Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Moore v. The Owners, Strata Plan KAS 353*, 2018 BCCRT 40

B E T W E E N :

Michael Moore

APPLICANT

A N D :

The Owners, Strata Plan KAS 353

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant Michael Moore (owner) owns strata lot 121 (SL121) in the respondent strata corporation, The Owners, Strata Plan KAS 353 (strata).

2. The strata owns a golf course and almost half of the owners' strata lots are adjacent to the course's fairways. Mr. Moore's SL121 is directly adjacent to the #3 hole fairway. This dispute is about whether and to what extent the strata must take further steps to stop errant golf balls from landing in Mr. Moore's yard, hitting his house, and potentially injuring his family and guests.

3. The owner is self-represented and the strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

4. 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.

5. 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.

6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I heard 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. An oral hearing was not requested.

7. I note the strata's request for a ruling as to whether the owner can properly bring this dispute, because he is not the only owner on title for SL121. I find there is no pre-requisite for all owners on title to be parties, although in some circumstances that may be warranted depending on whether those other owners are impacted by

the decision. Here, Mr. Moore asks for alterations to made to the golf course, and regardless of whether his spouse wishes to formally join him in that request, I find he is entitled to make it.

8. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute the tribunal may make one or more of the following orders:

   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

9. The issues in this dispute are:

   a. Has the strata failed to reasonably maintain the common property golf course, in that it has unreasonably permitted errant golf balls to enter the owner's strata lot?

   b. Does the owner have an actionable nuisance claim against the strata, given the errant golf balls?

   c. What steps, if any, must the strata take to prevent the errant golf balls hitting Mr. Moore's strata lot? In particular, how should the strata:

      i. Plant trees on the 3rd fairway adjacent to Mr. Moore's strata lot?

      ii. Re-shape the tee box at the 3rd hole?

      iii. Place signage at the #1, 3, 4, and 5 hole tee boxes to require golfers to call "Fore!" if golf balls leave the fairway and to warn they are responsible for errant balls?

   d. Should the strata be required to buy insurance, that covers strata lot owners' damage from errant golf balls?

e. Should I order the strata to reimburse the owner $250 in tribunal fees?

f. Should I order the owner to reimburse the strata $1,200 in claimed expenses?

BACKGROUND

10. I have only commented on the evidence and submissions as necessary to give context to my reasons. The applicant bears the burden of proving his claims, on a balance of probabilities.

11. The strata is a 200-unit mixed use complex that includes an 18-hole golf course. Each strata lot owner owns a proportionate 1/200th share of all strata assets, including the golf course. The golf course was professionally designed by Robert Trent Jones Senior in 1981, 1 of 4 such courses in Canada. It is undisputed that Mr. Jones Senior designed over 400 golf courses worldwide during his golf designer career. The course by design sits in a naturally open space with few trees or barriers to impede views. This background is relevant because the strata submits that the golf course changes requested by the owner unreasonably alters Mr. Jones Senior's course design and the brand. The strata says this would hurt the prestige of the course and decrease the revenue it generates.

12. Mr. Moore and his spouse have lived in SL121 since April 2014. Earlier, they owned SL181, which is on the right or east side of the #4 hole fairway, and which I infer they sold sometime prior to buying SL121. The strata submits the owner has acknowledged that when he built his house on the 4th hole, he purposely built the home more forward to mediate the risk of errant golf balls. The owner does not dispute this, and says that he should not have to take mitigating steps with respect to SL121 as it is the strata's obligation to mitigate the risk.

13. SL121 is on the left or west side of the 3rd hole fairway, 4 houses or about 160 yards from the tee. Only holes 3 and 4 are in a residential area of the strata, with hole 5 adjacent. As such, it is undisputed that houses on holes 3, 4, and 5 are more prone to being hit with errant golf balls.

14. While the strata denies it has acted unreasonably with respect to the golf balls, the parties generally agree about steps the strata can take to address the issue. However, there is ultimately no agreement on most of those steps because the parties differ about certain details. Therefore, I have addressed each of the remediation steps requested below.

15. The strata's relevant bylaws, filed at the land title office in 2004, are as follows:

    a. **Bylaw 2.2**: An owner must repair and maintain the owner's strata lot in a manner that is reasonably neat and attractive.

    b. **Bylaw 2.3**: An "owner, tenant, occupant, or visitor" must not use the common property or common asset in a way that causes a nuisance or hazard to another person or unreasonably interferes with another person's right to use and enjoy the property. I note that this obligation does not bind the strata, just individuals.

    c. **Bylaw 3.1**: The strata must repair and maintain common property and assets, save for certain limited common property that is not at issue here.

    d. **Bylaw 3.3**: The strata must employ a qualified person under written contract to hold the position "General Manager/Director of Operations of the Golf Division", who reports to the strata council president. The strata must also employ employees for the control, administration and maintenance of the common property and common assets.

Strata's maintenance of common property fairway – who is responsible for the errant golf balls?

16. As noted above, the central issue here is whether the strata has failed to adequately maintain the common property golf course so as to prevent errant golf balls from entering the owner's strata lot.

Frequency of balls hitting the owner's strata lot

17. The strata "freely concedes that errant golf balls may enter properties adjacent to the fairways". The strata says 91 owners or 45.5% of the ownership is impacted by errant golf balls, with 27 of the 91 owners living adjacent to hole #3, like the owner. The strata further agrees that golf balls leaving the course "represent a safety hazard to owners and may cause property damage".

18. The strata submits that the responsibility to protect against errant golf balls is shared by the strata (the golf course operator), the individual golfer, and the strata lot owners adjacent to the fairway. The strata submits that it is not reasonable to hold it responsible for every swing of golfers using its course.

19. The owner's estimate of the number of errant balls landing in his strata lot has varied over time from around 30 to 40 to 130 golf balls per year, which variation I accept was due to his closer examination. The strata conducted a focussed study and its estimate is 80 golf balls per 8-month golf season. The strata notes that other strata lots adjacent to hole #3 have around 138 to 196 balls per golf season, and those owners were aware of the risks and have taken measures to reduce them.

20. An assessment of the number of balls hitting the owner's strata lot per golf season does not allow for any precision. On balance, I find around 80 to 100 balls per golf season is a reasonable estimate and nothing in this decision turns on whether the number is 80, 100, or 130. I accept the owner's submission that some days he may receive 3 or 4 balls in his yard, and then at other times up to a week may pass without any balls. At this point, I also note that the photos in evidence indicate damage to the owner's house exterior.

Law of nuisance, and who is responsible to protect against errant golf balls?

21. The essence of the tort of private nuisance is unreasonable interference with another person's enjoyment of their land. The owner submits that given the nuisance presented by the number of high-speed golf balls entering his strata lot

and neighbouring strata lots, the strata must take mitigating action to prevent the problem. He submits that because the law of private nuisance applies, safety is all that matters and it does not matter that the course pre-existed his home or that other residents receive more balls.

22. The owner submits he does not have to take any action to protect himself, and in particular that he is not obligated to install a net. He submits that the errant balls need to be intercepted at their starting point – the tee.

23. This case is novel, in that while there are a number of "errant golf ball" court decisions, none of them address a strata lot owner claiming in nuisance about golf balls from the strata corporation's golf course that he partly owns and lives on. I will refer to this situation as being "in the strata context".

24. One question that arises is this: in terms of errant golf balls, what constitutes unreasonable interference? How many golf balls is too many? I accept that around 80 to 100 balls per season would be a nuisance in a non-strata context, given the case law discussed below. The question is whether in the strata context those 80 to 100 errant balls per season are an actionable nuisance, meaning the owner has a valid claim about them.

25. The owner cites David McKay's article *"*What's Your Legal Liability*"*, which provides an overview of errant golf ball cases, without citation, that appear to all refer to the non-strata context. The owner also cites a similar article, "Mitigating Risks of Errant Golf Balls" by British Columbia lawyer Anita Atwal.

26. These articles are based on a number of non-strata cases where someone is injured by an errant golf ball. Both authors agree that as for the impact on neighbouring homes and an associated nuisance claim, it is no defence that the golf course existed first. Second, the golf ball's driver is primarily responsible for errant golf balls. Third, responsibility may be shared by the relevant parties. Mr. McKay writes that as the golf course owner, the question will be "what did you fail to do which would be prudent and reasonable and would have limited liability". Both authors indicate that the occasional stray ball would not amount to an

unreasonable interference. Overall, I find that the articles support the conclusion that protection from golf balls is a shared responsibility, and neither article addresses what the threshold for "unreasonable interference" might be in a strata context.

27. Ms. Atwal notes that the point at which errant golf balls become an "actionable wrong" depends mostly on the frequency and duration of the errant golf balls. I agree that these are significant factors. However, as noted below, that the owner knowingly moved to the source of the nuisance is a relevant factor in considering whether the nuisance is an actionable wrong. Here, I note there is no evidence before me to support a conclusion that the errant golf balls issue has worsened since the applicant moved into SL121.

28. I have considered several other cases, none of which appeared to involve a strata context. These cases reiterate the points above, and add the following:

    a. A claim of nuisance contemplates more than a mere annoyance. Further, whether there is a nuisance includes consideration of the character of the neighbourhood, as well as the frequency and duration of the occurrence. Further, a nuisance exists where it substantially interferes with a claimant's use or enjoyment of land, and "in light of all of the surrounding circumstances" the interference is unreasonable. The law of nuisance involves a "give and take, live and let live" approach. While it is no answer for a defendant to say a plaintiff came to the nuisance, movement to a known nuisance may be a factor in determining whether a nuisance is actionable. A claim is actionable when there is sufficient reason to pursue a remedy through a court or tribunal process. A claimant must take steps to reduce or mitigate their loss (*Osler Dev. Ltd. et al v. H.M.T.Q. et al*, 2001, BCSC 129, a case about noise from an adjacent bridge, in which the court found the noise was a nuisance but it was not actionable).

    b. It is not unreasonable for a property owner "located adjacent to a golf course" to expect "some" golf balls to land on their property. Some, however, does

not mean 250 golf balls (*Skobleniuk v. Eaglestar Golf Inc*., 2006 BCPC 0377). The corollary of the law of private nuisance is "use your own property so as not to injure that of your neighbours".

c. In *Segal v. Derrick Golf and Winter Club (1977), 1977* CanLii 656 (AB QB), a case cited by the owner, 53 balls a year was found to be a nuisance, given the unpredictable nature of the sporadic intrusions is a relevant factor and that children cannot play in the backyard.

d. The obligation to abate or reduce the nuisance is on the person (or entity) causing the nuisance (*Douglas Lake Cattle Co. v. Mount Paul Golf*, 2001 BCSC 566; *Peace Portal Properties Ltd. v. Surrey (District of)*, 1990 CanLII 853 (BCCA); Segal). I note this conclusion is not entirely in line with Mr. McKay's comments that there can be a shared responsibility and the "give and take" observation in Osler. Decisions from BC courts are binding on me, although I note that these BC court decisions were not in the strata context, where the owner is a part owner of the entity causing the nuisance.

e. In *Liu v. Hamptons Golf Course Ltd*., 2017 ABCA 303, a neighbouring homeowner had complained of about 100 errant golf balls per golf season entering her back yard, sometimes breaking windows or glass doors. While the Alberta Liu decision is not binding upon me, I note these facts are most similar to those in the case before me. The notable exception is that Liu did not involve a strata lot owner suing its own strata corporation that owned the golf course. The appellate court, while primarily deciding the procedural issue of whether an injunction was appropriate, noted that the restrictive covenants in place were primarily created by the original developer and thus an agreement by the developer with itself. The appellate court found that the developer's intent was to obviously limit resistance by the neighbouring property owners to the golf course's operations.

f. In an Ontario case, *Sorbam Investments Ltd. v. Litwack*, 2017 ONSC 706, the court considered a landlord's responsibility for their tenanted land that

was a contamination source. The court quoted from a related case, stating "The nuisance was authorized as part of the arrangement by which the land was being used by another. The nuisance was within the contemplation of the parties when the agreement was made. … If a landowner leases property for use that would, by its nature, create a nuisance, it bears part of the blame and shares in the responsibility for it".

29. In the case before me, while the owner is not a landlord and the strata is not a tenant, I nonetheless find the analysis from Sorbam Investments helpful. I say this because the owner is a part owner of the golf course, which by its nature creates the nuisance of errant golf balls. As such, in this sense, the owner shares in the responsibility. Similarly, in Skobleniuk, the court quoted from Linden, Canadian Tort Law, 7th Edition, noting that the use of the term "unreasonable" indicates that the interference must be something that would not be tolerated by "the ordinary occupier". A strata lot owner is not an "ordinary occupier" in the strata context. This also supports the conclusion that the responsibility is shared between the owner, the strata, and the golf ball driver.

30. As indicated above, I have not identified any relevant case law that considers the law of private nuisance within the strata context.

31. Under the *Strata Property Act* (SPA), the strata bears the responsibility to repair and maintain common property. The strata's golf course is common property. The maintenance standard is not perfection or even the "best" approach. The strata is not an insurer. Rather, the strata must act reasonably and take some action to inspect and to complete necessary maintenance and repairs, which in this instance I find includes reasonably necessary alterations. For instance, the strata's movement of the 150 yard marker fell within its maintenance obligation. A "good" solution, if not the best, may be reasonable (see *Chapel v. The Owners, SP VIS 1517*, 2017 BCCRT 5, *The Owners of Strata Plan NWS 254 v. Hall*, 2016 BCSC 2363, and *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784).

32. As discussed further below, I find that what is unreasonable in a non-strata context may not necessarily be unreasonable in a strata context.

33. Here, the owner chose to buy a strata lot located on a golf course and in doing so chose to become a 1/200th owner in that golf course. He has assumed some risk with that choice. The owner's history of ownership in the strata and his past decision to locate his house further from the fairway indicates the owner was aware of the risks of living on a golf course at the time he purchased his strata lots. As noted above, I find that in the strata context the owner, like other owners whose properties are fairway-adjacent, is not an "ordinary" occupier.

34. Under the framework of the SPA, living within a strata corporation involves a democratic approach where the will of the majority succeeds, except where an owner establishes significant unfairness against them. The owner has not argued significant unfairness within the meaning of section 164 of the SPA or section 48.1 of the Act. In any event, I cannot find the strata has treated him significantly unfairly, particularly given the number of other strata lot owners that are similarly affected by errant golf balls.

35. The strata must consider the best interests of all owners, not just the owner. Certainly, safety is very important. But the owner is a golfer who chose to buy a fairway-adjacent strata lot on the golf course he partly owns as a member of the strata. In particular, the owner chose to buy SL121 with his house situated close to the fairway boundary. I find the owner has accepted a higher risk than someone whose legal interests are distinct from the golf course. In other words, I find there is a meaningful distinction between this strata context scenario and that of a homeowner buying an entirely separate home adjacent to an existing golf course.

36. I find these factors in the strata context raise the threshold of when errant golf balls become an unreasonable interference, at which point the strata must take more steps to stop them or be found to have unreasonably maintained the golf course. I also find that the strata context factors are also relevant in assessing whether the circumstances amount to an actionable nuisance claim against the strata.

37. Further, following the comments in the Osler decision, I find the "surrounding circumstances" of the owner's ownership in the strata impacts the assessment of whether the interference is unreasonable. The "give and take" approach makes sense in the strata context, where the strata lot owner made the choice to buy the fairway-adjacent lot and become a partial owner of the golf course. The character of the neighbourhood, namely a strata lot directly adjacent to the strata's fairway and tee box, is a relevant factor in assessing whether there is unreasonable interference from around 80 to 100 golf balls a year, or 10 to 12 balls a month during the 8-month golf season.

38. Third, I recognize that there are no restrictive covenants filed against the owner's strata lot that amount to a waiver of any nuisance claim against strata about the golf course. Nonetheless, I find the analysis in Liu, summarized above, to be helpful, bearing in mind that case was not in the strata context. As in Liu, in creating the strata one can reasonably infer that the developer intended that the strata lot owners would not sue the strata for its operation of the golf course. This is because the very nature of the strata is that it is a mixed use complex, comprised of a golf course and residences alongside that golf course, many of which sit adjacent to the fairways. While I would not go so far as to say the strata lot owner implicitly waived all claims upon purchase, I find the circumstances suggest that the number of expected golf balls is higher for a strata lot owner who buys a lot on the fairway.

39. Perhaps not surprisingly, the strata submits that owners who choose to purchase strata lots adjacent to the golf course make that decision with the knowledge that errant golf balls may from time to time enter their yard. The strata says being held totally responsible to ensure that no golf balls leave the field of play is unreasonable. I take this submission to be that the standard cannot be that the strata prevent all errant balls from entering the owner's lot. I agree. As noted above, the standard is not perfection.

40. The strata says its council can only arrange the course in such a way as to reasonably direct golfers towards the preferred landing spot for the first shot – the

drive. The strata says a significant responsibility for keeping balls in play lies with the player as does any damage or injury. That said, the strata agrees that it would be reasonable for it to take certain steps to direct golfers to the center portion of fairways for holes #3, #4, and #5, as discussed below under remedies.

41. Whether in nuisance or in consideration of the strata's obligation to repair and maintain common property, "reasonableness" is the test. As noted, I find that in the strata context what is reasonable may differ from a non-strata context and that it does so here. In other words, I find that because the owner is a 1/200th owner of the golf course and chose to buy a strata lot adjacent to the #3 fairway on the golf course he partially owns, a higher golf ball count is not unreasonable.

42. The owner submitted an unsigned statement from his neighbours who own SL120, who say they receive about 21 balls per week, or 700 balls per golf season, with resulting property damage. That number far exceeds the golf balls entering the owner's strata lot. The SL120 owners are not parties to this proceeding nor am I aware of their taking any action against the strata, and thus I place little weight on their statement in terms of assessing whether the owner has sustained unreasonable interference from golf balls.

43. I accept the owner has sustained some minor property damage and that he and his family are anxious about the golf balls entering his yard unpredictably. However, I find the 80 to 100 golf balls entering the owner's strata lot in a golf season is, in the strata context here, not an unreasonable interference. In any event, I find the number of errant golf balls are not an actionable nuisance against the strata. However, that is not the end of the matter.

44. The strata has an obligation to reasonably maintain the course, in the best interests of all owners. It is not a standard of perfection. Overall, I agree with the strata that it is a shared responsibility to protect against errant golf balls entering an individual owner's strata lot. To this end, the strata must maintain the golf course, but the bylaws require that individual owners must maintain their own strata lots, bearing in mind the neighbourhood in which they live – right on the golf

course. I find that to conclude otherwise would ignore a fundamental premise of strata living, that it is a democracy that must consider the best interests of all owners. To the extent Mr. Moore may argue that such a conclusion is significantly unfair to him, I disagree. As noted above, under the bylaws Mr. Moore has the option of installing a net or other protections on his strata lot, as have several other similarly situated owners.

45. I make the above comments not to relieve the strata from all responsibility, but rather to explain why I have taken a measured approach in the remedies granted below.

Remedies

46. The strata submits that golf balls leaving the fairway for the most part end up on the right side, rather than the left where the owner's strata lot is located. Further, the strata says the sliced balls are generally short shots with a high trajectory. The strata says the more problematic shots for properties on the left side of a fairway are the straight push or snap hooks produced by right-handed golfers.

47. The strata submits that owners of the 4 homes adjacent to the 5th hole have each taken their own steps to mitigate the potential impact of errant golf balls: planting trees on their property, constructing gazebos, and installing their own nets at considerable personal cost. The strata's recognition of owners' desire to mitigate the damage is reflected in the fact that the strata amended its bylaws to permit the installation of nets. There are 3 owners total with nets, adjacent to holes #4 and #5. As referenced above, the owner does not want to install a net because of the cosmetic impact.

48. The strata submits that fairway-adjacent lots are about $30,000 more valuable. The strata says this suggests the marketplace has discounted the inherit risk associated with living adjacent to a golf course.

49. The strata relies on the opinions of 2 seasoned amateur golfers, Jack McDonald and Jack Croucher. Mr. McDonald has acted as official and as Rules Chair

involved in selecting tee locations and hole locations. While Mr. McDonald has played the strata's golf course over 2,000 times, he is a non-strata member of the golf club. Mr. Croucher's opinion does not provide any background detail about his relevant expertise.

Replanting trees – number, location, and type

50. In terms of remedies, this is the central issue. The parties agree on the type of tree, namely Freeman Maples, which will grow to be 60' tall and 30' in diameter. The owner wants the strata to plant 4 new trees, close to and crowded in a northbound row almost immediately to the left of the 3rd hole tee box.

51. In contrast, the strata agrees to plant 3 trees, and has staked proposed locations largely in front of the owner's strata lot, except for one tree that is just south of it. The owner's strata lot is about 170 yards north of the tee and the owner's proposed tree locations. The owner says that the strata's proposed locations will not stop errant balls from entering his strata lot. The owner says the strata's proposed tree locations are too far out from the tee and too far to the left, and so ineffective at aligning golfers and intercepting shots. He wants the strata to follow the approach the strata used at the 5th hole tee, which was to plant trees close to the tee.

52. As noted, the strata agrees to plant 3 trees, at the locations determined by its Golf Superintendent. The strata says the owner's proposal unreasonably alters the professionally designed course and fails to balance the interests of all owners. The strata in part relies upon the brief opinions of Jack McDonald and Jack Croucher.

53. Mr. McDonald suggested planting "two, three or four strategic trees in the left rough beginning 100 yards or so from the white tee marker". Mr. McDonald expressly stated that the owner's proposed tree locations would significantly alter the design of the 3rd hole making it "nearly unplayable" from the existing 3rd hole tee boxes. Mr. Croucher's brief opinion agrees with Mr. McDonald that the owner's proposed tree locations would have a negative impact on the course design, as well as on residents on the other side of the hole. Mr. Croucher adds that the trees

at the owner's proposed locations would have to be enormous to be effective, and as such would have a canopy large enough to cover half the existing forward tee area.

54. The owner says consideration of the "Trent Jones Brand" should not come ahead of safety. The owner also suggests the Golf Superintendent Mr. Inglis is not unbiased, because he has a duty to comply with strata council directives. While the owner also notes he himself is an accomplished golfer, he cannot be said to be unbiased in this dispute. Overall, I find it is reasonable for the strata to rely upon the opinion of its Golf Superintendent, who is under the bylaws charged with management of golf operations in the best interests of all owners.

55. The owner submits that the strata has taken steps to stop errant golf balls before: it planted 3 trees on the 5th hole. The owner says he is simply asking for a similar approach at the 3rd hole.

56. The strata says one of the affected lots on the 5th hole fairway experienced about 184 balls during the 2017 golf season, and so the trees planted were not particularly effective. The strata says that given trees are only a partial solution, the strata should rely on the Golf Superintendent's knowledge to select the appropriate locations for 3 trees around hole #3. I agree.

57. The strata says the owner's proposed locations for 4 trees, or even 3 trees, would adversely impact playability on hole #3, in reliance upon Mr. Croucher's and Mr. McDonald's opinions.

58. The strata submits that its proposed placement of 3 trees along the left side of fairway #3 is designed to recognize the owner's concerns but also those of adjacent strata lots, along with the potential impact on the playability of hole #3 and the required maintenance on that hole.

59. It is unnecessary to explain how the 3rd hole is played and how errant golf shots can happen. I have considered all of the evidence. I find the determination of the best location for the trees so as to minimize errant golf balls requires some expert

opinion. On balance, I find that the weight of the evidence including the opinions before me supports the strata's position. While I have considered the owner's specific criticisms of Mr. McDonald's and Mr. Croucher's opinions, I find they do not detract from my overall conclusion. I order the strata to install 3 Freeman Maple trees as determined by its Golf Superintendent in the manner and location described in the strata's submissions.

60. In coming to my conclusion, as noted above I am mindful of the fact that I have chosen to take a measured approach given the strata context. Under the bylaws, the owner is free to install a net on his strata lot, which in the underlying evidence he acknowledges would afford him protection from the balls.

Re-alignment of tee box at hole #3 and related steps

61. The parties agree that, if the strata has not already done so, the strata will re-shape the grey and white tee box such that its edges are aligned with the preferred target line, based on the yellow lines in the evidence photos. Given the parties' agreement, I order the strata to re-align the 3rd hole tee box accordingly.

62. The strata also agrees to ensure that tee blocks are oriented perpendicularly to the centerline of the #3 fairway, so that golfers cannot re-orient the blocks after being placed by staff. I so order.

63. Next, I note the strata has already moved the 150-yard marker on the #3 hole to bisect the #3 fairway. I therefore make no order about the 150-yard marker.

Signage by the 3rd hole

64. The strata agrees to place signage that warns golfers to play safely, call "Fore!" if there is an errant shot, and to take responsibility for any property damage they create. The parties agree on the wording for the signage at the tee boxes for holes 1, 3, 4, and 5 (bold emphasis in original):

> **Play Carefully**
>
> Golfers are **responsible** for any damages caused by their errant shots.

Call "**FORE**" to warn other golfers and neighbours of errant shots.

65. I find the above-worded signage must be reasonably visible so as to be effective. However, I find on this issue it is reasonable to leave it to the strata's Golf Superintendent to determine exactly how large and in what colour the signage should be produced.

Insurance

66. The owner advocates for an Australian approach, whereby Golf Australia and the home club provide insurance for damages resulting from errant golf balls.

67. The strata submits it has no authority to expand the strata's insurance coverage so as to "cover costs of damages caused by errant golf balls", as requested by the owner. The strata correctly notes that it requires a ¾ vote of the owners at a general meeting in order to approve such an expenditure.

68. The strata notes the increased value of fairway-adjacent lots. The strata submits it is unreasonable to require all owners to bear the expense of the requested insurance, since only 45.5% of owners are affected by errant golf balls.

69. On balance, I am not prepared to make an order that the strata obtain such insurance, as I find whether the strata should incur that expense is something the owners as a whole should decide. I dismiss this claim. Nothing in this decision prevents the owner from seeking to have a resolution put before the owners at a general meeting, in accordance with the SPA.

Applicant's tribunal fees

70. Under section 49 of the Act, and tribunal rules 129 and 132, 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.

71. In this case there was divided success, bearing in mind the parties' agreement prior to adjudication and that the owner was unsuccessful on the substantive issue of the planted trees' location. I order the strata to reimburse the owner $125, which

is half of his tribunal fees. The applicant did not claim any dispute-related expenses.

Respondent's claimed expenses

72. The strata claims $1,200 for legal expenses it incurred in responding to this dispute. I see no reason in this case to deviate from the tribunal's general practice, as noted in its rules, that legal fees are not generally reimbursable expenses. This is also consistent with the Act's mandate that parties are generally self-represented. I dismiss the strata's claim.

ORDERS

73. I order the strata to do the following:

    a. As soon as practical, plant 3 Freeman Maple trees on the west side of the 3rd hole fairway, in the staked locations the strata identified in its tribunal submissions,

    b. Within 30 days, re-shape the 3rd hole tee box, as agreed by the parties in this proceeding,

    c. Within 30 days, ensure that the tee blocks are oriented perpendicularly to the centerline of the #3 fairway, so that golfers cannot re-orient the blocks after being placed by staff,

    d. Within 30 days, place signage at the #1, 3, 4, and 5 holes warning golfers, using language as agreed by the parties in this tribunal proceeding, with the strata's Golf Superintendent to determine size and colour so as to be reasonably visible, and

    e. Within 30 days, pay the owner $125 as reimbursement for tribunal fees paid.

74. I dismiss the balance of the owner's claims.

75. I dismiss the strata's claim for dispute-related expenses. In accordance with section 189.4(b) of the SPA, I order the strata to ensure that no part of the strata's expenses of defending the dispute are allocated to the owner.

76. 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.

77. 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.

Shelley Lopez, Vice Chair