Civil Resolution Tribunal

Date Issued: July 22, 2019

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Mykle-Hotzon v. The Owners, Strata Plan LMS 1372 et al,* 2019 BCCRT 887

B E T W E E N :

Barbara Mykle-Hotzon

APPLICANT

A N D :

The Owners, Strata Plan LMS 1372 and Sean Campbell

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Kate Campbell

INTRODUCTION

1. The applicant, Barbara Mykle-Hotzon (owner) owns strata lot 9 (SL9) in the respondent strata corporation, The Owners, Strata Plan LMS 1372 (strata). The

other respondent, Sean Campbell, also owns a strata lot in the strata, and is a member of the strata council.

2. The applicant says the soil underneath the townhouse-style building in which SL9 is located has subsided. She says this damaged the building's foundation and her strata lot. She says the subsiding ultimately caused a complete failure of the building's base structure, leading to a municipal "do not occupy" order on SL9 in September 2017.

3. The applicant seeks reimbursement for engineering fees, legal fees, disbursements, and dispute-related expenses. She also seeks other orders, as follows:

    a. A declaration that Mr. Campbell was not elected as a strata council member in February 2017

    b. Disclosure of current and future engineering reports

    c. That the strata retain independent geotechnical and structural engineers to review the existing engineering reports and assessments relating the building's foundation, and provide recommendations

    d. Payment of moving, storage, accommodation, and clean-up expenses during building 3 remediation

4. The applicant's original dispute application included additional claims, but the applicant's emails to tribunal staff confirm that these were withdrawn during the tribunal facilitation process. The Dispute Notice was subsequently amended to exclude the withdrawn claims. I have therefore not addressed those withdrawn claims in this decision as I find they are not before me.

5. The applicant is self-represented. The strata and Mr. Campbell are represented by Lisa Mackie, a lawyer.

6. The strata denies the applicant's claims. It says the reported findings of its engineer and the applicant's engineer show that while the building has structural issues that have caused cracks and settling in SL9, this interior damage is not itself a structural

problem. The strata says the interior damage to SL9 is therefore the applicant's responsibility to repair. The strata says it reasonably relied on the professional advice of its engineer, and is therefore not liable for the applicant's expenses.

7. Mr. Campbell says he is not personally liable for the applicant's claims. He also says he was a validly-elected member of the strata council from the time of the 2016 annual general meeting (AGM), until he resigned in October 2017.

8. The respondents also seek reimbursement of legal fees.

JURISDICTION AND PROCEDURE

9. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 121 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.

10. 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.

11. 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.

12. The applicable tribunal rules are those that were in place at the time this dispute was commenced.

13. 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.

Preliminary Decision

14. On October 10, 2018, a tribunal vice chair issued a preliminary decision in this dispute, indexed as *Mykle-Hotzon v. The Owners, Strata Plan LMS 1372 et al*, 2018 BCCRT 609. In that decision, the vice chair refused the strata's request that the tribunal refuse to resolve the dispute due to complexity. In paragraphs 36 and 37 of the preliminary decision, the vice chair refused to resolve the applicant's harassment claim against Mr. Campbell, because he found it was outside the tribunal's jurisdiction.

15. I agree with the vice chair's reasoning on these points, and I find there is no new evidence that supports a different conclusion. For these reasons, I confirm the October 10, 2018 preliminary decision.

ISSUES

16. The issues in this dispute are:

    a. Should I issue a declaration that Mr. Campbell was not elected as a strata council member in February 2017?

    b. Should the applicant's other claims be dismissed as against Mr. Campbell?

    c. Must the strata disclose existing or future engineering reports to the applicant?

    d. Did the strata breach its statutory duty to maintain and repair common property?

    e. Must the strata pay for the applicant's moving, storage, and cleaning expenses incurred due to the remediation?

f. Must the strata reimburse the applicant for engineering fees?

g. Is either the applicant or the strata entitled to reimbursement of legal fees?

BACKGROUND AND EVIDENCE

17. I have read all the evidence provided but refer only to evidence I find relevant to provide context for my decision. In a civil proceeding such as this, the applicant owner must prove her claims on a balance of probabilities.

18. The strata was created in 1994. It consists of 56 residential strata lots in townhouse-style buildings, plus an amenity building. The townhouses are wood-framed buildings, with concrete foundations. The applicant's strata lot, SL9, is in a 2-storey fourplex building (building 3) with 2 strata lots on the ground floor and 2 strata lots on the second floor. SL9 is on the ground floor.

19. The parties agree that the owner informed the strata council about damage to the interior of SL9 in early August 2015. The strata responded by hiring both structural and geotechnical engineers to do site visits and provide reports, with the first report provided by structural engineering firm Luiz Leon and Associates (LLA) on August 27, 2015. Geotechnical engineering firm Western Geotechnical Consultants (WGC) provided an initial report on September 11, 2015. Further structural and geotechnical engineering reports were completed after that. The engineering reports are detailed, but can be summarized as follows:

    a. August 27, 2015, LLA – separation cracks visible in SL9 around countertops, backsplash tiles, windowsills, and fireplace. Door out of alignment, floor not level. Similar cracks in SL10, but not as severe. LLA said no immediate structural concerns, but further investigation and assessment necessary as soon as possible. Foundation and slab had likely settled due to poorly constructed fill underneath and degradation of fill due to water seepage. Recommendation: expose footings around northwest corner of foundation and retain a geotechnical engineer to conduct a site review and testing.

b. September 11, 2015, WGC – preliminary assessment of foundation settlement. No requirement to vacate premises due to structure, no immediate safety risk. Geotechnical study forthcoming.

c. October 14, 2015, WGC – geotechnical assessment report. Settlement observed at northwest portion of building, likely due to dry weather. Settlement had damaged building, causing visual cracks and misalignments. Recommendations: use helical piles to underpin building, and carry foundation load. Reveal and clean perimeter drains, then backfill with gravel.

d. November 10, 2015, WGC – revised recommendations due to a geotechnical investigation at a nearby site, which revealed information about soil stratigraphy in the area. Options for remediation being discussed with LLA, and deep geotechnical drilling/cone penetration testing (CPT) required to predict potential for additional settlement and make helical pile recommendations. Crack monitoring instrumentation recommended to monitor the building for future movement over next 1 to 2 years. If no worsening, then building could be cosmetically repaired.

e. December 28, 2015, WGC – CPT had been performed, and crack monitoring had been ongoing since November. New recommendation: the foundation should be allowed to settle until the building was at its equilibrium. No remediation should be considered until at least April 2016, to allow this to occur. The likelihood of further settlement in the northwest corner was almost negligible. Installing piling was not recommended due to soil composition and cost.

f. March 31, 2016, WGC – final assessment of foundation settlement performed on March 28, 2016. Crack monitoring gauge showed negligible movement. The building had undergone the significant phase of its settlement. Remediation work could proceed, pending approval by structural engineer.

g. June 22, 2016, LLA – cosmetic repairs to building could commence. Raising foundation and installing piles not recommended due to cost and potential for

drywall cracking. Recommended repairs: drywall repair, floor levelling, and installation of steel plates across foundation crack if scan testing showed no rebar in foundation.

20. The owner, at her own expense, obtained an engineering report from structural engineer Mr. Gray on September 13, 2016. Mr. Gray inspected the site, and reviewed the previous reports from LLA and WGC. Mr. Gray confirmed there was structural damage to building 3 due to differential settlement of the building's foundation. He recommended further monitoring of the building foundation and floor slab to confirm that the settlement was not active, so remediation could proceed. As for remediation, Mr. Gray recommended raising and re-levelling all or part of the wood framed portion of the building above the foundation, and relevelling the floor slab. Mr. Gray said he agreed with LLA and WGC that the foundation should not be raised, due to cost.

21. The strata asked LLA and WGC to review and respond to Mr. Gray's report. LLA confirmed agreement with Mr. Gray. WCG notified the strata that Thanh Le, the engineer who had performed the geotechnical assessment and authored the WGC reports had moved to another firm, Terran Geotechnical Consultants (TGC). This led to some delay, as the strata corresponded with WCG and the engineer, and demanded urgent action. Mr. Le eventually provided a report on February 15, 2017. He said he reviewed settlement data taken from 60 days of survey monitoring provided by another firm, Hy Engineering (HE). Mr. Le said there was overall site setting, but he could not determine from the data whether there was further differential settlement that would be detrimental to the building. Mr. Le said further review was required, and structural repairs could be considered in Spring 2017. He said TGC would work with LLA to determine a course of action for structural repairs, and TGC would provide a more comprehensive assessment after obtaining more data.

22. On March 17, 2017, a certified arborist hired by the strata reported that he could see no tree root issues causing the noted structural issues on the northwest section of the property.

23. On April 6, 2017, TGC reported that 123 days of monitoring data showed that more settlement had occurred. The foundation was observed to have sporadic periods of settlement and heaving, which was not a soil behaviour expected in the area. TGC said the movement therefore might be “organic in nature”, such as due to roots. TGC recommended excavating the underside of the foundation to assess organic matter, and said they would continue to work with LLA to determine a course of action for remediation. The recommended excavation occurred on April 13, 2017.

24. On June 13, 2017, TGC reported that it had viewed the exposed foundation. TGC recommended removing surrounding trees to prevent root re-growth. TGC also recommended a monitoring plan, including routine inspection and cleaning of perimeter drains, and monitoring of the building and surrounding grade elevations.

25. Some upgrades to the building 3 foundation were completed by a concrete contractor in July 2017. Upgrades to the perimeter drainage were completed by August 8, 2017. Building settlement monitoring continued throughout this period.

26. On September 22, 2017, the City of Langley issued a do not occupy notice for strata lots 9 and 10. The details underlying that report are not in evidence, although the parties agree that it was related to the structural problems in building 3.

27. On October 20, 2016, TGC reported that monitoring was ongoing at the site. TGC said there had been further settlement, since an adjacent cottonwood tree was removed. TGC said the settlement was therefore indicative of tree root intrusion under the building 3 foundation. TGC recommended removing part of the interior building slab, in order to assess subsurface conditions underneath.

28. Email correspondence shows that the strata immediately hired a contractor to remove part of the slab, as recommended by TGC. Both TGC and LLA were involved with that project. On December 8, 2017, TGC reported that the root system under the slab was extensive, and coincided with the identified slab and foundation damage. TCG recommended fully exposing the root system, and recompacting the underslab soil. TGC also recommended ongoing surveying until the movement

stabilized. The report concluded by stating that TGC believed the root system was the main factor in the differential settlement and building damage.

29. Around February 2018, TGC reported that the foundation had stopped settling, and repairs could begin. The strata began the process to find an architect and supervising engineer for the work. This was completed by May 2018. The engineering firm, Element Consulting Engineers (ECE), further investigated the building 3 damage, and planned the repairs.

30. During the course of repair planning, ECE asked Robert Jirava, a structural engineer from Horace Engineering, to investigate and provide a report about the effect of settlement on the roof truss system in building 3. As explained in Mr. Jirava's January 11, 2019 report, after he visited the site, he offered an alternate about the cause of the differential settlement of the building. Mr. Jirava said the roof truss system was not affected by the settlement. Mr. Jirava summarized TGC's geotechnical reports, and said that based on his review of the site, the structural drawings, and the TGC reports, he believed the building settlement was not likely caused by tree roots, as suggested by TGC. Mr. Jirava said the settlement was more likely caused by compression of the underlying soil. Mr. Jirava recommended getting an opinion from a different geotechnical engineer about the cause of the building 3 settlement. He also made other recommendations, to occur after the new geotechnical report.

REASONS AND ANALYSIS

Should I issue a declaration that Mr. Campbell was not elected as a strata council member in February 2017?

31. I decline to issue a declaration about Mr. Campbell's status on the strata council from February 2017 onwards. For the reasons that follow, I find that this issue is moot, given that Mr. Campbell resigned from the strata council in October 2017.

32. The applicant has concerns about Mr. Campbell's status on the strata council because he was the council's key liaison between the council, the engineers, and

the affected owners in regard to the building 3 structural problems and potential remediation. The applicant says Mr. Campbell ought to have stood for re-election at the February 2017 AGM. The strata and Mr. Campbell say he was elected for a 2-year term at the 2016 AGM, and therefore did not need to be re-elected in 2017.

33. The strata also says the issue should be dismissed for mootness. The strata relies on the British Columbia Court of Appeal's decision in *Binnersley v. BCSPCA*, 2016 BCCA 259. In *Binnersley*, the court restated the principles of mootness as outlined by the Supreme Court of Canada in *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R 342, as follows:

> ... if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot...

34. At paragraph 23 of *Binnersley*, again citing *Borowski*, the court found that determining mootness involves a 2-step analysis. First, whether the live issue has disappeared and any issues are theoretical or academic. Second, if there is no live issue, should the court or tribunal exercise its discretion to hear the case anyway.

35. Following *Binnersley* and *Borowski,* which are binding precedents, I find that Mr. Campbell's status on the strata council in 2017 is moot, and I decline to exercise my jurisdiction to decide the matter.

36. In *Borowski,* the court said it may be appropriate decide moot issues if the decision will have some practical effect on the rights of the parties. I find that is not the case here, as the declaration sought by the applicant would have no practical effect. Mr. Campbell resigned from the strata council in October 2017. Any decisions made by the strata council before that were not made by Mr. Campbell alone, and would not be retroactively changed by a declaration now that he was not a member.

37. I therefore dismiss the applicant's claim about Mr. Campbell's status on the strata council.

Should the applicant's other claims be dismissed as against Mr. Campbell?

38. The applicant named Mr. Campbell as a respondent in this dispute. However, I find that all of the applicant's claims should be dismissed as against Mr. Campbell

39. Other than the election issue addressed above, all of the applicant's claims relate to the actions of the strata. Essentially, the applicant says the strata must disclose documents, failed to reasonably perform its statutory duty to maintain and repair common property, and was negligent in how it dealt with the structural issues in building 3. The applicant's requested remedies flow from those claims.

40. I find that Mr. Campbell is not personally liable for any of those claims, either in his capacity as a strata lot owner, or as a former strata council member. Mr. Campbell had no personal duty to disclose documents to the applicant, or to repair any property.

41. Under section 31 of the SPA, 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. While I accept that the applicant did not always agree with Mr. Campbell, I find the evidence before me does not establish that Mr. Campbell breached section 31.

42. Also, explained in the vice chair's preliminary decision in this dispute, the tribunal does not have jurisdiction to issue a remedy for a breach of SPA section 31: see *Mykle-Hotzon v. The Owners, Strata Plan LMS 1372 et al*, 2018 BCCRT 609 at para. 37.

43. For these reasons, I dismiss the applicant's other claims against Mr. Campbell.

Must the strata disclose existing or future engineering reports to the applicant?

44. The applicant seeks an order that the strata provide her with "sealed reports from its geotechnical and structural engineers". I decline to issue this order.

45. The evidence shoes that the strata has disclosed numerous engineering reports to the applicant since it began receiving them in 2015, and copies were provided as evidence in this proceeding. The strata says it has no further engineering reports. The applicant provided no contrary evidence, and did not specify whether she is aware of additional engineering reports that have not been disclosed. For that reason, I find that a further disclosure order would have no effect. I dismiss this claim.

46. I also dismiss the applicant's claim for disclosure of "future reports" from its engineers, as they continue to investigate the building damage. The strata has a statutory obligation to disclose records and documents, as set out in sections 35 and 36 of the SPA. These sections, as well as section 4.1 of the *Strata Property Regulation* (regulation), specify what records and documents must be prepared and kept by the strata, for what period, and how and by whom this information can be obtained.

47. Section 35 requires the strata to provide copies of written contracts (35(2)(g)), correspondence sent and received by the strata and strata council (35(2)(k)), and reports obtained by the strata respecting repair and maintenance of major items, including among other things, risk management reports (35(2)(n.2)). Regulation 4.1 requires written contracts to be kept for 6 years, correspondence for 2 years and reports until the item to which the report relates is disposed of or replaced.

48. I find that this legislation governs the future document requests anticipated by the applicant. Since the applicant has not established any evidence that the strata has failed to meet its prior disclosure requirements, I decline to issue any preemptive order for future disclosure.

49. For these reasons, the applicant's claims about disclosure of engineering reports are dismissed.

Did the strata breach its duty to maintain and repair common property?

50. The applicant says the strata was negligent in dealing with building 3's structural problems, and breached its statutory duty to maintain and repair common property.

51. The applicant says the strata owned her a duty of care under section 31(b) of the SPA. I find that section 31(b) is not applicable to this claim. Section 31(b) says a strata council member must exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances. No individual strata council member has a duty to maintain and repair common property, and as explained in the October 10, 2018 preliminary decision, the tribunal has no authority to order remedies for breaches of section 31.

52. Rather, I find the strata's duty to the owner is a statutory duty arising from sections 3 and 72 of the SPA, which require a strata corporation to repair and maintain common property. SPA section 3 says a strata corporation is responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners. Section 72 says a strata corporation must repair and maintain all common property. Repairs of limited common property may be delegated to individual owners under a strata corporation's bylaws, but that is not a factor in this dispute.

53. The parties agree that the foundation under building 3 is common property. The strata does not dispute its obligation to repair and maintain the foundation. However, it says it has met this duty by hiring engineers to investigate and make recommendations shortly after the problems with building 3 were first reported in fall 2015, and by reasonably following the advice of those engineers.

54. I acknowledge that the issues in this dispute are extremely serious, and have had an enormous impact on the applicant. Building 3's significant structural issues have made SL9 unsafe to occupy. However, based on the applicable law and the evidence before me, I find the strata was not negligent, and met its statutory duties under SPA sections 3 and 72.

55. In making this finding, I rely on the BC Supreme Court's decision in *Wright v. The Owners, Strata Plan #205,* 996 CanLII 2460 (S.C.), affirmed (1998), 43 B.C.L.R.

(3d) 1, 1998 CanLII 5823 (C.A.). In *Wright,* the court said a strata corporation's duty to repair is limited to what is "reasonable in the circumstances." The court also said a strata corporation is not responsible for insuring strata lot owners against losses, and is not responsible for errors made by those it hires to carry out work, as long as it acted reasonably in the circumstances:

> The [strata corporation] are not insurers. Their business, through the Strata Council, is to do all that can reasonably be done in the way of carrying out their statutory duty; and therein lies the test to be applied to their actions. Should it turn out that those they hire to carry out work fail to do so effectively, the defendants cannot be held responsible for such as long as they acted reasonably in the circumstances: and in this instance I have to say that the defendants did just that. They cannot be found to have been negligent.

56. *Wright* is a binding precedent, and I find its reasoning applicable to the facts before me. Specifically, I find the strata acted reasonably in hiring both structural and geotechnical engineers promptly after the building 3 problems were reported. I also find the strata reasonably relied on the advice of those engineers, and continued to follow their recommendations. This includes the recommendations for monitoring of building 3 movement, and the many recommendations for further investigation, such as removing part of the building slab to look for tree roots in November 2017.

57. As explained in *Wright,* the fact that some of the advice from the strata's engineers may have been wrong, or that engineers later made different findings and recommendations, does not mean the strata was negligent. Since the strata council members are not engineers, I find it was reasonable for the strata to follow their advice. Also, the extensive engineering reports in evidence, and the contrary opinions set out in them, demonstrate the extreme complexity of the building 3 problems. I find that the evidence shows that the strata continuously dealt with the problem as best it could from August 2015 onwards.

58. In assessing the extent of the strata's duty to repair under the SPA, the standard is not perfection. Determining what is reasonable may involve assessing whether a

solution is good, better, or best: *Weir v. The Owners, Strata Plan NW 17, 2010 BCSC 784.* Also, I agree with the tribunal's findings that an owner cannot direct the strata how to conduct its repairs: *Swan v. The Owners, Strata Plan LMS 410,* 2018 BCCRT 241. I also agree that the strata is entitled to prioritize its repairs: *Warren v. The Owners, Strata Plan VIS 6261, 2017 BCCRT 139.*

59. Based on these court precedents and tribunal decisions, I conclude that the strata met its statutory to maintain and repair common property by following the advice of its engineers.

Legal Opinion

60. The applicant also says the strata acted negligently by relying on a July 4, 2016 opinion from its lawyer. I disagree. The applicant's disagreements with the content of the legal opinion largely mirrors the issues in this dispute. That is, the main subject matter of the legal opinion was the strata's liability to pay for repairs to strata lots 9 and 10. The fact that the strata relied on a legal opinion with which the applicant disagrees does not make the strata negligent.

61. The July 4, 2016 letter says that in the lawyer's opinion, building 3's structure had not been damaged. This appears to be based, at least in part, on the fact that the repairs recommended in the July 2016 LLA report were described as "cosmetic." As clarified in the September 13, 2016 report from engineer Mr. Gray, the building did have structural damage. However, I find that the strata's reliance on this legal opinion was not negligent.

62. The final element of the test for negligence, as set out in *Mustapha v. Culligan of Canada Ltd*., 2008 SCC 27, is whether the respondent's breach of the standard of care caused the applicant's damages. I find that the strata's reliance on the July 2016 legal opinion did not cause the applicant's damages.

63. In making this finding, I note that in a September 16, 2018 letter in response to the July 4, 2016 legal opinion, the applicant's lawyer wrote that both the strata's structural engineer and a structural engineer hired by the applicant agreed that it was premature to proceed with remedial repair work at that time, until it was confirmed that building 3's settlement was no longer active. Thus, it cannot be said that the July 4, 2016 legal opinion delayed necessary repairs, or led to the September 2017 do not occupy order. The legal opinion, and the strata's reliance on it, did not in itself cause further damage to the applicant's strata lot, or her belongings.

64. The applicant submits that the strata should have made temporary or interim repairs to building 3, in order to prevent the September 22, 2017 do not occupy order. However, her own lawyer made no mention of such temporary repairs in the September 16, 2018 letter. Instead the lawyer said that it was premature to proceed with remedial work, and that the strata should engage structural and geotechnical engineers for further monitoring of the building 3 foundation movement. I am therefore not persuaded that the strata was negligent in not performing interim repairs before September 2017.

65. For all of these reasons, I conclude that the strata was not negligent, and did not breach its statutory duty to maintain and repair common property.

Must the strata pay for the applicant's moving, storage, and cleaning expenses incurred due to the building 3 remediation?

66. As I have concluded that the strata was not negligent, and did not breach its statutory duty to maintain and repair common property, I find it is not liable to pay for the applicant's moving, storage, alternate accommodation, or cleaning expenses. There is nothing in the SPA that would require such payment, and as noted above in Wright, the strata is not responsible to insure the applicant against losses it did not cause, as long as it was not negligent.

67. I therefore dismiss this claim.

Must the strata reimburse the applicant for engineering fees?

68. I dismiss the applicant's request for reimbursement of engineering fees. I find she is not entitled to these fees as special damages, as the strata was not negligent.

69. Tribunal rules allow the tribunal to order an unsuccessful party to reimburse a successful party's reasonable dispute-related expenses. The applicant was not successful in this dispute, so I find she is not entitled to reimbursement of engineering fees on that basis. Also, the statement of account from Mr. Gray's engineering firm shows that the $11,006.75 balance paid by the applicant related to 16 separate invoices dated from August 31, 2016 and October 31, 2018. There is no indication before me about what the 16 invoices are for, since only one report from Mr. Gray is in evidence, and there is no reference to other reports by Mr. Gray in the evidence before me. Thus, I would not order reimbursement of $11,006.75 in engineering fees in any event, as it unclear what the fees are for, and I find the total amount unreasonable in the circumstances.

70. I therefore dismiss the applicant's claim for reimbursement of engineering fees.

Is either the applicant or the strata entitled to reimbursement of legal fees?

71. Both the applicant and the strata request reimbursement for legal fees and related disbursements.

72. The tribunal's rules state that the tribunal will not order one party to reimburse another party's legal fees in strata property disputes, except in extraordinary circumstances. While complex, I find this case is not extraordinary, and therefore dismiss both parties' claims for legal fees.

73. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the applicant.

TRIBUNAL FEES

74. 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. As the applicant was unsuccessful in this dispute, and the respondents paid no tribunal fees, I order no reimbursement.

DECISION AND ORDERS

75. The applicant's claims, and this dispute, are dismissed.

Kate Campbell, Tribunal Member