration is loosening the guardrails. SE reported an active leak allowing water into the guardrail curb. SE advised that the roof deck area is not safe to access due to the unsecured guardrail. SE reported that the damage is not localized and therefore a targeted repair is not appropriate to re-secure the guardrails. [My emphasis]
- 74) At the December 2016 AGM, the owners defeated a 3/4 vote resolution to spend \$50,000 from the CRF to repair the balcony and the guardrails. One hundred and thirteen owners voted against it and 22 voted in favour. The new council declared the work an emergency in January 2017. The SPA permits an expenditure from the contingency reserve fund, if there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage, whether physical or otherwise. (SPA s. 98(3)) The applicant argues that that the council should go back to the owners for approval to spend funds from the CRF funds for this work.

- 75) I disagree. It has been 2.5 years since the owner of the adjacent strata lot brought this problem to the attention of council. The DR recognized the guardrail as needing repair. The council retained a professional engineer to advise them.
- 76) The applicant submits that there is no emergency and council should call a special general meeting to ratify council's decision. The applicant states that because no children live in the adjacent strata lot, there is no urgency.
- 77) According to the June, 2017 strata council minutes, \$4,533.51 is available for remediation of the balcony guardrail specifically and \$29,291.39 is available for general balcony repairs. Both of these amounts remain from the passage of Resolution #6 at the May 2015 AGM.
- 78) I do not see any purpose in holding another general meeting. In December 2016, the owners rejected this same project (113 opposed and only 22 in favour). There is no evidence to support the applicant's position that the owners would now vote in favour of the repair of the balcony and the balcony guardrail. A professional engineer declared the condition of the balcony and guardrail as unsafe and contrary to the BC building code. There is damage to the structure of the balcony which forms the roof of the common property pub/lounge located below. The owners overwhelmingly rejected paying for the repair in December 2016. Council recognizes its obligation to repair and maintain the common property. (SPA s. 72) There is no evidence to support the applicant's position that holding another meeting of the owners would get owners' approval when the owners so resoundingly rejected the repair resolution in December 2016. Holding a meeting in this instance would put an unnecessary delay when the council believes on reasonable grounds that safety is threatened. Council must act to ensure safety or prevent significant physical damage to the building. For these reasons, I find the council had reasonable grounds to believe that an immediate expenditure was necessary in compliance with s. 98(3) of the SPA.

**Did the council make expenditures to investigate the courtyard contrary to the SPA?**

- 79) I find that council's decision to investigate the cause of pooling water in specific areas of the landscaped courtyard is properly an operating expense and does not require owner approval. My reasons are as follows:
- 80) The strata constituted its own technical committee to work with outside professionals and identify and resolve problems of pooling water in the courtyard in a number of areas. The technical committee reported that the courtyard drainage system was likely compromised. In November 2016, the council recommended, as an initial step, that the strata retain a professional to investigate the nature of the problem and identify next steps. The maximum cost was to be no more than \$5,000.
- 81) The strata must repair and maintain the common property. (SPA s. 72) It does this through the expenditures from the operating fund and the contingency reserve fund. The operating fund is for expenses that occur once per year or more often than once per year. When water is pooling on landscaped common property over a parkade, there are costs to investigate the cause of the problem. These costs may be made from the strata's operating fund in such categories of expense as "repair and maintenance" or "landscaping" or "building complex maintenance." The applicant says that council has to pay for this from the CRF. I disagree. The strata must repair and maintain the common property courtyard. An operating fund expense may occur once per year or more often. The council is addressing an immediate and specific problem. The council wants to allow the surface water standing in the courtyard to be adequately drained from the identified courtyard area. This is a repair of common property that falls properly into the operating fund at this juncture.
- 82) The owners defeated a resolution to spend \$50,000 from the CRF for extensive membrane investigation and drainage correction, as proposed by the technical committee. As an interim step, the council is proposing to spend up to \$5,000 to

identify and carry out corrections to the drainage in the courtyard to address water that is pooling in three specific landscaped areas. A plumbing company excavated two areas to expose the membrane and podium. Council has decided to refer the matter to the owners, the technical committee and professionals for recommendations to deal with the excavated areas specifically and as part of the entire courtyard drainage improvement and membrane issue. The minutes of June 29, 2017 indicate that council is planning to call a special general meeting to approve the use of CRF funds to further investigate beyond with at the initial plumbing company was tasked to do and fund a full assessment of the courtyard membrane.

- 83) I find the initial expenditures to investigate the pooling of water in specific areas of the landscaped courtyard is an expense properly made from the operating fund and does not require owner approval other than by approving the operating expense in the annual budget.

**Is the strata obliged to contribute to an RSP for the building manager and to present the building manager's salary and benefits in a detailed format?**

- 84) I find that council's decision whether or not to contribute to the RSP of the building manager is discretionary and the presence of a budget line-item does not constitute a direction to council. My reasons are as follows:
- 85) A strata's budget is an estimate of income and expenses for a fiscal year. A strata must prepare a budget for each fiscal year for approval by a resolution passed by a majority vote at each annual general meeting. (SPA s.103(1)) A strata's budget must contain the information found in SPA Regulation 6.6. According to this regulation, one required item that must be included in a strata's budget is the estimated expenditures out of the operating fund, itemized by category of expenditure. Expenditures from the strata's operating fund are "estimates". These estimated expenditures are not binding on the council. The SPA does not state that approval of a budget is a directive to council. Operating fund estimates are an



important guide. They are important because they are used to calculate strata fees for the fiscal year.

- 86) The applicant says that because the owners voted to allocate an amount in the operating fund to an RSP for the building manager, the strata became obliged to make this contribution to the building manager's RSP. I disagree. There is no obligation to spend money allocated in the operating fund. If an amount appears in the operating fund for expenditure, the expenditure of that money is discretionary and that discretion lies with the council as long as the expense is authorized by the SPA. Approval of a budget with amounts in the operating fund is not a directive.
- 87) I find nothing in the SPA that supports the applicant's assertion that the passing of a budget creates a directive to the council that it must spend money from the operating fund. The applicant has not provided any other evidence of a specific resolution or other authority to make this claim. There is nothing in the SPA that requires the council to pay funds into the RSP of the building manager merely because an amount appears in the annual budget as a potential expenditure. Strata contributions to a resident manager RSP could be addressed in an employment contract between the strata and the building manager, but there is no evidence before me of a contractual obligation on the part of the strata to make an RSP contribution. Further, the minutes do not reflect a resolution was passed directing the strata council to make the RSP contribution.
- 88) There is nothing in the SPA that requires a detailed breakdown of the expenses that comprise the amounts paid to or on behalf of the building manager. The council submits that it is still in process on this issue and, as it is discretionary, I make no finding on this issue.

#### **Are council members in breach of their duty under the SPA?**

- 89) In order to find that council members breached their duty under the SPA, I must find a breach of section 31. Section 31 says that in exercising the powers and performing the duties of the strata, each council member must act honestly and in

good faith with a view to the best interest of the strata. Each council member must exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.

- 90) I find the strata has not contravened the SPA with regard to any of the claims made by the applicant in this dispute. Further, I cannot find any breach of the council members' duty under section 31 of the SPA.
- 91) The tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable expenses related to the dispute resolution process. The strata has been the successful party in this dispute, but has not claimed any tribunal fees or dispute-related expenses. Accordingly, I make no order with respect to tribunal fees and expenses. The owner's claim for reimbursement of tribunal fees is dismissed.

#### **DECISION AND ORDER**

- 92) I order the applicant's claims are dismissed.

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Bonnie Elster, Tribunal Member