



# Civil Resolution Tribunal

Date Issued: October 18, 2017

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Wang v. The Owners, Strata Plan LMS 2970*, 2017 BCCRT 97

BETWEEN:

Yi Wang

**APPLICANT**

AND:

The Owners, Strata Plan LMS 2970

**RESPONDENT**

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## AMENDED REASONS FOR DECISION

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## INTRODUCTION

1. The applicant, Yi Wang (owner) owns strata lot 48 in the respondent strata corporation, The Owners, Strata Plan LMS 2970 (strata). The owner claims the strata has acted in a significantly unfair manner by not providing access to

financial information requested by the owner. The owner also claims that the strata acted in bad faith when it entered into contracts for rental of certain equipment (agreements) without the approval of the owners of the strata. The owner further claims the strata failed to respond to the owner's email requesting details surrounding the contracts.

2. The owner seeks orders concerning access to records and documents, termination of the agreements, liability of strata council members, an apology and reimbursement of tribunal fees paid.
3. The strata denies acting in a significantly unfair manner and says the strata council acted in the best interests of the owners. The strata also says it has the authority to enter into the service contracts without approval of the owners and that the approved budget for the contract expenses was the only approval it required.
4. The strata seeks dismissal of the owner's claims.
5. The owner is self-represented. The respondent is represented by an authorized strata council member.
6. For the reasons that follow, I find the strata must comply with section 36 of the *Strata Property Act* (SPA), and permit authorized individuals access to records and documents set out in section 35 of the SPA during regular business hours. I decline to order the balance of the owner's requests.

## **JURISDICTION AND PROCEDURE**

7. 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.

8. 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.
9. 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.
10. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
11. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.
12. Section 48.1(2) of the Act is substantially similar to section 164 of the SPA and addresses remedies for significant unfairness in strata property disputes. Section 48.1(2) provides that the tribunal has discretion to make an order directed at the strata, the council or a person who holds 50% or more of the votes, if the order is necessary to prevent or remedy a significantly unfair action, decision or exercise of voting rights.

## **ISSUES**

13. The issues in this dispute are:
  - Did the strata comply with the SPA provisions in providing the owner access to records and documents?
  - Did the strata council require approval to enter into the agreements?

- Did the strata council act in bad faith when it entered into the agreements?
- Should the agreements be terminated and, if so, what, if any, responsibility do the strata council members have with respect to associated costs?
- Should the strata send the agreements to all owners with a letter of apology?
- Should the strata be ordered to reply to the owner's email of Dec 27, 2016?
- Is the strata responsible to reimburse the owner for tribunal fees paid?

## **BACKGROUND AND EVIDENCE**

14. I have read all of the evidence provided but refer only to evidence I find relevant to provide context for my decision.
15. The strata was created October 15, 1997 and is a mixed use building located in Richmond, B.C., constructed in 2 phases. There are 2 residential high-rise towers over parking areas with non-residential strata lots located on the ground floor. There are a total of 171 strata lots of which 163 are residential and 8 are non-residential.
16. The owner developer created separate sections comprising residential and non-residential strata lots under section 192 of the SPA when it filed bylaws amendments on October 31, 1997. The sections were canceled by the strata effective February 26, 2015 when amended bylaws eliminating the separate sections were filed at the land title office. Nothing in my decision turns on the cancellation of the sections and I note this only because the financial structure of the strata changed during the relevant time of this dispute.
17. The owner purchased strata lot 48 (SL 48) in the strata in February 2008. The owner holds a Certified Professional Accountant (CPA) designation.

18. On January 9, 2015, the strata issued an annual general meeting (AGM) notice for a meeting to be held on January 30, 2015 (January 2015 AGM). In addition to regular business items, the agenda included consideration of five  $\frac{3}{4}$  vote resolutions involving elimination of inter-fund loans for each of the residential and commercial sections, authorization for the installation of an electrical capacitor and bylaw amendments that included the cancellation of the separate sections. One page in the notice package entitled "LMS 2970-Chancellor Financial Highlight-Strata" indicates the proposed operating budget includes a "new item of water treatment for \$1705 + tax per month ... proposed to improve water quality and prolong the life span of the water piping system to minimize pin-hole leak [sic]."
19. Two proposed budgets were included in the notice package (contingent on the passing of the bylaw amendment eliminating the separate sections and creating different types of strata lots). Both proposed budgets included a line item entitled "Water Treatment" with a corresponding budget amount of \$21,000. No resolutions respecting the rental or lease of any equipment were proposed in the notice package.
20. The January 2015 AGM minutes show an approved budget passed by the owners included a line item entitled "Water Treatment" with an associated expense of \$21,000. The minutes do not reflect any discussion on this particular line item.
21. On February 24, 2015, the strata council held a meeting (February 2015 council meeting). The meeting minutes state under the heading "Hytec Water Installation" that following the owner's approval of the operating budget "which included a new line-item for water treatment to minimize corrosion to the water pipe and pinholes leak [sic]" that a resolution was passed to approve the "Hytec Water Management 36 month "All Inclusive" Aqua plan at a cost of \$1,521.90 per month plus taxes."

22. On March 1, 2015, the strata's property manager signed a contract between the strata and Hytec Water Management Ltd. (Hytec) for a term of 66 months (the Hytec agreement). The Hytec agreement is entitled "Hytec Water Management Ltd. / AquaPlan Rental Agreement and included the installation of certain equipment plus the "re-fill of Hytec pH and Aquasoft control products." The monthly rental is shown as \$1,704.53 including taxes and does not breakdown the equipment costs from the control products.
23. In an unsigned, undated letter to the strata from Roynat Lease Finance (Roynat), acknowledged by the strata on April 29, 2017, Roynat congratulates the strata on its new equipment and thanks it for choosing Roynat as its "equipment financing partner." The letter references "Contract Number: 385274 / Hytec Water Treatment System" with a start date of May 1, 2015, next payment date of June 1, 2017 and a buyout date of Nov 1, 2020 for \$10 plus taxes, subject to 60 days prior written notice. A copy of the Roynat contract number 385274 was attached to the cover letter (collectively the Roynat agreement). The Roynat agreement appears to be a standard agreement that sets out, among other things, its terms and conditions and that the agreement is strictly a rental of equipment.
24. On March 6, 2015, the president of Hytec sent a letter to the strata's council entitled "Addendum to Hytec Water AquaPlan" (Hytec letter) that referenced the Hytec agreement and Roynat agreement confirming the Roynat agreement is for administration purposes only to facilitate the collection of monthly rental payments under the Hytec agreement and that Hytec is responsible for the maintenance, warranty and service of the installed equipment. The letter also states that after 36 months, Hytec will install new "pumps, meters tanks" at its expense and if the contract is not renewed, Hytec will remove the equipment at its expense and that the renewal rate will be "\$6.90 per month or \$1,179.90 month plus tax". The Hytec letter is not acknowledged or countersigned by the strata.
25. On December 8, 2015 the strata issued an AGM notice for a meeting to be held on December 29, 2015 (December 2015 AGM). In addition to regular business

items, the agenda included two  $\frac{3}{4}$  vote resolutions regarding bylaw amendments and a majority vote resolution to ratify a rule. The proposed budget contained in the December 2015 AGM notice package included a line item entitled "Water Treatment" with projected expenses to November 30, 2015 of \$12,128 and a proposed budget of \$21,000. No resolutions or information respecting the rental or lease of any equipment were proposed or contained in the December 2015 AGM notice package.

26. The minutes of the December 2015 AGM show the approved budget passed by the owners includes a line item entitled "Water Treatment" with an associated expense of \$21,000. The minutes do not reflect any discussion on this particular line item.
27. On November 9, 2016 the strata issued an AGM notice for a meeting to be held on November 30, 2016 (November 2016 AGM). In addition to regular business items, the agenda included two  $\frac{3}{4}$  vote resolutions regarding bylaw amendments. The proposed budget contained a line item entitled "Water Treatment" with projected expenses to November 30, 2016 of \$20,454.36 and a proposed budget of \$21,000. No resolutions or information respecting the rental or lease of any equipment were proposed or contained in the November 2016 AGM notice package.
28. The minutes of the November 2016 AGM show the approved budget passed by the owners includes a line item entitled "Water Treatment" with an associated expense of \$21,000. The minutes reflect discussion under the heading "Audit" that on August 19, 2016 an owner attended the offices of the strata's management company in "an attempt to conduct a "Surprise Audit". However, the Strata Manager declined her request." In her submissions, the owner confirms that she was the owner that raised the questions at the November 2016 AGM.
29. The minutes also reflect the owner was provided with the requested financial information for her inspection "for several days, one hour per day" and that she claimed she found a discrepancy in the water treatment contract term "between

the minutes (36 months) and the contract (66 months).” Specific details were not provided on which minutes or contract was being referenced but the minutes state the strata would clarify the “water treatment contract term issue.” Other financial questions were also reflected in the minutes that are not relevant to this dispute.

30. On December 2, 2016, in a letter signed by the strata’s property manager in response to the questions raised by an owner at the November 30, 2016 AGM, the strata clarified the 36 months noted in the minutes refers to the program offered by the contractor, which is not the length of the contract but the time when the contractor will install new equipment. The contract term was clarified to be 66 months.
31. Between August, 2016 and February, 2017 (inspection period), the owner requested access to inspect certain financial records of the strata. During the inspection period she was permitted to inspect documents on 8 separate occasions for a total of approximately 10 hours.
32. The strata limited her access to inspect documents to 1 hour increments requiring her to be supervised by the strata caretaker during these times.
33. On December 27 2016, the owner emailed a number of questions to the strata and submits the strata has not responded to her email or answered her questions. Specifically, she says the following explanations are outstanding:
  - a. Why the Hytec Agreement was renewed prior to the 36 month initial term?
  - b. Why the values of the contracts were not disclosed to all strata owners?
  - c. What has happened to the amount of the reduced rental fee after 36 months?



## **POSITION OF THE PARTIES**

34. The owner argues the strata has denied her access to records and documents. The owner says that the SPA does not permit the strata to limit access for her inspection of records and documents to 1 hour increments or allow the strata to have its caretaker supervise the owner during such inspection, and to do so is significantly unfair.
35. The owner further argues that the Hytec agreement and Roynat agreement were executed by the strata without the proper approval and that the strata council did not act honestly and in good faith with a view to the best interests of the strata when it entered into the agreements.
36. The owner further argues that the strata council never directly answered the owner's December 27, 2016 email and that it is in the best interest of the strata that the council answer the questions asked.
37. The owner requests that I order:
  - a. The strata to provide her unlimited access to the strata's records and documents without being supervised;
  - b. The strata follow section 36(3) of the SPA and provide the documents within 2 weeks of the request;
  - c. The agreements be terminated by the strata and a copy of the agreements be circulated to all owners with an apology letter;
  - d. The strata council be held responsible for expenses losses claims and associated costs resulting from termination of the agreements; and
  - e. The strata council respond to unanswered questions contained in the owners December 27, 2016 email.
38. The strata argues that it has not denied the owner access to the records and documents she requested to inspect. It also argues that limiting access to 1 hour

increments is necessary to allow the caretaker to complete their duties and that supervision is required because the documents are original documents. The strata says that if the owner wants unlimited access to records and documents she can pay for copies of the documents as permitted under the SPA.

39. The strata further argues that it has the authority to enter into contracts under the SPA without the authority of the owners and, in any event, the owners approved the agreements when they approved the budget as the budget contained a line item regarding the expenses associated with the agreements.
40. The strata further argues that its council did act in the best interest of the owners when it contracted for the services contained in the agreements.
41. The strata does not make any express requests of me but I infer it requests that I dismiss the owners claims.

## **ANALYSIS**

### **Did the strata comply with the SPA provisions in providing the owner access to inspect records and documents?**

42. For the reasons that follow, I find the strata did not comply with the SPA provisions in providing the owner access to inspect records and documents.
43. Section 35 of the SPA and regulation 4.1 identify records the strata must prepare and documents that it must retain. Section 35(1)(d) specifically requires the strata to prepare “books of account showing money received and spent and the reason for the receipt or expenditure”. Section 35 (2)(a) requires the strata to retain copies of the records referred to in subsection (1). Regulation 4.1 requires the strata to retain the books of account for a period of 6 years.
44. Section 36 of the SPA requires a strata to make the records and documents referred to in section 35 available for inspection by, and provide copies to, an authorized person, including an owner. On receiving a request from an

authorized person the strata must comply with the request within 2 weeks unless the request is in respect of bylaws or rules.

45. Regulation 4.2 of the SPA permits the strata to charge for a copy of a record or document requested under section 36 to a maximum fee of \$.25 per page. The regulation also says the strata cannot charge a fee for inspection of a record or document.
46. The SPA is silent with respect to setting time limits for inspection of records and documents and with respect to supervision of an owner during the inspection process. It only requires that the requested information be made available for inspection within a period of 2 weeks.
47. The evidence indicates that during the period August 19, 2016 through February 8, 2017 (inspection period), the owner made numerous requests to inspect specific financial records of the strata. The strata permitted some inspections but limited the periods to one hour per inspection because it wanted the owner to be supervised given the records she wanted to inspect were original records.
48. There are 3 issues that concern access to records and documents.
  - Was it reasonable for the strata to require the owner to be supervised while inspecting records and documents?
  - Was it reasonable for the strata to limit the inspection periods to one hour increments or should other arrangements have been made to accommodate the owner's request?
  - Was the owner denied access to certain records and documents and did the strata meet the time limits provided in the SPA?
49. I will first address supervision. While the SPA is silent on the issue, I find it reasonable for a strata to maintain security over its original records and documents. Here, the owner was not asked to pay for the supervision and was not charged for inspecting the records, which is consistent with the SPA that

does not allow a strata to charge for inspection. Therefore, I find the actions of the strata requiring supervision of its original records to be reasonable.

50. With respect to the strata limiting the owner's access to inspection of records to 1-hour increments, the evidence shows that during the inspection period, the records and documents were made available for inspection by the owner a total of eight times for period of approximately 10 hours. It is undisputed that the additional two hours were as a result of the owner convincing the caretaker to permit the time limit to be extended.
51. The SPA is silent on the issue of limiting the amount of time an authorized person can inspect records. Absent any statutory guidelines, it is my view that the strata must be reasonable in establishing any time limits for inspection of records and documents based on the circumstances at hand. Some factors that should be considered include the specific records and documents requested and the number of, if any, prior requests made by the same individual. While the strata's cost to provide access to the requested documents should also be considered, cost cannot be the sole determining factor given the SPA does not permit the strata to charge for inspection.
52. The strata claims that the 1-hour limits were imposed as that was the extent of time its caretaker could devote to supervision because of other duties that they had to perform. No explanation was given by the strata as to why an individual other than the caretaker could not perform supervision duties or why arrangements to review records and documents at a location other than the caretaker's office could not be made. The owner claims she had to take a vacation day from her employment each time inspection of the records were granted. The owner did not identify why an entire vacation day was required for a 1-hour inspection but I accept that time off of work was necessary. Overall, the question then is; was the 1 hour time limit imposed by the strata reasonable in the circumstances? I find the answer to that question is no.

53. The strata retains a professional management firm and, in my view, arrangements for another individual or individuals to supervise the inspection of original documents could not be made either at the caretakers office or at the property manager's office. The strata set the time limit immediately after the owner attended the property management offices unannounced, allegedly to conduct a "surprise audit", and no accommodation was provided to the owner as a result of her advice that she was required to take time off work to inspect the records. The owner's request was for financial records which consisted of several boxes. It does not appear the owner made prior requests to inspect documents.
54. The courts have considered the meaning of "significantly unfair" in a number of contexts, equating it to oppressive or unfairly prejudicial conduct. In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, the Court of Appeal interpreted a significantly unfair action as one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith and/or unjust or inequitable.
55. Given there appears to have been options available to the strata to arrange for supervision of the inspection, the large volume of records requested that could not possibly have been reviewed in a short period of time, and that the owner had to take 8 vacation days from her employment to complete her inspection, I find the actions of the strata in limiting the owner's access to 1-hour increments to be burdensome, harsh and wrongful and therefore, significantly unfair.
56. I see no reason why the timeframe of the inspection arrangements could not in future be extended to 4 or more hours at a time so as to allow the owner sufficient time to complete her inspection in 2 or 3 days rather than 8 days. To this end, the owner should give the strata reasonable notice of the estimated time she requires for such an inspection, so that the strata could make the appropriate arrangements. Nothing in this decision changes the strata's obligation to provide the documents for inspection within the two-week timeframe set out in the SPA.
57. Was the owner denied access to records? During the inspection period, the owner made very specific requests for financial information covering certain time

frames. I find that she was often not provided with the documents within the two-week timeframe contrary to the SPA provisions.

58. Further, after being advised that the requested documents were available for inspection the owner discovered during her inspection that some documents were not provided. She brought this to the attention of the strata and was informed that the documents were provided, implying that she missed them. Based on the evidence provided and the number of times she advised strata that requested documents were not provided, I accept the owner's position and find that, on some occasions, the documents were not provided. By not providing the documents, the strata has denied the owner the ability to inspect them.
59. Emails were provided that indicate the strata was only willing to provide the documents for inspection once. The emails clearly set out the strata's view that some documents had been previously been provided and would not be provided again. Contrary to the strata's view, there is nothing in the SPA that restricts an owner from requesting to inspect the same documents more than once. As a result, I find that by not providing documents to the owner when requested, the strata has denied the owner her right to inspect the records and documents that were not provided. That the owner had already inspected some documents does not mean that she cannot inspect them a second time.
60. For the foregoing reasons, I find the strata did not comply with the SPA provisions in providing the owner access to records and documents when it failed to provide access within 2 weeks of the date requested and when it denied the owner access to the same records and documents more than once.
61. In reaching this conclusion, I note that the owner's inspection requests were not outrageous or numerous enough so as to be considered vexatious. The numerous requests made by the owner were necessary as the strata was simply not providing the requested documents.
62. I dismiss the strata's argument that the owner could have obtained copies of the documents by paying the fee of \$.25 per page in order to have unlimited access

to the documents. The SPA is clear that an authorized person, here the owner, has the option of choosing to inspect records and documents or requesting copies of them. The owner has a right to inspect the records and documents and is not required to pay for copies.

63. The owner has requested I order the strata provide her unlimited access for inspection of documents. I am not inclined to go that far. However, I order the strata to comply with section 36 of the SPA, and specifically that the strata permit access by an authorized person to inspect records and documents for a reasonable time, which could be 4 or more hours at a time, considering the circumstances.
64. I dismiss the owner's request for an order that she be given unsupervised access to records and documents.

**Did the strata require approval to enter into the agreements?**

65. For the reasons that follow, I find the strata did not require approval of its owners to enter into the agreements.
66. The owner submits that strata owners were not aware of the Hytec agreement or Roynat agreement as they were never voted on by the strata. Specifically, the owner submits that the strata contravened section 111 of the SPA when it did not obtain authorization by a  $\frac{3}{4}$  vote resolution when it entered into the lease agreement.
67. The strata submits that section 38 of the SPA permits the strata to enter into contracts in respect of its powers and duties under the SPA and bylaws and that approval of the agreements by the strata owners is not required. It also submits that the Hytec agreement is a service agreement.
68. The strata did not respond to the section 111 allegation of the owner.
69. Under section 111 of the SPA, the strata is entitled to borrow money required by it to exercise its powers and perform its duties after approval of a resolution

passed by a  $\frac{3}{4}$  vote at a general meeting of the strata. Does the Hytec agreement or Roynat agreement include borrowing money? I find the answer to that question is no.

70. The Hytec agreement, simply put, permits Hytec to install its equipment to the strata's potable water distribution system for a fixed term of 66 months for the purpose of distributing its treatment products throughout the strata's water distribution system. Hytec agrees to rent its equipment and supply all treatment products for the duration of the term at a fixed monthly fee.
71. The Hytec agreement expressly references its rental program and rental payments and does not purport to transfer ownership of its equipment to the strata at any time. In fact, the agreement states that if the agreement is not renewed at the end of its term, Hytec will remove its equipment at its expense.
72. The Hytec agreement also expressly states Roynat Leasing is Hytec's financial partner that underwrites the Hytec rental program and will collect the monthly payment on behalf of Hytec under the terms of its own agreement.
73. The Hytec letter specifically addresses the following matters:
  - a. that the Roynat agreement is for administration purposes only to facilitate the collection of monthly rental payments under the Hytec agreement;
  - b. if the terms and conditions of the Roynat agreement are in conflict with provisions of the Hytec agreement, the Hytec agreement will prevail;
  - c. that Hytec is responsible for the maintenance, warranty and service of the Hytec agreement and will remove at its expense, all its equipment in the event the contract is not renewed; and
  - d. at the 36 month point of the Hytec agreement, Hytec will install new equipment at its expense.



74. Despite the fact that the Hytec letter indicates it is an addendum, presumably to the Hytec agreement, I find that it is not an amendment to the existing Hytec agreement as there was no requirement for the strata to accept the terms of the letter. I find the Hytec letter simply clarifies some terms of the Hytec agreement and offers to install new equipment after 36 months.
75. Nothing in the Hytec agreement indicates the strata is borrowing money from Hytec or Roynat or that Hytec is lending money to the strata.
76. The cover letter to the Roynat agreement refers to Roynat as an “equipment financing partner.” The terms of the agreement state, among other things, that Roynat “agrees to rent to you and you agree to rent from us the equipment...” The Roynat agreement also states that the equipment remains the property of Roynat at all times and that the strata does not have a right or title to the equipment or the right to use it as per the terms of the Roynat agreement.
77. Nothing in the Roynat agreement indicates the strata is borrowing money from Roynat or that Roynat is lending money to the strata.
78. Based on my review of the agreements I find that they do not amount to the strata borrowing money. I find that section 111 of the SPA does not apply and that a  $\frac{3}{4}$  vote resolution of the owners under that section is not required.
79. Although not argued by the parties, I note that under section 82 of the SPA, the strata is entitled to acquire personal property for its use. Under that section, the strata must obtain prior approval by a resolution passed by a  $\frac{3}{4}$  vote at a general meeting of an acquisition personal property of the market value of more than an amount set out in its bylaws or \$1,000 if the bylaws are silent as to the amount.
80. Having found the agreements constitute rental of equipment, I find the strata has not acquired personal property and that section 82 of the SPA does not apply.
81. I note that the strata submits that the Supreme Court has held that section 38 of the SPA authorizes a strata corporation to enter into contracts that relate to its powers and duties under its bylaws and the SPA, and accepted that a contract

was approved at a council meeting even if all the details with respect to a contract being approved are not explicitly referenced. (See *The Owners, Strata Plan VIS 4686 v. Craig*, 2016 BCSC 90)

82. I do not find this information particularly helpful as the court addressed approval of the agreement by the strata at a strata council meeting and that is not contested by the owner here. What is contested by the owner is that the strata did not have the authority to enter into the contracts as a  $\frac{3}{4}$  vote resolution under section 111 of SPA or some other approval method by the strata owners was required.
83. I agree with the strata that section 38 of the SPA gives it permission to enter into the agreements. I find that approval of the owners to enter into the agreements under section 111, or under any other provision of the SPA or the strata's bylaws was not required by the strata or its council.

**Did the strata council act in bad faith when it entered into the agreements?**

84. The applicant bears the burden of proof, on a balance of probabilities, to establish the strata council did not act in good faith. There is nothing in the evidence before me to establish that the strata council acted in bad faith when it entered into the agreements.
85. The owner submits that the strata council acted contrary to section 31 of the SPA because in its handling of the agreements, the strata council members did not act honestly and in good faith with a view to the best interests of the strata and failed to exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.
86. The owner says that the strata, in its December 2, 2016 letter to owners misrepresented that the Hytec agreement was of a 66 month term rather than a 36 month rental program renewable on 66 month continuous terms. The owner points to the Hytec agreement, the November 30, 2016 AGM minutes and

information obtained from the Hytec website that indicates the program includes updating every three years.

87. I find the evidence does not support the owner's submission. In fact, I have previously found that the term of the Hytec agreement was 66 months and that the Hytec letter advised that the equipment would be renewed at the 36 month time frame.
88. I do not accept the owner's allegation that the strata prematurely renewed the Hytec agreement as I do not agree there is a reduction in the rental rate after 36 months. It is my view that the "new rental rate" set out in the Hytec letter is to take effect at the end of the 66 month term of the agreement. I say this because the owner states that the strata council "pocketed" the reduced price of \$11,491.26 for their personal gains. I find this particular allegation of misappropriation of funds completely unsubstantiated and without merit.
89. I find that the information provided by the strata in its December 2, 2016 letter to the owners with respect to the term of the water treatment contract being 66 months was accurate.
90. The January 2015 AGM package included a brief note about water treatment and a new line item in the budget entitled "Water Treatment". There is nothing in the January 2015 AGM minutes that indicate the water treatment program was discussed in detail yet owners had the ability to raise whatever questions or concerns they may have at that time. I do not know if the owner was present at that AGM, but she could have attended had she chosen to do so.
91. The operating budget including water treatment costs was passed at the January 2015 AGM.
92. The February 2016 council meeting minutes clearly show that the Hytec agreement was not executed until after the annual expense relating to the agreement was approved by the owners in the operating budget.

93. The Hytec agreement and Roynat agreement were not executed until approximately March 2016 and April 2016 respectively. I find the actions of the strata council in ensuring the expense for the water treatment was approved by the owners in advance of executing the agreements is contrary to the owner submissions and supports the fact the strata council acted in compliance with section 31 of the SPA.
94. I find that the strata council did not act in bad faith when it entered into the agreements.

**Should the agreements be terminated and, if so, what, if any, responsibility do the strata council members have with respect to associated costs?**

95. Having found that the strata had the authority to enter into the agreements and that the strata council did not act in bad faith when it entered into the agreements, I find the agreements should not be terminated.
96. In the result, I need not address the strata council's responsibility of costs with respect to termination.
97. The owner's requests that the agreements be terminated and the council be responsible for costs associated with termination are dismissed.

**Should the strata send the agreements to all owners with a letter of apology?**

98. I do not see any reason for the strata to send the agreements to all owners as every owner has the opportunity to request a copy of the agreements, or request to inspect them, under section 36 of the SPA should an owner wish to do so.
99. I also do not find it necessary to order the strata issue a letter of apology to all owners given I have found no need for an apology in terms of the strata's decision to enter into the agreements.

**Should the strata be ordered to reply to the owner's email of Dec 27, 2016?**

100. The owner submits that the strata never directly answered the questions she raised in her December 27, 2016 email.

101. I find that the strata has directly answered the owner's questions in its arguments during the tribunal process and I therefore decline the owner's request.

**Is the strata responsible to reimburse the owner for tribunal fees paid?**

102. Under section 49 of the Act and the tribunal rules, 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. I see no need to strata from this general rule. The owner has been partially successful with respect to her request for access to documents but unsuccessful on the balance of her claims. The strata has been the more successful party in this dispute but did not pay any tribunal fees.

103. Accordingly, I make no order with respect to reimbursement of tribunal fees.

**DECISION AND ORDERS**

104. I order the strata to comply with section 36 of the SPA, and permit authorized individuals access to the records and documents set out in section 35 of the SPA during regular business hours.

105. I further order that with respect to inspection of its records and documents, the strata;

- a. May, at its discretion, require the inspection to be supervised,
- b. May set a reasonable time limit for the inspection considering the circumstances of the request, and
- c. May not deny multiple inspections of the same record or document.

106. The owner's remaining claims are dismissed.

107. Under section 57 of the Act, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia, a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.

108. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia. However, the principal amount or the value of the personal property must be within the Provincial Court of British Columbia's monetary limit for claims under the *Small Claims Act* (currently \$35,000). Under section 58 of the Act, the Applicant can enforce this final decision by filing in the Provincial Court of British Columbia a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

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J. Garth Cambrey, Vice Chair