Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Kazakoff v. The Owners, Strata Plan KAS 880*, 2018 BCCRT 12

B E T W E E N :

Gregory Kazakoff

APPLICANT

A N D :

The Owners, Strata Plan KAS 880

RESPONDENT

REASONS FOR DECISION

Tribunal Member: J. Garth Cambrey, Vice Chair

INTRODUCTION

1. The applicant, Gregory Kazakoff (owner), owns strata lot 5 (unit 5) in the respondent strata corporation The Owners, Strata Plan KAS 880 (strata). This dispute is about the strata's changes to common property that the owner alleges were made without proper authority.

2. The owner wants the common property restored to its original condition and that strata council members be held personally responsible for reimbursing the strata for related costs. The owner also seeks reimbursement of fees paid for this dispute.

3. The strata says its strata council members acted reasonably within their authority and seeks dismissal of the owners claims.

4. The applicant is self-represented. The respondent is represented by a strata council member.

5. For the reasons that follow, I find the strata must call a general meeting to allow the strata owners to consider ¾ vote resolutions for the alterations made to common property, other than the removal of the dividing fence and patio extension adjacent to unit 5. With respect to alterations made to the common property adjacent to unit 5, I find the strata must reinstate the dividing fence and expand the patio extension.

6. I also find the strata must reimburse the owner for tribunal fees he paid in relation to this dispute.

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 *Strata Property Act* (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.

POSITION OF THE PARTIES

13. The owner says the strata made changes to common property adjacent to units 1, 4, 28 and 43, contrary to the SPA (collectively, the landscaping alterations). Additionally, the owner says the strata removed a wooden dividing fence and altered the concrete patio extension on the common property adjacent to unit 5 but has not removed or altered other similar alterations adjacent to other units within the strata complex.

14. The owner requests orders that the strata council members reimburse the strata the cost of the landscaping alterations made and restore the common property patio extension and dividing fence adjacent to unit 5.

15. The strata says that it has acted within its authority and made maintenance decisions required under section 72 of the SPA.

ISSUES

16. The issues in this dispute are:

    a. Did the strata make alterations to common property adjacent to units 1, 4, 5, 28 and 43 without having first passed a ¾ vote of the strata contrary to the SPA? If so, should the strata council members be held responsible to reimburse the strata the cost of the alterations made and what is an appropriate remedy?

    b. Were the actions taken by the strata to alter the common property adjacent to unit 5 significantly unfair to the owner? If so, should the strata reinstate the patio extension and dividing fence?

    c. Should the applicant be reimbursed $225 for tribunal fees paid?

BACKGROUND AND EVIDENCE

17. I have read all of the evidence provided but refer only to evidence I find relevant to provide context for my decision.

18. The strata comprises 48 residential townhouse strata lots located in Kelowna, B.C., built in two phases and fully completed in approximately 1993.

19. The owner co-owns unit 5, which was purchased on October 27, 2015. At the time of purchase, a concrete patio and awning structure and a poured concrete patio extension and dividing fence had been completed on common property adjacent to unit 5. The concrete patio and awning structure are not in issue in this dispute. Rather, the issue here is the concrete patio extension and the dividing fence adjacent to unit 5. The parties agree that the concrete patio extension and dividing fence were installed by a prior owner but do not agree when those alterations were made although nothing turns on that exact date.

20. The strata plan shows all landscaped areas are common property. There is no limited common property shown on the strata plan and no resolutions have been passed by the strata to designate limited common property. I therefore conclude that the exterior areas adjacent to units 1, 4, 5, 28 and 43 at issue are common property of the strata.

21. Common property alterations with respect to converting some grassed areas to shale around a recreational vehicle parking area were approved by a ¾ vote resolution at the AGM held July 21, 2015 (2015 AGM). The minutes reflect that funds required to complete this work were approved from the contingency reserve fund (CRF) and that the "changes … may constitute a significant change in the use or appearance of common property." The alterations completed under this approved resolution are not part of this dispute but the 2015 AGM minutes show the strata was aware of possible significant changes to common property requiring the passing of a ¾ vote resolution.

22. In March 2016, the owner, and at least one other owner, informed the strata that the landscaping alterations, which largely involved converting grassed areas to rock and planted shrubs, were significant changes to common property which should properly be considered at a general meeting. It appears from the evidence that the landscaping alterations were completed in March or April 2016 at a cost of $7,838.25.

23. A number of photographs were provided by the parties that show the original landscaping and the altered landscaping.

24. Also in March 2016, the owner was informed that the strata council considered his patio extension a tripping hazard and would remove it along with the dividing fence. The owner originally understood the patio extension and dividing fence would be replaced by the strata but this was not done. The strata removed the dividing fence in April 2016 and the concrete patio extension in July 2016. The dividing fence was not replaced and the strata partially replaced the patio extension with concrete paving stones in October 2016.

25. I find the cause of action arose in approximately March 2016. Therefore, I find the relevant bylaws were those filed at the Land Title Office on August 3, 2010, plus the amended bylaws filed August 15, 2012. The Form I accompanying the bylaws filed August 15, 2012 states that "all old bylaws" were repealed yet there is language contained in the August 15, 2012 bylaws that refer to the Schedule of Standard bylaws. I conclude the Schedule of Standard Bylaws does not apply given the statement contained in the Form I and that different bylaws were filed by the strata.

26. Prior to August 15, 2012, there were no bylaws permitting the strata to request an owner complete an alteration agreement for alterations made to common property.

ANALYSIS

Did the strata have authority to make alterations to common property adjacent to units 1, 4, 5, 28 and 43? If not, should the strata council members be held responsible to reimburse the strata the cost of the alterations made, and if not, what is an appropriate remedy?

27. The owner advances two arguments about the strata's authority to complete the alterations at issue. The first argument is that the alterations were significant changes within the meaning of section 71 of the SPA. The second argument is that the alterations were not maintenance but were rather capital expenditures.

28. I will first address the issue of significant change.

29. Under section 71 of the SPA, the strata must not make a significant change in the use or appearance of common property unless the change is approved by a ¾ vote resolution or there are reasonable grounds to believe that immediate change is necessary to ensure safety or prevent significant loss or damage. Here, the requirement of an immediate change has not been argued.

30. As noted earlier, all areas at issue are shown on the strata plan as common property and at least two owners voiced concern over the changes made.

31. Criteria for determining what is a significant change in use and appearance under section 71 of the SPA was clearly set out in *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333 at paragraph 19:

    a. A change would be more significant based on its visibility or non-visibility to residents and its visibility are non-visibility towards the general public;

    b. Whether the change to common property affects the use or enjoyment of the unit or number of units or an existing benefit of all unit or units;

    c. Is there a direct interference or disruption as a result of the change to use?

    d. Does the change impact on the marketability or value of the unit?

    e. The number of units the building may be significant along with the general use, such as whether it is commercial, residential or mixed-use;

    f. Consideration should be given as to how the strata corporation has governed itself in the past and what it is followed. For example, has it permitted similar changes in the past? Has it operated on a consensus basis or has it followed the rules regarding meetings, minutes and notices as provided in the SPA.

32. In *Foley*, the court also noted that the Court of Appeal in *Reid v. Strata Plan LMS 2503*, 2003 BCCA 128 found that the placement of potted plants, cedars, bushes and other shrubs in a common property entrance area did not constitute a significant change to the use or appearance of the common property under section 71 of the SPA.

33. For the reasons that follow, I find the strata's alterations to the common property adjacent to units 1 and 5 were significant. However, I find the alterations made to the common property adjacent to units 4, 28 and 43 were not significant.

34. Based on my review of the photographs of alterations adjacent to units 1, 4, and 5, the alterations made adjacent to unit 1 differ dramatically from the other alterations at issue. This is because the unit 1 alterations were extensive and highly visible to

all residents and the general public, given the alterations were made at the main entrance to the complex.

35. I find the alterations made adjacent to unit 4 were not extensive nor highly visible to residents or the general public. The location of unit 4 is near the end of the short interior roadway, which would not likely be used by the majority of residents. These alterations are not visible from the public roadway as the views to the area appear to be impeded by either the building or a solid fence.

36. Except for the removal of the dividing fence and removal and partial replacement of the patio extension at unit 5, I find the alterations made to the other common property areas at issue, including adjacent to units 28 and 43, did not affect the use or enjoyment of, or benefit to, any unit within the strata complex. Further, I do not find that any of the alterations made resulted in a direct interference or disruption to any unit owner, except those adjacent to unit 5.

37. Although the owner asserts that the alteration to the common property adjacent to unit 5 has affected the marketability and market value of unit 5 no evidence to support the owners claim was submitted.

38. I find the alterations completed at unit 5 affected the use and enjoyment of common property and benefit of the owner and also resulted in direct interference and disruption to the owner. As such, given the *Foley* criteria I find the changes here amounted to a significant change in the use and appearance of common property. As noted above, I come to the same conclusion about the common property changes adjacent to unit 1.

39. Limited evidence was provided with respect to the alterations completed at units 28 and 43. However, based on the information and descriptions provided I do not consider the alterations at these locations to be extensive nor highly visible to strata residents. From the site map provided and strata plan, the alterations completed at these units do not appear to be visible by the public.

40. There is no evidence to support any change in marketability or market value of units based on any of the alterations nor do I find that the general use of these areas to be significantly affected based on the layout of this 48-unit residential complex.

41. In the result, for the reasons above I find the changes to the common property areas adjacent to units 4, 28, 43 were not significant.

42. As noted earlier, the ¾ vote resolution relating to common property alterations adjacent to the recreation vehicle parking area was passed by the strata at the 2015 AGM.

43. The second argument advanced by the owner is that the alterations were capital in nature and not part of a maintenance budget.

44. In its submissions, the strata says it acted within its authority to make maintenance decisions within the operating funds approved by the owners as required under section 72 of the SPA.

45. Though not specifically argued, I find the parties' positions with respect to capital versus maintenance expenditures involve sections 92, 96, 97 and 98 of the SPA.

46. Under section 92 of the SPA, the strata must establish, and strata owners must contribute through strata fees, to an operating fund and CRF. The operating fund is to be used for common expenses that usually occur either once a year, or more often than once a year, or are necessary to obtain a depreciation report under section 94 of the SPA. The reference to section 94 does not apply here.

47. Under section 96 of the SPA, the strata must not spend money from the CRF unless the expenditure usually occurs less often than once a year, does not usually occur, is authorized by a ¾ vote at a general meeting or is authorized under section 98 of the SPA as an unapproved expenditure.

48. Under section 97 of the SPA, the strata must not spend money from the operating fund unless the expenditure usually occurs once a year or more often than once a

year, is first approved by a ¾ vote at a general meeting or is authorized in the operating budget or under section 98 of the SPA as an unapproved expenditure.

49. Section 98 of the SPA governs unapproved expenditures that have not been approved in the operating budget or by passing a ¾ vote resolution. Such unapproved expenditures may only be made out of the operating fund to the maximum amount set out in the bylaws. If the bylaws are silent as to the amount, the maximum is the lesser of $2,000 or 5% of the total contribution to the operating fund for the current year.

50. Exceptions to the foregoing unapproved expenditures include situations where there are reasonable grounds to believe that immediate expenditure is necessary to ensure safety or prevent significant loss or damage. These exceptions do not apply here.

51. Financial statements for the fiscal year ending March 31, 2016 submitted by the strata show a line item entitled “grounds and landscaping” with an annual budget of $13,180. This is in addition to a separate line item entitled “grounds maintenance” that I infer to be the strata’s contractual obligations to maintain its landscaping. In its submission, the strata says the strata council “applies the Operating Funds to projects as seems appropriate and reasonable.”

52. All expenses appear to be within the budgetary constraints approved by the owners. However, I find the expense from the operating budget for the landscape alterations is not consistent with the operating fund as described under section 97(a) of the SPA for the reasons that follow.

53. Though not directly addressed by the parties, I cannot agree that landscape alteration expenses to a specific area of the landscaping can be expected to occur once a year or more often than once a year. Put another way, improvements made to a landscaped area are more likely than not going to be made less often than once per year. Under section 92(a) of the SPA, such expenses must not be paid from the operating fund.

54. Therefore, on the matter of the landscaping alterations, I agree with the owner that such expenses are capital in nature and must be made from the CRF (or by special levy) with the proper approval by the owners.

55. To the extent the strata says that section 72 of the SPA somehow gives it authority to alter common property, I cannot agree. The duty to repair and maintain common property has been extensively addressed by the courts and the tribunal and there is no evidence to suggest the landscaped areas in question here were in a state of disrepair or not being properly maintained. Again, there is no suggestion there was any urgency to the repairs.

56. In summary, I find the strata's alterations to common property adjacent to units 1 and 5 were significant and required a ¾ vote of the strata to be passed. Although I have found the alterations completed to common property adjacent to units 4, 28 and 43 were not significant changes, I find the costs for all the alterations completed were not properly approved from the operating fund given the expenses were not consistent with fund as required under section 97(a) of the SPA. The expenses should have been paid from the CRF or by special levy, both of which require the passing of a ¾ vote resolution.

57. Should the strata council members be held responsible to reimburse the strata the cost of the alterations made to units 1and 5?

58. Under section 31 of the SPA, in exercising the powers and performing the duties of the strata, each strata council member must act honestly and in good faith with a view to the best interests of the strata and exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.

59. The owner 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 acted in bad faith either when it decided to proceed with the unit 1 or unit 5 alterations or when it paid for any alterations from the operating fund.

60. The owner submits that the strata council was aware of the requirements of section 71 of the SPA as evidenced by the ¾ vote resolution put to the strata owners at the 2015 AGM. I agree. However, that the strata council was aware of the section 71 requirements and considered the unit 1 and 5 alterations were not significant does not mean the strata acted in bad faith.

61. It is unclear from the evidence whether the March 30, 2016 correspondence received from owners objecting to landscape alterations was received by the strata before or after the work was done. However, the April 10, 2016 invoice date for the completed work suggests the work was already completed.

62. The strata submits that its council had historically made decisions to alter common property without a ¾ vote resolution passed by the strata owners and I agree. While the strata may have believed the strata owners were in agreement with the alterations, given similar alterations had been made previously without the strata's input, the strata's decisions to proceed with the alterations and pay for them from the operating fund was nonetheless contrary to the SPA.

63. Overall, with respect to the units 1 and 5 alterations, I cannot accept the owner's position that the strata council did not act honestly and in good faith with a view to the best interests of the strata. I also note that the owner named only the strata as a respondent, and did not name the individual council members. In any event, I would not be inclined to make an order against non-parties who have not had the opportunity to make submissions on the issue.

64. Given I have found that the unit 1 and 5 alterations were significant, what then is the appropriate remedy against the respondent strata?

65. With respect to the common property alterations adjacent to unit 1, I adopt the view of the Court in *Foley* that it is important for owners in a strata complex to attempt to resolve their differences by following the procedures contemplated by the SPA and bylaws. That is, all 48 owners of the strata should be afforded an opportunity to determine whether the unit 1 alterations should be allowed to stand.

66. I agree with the owner's submissions that the acceptability of the unit 1 alterations has not been properly considered by the strata owners. I find the strata must call a general meeting to consider the approval of the unit 1 alterations by ¾ vote resolution. The resolution must address that the alterations constitute a significant change in appearance of common property and will also include funding of the work from the CRF, by special levy or a combination of both. If the ¾ vote resolution passes this particular claim will be resolved. If the ¾ vote resolution fails, I order the strata to reinstate the common property adjacent to unit 1 to its condition prior to the alterations being completed within 60 days of the date of the general meeting. The cost of reinstating the common property to be at the expense of the strata including the applicant owner.

67. With respect to the alterations completed at units 4, 28 and 43, I find that the strata must allow the strata owners to consider a ¾ vote resolution authorizing the expense for this work from the CRF, by special levy or a combination of both. The strata must include a separate ¾ vote resolution on the agenda of the general meeting set out above to consider funding the expenses of the alterations completed at units 4, 28 and 43, from the CRF, by special levy or a combination of both. If the resolution passes, these claims will be resolved. If the resolution fails, the strata would have effectively completed the alterations without proper funding authority. In such case, I order the strata to reinstate the common property adjacent to units 4, 28 and 43 to its condition prior to the alterations being completed within 60 days of the date of the general meeting. The cost of reinstating the common property must be at the expense of the strata including the applicant owner.

68. Nothing in this decision prohibits the strata from transferring operating fund surplus monies to the CRF pursuant to section 105(1) of the SPA.

69. I will address the unit 5 alterations below as I find there are other factors that need to be considered with respect to a proper remedy. In my view, that proper remedy is for the strata to complete additional work to restore the area to what the owner had before the strata completed the alterations. Further, given I have found below

that the owner was treated in a significantly unfair manner I find the unit 5 alterations should not be put to a ¾ vote of the strata owners.

Was the strata's removal of the unit 5 alterations significantly unfair to the owner? If so, should the strata reinstate the patio extension and dividing fence?

70. From the photographs provided, there appears to be several patios adjacent to strata lots that have awning covers attached to the building exterior. Unit 5 has such a cover over a concrete patio. The patio cover and patio beneath it are not at issue in this dispute. It is only the patio extension that is not under the awning and the dividing fence (unit 5 alterations) that is at issue in this dispute.

71. As noted earlier, it is not disputed that the common property patio extension and dividing fence adjacent to the owner's strata lot were completed several years before the owner purchased his strata lot. I accept that the patio extension and dividing fence were installed at or near the time phase 1 of the strata was originally constructed.

72. No alteration agreement was obtained by the strata when the alterations were originally made. The strata bylaws show that alteration agreements were not required until the August 15, 2012 bylaw amendment was filed, well after the unit 5 alterations were completed.

73. Further, no evidence was provided to suggest the unit 5 alterations were granted short term exclusive use under section 117 (f) of the former *Condominium Act* (or similar bylaw in force at the time) or granted similar short term exclusive use under section 76 of the SPA.

74. Based on the foregoing, I find that the unit 5 alterations, together with other similar alterations made adjacent to other units at around the same time, were alterations that were approved by the strata.

75. The owner says he was denied the use of his patio extension from July to October and that it was unfair for the strata to remove his patio extension and dividing fence for the following reasons:

    a. His patio extension was not a maintenance or safety issue.

    b. Patio extensions at units 10, 19, and 23 were installed by prior owners without alteration agreements and the strata has not removed them.

    c. Dividing fences exist at other locations on the common property and the strata continues to repair them.

76. The issue to be determined is whether the applicant has proved, on a balance of probabilities, that the reinstatement of the concrete patio and dividing fence is necessary to remedy a significantly unfair action by the strata.

77. As noted earlier, the language of section 48.1 (2) of the Act mirrors that of section 164 of the SPA. Both require a finding that the order requested by the owner is necessary to remedy a significantly unfair act of the strata, in relation to the owner. For the reasons set out below, I find that owner was treated in a significantly unfair manner when the strata removed the dividing fence and patio extension adjacent to his strata lot.

78. The courts and the tribunal 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 128, 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.

79. The British Columbia Court of Appeal has considered the language of section 164 of the SPA in *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44. The test established in that case was restated by the Supreme Court of British Columbia in *The Owners, Strata Plan BCS 1721 v. Watson*, 2017 BCSC 763 in an application for leave to appeal a decision of the tribunal at paragraph 28:

"The test under s. 164 of the *Strata Property Act* also involves objective assessment. *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, requires several questions to be answered in that regard:

1) What is or was the expectation of the affected owner or tenant?

2) Was that expectation on the part of the owner or tenant objectively reasonable?

3) If so, was that expectation violated by an action that was significantly unfair?"

80. The parties did not address the component parts of the test established by the Court of Appeal in *Dollan*. It is undisputed that the strata removed the dividing fence and patio, and partially replaced the concrete patio with concrete paving stones over a smaller area, without consultation with the owner.

81. The owner says he was approached by an individual whom he thought represented the strata about "replacing his patio extension and dividing fence" to which he verbally agreed. It is undisputed that the owner expected the patio and dividing fence to be replaced and I accept the owner's submission in this regard. The dividing fence was promptly removed and has not been replaced. The concrete patio extension has been only partially replaced with paving stones, after several months of inaction by the strata.

82. The owner says the dividing fence was not in a state of disrepair. The strata says the contrary. From my review of photographs of the unit 5 dividing fence before it was removed, I find it was not in a state of disrepair.

83. Is not clear from the evidence why the strata chose to remove only the patio extension and dividing fence at unit 5 and not at other locations throughout the strata complex. The strata claims the patio extension presented a tripping hazard but gave no reason why the dividing fence was removed. The photographs show the concrete level of the unit 5 original alteration, which is not under dispute, and the patio extension that forms part the unit 5 alterations were not entirely level at

the corner of the building. From my review of the photographs, I do not see how the different concrete levels created any significant tripping hazard given the location of the owner's personal furniture. Apart from the strata's submission, there is no evidence before me to suggest the patio extension was a tripping hazard.

84. Applying the test in *Dollan*, I find the owner's expectation that his fence and patio extension be replaced was objectively reasonable and the strata's removal of the fence and only partial replacement of the patio was significantly unfair.

85. Given the strata continues to repair and maintain other common property dividing fences and continues to permit other similar patio alterations, I find the strata must reinstate the common property dividing fence and patio extension adjacent to unit 5. In his submission, the owner was willing to accept concrete paving stones being used for his patio extension but expected the completed patio to be the same size as it was before the poured concrete patio extension was removed. I therefore find that strata must extend the existing concrete paving stone patio extension to include 2 additional rows of paving stones of equal size, quality texture and colour to those already installed by the strata.

86. I find there is no requirement for the owner to enter into an alteration agreement with the strata as the alterations existed before the bylaws were amended to require alteration agreements. Further, the owner did not request the alteration be made.

DECISION AND ORDERS

87. The owner's claims are allowed in part.

88. I order that within 45 days of the date of this order:

    a. the strata call a general meeting to consider approval of the unit 1 alterations by ¾ vote resolution. The resolution must address that the alterations constitute a significant change in appearance of common property and will also include funding of the work from the CRF, by special levy or a

combination of both. If the ¾ vote resolution passes this particular claim will be resolved. If the ¾ vote resolution fails, I order the strata to reinstate the common property adjacent to unit 1 to its condition prior to the alterations being completed within 60 days of the date of the general meeting. The cost of reinstating the common property to be at the expense of the strata including the applicant owner.

b. The strata include a separate ¾ vote resolution on the agenda of the general meeting set out above to consider funding the expenses of the alterations completed at units 4, 28 and 43, from the CRF, by special levy or a combination of both. If the resolution passes, these claims will be resolved. If the resolution fails, I order the strata to reinstate the the common property adjacent to units 4, 28 and 43 to its condition prior to the alterations being completed within 60 days of the date of the general meeting. The cost of reinstating the common property to be at the expense of the strata including the applicant owner.

c. The strata replace, at its cost without contribution by the owner, the dividing fence it removed from the common property adjacent to unit 5 with one of similar size and design.

d. The strata extend, at its cost without contribution by the owner, the common property patio extension adjacent to unit 5 by an additional 2 rows of concrete paving stones that match the existing paving stones, so that the patio extension is of a similar size to that which was removed.

89. 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 the more successful party. Accordingly, I order the strata to reimburse the owner $225 in tribunal fees paid.

90. The owner's remaining claims are dismissed.

91. Under section 189.4(b) of the SPA, an owner who brings a tribunal claim against the strata corporation is not required to contribute to the expenses of bringing that claim. I order the strata to ensure that no part of the strata's expenses with respect to defending this claim are allocated to the owner.

92. 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.

93. 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.

J. Garth Cambrey, Vice Chair