



# Civil Resolution Tribunal

Date Issued: January 18, 2019

File: ST-2017-00298/ST-2017-005628

Type: Strata

Civil Resolution Tribunal

Indexed as: *Huie et al v. The Owners, Strata Plan LMS 2165*, 2019 BCCRT 81

B E T W E E N :

Jade Huie and Cynthia Huie

**APPLICANTS**

A N D :

The Owners, Strata Plan LMS 2165

**RESPONDENT**

A N D :

Cynthia Wai Fong Huie and Jade Huie

**RESPONDENTS BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Julie K. Gibson

## INTRODUCTION

1. This dispute arises in 6-unit strata corporation. The central issue is the question of how strata fees are determined. The parties also disagree about who is obliged to pay for necessary building repairs.
2. The applicant Jade Huie owns strata lot 6 (SL6), with her husband in the respondent The Owners, Strata Plan LMS 2165 (strata). The applicant Cynthia Huie owns strata lot 5 (SL5) in the strata.
3. Jade and Cynthia Huie contest the strata fees. They say the unit entitlement of strata lots in the strata plan was based on an incorrect square footage. As a result, they have paid only the strata fees that accord with their understanding of the square footage, which differs from the fees owing based on unit entitlement.
4. Jade and Cynthia Huie also oppose some of the repairs the strata wants to complete, even where they voted in favour of those repairs initially. The concerns boil down to how the repairs are to be funded.
5. In response, the strata says the strata fees are owing based on unit entitlement. The strata also says that, because Jade and Cynthia Huie have 2 votes out of 6, they have blocked special levy votes requiring a  $\frac{3}{4}$  vote resolution under the *Strata Property Act* (SPA), which would have funded the needed repairs.
6. The strata counterclaims, saying Cynthia and Jade Hui have not acted in good faith as council members, and seeking various relief against them.
7. Jade and Cynthia Huie represent themselves. The strata is represented by strata council member (and property manager) Sung Han (Hanson) Wang.
8. Due to the number of issues, I will outline the relief sought in the claim and counterclaim, and then address each issue separately below.

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9. In the March 26, 2017 Dispute Notice, Jade and Cynthia Huie raise multiple issues against the strata, including that it,
- a. failed to obtain proper approval for legal expenses of \$13,800 to be paid by special levy,
  - b. increased strata fees improperly, without a vote and without accounting for unit entitlement,
  - c. relied on an inaccurate budget to raise strata fees,
  - d. failed to fund renovations through special levies, despite agreeing that all pre-September 2016 renovation projects would be funded by special levy,
  - e. “squandered” \$3,000 on a depreciation report,
  - f. failed to provide a financial report,
  - g. failed to repair their patios despite the repairs being approved in 2014 and 2015, to be completed before June 2016,
  - h. used improper materials to repair front door platforms, then failed to complete the repairs,
  - i. used incorrect information to insure strata buildings,
  - j. failed to provide maintenance services, including lawn cutting,
  - k. spent \$2,100 on garden maintenance but “nothing was done”,
  - l. spent money on wasp nest removal when the applicants say they did not notice a problem,
  - m. permitted Helen Lee as a strata treasurer when she was a non-resident and passed obligations to her son, Hanson Wang, improperly,
  - n. squabbled over replacing the roof when, in the applicants’ opinion, it does not need replacement, and

- o. permitting Hanson Wang as a property manager, when he is not an owner nor part of strata council and is dishonest in spending strata money.
10. Jade and Cynthia Huie seek the following remedies against the strata, which include monetary remedies totaling \$4,566.12:
- a. Reimbursement of \$725.00 in legal costs paid by Jade Huie as the owner of SL6, because they say the “strata [fee] ratio” from September 2014 was wrong,
  - b. Reimbursement of the special levy paid by Jade Huie (SL6) for lawyer fees \$3,116.12;
  - c. For the strata to replace their front door platform and repair the patio for unit 6 as soon as possible;
  - d. Payment for tree replacement, tree trimming and maintenance of located near units 5 and 6, though, based on the strata plan, trees are on common property;
  - e. The strata to amend the budget and provide financial reports, copies of all expense invoices and payment history from September 2016 onwards;
  - f. For the strata to explain why insurance coverage is not adequate for the building,
  - g. To have a neutral third party such as a professional property manager manage the strata.
  - h. Tribunal fees of \$225.00

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11. On October 13, 2017 the strata counterclaimed, against Cynthia Huie and Jade Huie. Cynthia Huie is described as Cynthia Wai Fong Huie in the counterclaim. Both names refer to the same person.
12. The strata asks for the following remedies:

- a. An order that Cynthia Huie reimburse the owners of the strata for the \$11,000 special levy for legal expenses;
  - b. An order that the strata commence the special projects under the special levy including roof replacement and painting for all 6 strata lots, and for SL 5 and SL6 to comply;
  - c. A declaration that the owners of SL5 and SL6 breached their duty of good faith and duty of care owed to the strata, as council members, under s. 31(a) of SPA;
  - d. An order that SL5 and SL6 pay unpaid strata fees and existing arrears immediately;
  - e. An apology letter to owners that have been impacted by their behaviours;
  - f. Tribunal fees of \$225.
13. Although the strata sought special costs in its counterclaim initially, in submissions it made no argument about special costs and so I have not considered that claim.
14. Jade Huie submitted a Dispute Response to the counterclaim on October 27, 2017.
15. In it, she disagrees with the strata's claims. Jade Huie says:
- a. Hanson Wang, who is not a strata council member, is trying to get the buildings renovated,
  - b. That the 16-year-old roof does not need replacing,
  - c. That Hanson Wang refused to repair the front entrance steps and sundeck despite their dangerous condition and the strata having approved the repair in October 2014,
  - d. The strata wasted \$3,000 on a depreciation report.
  - e. Special levy voting was calling for renovation projects without getting quotes.

- f. In March 28, 2016, a contractor recommended a metal railing for the sundeck (\$5,672) to reduce future maintenance, but Hanson refused.
  - g. In October 2016, Hanson Wang hired a friend to repair 5 platforms, for \$2,950. The repair was poorly done and another \$2,500 was authorized to re-repair 3 of the platforms.
  - h. In September 2017, Hanson Wang used the gardener to repair the sundeck for \$10,000.
  - i. Poor repair on railing for balcony.
  - j. City Hall issued stop work order on October 20, 2017.
  - k. Changed strata fee without unanimous vote.
  - l. Another strata council member forced Cynthia Huie to sign “unfair cheques without providing supporting invoices.”
  - m. Helen Su, prior owner of strata lot 2, sold her unit on November 2014 but still became strata president.
16. Cynthia Huie filed a different Dispute Response the same day.
17. In it, she contests the strata fee, saying the strata changed the formula to calculate it without the required unanimous resolution allowing it to do so.

## **JURISDICTION AND PROCEDURE**

18. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). 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.
19. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the

evidence in this dispute amounts to a “she said, he said” scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal’s mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal’s process and that oral hearings are not necessarily required where credibility is in issue.

20. 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.
21. Under section 123 of the Act and the tribunal rules, in resolving this dispute the tribunal may make order a party to do or stop doing something, order a party to pay money, order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

22. The issues in this dispute are:
  - a. whether the strata fees have been calculated properly and, if so, what order would be appropriate regarding any arrears;
  - b. whether the special levy for legal fees was properly authorized, and whether the strata is entitled to recover the amount paid for legal fees from Cynthia Huie;
  - c. how to resolve the issue of stalled repairs including the roof, painting and several special projects;

- d. whether it is appropriate to order the strata to explain an alleged error in its insurance policy;
- e. whether Cynthia and Jade Huie breached their duty of good faith and duty of care owed to the strata under s. 31(a) of SPA;
- f. whether the depreciation report was properly authorized and funded;
- g. how to resolve the concerns Cynthia and Jade Huie have raised about their cedar trees and gardening needs;
- h. how to resolve Cynthia and Jade Huie's concerns about the budget for pest control and wasp nest removal;
- i. whether the strata has improperly failed to invite Cynthia and Jade Huie to strata meetings;
- j. whether the strata has failed to produce documents requested by Cynthia and Jade Huie, including the 2016 financial statement;
- k. whether Hanson Wang has been dishonest in his spending of strata money;
- l. whether Hanson Wang is an appropriate strata property manager;
- m. whether the tribunal should order the strata to hire a neutral third party to manage it, in place of Hanson Wang; and
- n. whether the tribunal should order Jade and Cynthia Wang to issue a written apology to the strata.

## **EVIDENCE AND ANALYSIS**

### ***Strata Fees, Unit Entitlement, and Related Arrears***

23. A strata corporation must calculate strata fees using the formula in the SPA section 99, based on unit entitlement. Under the SPA section 100, if a strata wants to use a



different basis, other than unit entitlement, it must pass a resolution by a unanimous vote at an special general meeting (SGM) or an annual general meeting (AGM).

24. Unit entitlement is set out in the strata plan. The strata plan's schedule of unit entitlement provides that SL5 has a unit entitlement of 182 and SL6 has a unit entitlement of 283. The total unit entitlement of all strata lots is 1,181.
25. The SPA obligation to pay strata fees requires "... all owners to contribute to strata expenses, even those that say they do not benefit from or do not agree with." (*Kornylo v. The Owners, Strata Plan VR 2628*, 2018 BCCRT 599, at paragraph 85).
26. Jade and Cynthia Huie say that the unit entitlement set out in the strata plan is incorrect, because it is based on incorrect square footage.
27. They say that, back in 2006 or 2007, "all members" agreed that SL6 should pay strata fees based on a 1.42:1 ratio rather than a 1.5:1 ratio. They say they were unaware that the strata needed to register such a change with the Land Title Office.
28. The applicants point to an April 11, 1995 agreement between owners at the time, that "larger units" would pay 1.5 shares and smaller units would pay 1 share.
29. The strata plan was registered with the Land Title Office on October 18, 1995, and so I find it governs unit entitlement and supersedes the earlier April 1995 agreement.
30. Jade Huie filed a November 8, 2006 memorandum in evidence, in which she suggests a change in unit entitlement from the strata plan. It reads, in part "Unit 4715 has less than 50% more square footage than the average unit. In the past years, Jade rounded it off and paid more than her required share because the additional difference was very minimal. Now that there has been a significant increase in strata fees, we should take this opportunity to recalculate accordingly."
31. There is no evidence before me that the November 2006 proposed change was accepted by a unanimous vote of owners at an AGM or SGM or registered at the

Land Title Office, which is what section 100 of the SPA requires for the change to be effective.

32. Having said that, Jade and Cynthia Huie then proceeded to pay strata fees on this basis from 2007 until fall 2014.
33. At that point, a budget was approved, by 4-2 margin, that expressly included strata fees for 2015/2016 based on unit entitlement as shown in the strata plan.
34. I find that the SPA requires that strata fees be calculated using the unit entitlement in the strata plan and the formula in section 99.
35. On the evidence, I dismiss the claim by Cynthia and Jade Huie to be refunded strata fees or to have their fees calculated on another basis. The way to change the formula is to proceed under section 100, via unanimous vote at an SGM or AGM. I find that the formula was never properly changed.
36. I dismiss the claim for reimbursement of \$725.00 in legal costs paid by SL6 because of the allegation that the “strata [fee] ratio” was wrong.
37. In the counterclaim, the strata asks for an order that Cynthia and Jade Huie pay any unpaid strata fees and existing arrears immediately. Cynthia and Jade Huie are required to pay strata fees calculated according to unit entitlement. I find that some of the arrears were paid, based on bank statements provided in evidence.
38. Under s. 48(2) of the Act an order for payment of money must set out the principal amount payable. I am unable to make that order due to a lack of evidence regarding the strata fees paid versus strata fees owing to the date of this decision.
39. I order that, within 15 days of this decision, the strata calculate the arrears owing by Jade Huie and Cynthia Huie. The strata will then be entitled to demand payment of any arrears under s. 112 of the SPA.

### ***Special Levy for Legal Fees***

40. Cynthia and Jade Huie say the strata failed to obtain proper approval for legal expenses of \$13,800 to be paid special levy. They ask that Jade Huie be refunded for her share of the legal expense special levy.
41. At an October 28, 2014 strata council meeting Cynthia Huie was not re-elected as a co-signor for the strata council bank account.
42. At a November 14, 2015 AGM, Cynthia Huie was not re-elected as a strata council member.
43. When the strata contacted Cynthia Huie to replace her as signatory, this required a letter of instruction signed by her and the other existing signatory.
44. By her own admission, Cynthia Huie refused to sign the letter of instruction. The documents establish that Cynthia Huie continued to refuse to relinquish signing authority into 2016.
45. On February 4, 2016, the strata council met and voted 3-0 to retain legal counsel to take steps to remove Cynthia Huie as a strata signatory.
46. On May 6, 2016, counsel for the strata filed a Petition against Cynthia Huie, in the Supreme Court of British Columbia, seeking an order to compel her to remove herself as a signatory on the strata's bank account.
47. On August 4, 2016, Cynthia Huie signed the letter of instruction needed to relinquish her signing authority for the strata bank account.
48. On October 30, 2016, an SGM was held where Cynthia Huie appointed Jade Huie as her proxy.
49. At the SGM, a  $\frac{3}{4}$  vote resolution was passed approving a special levy to pay the litigation costs incurred to remove SL5 as a an authorized signatory, to a maximum of \$13,800, to be paid by December 1, 2016, as calculated by unit entitlement.
50. The special levy was due by November 15, 2016, under section 171(5) of SPA, which exempted Cynthia Huie from contributing to the expense. The resolution

provided that if the actual cost was less than the special levy amount, the remaining funds would be transferred to the contingency reserve fund (CRF). SL5 was not assessed due to s. 171(5) of the SPA. The motion carried 4-1.

51. The minutes of the SGM include the following:

“Strata Lot #6 will be willing to pay costs once she sees the final invoice from Hammerberg Lawyers. Hanson Wang hopes to negotiate with Hammerberg Lawyers to reduce the legal fees to date.”

52. Jade Huie says Hanson Wang retained that lawyer without prior approval by the strata, did not report on the case, settled the case in August 2016 and then called a special meeting to vote and set a special levy of on October 30, 2016.

53. They say Hanson Wang told them the special levy was set on October 28, 2014. There is no evidence that he said so.

54. They say he refused to provide lawyer invoices.

55. The invoices from Hammerberg Lawyers, who were retained to address the issue of Cynthia Huie refusing to relinquish her signing authority, were dated from March 11, 2016 to September 12, 2016. The total of the legal services provided was \$13,704.70. Hanson Wang was then able to negotiate a \$2,704.70 “courtesy discount”, as confirmed in correspondence dated November 9, 2016 from Hammerberg.

56. In *Lum v. Strata Plan VR519* 2001 BCSC 493 the court held that there is a duty on the part of strata council to have the strata corporation properly represented in legal proceedings concerning it. The fact that some owners oppose legal representation in such proceedings does not change the strata council’s obligation to arrange for representation (see *Lum* at paragraph 24).

57. A strata council is entitled to retain a lawyer without the approval of the owners. However, a strata council lacks the ability to pay the lawyer without an emergency situation under the SPA, or a budget line item for legal expenses. (*Dockside Brewing Co. v. Strata Plan LMS 3837*, 2005 BCSC 1209, affirmed 2007 S.C.C.A. No. 262 (Q.L.))

58. Having said that, SPA section 171(2) says that before a strata corporation sues under this section, the suit must be authorized by a  $\frac{3}{4}$  vote at an AGM or SGM.
59. Following the decision in *Lum*, I find that it was strata council was entitled to retain legal counsel to address the issue of Cynthia Huie's refusal to relinquish signing authority.
60. The strata council did not try to pay for the lawyer under its own authority. Here, a  $\frac{3}{4}$  resolution was passed, at an SGM, to pay the legal fees. I find this to be a valid mechanism for funding the needed legal expenses.
61. Given section 171(2), the  $\frac{3}{4}$  vote resolution should have preceded prior to filing the Petition against Cynthia Huie. However, given that the  $\frac{3}{4}$  vote resolution to pay the legal fees passed, and given that the strata could not use its bank account properly while Cynthia Huie refused to relinquish signing authority, I find that the steps taken were reasonable and valid.
62. No portion of the special levy was made payable by Cynthia Huie.
63. I dismiss the claim to have Jade Huie reimbursed for her \$3,116.12 portion of the legal fees special levy as she was to a party to the strata's Supreme Court proceeding.

### ***Roof Replacement, Painting and Other Special Projects***

64. In their claim, Jade and Cynthia Huie contend that the roof does not need replacement, but they ask that patios and front door platforms be repaired promptly.
65. In its counterclaim, the strata asks for an order permitting it to commence a series of special projects, funded by a special levy, including roof replacement and painting for all 6 strata lots. They also ask for an order that Jade and Cynthia Huie, as owners of SL 5 and SL6, comply.
66. There is no dispute between the parties that the special projects, including roofing and painting, are repair and maintenance obligations of the strata. In *Weir v.*

*Owners, Strata Plan NW17*, 2010 BCSC 784, the court described the duty to repair is subject to a test of reasonableness. A strata corporation may consider the cost for each approach and its impact on owners and implement needed repairs within a budget that the owners as a whole can afford. The reasonableness test requires balancing competing interests, such as those of the individual strata lot owner in having the repair completed, against those of the remaining owners in controlling the budget.

67. Here, the strata wants to proceed with the special projects. Indeed, both applicants voted in favour of completing these projects, but object, in essence, to paying for them.
68. On November 14, 2015, an AGM was held where motions passed unanimously to proceed with the following special projects:
  - a. Repair for unit 6 balcony by June 30, 2016.
  - b. Replace the roof for all 3 buildings by July 31, 2016.
  - c. Paint all three buildings by September 30, 2016.
  - d. Unit 5 backyard patio platform repair by December 31, 2015.
  - e. Entrance stairs platform repair for all six units by July 31, 2016.
  - f. Fence repair along the common area pathway by July 31, 2016.
69. These motions passed unanimously by votes of 6-0.
70. At the October 12, 2016 AGM, Jade Huie raised a concern that the special repair projects had not been completed. Hanson Wang informed her that the 5 front stair projects were in progress, and that her deck repair was a top priority.
71. There was a vote passed to move the special projects discussion into an SGM.

72. As well, a resolution passed (4-2) that a contingency serve fund contribution should be added into the budget to help pay for some long-term projects. With this amendment, the operating budget for 2016/17 was approved, 4-2.

### ***Roof***

73. At the November 14, 2015 AGM, Jade and Cynthia Huie both voted in favour of replacing the roof by July 31, 2016.
74. At an October 30, 2016 SGM, a resolution to fund the roof repair through a \$40,000 total special levy, to be paid by April 1, 2017, was defeated 4-2. The remainder of the special projects were not considered given that the first resolution did not pass.
75. In their claim, Cynthia and Jade Huie say the roof does not require replacement. This is directly contrary to their vote at the November 14, 2015 AGM.
76. At a strata council met on April 24, 2014, roofing quotes were discussed. It was noted that “no agreement could be made on how much Jade is willing to contribute to the roofing and painting as per her square footage”, though the others were all in agreement.
77. The roof was constructed in 1995. It is nearly 24 years old. The depreciation report lists the remaining lifespan of the roof as 3 years, starting January 2017. The details of the report include comments that the “...roof it at the end of its economic life.”
78. I accept the depreciation report and find that the roof needs urgent repair.
79. Roof repair is necessary on an urgent basis, and all owners voted in favour of the project and have reviewed several quotes. I order a special levy to complete the roof repair in the amount of \$40,000.

### ***Painting***



80. While Cynthia and Jade Huie expressed concern about costs of repair for the projects approved at the November 14, 2015 AGM, in their submissions they also repeatedly expressed concerns that some of the projects were unfinished.
81. I am satisfied that painting of the 3 buildings is also a necessary maintenance expense.
82. Current quotes for the painting were not filed in evidence. The strata will need to call a meeting to propose a special levy to fund the painting, given section 48(2) of the Act.

### ***Deck and Platform Repairs SL 5 and 6***

83. Turning to the balcony repairs and the backyard patio, the strata plan shows the porch area to be limited common property for each strata lot. The back patio for each strata lot is also limited common property.
84. At a strata council meeting on July 14, 2016 the council approved strata lot 6 having upgrade of deck railings and glass panels over and above the agreed common repairs to the deck with vinyl. The strata would pay to maintain the original deck, and the owner of SL6 would be responsible for future maintenance of the upgrade.
85. Attached to the minutes were two quotes, one from HSW limited for \$5,672.00 plus GST, one from AAA Constructions of \$7,120 total.
86. On March 18, 2017, a third quotation to repair the decks and platforms SL5 and SL6, from Sundeck Master, for \$9,700, was discussed and strata council assessed it as a reasonable quote. The scope of work to be completed was one factor in selecting between quote.
87. In January 2017, strata council was awaiting 2 more quotes from “contractors that strata lot #6 would be satisfied to do the work for them.”
88. On October 18, 2017, Hanson Wang wrote to Jade Huie, on behalf of the strata, saying that the balcony is a strata asset and that any engagement with the

contractor should be from strata council. As well, he asked that she not block contractors from doing work.

89. Based on the communications in evidence, I find that the strata, through the property manager, was attempting to meet its repair and maintenance obligations, but was being prevented from doing so by Jade and Cynthia Huie's position that they would not accept several of the quotes for any repair, objected to the expense of the repair even where the scope of work justified it, and also physically refused access, in some cases, when contractors attempted to complete repairs to SL5 and SL6.
90. This leaves the issue of the front stair platform repairs on strata lot 6. Unfortunately, while the strata hired a contractor to complete this work in October 2016, Cynthia Huie objected to the quality of work and, in particular, felt the contractor might not have sufficient experience working with vinyl. The relationship between the contractor and Cynthia Huie deteriorated. At some point the contractor placed construction debris under the stair platform. The strata fired the contractor.
91. The strata has now committed to hiring another contractor to complete these repairs. I order that the strata proceed with the repairs and that Cynthia Huie cooperate by providing access to the work site, which I find has been an issue in the past on this and other repair projects.
92. Given that Cynthia and Jade Huie are seeking completion of the deck and platform repairs, and the strata wishes to proceed with those repairs, I order that those proceed via special levy funding up to a maximum of \$10,000 total for units SL5 and SL6 I order Cynthia and Jade Huie to cooperate in those repairs.
93. While it is my understanding that the entrance stairs project and fence repair projects are now complete, if they remain unfinished then the strata ought to proceed and Jade and Cynthia Huie are urged to cooperate. I was not provided with current quotes and so cannot include these projects in the special levy order.

94. In summary, given the vote at the November 2015 AGM, I agree that the strata should proceed with painting of all 3 buildings, and any of the other special projects that are not yet complete.
95. I also order that Cynthia and Jade Huie cooperate with the pending repairs, consistent with their obligations as owners under SPA.
96. I order the assessment of a special levy, totalling \$50,000, be assessed against all 6 strata lots based on the unit entitlement of each strata lot, for the purposes of:
- a. Replacing the roof of all strata buildings, at up to \$40,000,
  - b. Completing the repair work on the patio, deck and platform of SL5 and SL6, except for the agreed owner-paid upgrade to the railing material, up to \$10,000 total,
97. Any special levy surplus money remaining after completion of the owner's payments and work must be refunded to the strata lot owners or deposited to the strata's contingency reserve fund according to sections 108(5) and (6) of the SPA.

### ***Insurance***

98. Cynthia and Jade Huie say the strata has a total square footage of 9,030, but that the strata used a square footage of 8,550 to insure the buildings. They allege this was an "intentional" error by property manager Hanson Wang.
99. The strata admits that the 3 buildings within the strata were previously insured on an equal basis, in error.
100. I find that, when the error came to light, the strata took reasonable steps to correct it. The strata's insurance agent noted that while the policy had listed the 3 buildings as identical and that an incorrect square footage used, the main concern was that the insured amount is adequate.

101. At an October 11, 2017 AGM, the strata resolved to address the issue of the strata's insurance coverage so that each building received coverage in proportion to its size.
102. Based on the evidence that the strata addressed this concern and adjusted its insurance policy to reflect the correct square footage for each of the 3 buildings, I dismiss this claim.

***The SPA Section 31 (a) Duty of Good Faith and Duty of Care***

103. Under the SPA, section 31, each 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.
104. The strata seeks a declaration that Cynthia and Jade Huie breached this duty in their capacity as strata council members.
105. Cynthia Huie's admits, in her own email of July 27, 2016, that she challenged the strata to litigate with her if they wanted her to relinquish signing authority. She should, instead, have relinquished signing authority, because she was no longer a member of strata council and her actions caused the strata to be unable to properly address its daily operations.
106. Cynthia Huie says she had concerns about the cheque approval process and wanted those resolved before she relinquished signing authority. The strata says she wanted to keep signing authority for her own motives, unrelated to the well-being of the strata. It is not necessary, nor do I have sufficient evidence before me, to make a finding as to Cynthia Huie's motives.
107. However, I find that Cynthia Huie refused to relinquish signing authority, even though she was aware of her obligation to do so, and despite formal written demands from strata council over an extended period of time. I find that she did not approach her obligations as a reasonably prudent person on this issue, regardless of her reasoning.

108. As for Jade Huie, I do not find she breached her section 31 obligations.
109. I find that Cynthia Huie breached section 31(a) of SPA for failing to relinquish signing authority on the strata bank account in a timely fashion once she was no longer a member of strata council.
110. Having said that, I find I do not have jurisdiction to address the related remedy sought by the strata, namely that Cynthia Huie be required to reimburse the special levy amount for legal costs incurred given section 33 of the SPA is outside the tribunal's jurisdiction. On this point, I rely upon the decision in *Mykle-Hotzon v. The Owners, Strata Plan LMS 1372 et al*, 2018 BCCRT 609 at paragraphs 37-38.
111. Under section 10 of the Act, I must refuse to resolve the strata's counterclaim seeking relief for breach of section 31 of the SPA.
112. I decline to make a formal declaration regarding the breach of section 31 in my orders, because I am conscious that the hope is that some harmony will return to this very small strata corporation.

### ***Depreciation Report***

113. Cynthia and Jade Huie feel that \$3,000 was "squandered" on a depreciation report.
114. On November 14, 2015, an AGM was held. At the AGM
- a. Cynthia Huie's motion to remove the depreciation report expense from the 2015/2016 operating budget was defeated,
  - b. Cynthia Huie brought a successful motion to decrease the budgeted expense for the depreciation report from \$4,500 to \$4,000,
  - c. The operating budget for the 2015/2016 fiscal year was then approved by a motion of the owners.

115. In late September 2015, Hanson Wang emailed strata council members, with a copy to Cynthia Huie and indicated that, out of 5 quotes, he had one for \$2,820 for NLD Consulting to complete the depreciation report.
116. NLD Consulting prepared a 126-page depreciation report. In February 2017, the strata paid the \$3,011.19 cost of the report.
117. I find that the depreciation report expense was appropriately authorized. I dismiss this aspect of the applicants' claim.

### ***Budget***

118. Cynthia and Jade Huie also say that Hanson Wang relied on an inaccurate budget to raise strata fees. The budget documents disclosed in evidence were approved by the owners at each annual AGM, as required by the SPA.
119. Budgets are, by their nature, estimates rather than guarantees about the costs of operating a strata corporation. There is no evidence to establish that the budgets were improperly prepared or intentionally inaccurate. I dismiss this claim.

### ***Wasp Nest/Pest Control***

120. In July 2015, the applicants say Hanson Wang sent them a photo of a bee on a window.
121. They contest the expenses for wasp nest removal. They say the budget approvals for pest control were too high. They cite Jade Huie having a wasp nest removed for \$95 once.
122. I dismiss this claim. As earlier noted, I find the budgets were properly approved. There is no evidence that having a budget for wasp nest removal or other pest control is improper.

### ***Trees and Gardening***

123. Jade and Cynthia Huie say that in 2004 they planted over 60 cedar trees to act as a fence border for their properties. On July 1, 2015, they say 28 cedar trees were “killed by someone”.
124. The only evidence before me is that the trees died. There is no evidence that they were killed by a person.
125. Jade and Cynthia Huie seek to have the cedar trees replaced, the lawn adjacent to their strata lots power raked, and the trees pruned “as needed.”
126. At the same time, they admit the gardeners come once every few weeks. They complain that the quality of the gardening is poor.
127. I was not provided evidence that the gardening performed on the common property areas is poorly done or unreasonable. Rather, there is evidence from Jade Huie in a June 2017 email that the gardener was attending and cutting the lawn. She requested that he also clean the driveway under her patio and the common walkway, during future visits.
128. There is evidence that payments were withheld to the gardener when he had attended and worked at the property, because Jade and Cynthia Huie said he did not come by.
129. I find it is reasonable to have a gardener attend every few weeks. Jada and Cynthia Huie can address their wish list for gardening within the confines of the current gardening contract, subject to the overall needs of the strata and appropriate approval being given by the strata or strata council.
130. To require more frequent gardening would also place additional financial strain on all owners, including Jade and Cynthia Huie. I dismiss the claim for more gardening than is already being completed.
131. The strata says the cedar trees were planted as an owners’ own upgrade. Based on the strata plan the cedar trees were on common property that the strata is responsible to maintain.

132. In communications with Jade and Cynthia Huie, the strata indicated it was not against planting new cedar trees, but not if the trees were likely to die quickly.
133. While I agree that the strata was safety conscious in removing dead trees, I cannot find the strata is obliged to replant them in the current context. I say this particularly given the financial requirements of the strata in regard to the repairs described above.
134. I dismiss the claim regarding replanting of the cedar trees. Having said that, the strata owners are welcome to agree on way forward regarding tree replacement, if they decide that is a priority.

### ***Strata Meeting Invitations***

135. Jade and Cynthia Huie say they have not been invited to strata council meetings.
136. Based on the minutes filed in evidence, I find that Jade and Cynthia Huie participated in several strata council meetings, SGMs and AGMs. As one example, at the October 30, 2016 SGM, Jade acted as proxy for Cynthia and also voted on her own behalf.
137. There was no evidence showing the strata failed to provide Jade and Cynthia Huie with notice of meetings when appropriate, or otherwise excluded them from strata communications. I dismiss this claim against the strata.

### ***Production of 2016 Financial Statement and Demand for Budget Amendments***

138. Under SPA section 103, a strata must prepare a budget for each coming fiscal year, for approval by a majority vote at each AGM.
139. The budget must be distributed with the notice of the AGM and must be accompanied by a financial statement.
140. For the purposes of section 103(3) of the SPA, the financial statement must contain certain enumerated financial information (similar to the information required



to be set out in the budget) to which the financial statement relates “as of a day that is within the 2 month period” before the date of the AGM.

141. Within 8 weeks of the fiscal year end, the strata must prepare a financial statement updated to the end of the fiscal year. For the purpose of distribution with the AGM notice, the strata may provide, by bylaw the required financial information “in a summary form” but at the AGM a fully compliant financial statement must be provided. (See *Strata Property Regulation* (regulations) 6.6)
142. Jade and Cynthia Huie say the strata failed to give them a copy of the 2016 financial report, despite their requests.
143. The strata’s evidence was that it did not have a formal financial statement for 2016 at the time of Jade and Cynthia Huie’s initial request, due to a recent change in treasurer.
144. In a February 7, 2017 email, Hanson Wang’s assistant Rita Cao provided Jade Huie with copies of bank statements, and all receipts and records from September 2016 onwards.
145. In this proceeding, Jade and Cynthia Huie have received copies of budgets for 2015-2018 inclusive, as well as balance sheets and expense summaries, including a detailed journal reporting all strata expenses for September 1, 2017-November 1, 2017.
146. The minutes of the October 2017 AGM do not reveal whether a financial statement for 2016 was distributed with the notice of that meeting.
147. However, a financial statement for September 1, 2016 to August 31, 2017 was filed in evidence, that contains the information required by the regulations.
148. Given the evidence, I am unable to make a finding as to whether a compliant financial statement accompanied the 2017 AGM notice. However, I find that the strata has responded to Jade and Cynthia Huie’s requests for financial information in a prompt and detailed manner.

149. I order the strata to comply with the SPA and the regulations regarding financial statements, including ensuring the financial statements are properly sent out with the AGM notices, in future.

150. Cynthia and Jade Huie asked that the strata amend the budget, although it was not clear precisely what they wanted to amend, except for it to accord with what they want. The evidence does not show anything improper in the budget setting process by the strata. I dismiss this aspect of the claim.

### ***Hiring Neutral Third Party to Manage Strata***

151. Cynthia and Jade Huie say that the strata should hire a “neutral” third party to manage the strata.

152. The strata is not obliged to choose the strata manager that individual owners prefer. I find from the evidence that Hanson Wang approaches his management responsibilities with reason and diligence.

153. As well, the strata previously voted on whether a private strata management company should be engaged and decided the cost would be too significant.

154. I make no findings that Hanson Wang failed in any way in his obligations to the strata. There is no evidence that he acted dishonestly as Jade and Cynthia Huie allege.

155. I am not making an order regarding the request for an apology from Jade and Cynthia Huie. I urge them to cooperate with the strata’s repair and maintenance program as required under the SPA.

156. I dismiss these aspects of the claim.

### **TRIBUNAL FEES AND EXPENSES**

157. 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 dispute-related expenses. I see no reason in this case to deviate from the general rule. The strata was largely successful in this dispute and claimed no expenses. I therefore order Cynthia and Jade Huie to reimburse the strata for tribunal fees of \$225.

158. The strata corporation must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owners.

## **DECISION AND ORDERS**

159. I order:

- a. the assessment of a special levy, totalling \$50,000, be assessed against all 6 strata lots based on the unit entitlement of each strata lot, for the purposes of:
- b. Replacing the roof of all strata buildings, at up to \$40,000, and
- c. Completing the repair work on the patio, deck and platform of SL5 and SL6, except for the agreed owner upgrade to the railing material, up to \$10,000 total.
- d. Any special levy surplus money remaining after completion of the owner's payments and work must be refunded to the strata lot owners or deposited to the strata's contingency reserve fund according to sections 108(5) and (6) of the SPA.

160. I further order that:

- a. the strata calculate any existing arrears owed by Cynthia and Jade Huie, within 15 days of this decision, at which point it may demand payment under s. 112 of the SPA,
- b. Cynthia and Jade Huie cooperate with the strata's efforts to complete the repairs authorized at the November 14, 2015 AGM,

- c. The strata comply with the SPA and regulations regarding financial statements, including ensuring that financial statements are distributed with AGM notices, in future, and
  - d. Cynthia Huie and Jade Huie pay the strata \$225 in tribunal fees, within 15 days of this decision.
161. The strata is also entitled to post judgement interest under the *Court Order Interest Act* R.S.B.C. 1996, c. 79, as amended, as applicable.
162. The remaining claims of Cynthia Huie and Jade Huie are dismissed.
163. I refuse to resolve the strata's counterclaim about alleged SPA section 31 breaches.
164. I dismiss the strata's remaining claims.
165. 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.
166. 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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Julie K. Gibson, Tribunal Member