Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Marook Super Pty. Ltd v. The Owners, Strata Plan KAS 2205*, 2019 BCCRT 906

B E T W E E N :

MAROOK SUPER PTY. LTD

APPLICANT

A N D :

The Owners, Strata Plan KAS 2205

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Eric Regehr

INTRODUCTION

1. The applicant, Marook Super Pty. Ltd, is the owner of a strata lot in the respondent strata corporation, The Owners, Strata Plan KAS 2205 (strata). The strata is a recreational condominium development. The applicant makes several claims related

to the use of common property, governance, and the strata's compliance with the *Strata Property Act* (SPA) and its bylaws.

2. The applicant is represented by a non-legal representative. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

3. 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.

4. 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.

5. Under section 10 of the Act, the tribunal must refuse to resolve a claim that it considers is not within the tribunal's jurisdiction. A dispute that involves one or more issues that are within the tribunal's jurisdiction and one or more that are outside its jurisdiction may be amended to remove those issues that are outside its jurisdiction.

6. 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.

7. Under section 123 of the Act and the tribunal rules, in resolving this dispute the tribunal may 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

8. The issue in this dispute is whether the tribunal should make the following orders requested by the applicant:

    a. A declaration that certain strata council members breached section 32 of the SPA and an order that strata council members must act in accordance with section 32 of the SPA.

    b. The strata require that the owner of strata lot 47 (SL47) to remove a workshop and storage area, including its walls, from the part of its strata lot located in the strata's first floor parkade.

    c. A declaration that the strata breached section 26 of the SPA by failing to enforce bylaw 6(1) in relation to fire safety defects in SL47.

    d. A declaration that the strata breached section 26 of the SPA by failing to enforce bylaws 2(2) and 6(1)(a) in relation to the restaurant's smoker and the rental pool manager's housekeeping carts.

    e. An order that the bylaw that provides for 2 unelected strata council members is invalid and of no force, and that the strata council members serving under that bylaw be removed.

9. The strata says that the claims about the workshop and the smoker are moot because the owners have already done what the applicant wants. The strata asks that the remaining claims be dismissed. The strata also asks for an order that the applicant reimburse it $2,310 in "additional management fees and administration".

BACKGROUND

10. In a civil claim such as this, the applicant must prove its case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.

11. The strata consists of 57 strata lots in a four-floor resort condominium building at Big White, a ski hill near Kelowna. Owners of residential strata lots may participate in a rental pool that is managed by a third party (rental pool manager). There are 2 commercial strata lots: one for a restaurant and the other for operations of the rental pool. Big White Ski Resort Ltd. (Big White) owns the commercial strata lots and several residential strata lots and operates the ski hill. The restaurant is operated by Big White's tenant.

12. The strata filed a complete set of bylaws in the Land Title Office on March 13, 2016. The bylaws relevant to this dispute are:

    a. Bylaw 2(2): The owners and occupiers of the commercial strata lots will use reasonable efforts to ensure that their business do not cause a nuisance or disturbance to any owner of occupier of any of the residential strata lots, having regard to the nature of the development.

    b. Bylaw 3(1): The owners of the residential strata lots will not use their strata lots in a way that is contrary to the rental pool.

    c. Bylaw 3(2): The rental pool manager and its employees may access and use common property as reasonably required for the operation of the rental pool.

    d. Bylaw 6(1)(a): An owner or tenant must not use a strata lot or common property in a way that creates a nuisance or hazard to another person.

    e. Bylaw 6(1)(e): An owner or tenant must not use a strata lot in a way that is contrary to a purpose for which the strata lot is intended as shown expressly or by necessary implication on the strata plan.

    f. Bylaw 12(1): The strata council must have between 3 and 7 members.

    g. Bylaw 12(2): There must be a representative of the rental pool manager and a representative of the restaurant on strata council.

13. Because the applicant's claims are about several unrelated issues, I will address the evidence about each of them in turn.

EVIDENCE AND ANALYSIS

Does the tribunal have jurisdiction to make an order about sections 31 or 32 of the SPA?

14. The applicant asks for 2 orders about section 32 of the SPA, which governs conflicts of interest of strata council members. The applicant also refers to sections 31 and 32 of the SPA in its submissions about the other issues in this dispute. Section 31 of the SPA governs a strata council member's standard of care.

15. In *Dockside Brewing Co. Ltd. v. Strata Plan LMS 3837*, 2007 BCCA 183, the Court of Appeal found that the remedies for breaching sections 31 and 32 of the SPA are found in section 33 of the SPA. Under section 122(1)(a) of the Act, section 33 of the SPA is expressly outside the jurisdiction of the tribunal. Therefore, the tribunal has no jurisdiction to resolve this claim.

16. Section 10(1) of the Act says that the tribunal must refuse to resolve a claim that is outside its jurisdiction. Accordingly, I refuse to resolve the applicant's claims about sections 31 and 32 of the SPA.

Should the strata require that the owner of SL47 remove a workshop from the part of its strata lot located in the parkade?

17. The first floor of the strata includes the lobby and the first level of parking, which is common property. According to the strata plan, one corner of the area of the first floor is part of SL47 (SL47 parkade area). SL47 is a large residential strata lot on the fourth floor. Big White owns SL47.

18. When the strata was initially built, the SL47 parkade area consisted of 3 parking stalls. Around 10 years ago, Big White erected walls around the area and turned it into a storage area and workshop. Big White used it to do maintenance associated with the operation of the ski hill and the rental pool manager used it as part of its operation of the rental pool.

19. At the 2018 AGM on December 11, 2018, an owner raised the issue of Big White using the SL47 parkade area as a workshop. A representative of Big White offered

to remove it if the owners wished, but there was no resolution put forward. However, for "operational reasons", Big White subsequently moved its workshop elsewhere.

20. The strata says that this issue is moot because Big White has removed the maintenance supplies from the area. However, the strata does not say that Big White has removed the workshop's walls or stopped using it as a storage area, which is part of the applicant's complaint. The applicant also says that the strata could easily decide to relocate the maintenance area back to the workshop if there is no tribunal decision about the issue.

21. I considered the BC Court of Appeal's summary of the concept of mootness in *Binnersley v. BCPSCA*, 2916 BCCA 259. In general, when events occur after a person files a Dispute Notice that resolve the controversy between the parties, the dispute is moot and the tribunal will decline to resolve it. However, the tribunal has discretion to decide the dispute if, for example, resolving the dispute will have a practical impact on the parties and potentially preclude future disputes.

22. Given the nature of the applicant's submissions, I find that it is appropriate to resolve this claim even if the immediate controversy is resolved.

23. The applicant makes 3 arguments. First, the applicant says that Big White converted non-habitable area into habitable area contrary to sections 70 and 246 of the SPA. Second, the applicant says that using the SL47 parkade area as a workshop is contrary to bylaw 3(1) because it is contrary to the rental pool. Third, the applicant says that using the SL47 parkade area as a workshop or storage area is contrary to bylaw 6(1)(e) because it is inconsistent with the strata plan. The applicant says that the strata failed to properly enforce the SPA and the bylaws in response to each of these alleged breaches.

Did Big White convert a nonhabitable area into a habitable area?

24. The portion of SL47 on the fourth floor is 332 square meters. The SL47 parkade area is 109.6 square meters. SL47's unit entitlement is 332. The applicant says that because section 246(3)(a)(i) of the SPA says that a residential strata lot's unit

entitlement is based on habitable area, by necessary implication the SL47 parkade area was nonhabitable area. I agree.

25. The question is whether by erecting walls and converting the SL47 parkade area into a workshop and storage area, Big White converted a nonhabitable area into a habitable area. Section 70(4) of the SPA says that if an owner wishes to make a nonhabitable part of a strata lot habitable, they must seek an amendment to the Schedule of Unit Entitlement and obtain a unanimous vote from the owners, which Big White did not do. Therefore, by permitting Big White to enclose the SL47 parkade area, the applicant says that the strata breached section 26 of the SPA by failing to exercise its duties in accordance with the SPA.

26. Section 14.2 of the Regulation defines habitable area as "the area of a residential strata lot which can be lived in, but does not include patios, balconies, garages, parking stalls or storage areas other than closet space". The applicant says that section 14.2 of the Regulation creates an exhaustive list of "permitted uses" in a non-habitable area of a strata lot, of which a "workshop" is not one.

27. The applicant also seeks to rely on the Regional District of Kootenay Boundary's definition of "habitable area" and BC Assessment's classification of the strata. I find that the Regulation provides an exhaustive definition of habitable area for the purposes of the SPA and that no other definition is relevant to determining whether the SL47 parkade area has been converted to a habitable area.

28. I disagree with the applicant that Big White created a "habitable area" as defined by section 14.2 of the Regulation by putting walls around its 3 parking stalls. I find that the key part of the definition is that the area must be capable of being lived in. There is no suggestion that a person could use the workshop as part of their living space. Furthermore, even if the workshop could have been lived in, I find that because it is in a parkade and Big White used it as a workshop and storage area, it a garage within the meaning of section 14.2 of the Regulation.

29. For these reasons, I find that Big White did not make a nonhabitable part of SL47 habitable.

Did Big White use the SL47 parkade area in a manner contrary to the rental pool?

30. The applicant argues that the use of SL47 parkade area as a workshop is contrary to bylaw 3(1), which says that an owner of a residential strata lot must not use their strata lot in a manner "contrary to the rental pool". The applicant relies on the Rental Pool Agreement, which says that a residential strata lot will only be used as a residential condominium. The applicant says that using part of SL47 as commercial storage and a commercial workshop contravenes the Rental Pool Agreement and, by extension, bylaw 3(1).

31. The strata does not deny that Big White used the workshop for commercial purposes. However, the strata says that this use benefitted the rental pool because Big White used it for maintenance and storage that related to the operation of the rental pool and the ski hill.

32. I agree with the strata. Bylaw 3(1) does not say that an owner may not breach a term of the rental pool agreement. Rather, it says that an owner may not use their strata lot in a way that is detrimental to the operation of the rental pool. Whether Big White breached its agreement with the rental pool manager is not directly relevant to whether it used the strata lot in a way that is contrary to the interests of the rental pool itself.

33. The evidence suggests that Big White did some maintenance work in the workshop that was not directly related to the strata's building or the operation of the rental pool. However, there is no evidence that such a use had any detrimental impact on the rental pool. Therefore, I find that Big White did not breach bylaw 3(1) by using the area as a storage room and workshop.

Did Big White use the SL47 parkade area for a purpose contrary to the intention shown on the strata plan?

34. The applicant also says that using the SL47 parkade area as a workshop and storage area was a breach of bylaw 6(1)(e) because it was contrary to a purpose for

which the strata lot is intended, as shown expressly or by necessary implication on the strata plan.

35. On the strata plan, the common property parkade is labelled “Parking (C)”. The SL47 parkade area is separated from the common property parkade by solid lines with the words “No Wall” adjacent to the lines. I find that “C” in the label “Parking (C)” means that the label only applies to the common property and not the SL47 parkade area. There is no label within the SL47 parkade area.

36. The applicant argues that because the SL47 parkade area was originally used for parking spaces, its intended use must have been parking. I disagree that its initial use is relevant to the question of whether SL47’s owner breached bylaw 6(1)(e), which only refers to what is on the strata plan.

37. I find that there is nothing expressly or by necessary implication on the strata plan to indicate that the SL47 parkade area was intended to be used for parking.

38. As for the words “No Wall” written next to the boundary lines, I find that these words do not prohibit the erection of a wall around SL47. Rather, I find that those words are intended to be descriptive because there was initially no physical boundary to identify where the SL47 parkade area was. I find that the strata plan does not expressly or by necessary implication say that the SL47 parkade area was not to be enclosed.

39. The applicant also argues that bylaw 6(1)(e) prohibits SL47, which is a residential strata lot, from being used for a commercial purpose. Some strata plans for mixed-use developments indicate which strata lots are residential and which are commercial. However, this strata plan does not. The only thing that the strata plan says about use is that “the strata plan is for residential and commercial use”. The strata plan does not designate any lots as residential or commercial. Therefore, the strata plan does not say that SL47 can only be used for residential purposes.

40. Therefore, I find that the strata plan does not say that the SL47 parkade area could not be used as an enclosed storage area or workshop.

41. I find that my conclusion is supported by the fact that other parts of the strata, such as the restaurant's bathrooms and the hotel's front desk, are designated as limited common property with clear descriptions of their intended uses. If the owner developer had intended that the SL47 parkade area would be limited to a particular use, such as parking, it could have easily indicated on the strata plan.

42. Therefore, I find that SL47's owner did not breach bylaw 6(1)(e) when it erected the walls around the workshop and used it as a storage area and workshop.

43. In conclusion, I find that the strata did not fail to enforce the bylaws or the SPA in relation to Big White's use of the SL47 parkade area as a parkade and storage area.

Did the strata fail to enforce bylaw 6(1)(a) in relation to fire safety defects in SL47?

44. The Big White Fire Department provided the strata with an inspection report dated September 18, 2018. The report noted several contraventions that required correction, including that the walls around the SL47 parkade area needed a 2-hour fire-resistance rating.

45. At the December 2018 strata council meeting, a representative of Big White presented an architect's opinion that the BC Building Code only requires 1 hour of fire resistance for the walls around the SL47 parkade area, not 2 hours. The architect said that the walls have the required 1 hour of fire resistance. The strata council forwarded the architect's opinion to the Fire Department.

46. On April 1, 2019, the Fire Department said that the architect's explanation addressed its concerns.

47. The applicant says that Big White breached bylaw 6(1)(a) by building erecting walls that did not comply with the BC Building Code. The applicant says that the walls are a hazard. The applicant says that an architect is unqualified to respond to a fire inspection report. The applicant also questions whether the Fire Department employee was experienced enough to accept the architect's explanations.

48. Accepting that the initial report from the Fire Department raised the possibility that Big White breached bylaw 6(1)(a) by erecting walls that were a fire hazard, I disagree that the strata failed to enforce its bylaws. Big White gave the strata the architect's report reasonably promptly after the initial inspection report and the Fire Department, in turn, accepted the architect's explanation.

49. The applicant also says that the strata had no business giving the architect's opinion to the Fire Department because it was Big White's issue to resolve. The applicant says that the strata council's decision caused the strata financial harm because it lost out on revenue from fines that the strata should have imposed.

50. Section 129(2) of the SPA says that the strata may give an owner time to comply with a bylaw before enforcing it. I find that the strata was therefore entitled to allow Big White time to address the Fire Department's concerns before taking any formal enforcement action. I find that there was nothing inappropriate about the strata providing the architect's opinion to the Fire Department.

51. Finally, the applicant's suggestion that neither the architect nor the Fire Department employee were qualified to address the fire safety issues raised in the inspection report is speculative. I also note that the applicant provided no expert evidence of its own to suggest that the walls do not comply with the BC Building Code.

52. For these reasons, I dismiss the applicant's claim about the alleged fire safety defects of the walls around the SL47 parkade area.

Did the strata fail to enforce bylaws 2(2) and 6(1)(a) in relation to the restaurant's smoker and the hotel's housekeeping carts?

53. On December 10, 2018, the restaurant asked the strata to approve its use of a common property electrical plug for a smoker. The restaurant's email suggested that this arrangement would be temporary. The strata council approved the request.

54. The applicant says that using the smoker in common property means that the strata is paying for its electricity. The applicant also says that the smoker obstructed a fire

exit and that its extension cord prevented a fire door from closing. The applicant says that this was a breach of bylaws 2(2) and 6(1)(a).

55. At the January 2019 strata council meeting, the strata council noted that the restaurant had made "alternate arrangements" for its electrical smoker. Nothing in the Dispute Notice or the parties' evidence or submissions suggests that the smoker is still on common property. I find that the issue is moot.

56. Applying the principles set out in *Binnersley*, I decline to exercise my discretion to consider this issue. I find that it would provide no ongoing benefit to the parties. Accordingly, I dismiss the applicant's claim about the placement of the restaurant's smoker.

57. Turning to the housekeeping carts, the applicant provided photographs of 2 occasions when a housekeeping cart was left in a hallway. In one of the photographs, the housekeeping cart was in front of a fire escape. There is no evidence about how long the housekeeping carts were present.

58. At the December 2018 strata council meeting, the strata council discussed safety concerns about housekeeping carts in hallways. The minutes say that housekeeping was to ensure that carts did not obstruct stairwells or access to fire extinguishers.

59. The applicant says that leaving housekeeping carts in the hallways is a hazard and a nuisance contrary to bylaws 2(2) and 6(1)(a).

60. The strata says that it is required by bylaw 3(2) to permit the resort corporation to access and use common property as reasonably required for the operation of the strata rental pool. The strata says using housekeeping carts is common industry practice. In effect, the strata says that it is powerless to regulate the use of the housekeeping carts unless there is a bylaw breach.

61. While I accept that in some circumstances a housekeeping cart could pose a nuisance or hazard, I find that the applicant has not established that the strata failed to reasonably enforce its bylaws. The only evidence about a specific instance of the

housekeeping carts being left on common property is the applicant's 2 photographs. I cannot conclude from these photographs alone that the housekeeping carts posed a nuisance or hazard within the meaning of the bylaws. I accept that it may be reasonably necessary for the housekeeping staff to leave housekeeping carts unattended. Whether they are a nuisance or hazard depends on the circumstances.

62. Bylaw enforcement is complaint based and each complaint of a bylaw breach must be assessed on its own merits. There is no evidence that the applicant, or anyone else, has made any complaints to the strata about specific instances when the housekeeping carts were a nuisance or hazard. If there is a complaint, the strata has an obligation to respond by investigating the alleged breach. Before the strata takes any enforcement action such as a fine, it must comply with the procedural requirements of section 135 of the SPA, which include receiving a complaint.

63. I also note that while the strata must enforce bylaws, it retains some discretion about whether and when to enforce a breach. Section 133(1) of the SPA says that the strata may do what is "reasonably necessary" to remedy a contravention. In doing so, the strata may choose not to enforce a breach when its effect on the owners is insignificant. See *Strata Plan LMS 3259 v. Sze Holding Inc.*, 2016 BCSC 32. Furthermore, as discussed above, section 129(2) of the SPA gives the strata the discretion to give an owner time to remedy a bylaw contravention before taking any steps to enforce.

64. In summary, I find that there is no evidentiary basis to find that the strata has failed to enforce bylaws 2(2) and 6(1)(a) in relation to the housekeeping carts. I dismiss the applicant's claims about this issue.

Is the bylaw 12(2) valid and enforceable?

65. As mentioned above, bylaw 12(2) provides that there must be a representative of each of the restaurant, which is a tenant, and the rental pool manager, which is neither an owner nor a tenant, on strata council (appointed representatives). Bylaw 12(1) says that the strata council must have between 3 and 7 members, including the appointed representatives.

66. The applicant says that having 2 strata council spots reserved for the appointed representatives offends section 25 of the SPA, which says that at each annual general meeting, the eligible voters must elect a strata council. The applicant also relies on section 50(1) of the SPA, which says that matters must be decided by a majority vote.

67. To illustrate its point, the applicant points to the 2018 AGM, in which 9 persons, including the appointed representatives, were nominated for strata council. However, only 5 were "elected" because 2 of the spots went to the appointed representatives by operation of bylaw 12(2).

68. The strata says that prior to 2014, the strata had a residential section and a commercial section. The strata says that Big White, which owned all the strata lots in the commercial section, relied on the inclusion of bylaw 12(2) to agree to cancel the sections and adopt the current bylaws. The strata says that bylaw 12(2) exists to ensure a balance between the residential and commercial interests and between the residential strata lot owners who participate in the rental pool and those who do not.

69. The strata has received a legal opinion that bylaw 12(2) is invalid, which is not in evidence. Big White provided the strata with an opinion that bylaw 12(2) is valid, which is in evidence. Big White's lawyer characterizes bylaw 12(2) as nothing more than a bylaw under section 28(2) of the SPA that allows the appointed representatives to be on council.

70. I find that bylaw 12(2) offends section 25 of the SPA because the appointed representatives are not elected. In effect, by passing bylaw 12(2) in 2014, the owners delegated the right to choose 2 members of strata council to the restaurant and the rental manager at the expense of future owners' right to elect strata council members. I find that section 28(2) of the SPA does not permit the strata to pass a bylaw that requires unelected members of strata council. I find that section 25 requires the owners to elect a strata council at each year's AGM.

71. Section 121(1)(a) of the SPA says that a bylaw is not enforceable to the extent that it contravenes the SPA. Therefore, insofar as bylaw 12(2) reserves 2 places on strata council for the appointed representatives, I order that it is unenforceable.

72. The applicant also argues that neither of the appointed representatives is eligible to be on strata council under section 28 of the SPA, which sets out who is eligible for strata council. The applicant argues that they should both be removed from strata council. Section 28(1) of the SPA says that owners, individuals representing corporate owners, and tenants who have been assigned their landlord's right to stand for council are eligible. There is no evidence that Big White has assigned its right to stand for strata council to the restaurant.

73. Section 28(2) of the SPA says that the strata can pass a bylaw allowing other classes of persons to be on strata council. The strata says that bylaw 12(2) allows the appointed representatives to be on strata council. The applicant argues that the representatives of the restaurant and rental pool manager cannot be eligible under section 28(2) because they are not "connected" to a strata lot. I find that section 28(2) does not require a class of persons to be connected to a strata lot. I find that section 28(2) therefore allows the strata to pass a bylaw that representatives of the restaurant and rental pool manager are eligible for strata council.

74. Having found that bylaw 12(2) is not enforceable insofar as it reserves places on strata council for the appointed representatives, can bylaw 12(2) still operate to permit such representatives to be on strata council, if elected?

75. I find that because bylaw 12(2) requires representatives of the restaurant and rental pool manager to be on strata council, it must, by necessary implication, also allow them to be on strata council. I find that bylaw 12(2) permits the restaurant and the rental pool manager to each nominate a representative for strata council. If the owners elect those representatives, I find that the combined effect of section 28(2) of the SPA and bylaw 12(2) allows them to serve on strata council.

76. Turning to the remedy, I order that bylaw 12(2) is enforceable insofar as it permits representatives of the restaurant and rental pool manager to be on strata council if the owners elect them.

77. Despite my finding that the appointed representatives were entitled to stand for election to strata council, the reality is that they were not elected in accordance with section 25 of the SPA. Should the appointed representatives be removed from strata council, as the applicant asks? As stated by the BC Supreme Court in *Lum v. Strata Plan VR519 (Owners of)*, 2001 BCSC 493, the tribunal should only interfere with or override a strata's democratic government when absolutely necessary.

78. I find that it is neither necessary or appropriate to remove the 2 appointed representatives because the evidence suggests that many of the owners may want them to remain on strata council. At the 2017 AGM, there were only 7 nominees for strata council, including the appointed representatives. Rather than proceed by acclimation, the owners present unanimously voted to approve all 7 nominees. I find that this unanimous vote less than 2 years ago strongly suggests that many of the current owners want representatives of the restaurant and rental pool manager on strata council. There is no indication in the minutes of the 2018 AGM that any owners took issue with the 2 appointed representatives being excluded from the contested election.

79. For these reasons, I find that the composition of the strata council should be determined by the owners.

80. I order that the strata hold a special general meeting (SGM) within 60 days of the date of this decision. I order that the appointed representatives may remain on strata council until the SGM, subject to bylaw 14, which allows the owners to remove a strata council member, and bylaw 15, which governs what happens when a strata council member resigns or is absent. I order that the agenda of the SGM must include the election of 2 strata council members to fill the 2 appointed representatives' vacant positions, until the next AGM is held. I order that the

restaurant and the rental pool manager may nominate persons to be elected to the strata council.

81. I dismiss the applicant's remaining claims about bylaw 12(2) and the composition of strata council.

82. Since my order effectively "reads down" bylaw 12(2), the strata may consider formally amending it to avoid confusion.

TRIBUNAL FEES AND EXPENSES

83. 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 find that the applicant was partially successful. I therefore order the strata to reimburse the applicant for half of its tribunal fees of $225, which is $112.50. The applicant did not claim any dispute-related expenses.

84. As noted above, the strata asks for an order reimbursing it for $2,310 in dispute-related expenses. As the applicant points out, the strata's request contradicts section 189.4 of the SPA, which says, in part, that the strata cannot charge dispute-related expenses against the applicant. The strata did not make any submissions in support of its claim. Accordingly, I dismiss the claim.

DECISION AND ORDERS

85. I order that:

    a. Within 14 days of the date of this decision, the strata pay the applicant $112.50 for half of its tribunal fees.

    b. Bylaw 12(2) is unenforceable insofar as it requires that a representative of the restaurant and a representative of the rental pool manager be on strata council.

c. Bylaw 12(2) is enforceable insofar as it permits a representative of the restaurant and a representative of the rental pool manager to be on strata council.

d. Within 60 days of the date of this decision, the strata hold a special general meeting (SGM), which must include on the agenda the election of 2 strata council members to fill the vacant positions of the appointed representatives. The restaurant and the rental manager may each nominate representatives, who may be the appointed representatives, to be elected to strata council.

e. The appointed representatives may each remain on strata council until the SGM, subject to bylaws 14 and 15.

86. I refuse to resolve the applicant's claims that relate to sections 31 or 32 of the SPA under section 10 of the Act.

87. I dismiss the applicant's remaining claims.

88. 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.

89. 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.

Eric Regehr, Tribunal Member