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File: ST-2018-004637 and
ST-2018-004993

Type: Strata

Civil Resolution Tribunal

Indexed as: *Harvey v. The Owners, Strata Plan VR 390*, 2019 BCCRT 944

B E T W E E N :

Wendy Harvey

APPLICANT

A N D :

The Owners, Strata Plan VR 390

RESPONDENT

REASONS FOR DECISION

Tribunal Member: J. Garth Cambrey, Vice Chair

INTRODUCTION

1. The applicant, Wendy Harvey (owner), owns strata lot 13 (SL13) in the respondent strata corporation, The Owners, Strata Plan VR 390 (strata). The owner has commenced 2 separate disputes against the strata as described below. These are my reasons for decision for both disputes.

2. In one dispute (ST-2018-004637 or first dispute), the owner claims the strata owes her money under the terms of a June 13, 2008 alteration agreement between the owner, her spouse Mr. Edgar, and the strata (agreement). The owner seeks orders that the strata reimburse her $13,500.00 for contributions she alleges she made contrary to the agreement, or for reimbursement of expenses she alleges she is entitled receive under the agreement. In her submissions, the owner also asks for an order that the agreement wording be modified to correct a "prejudicial drafting oversight", and a declaration that the strata has acted contrary to section 31(a) and (b) of the *Strata Property Act* (SPA) by participating in a "prejudicial financial fraud scheme", among other things.

3. The strata says these claims are outside the jurisdiction of the Civil Resolution Tribunal (tribunal), or out of time under the Limitation Act (LA), and asks that they be dismissed.

4. In another dispute (ST-2018-004993 or second dispute), the owner makes a number of allegations about governance and procedure. The owner seeks orders that the strata:

    a. Provide monthly financial information about its "legal defence fund", which I infer is a fund the remaining strata owners, other than the applicant owner, have created to fund various tribunal disputes filed by the owner.

    b. Remove a dirt and gravel pathway and replace a common property plant and fence it allegedly removed contrary to the SPA.

    c. Cease violating the SPA and strata bylaws to the prejudice of the applicant.

    d. Provide certain documents requested by the owner.

    e. Withdraw its June 2017 demand that the owner not communicate with the property manager.

5. The owner also seeks the following orders:

    a. That the council president and strata manager act in good faith.

b. That GN, one of the council members, be absent from any council meetings attended by Mr. Edgar.

6. The strata denies these claims and says the tribunal either has no jurisdiction or should dismiss them.

7. The owner is self-represented. The strata is represented by a lawyer, Veronica Franco.

8. For the reasons that follow, I refuse to resolve the owner's claims against the strata council president and property manager. I also dismiss the owner's remaining claims except that I order the strata to provide the owner with a copy of the quotation to rebuild the chimney adjacent to SL13 that was attached to the single page report of Dunbar Masonry dated January 18, 2018.

JURISDICTION AND PROCEDURE

9. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over strata property claims brought under section 121 of the *Civil Resolution Tribunal Act* (CRTA). 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. The owner has requested that I "question in person significant witnesses for credibility" but did not provide a list of potential witnesses. The owner also requested that I perform a "hands-on visit" of SL13. I decline both of the owner's requests. I decided to hear this dispute through written submissions as I find there are no significant issues of credibility or other reasons that might require me to call witnesses or view the property.

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 61 of the CRTA, the tribunal may make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the tribunal in accordance with its mandate. In particular, the tribunal may make such an order on its own initiative, on request by a party, or on recommendation by a case manager.

14. Tribunal documents for the second dispute incorrectly show the name of the respondent strata as The Owners, Strata Plan, VAS390, whereas, based on section 2 of the SPA, the correct legal name of the strata is The Owners, Strata Plan VR 390. Given the parties operated on the basis that the correct name of the strata was used in their documents and submissions, I have exercised my discretion under section 61 to direct the use of the strata's correct legal name in these proceedings. This is reflected in the style of cause above.

15. Under section 123 of the CRTA and the tribunal rules, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUES

16. The issues in these disputes are:

    a. Does the tribunal have jurisdiction to decide the disputes?

    b. Are any of the owner's claims out of time under the *Limitation Act* (LA)

    c. Should I vary the language of paragraph 6 of the agreement?

d. Should I order the strata to reimburse the owner $13,500.00 under the terms of the agreement?

e. Should I order the strata to provide financial information for its legal defence of the tribunal disputes?

f. Has the strata acted contrary to the SPA and, if so, what is an appropriate remedy, if any?

BACKGROUND, EVIDENCE AND ANALYSIS

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

18. In a civil proceeding such as this, the applicant owner must prove each of her claims on a balance of probabilities.

19. The strata is a residential strata corporation located in Vancouver, B.C. comprising 12 strata lots in a single 11-storey building. It was created in 1976 under the *Strata Titles Act* and exists under the SPA.

20. In 1984, strata lots 1 and 3 were subdivided such that most of strata lot 1 became SL13 and strata lot 3 (plus a small part of strata lot 1) became strata lot 14 (SL14). I would describe SL13 as a 2-storey townhouse-type strata lot. SL13 is located at the base of the high-rise tower, which contains the remaining 11 apartment-type strata lots. For clarity, SL13 is attached to and forms parts of the high-rise building. It is not a separate building.

21. The owner purchased SL13 on September 28, 2005. Court documents show the owner undertook renovations to SL13 between about September 2005 and June 2013, when she took residence in SL13 with Douglas Edgar.

22. The bylaws applicable to these disputes are the bylaw amendments filed at the Land Title Office (LTO) on May 31, 2001 plus several amendments filed in 2006 and 2015 as shown on the general index for the strata plan. The bylaw amendments filed June

25, 2018 do not apply given the disputes arose prior to that date. Not all applicable bylaws are relevant, and the bylaws do not create different types of strata lots for purposes of calculating strata fees under section 99 of the SPA and *Strata Property Regulation* (regulation) 6.4 (2). I will refer to relevant bylaws as necessary below.

23. The owner and Mr. Edgar have a history of litigation with the strata in the BC Supreme Court (BCSC) , BC Provincial Court and, more recently, a history of disputes with the tribunal.

24. The BCSC litigation largely revolves around building envelope repairs completed by the strata and unauthorized renovations completed by the owner and Mr. Edgar to SL13 and adjacent common property (CP).

25. Between 2007 and 2013 there were several BCSC decisions, which I will briefly summarize below for context.

26. In 2006, the strata commenced building envelope repair work with the help of its consulting engineer, Morrison Hershfield Ltd. In February 2007, the owner commenced arbitration proceedings under the SPA regarding remediation of SL13 and adjacent CP decks and patios.

27. In a decision dated March 5, 2007 indexed as *Harvey v. Strata Plan VR 390*, 2007 BCSC 333, the owner unsuccessfully petitioned the BCSC seeking to stop the strata from completing the building envelope repairs on SL13, pending the outcome of the arbitration.

28. On June 13, 2008, the owner and Mr. Edgar entered into the agreement with the strata that forms the basis of the first dispute, which I discuss below.

29. On July 24, 2009, Madam Justice Boyd ordered the owner and Mr. Edgar to stop completing unauthorized work by “demolishing, altering or removing” any part of the strata’s common property (Boyd Order).

30. On October 29, 2009, Madam Justice Russell granted the strata an order restraining the owner and Mr. Edgar form interfering or impeding the building envelope repairs relating to SL13.

31. On December 18, 2009, the owner and strata entered into a consent order to allow the repair work to proceed (consent order). The terms of the consent order are not in evidence.

32. On March 10, 2010, Mr. Justice Preston found that Mr. Edgar was in breach of the consent order and the strata was successful on its petition for injunctive relief. The strata was also successful in obtaining an order for special costs. (See *Owners, Strata Plan VR 390 v. Harvey*, 2010 BCSC 715.)

33. On December 12, 2013, Madam Justice Gray found the owner and Mr. Edgar had breached the Boyd Order by completing unauthorized work, but declined to order the sale of SL13 to recover monies owed to the strata (Gray Order). Later, in 2014, Madam Justice Gray also awarded the strata special costs.

Does the tribunal have jurisdiction to decide the disputes?

Other tribunal disputes involving the same claims

34. I will first address the strata's claims that the issues in these disputes have already been brought before the tribunal in disputes ST-2017-002195 and ST-2017-00343 (earlier disputes). While that may have been true when the tribunal accepted the disputes that are now before me, I note the tribunal ordered the earlier disputes withdrawn in an unpublished decision dated September 19, 2018. Therefore, I do not find there is any concern with me continuing to hear these disputes.

Jurisdiction over the agreement in the first dispute

35. The strata submits the owners first claim about the agreement does not fall under the tribunal's strata property dispute jurisdiction. It says the dispute is really a contractual dispute that would be within the tribunal's small claims jurisdiction and should be heard there. The owner disagrees.

36. I am aware of another unpublished preliminary decision involving the same parties and the same agreement in tribunal dispute ST-2019-003291. In that decision, the tribunal refused to resolve a dispute about money paid into a lawyer's trust account under the terms of the agreement because it found the dispute was outside the tribunal's strata property claim jurisdiction.

37. I find the dispute before me about the agreement is not outside the tribunal's strata property claim jurisdiction. I say this because this dispute relates to common property and assets of the strata, and money owing between the parties for strata fees and a special levy. I find this dispute is in respect of the SPA under section 121(1) of the CRTA. Therefore, I agree with owner that the tribunal has jurisdiction over the first dispute about the agreement.

Claims against the strata council president and property manager

38. The owner claims the strata council present and strata property manager have not acted in good faith and have acted with prejudice to the owner. The strata disagrees.

39. I note that neither the president nor the property manager were named respondents in this dispute and therefore they did not have the opportunity to respond to the owner's claims. That alone is reason for me not to consider the owner's claims against these individuals.

40. The owner specifically claims the council president has breached their standard of care under section 31 of the SPA. Section 31 requires a council member to 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.

41. The BC Court of Appeal has found that remedies for breaches of section 31 of the SPA are found in section 33 of the SPA. Section 33 is expressly outside of the tribunal's jurisdiction as set out in section 122(1)(a) of the CRTA and must be dealt with by the Supreme Court. (See *Dockside Brewing Co. Ltd. v. Strata Plan LMS 3837*, 2007 BCCA 183 at paragraph 59.)

42. For this reason, I find I do not have authority to make orders against the president for breaches of section 31 of the SPA. I also find it inappropriate to make any findings of fact about a breach of section 31 as the court must make its own findings, if the matter is pursued there. Accordingly, under section 10 of the CRTA, I refuse to resolve the applicant's claims that the president failed to exercise their required standard of care.

43. I note that section 31 of the SPA applies only to individual council members. It does not apply to the strata corporation or the property manager. Therefore, to the extent the owner claims the strata or property manager acted contrary to section 31 of the SPA, I dismiss her claims.

Claim against GN, a council member

44. The owner claims that GN, at a June 18, 2018 strata council meeting, harassed and bullied Mr. Edgar. The owner argues that GN should be absent from any council or general meetings, including hearings, when Mr. Edgar provides reasonable notice that he will attend. The strata describes a different version of events, but I find I do not have to make any finding about credibility or reliability on this issue.

45. Neither GN or Mr. Edgar are parties to either of these disputes and, as such, neither have provided submissions. I dismiss the owner's claim for these reasons.

46. However, had GN and Mr. Edgar been parties, I would not have made the order requested by the owner for the following reasons.

47. As for the owner's allegations of harassment, I find that a strata council member's duty of care under section 31 of the SPA includes such allegations. (See *Mykle-Hotzon v. The Owners, Strata Plan LMS 1372 et al,* 2018 BCCRT 609.) Based on my finding above that section 31 is outside the tribunal's jurisdiction, I would refuse to resolve the owner's allegations of harassment against GN.

48. There is no dispute that GN is an elected strata council member. Therefore, based on sections 4 and 26 of the SPA, GN has both a duty and an obligation, along with

the other elected council members, to exercise the powers and perform the duties of the strata council. I find the duties and obligations placed on GN under the SPA, along with the standard of care required of them under section 31 of the SPA, give GN the right to attend all council meetings, including hearings, which are held at council meetings under section 34.1 of the SPA. It would be up to GN to decide if they wished to attend the council meeting, or portion of it, that Mr. Edgar might be in attendance.

49. I also note bylaw 17(3) permits only owners to attend council meetings as observers. Given Mr. Edgar is not an owner within the meaning of the SPA, I find the strata may choose to restrict his attendance at council meetings.

50. As for attendance at general meetings, GN, as a strata owner, has a right to attend any general meeting of the strata corporation. As the spouse of an owner, Mr. Edgar would only be able to attend a general meeting if the owner gave him her proxy (barring Mr. Edgar being assigned the owner's rights as a tenant under section 147(2).)

51. Regardless, there is no requirement under the SPA or the strata's bylaws that addresses a council member be absent or recuse themselves from a council meeting except about conflicts of interest under section 32 of the SPA.

Are any of the owner's claims out of time under the LA?

Significant change in use of CP

52. For the reasons set out below, I find the owner's claim about alterations made to CP is barred under the LA.

53. Under section 71 of the SPA, a strata corporation is not permitted to make a significant change in use or appearance of CP unless the change is first approved by a ¾ vote at a general meeting or there are reasonable grounds to believe the change is necessary to ensure safety or prevent significant loss or damage. There is evidence from the owner that Mr. Edgar witnessed a council member and previous

owner of unit 101 (SL2), making alterations to CP. The alterations included removing a plant, installing a pathway, and replacing or installing a gate.

54. It is unclear when the alterations were actually made. However, the owner submitted evidence that states Mr. Edgar witnessed the alterations being made by the previous owner of SL2 “several years” before a June 2017 hearing. Based on LTO records, the current owner of SL2 purchased the strata lot on December 20, 2011. Therefore, I find the it is more likely than not that the alterations were completed by the previous owner of SL2 before they sold SL2 on December 20, 2011. The strata submits the alterations were made about 10 years ago, which I find generally aligns with the owner’s time frame.

55. I find that section 71 of the SPA applies equally to alterations made by owners if the alterations were approved by the strata corporation. Given the owner’s evidence that a council member made the subject alterations was not denied by the strata, I find it is reasonable for me to conclude that the strata was aware of the alterations. Therefore, I find the owner’s allegations apply to the strata, even though it was Mr. Edgar who witnessed the alterations.

56. The strata says the limitation period established under the LA has lapsed and the owner is out of time to commence her alteration claim. The owner did not provide submissions on the strata’s limitation defence.

57. Under section 13 of the CRTA, the LA applies to the tribunal as if it were a court. The current LA came into force on June 1, 2013. Prior to June 1, 2013 a former version of the LA (former LA) was in force.

58. Section 30(2) of the LA says that the former LA applies to a claim that is based on an act or omission that took place before June 1, 2013. Given my finding above that the alteration took place prior to December 20, 2011, the former LA applies.

59. The former LA says the various limitation periods apply to “actions”, defined as “any proceeding in a court and any exercise of a self help remedy”. I find the owner had a right to commence an action on December 20, 2011. Under section 3(5) of the

former LA, the limitation period is 6 years from the date the owner had a right to commence an action or December 20, 2017, after which the owner is out of time. The Dispute Notice for the second dispute was issued on July 16, 2018, several months after the limitation period expired.

60. For these reasons, I dismiss the owner's claim about significant changes to CP because it is out of time under the LA.

Should I vary the language of paragraph 6 the agreement?

61. The agreement reached between the parties in 2008 lead to the completion of the building envelope work and is the basis of the owner's first dispute. It is a complex agreement that, in essence, permitted the owner to retain unauthorized repairs she had completed to common property and SL13 and allowed the owner to complete potential 'upgrades' to SL13. The 'upgrades' included a radiant floor heating system and upgrades to exterior windows and doors.

62. I will first address the owner's claims about the agreement's language. She claims the agreement contains a "prejudicial drafting oversight" as it only excludes her from paying for special levies associated with the strata's heating system and not operating costs. She says she should not be responsible for any of the strata's heating system costs, including operating expenses, contingency reserve fund expenses or special levy expenses. The strata disagrees and says the agreement language is intentional and that the owner had the benefit of legal counsel at the time she executed the agreement.

63. I do not agree with the owner that the paragraph 6 of the agreement contains a drafting oversight. Rather, I agree with the strata that the owner is likely attempting to redraft the agreement.

64. Paragraph 6 of the agreement is the relevant part that deals with the heating systems and states (I note reference to Owners in the agreement includes both the owner and Mr. Edgar):

> The Owners agree to pay all costs of installing the Heating System for [SL13], including the cost of any common property components of the Heating System that exclusively service [SL13] (the "Exclusive Components). The Owners and the Strata Corp. agree that the Owners may replace the Exclusive Components at the Owners sole cost and, in perpetuity, the Owners and any subsequent owners will be exempt from any special levy(ies) assessed by the Strata Corp. to replace components of the high rise building heating system that exclusively service the other 11 strata lots in the Strata Corp.

65. The owner says the phrase "special levy(ies) assessed" should be replaced with the phrase "expenditure(s) duly required". I disagree.

66. I find the owner was represented by legal counsel at the time the agreement was drafted and signed. My conclusion is based on a June 13, 2008 letter from Jamie Bleay, a lawyer, to the strata's legal counsel at the time, that states in part that Mr. Bleay had acted for the owner and Mr. Edgar "these past several months in connection with their efforts to reach an agreement with your client regarding proposed alterations and upgrades to [SL13]". The letter enclosed a certified cheque for $10,500.00 that was required as part of the agreement. It is unclear if Mr. Bleay had reviewed the final agreement but I find he was familiar with its terms and, more likely than not, provided the owner advice on the terms of the agreement.

67. The owner does not provide any evidence to support her claim and only provides her opinion on why the language should be changed. I also find it perplexing that it took the owner about 8 years to raise her concern with the strata.

68. The strata provides a compelling argument that the agreement was executed at a time when the owner's 'upgrades' were not completed to allow the strata to complete its building envelope repair. Some of the unauthorized repairs to SL13 were complete but the SL13 heating system was not. It was not known to the parties at the time, to what extent the SL13 heating system would affect CP pipes or the removal of them from SL13. Based on the strata's submission, the absence of any evidence

to the contrary, and my finding that the owner had legal advice at the time the agreement was executed, I find the owner has not proved the parties intended different language than what is contained on paragraph 6 of the agreement different that.

69. I therefore dismiss the owner's claim that the language in paragraph 6 of the agreement should be varied.

70. I note that even though the tribunal has broad powers to resolve disputes, the remedy sought by the owner to vary the language of the agreement would not typically be available under the common law of contracts years later without the consent of the parties.

Should I order the strata to reimburse the owner $13,500.00 under the terms of the agreement?

71. There are 2 parts to this claim. The first part involves an $11,000.00 claim relating to the strata's heating system expenses. The second part involves a $2,500 claim relating to a potential upgrade to an exterior door of SL13.

72. I will first address the owner's heating system claim for $11,000.00.

73. When the owner installed radiant floor heating she also installed a separate gas meter. The gas consumption for the gas meter relates only to SL13 and is billed directly to SL13.

74. The strata has a boiler system that is connected to its own common gas meter. The boiler provides hot water to both the strata's heating system and the domestic hot water (DHW) for all 12 strata lots including SL13, through a heat exchanger. Therefore, the gas used by the boiler services both the strata's heating system and its DHW. In 2016, the strata was required to replace a main circulating pump and at least 1 DHW storage tank at a cost of about $13,000.00. It considered the expense an 'emergency' under section 98 of the SPA and charged the expense to its contingency reserve fund (CRF), paid in part by contributions made by the owner.

The strata then raised a $15,000.00 special levy to “replenish” the CRF, which the owner argues was really to cover the cost of the emergency repair.

75. As I understand it, the owner claims reimbursement of gas costs and her proportionate share of the CRF expenditure. The owner’s claim is based on her allegation that the agreement language should include all repair and maintenance costs of the common heating system, rather than only special levy fees, which I have already dismissed.

76. The owner’s claim for reimbursement of $11,000.00 relates to her proportionate share of the costs to repair and maintain the common heating system, the gas expenses, and the cost to replenish the CRF. She requested payment of $6,098.12 as an interim amount based on the records she received from the strata, estimating the full amount to be $11,000.00. I discuss the owner’s requested records and documents below but do not find the owner received less financial information than she is entitled to receive.

77. It is unclear if the operating expenses used by the owner in her calculation relates to the strata’s heating system or its DHW system. I understand the expenses used for the calculation are simply based on the total plumbing and mechanical expenses contained in the general ledger information provided by the strata. However, in reviewing the general ledger, there is no way to tell what expense, if any, relates exclusively to the heating system, or what expense relates to the DHW system. Either way, given my conclusion that the agreement only excludes special levies for the heating system, I find the owner is not entitled to reimbursement of any operating expenses relating to repair and maintenance.

78. It is undisputed that strata’s gas expense relates to the boiler, and the boiler services both the strata’s heating system and DHW system. The gas meter does not exclusively measure the expenses for the strata’s heating system. Further, the gas expense is also an operating expense and not a special levy. Therefore, I find the owner is also not entitled to reimbursement of gas expenses under the terms of the agreement.

79. As for the special levy to replenish the CRF, I have noted the owner says this was really to cover the cost of the circulating pump and DHW tank(s). The owner says that because it was a special levy, she should not be responsible to pay her proportionate share. However, the DHW tanks are not part of the strata's heating system and SL13 is not disconnected from the strata's DHW system.

80. The strata enquired of the contractor who repaired the pump and replaced the DHW tank(s) if the work related to the strata's heating system or DHW system. On July 18, 2017, the contractor advised the work related to both systems. Given the contractor's opinion that the work performed related to both the heating system and DHW system, I find the cost of the repair work was not exclusively related to the strata's heating system. Therefore, under the terms of the agreement, the owner is not exempt from paying her proportionate share of the cost.

81. For that reason, I find the owner is not entitled to reimbursement of her portion of the special levy under the terms of the agreement.

82. I dismiss the owner's argument that the strata has committed civil fraud by not reimbursing them the amount claimed for the strata's heating system expenses. The tort of civil fraud (also known as deceit or fraudulent misrepresentation) consists of 4 elements:

    a. A false representation made by the defendant;

    b. Some level of knowledge of the falsehood of the representation on the part of the defendant (or respondent strata), whether through knowledge or recklessness;

    c. The false representation caused the plaintiff to act; and

    d. The plaintiff's actions resulted in a loss.

    (See *Bruno Appliance and Furniture, Inc. v. Hryniak*, 2014 SCC 8, at paragraph 21)

83. The owner did not address any of the required elements in her submissions and I find she has not proven civil fraud on the part of the strata.

84. Finally, the owner says she has been treated in a significantly unfair manner. I agree with the strata that significant unfairness cannot be found if the strata acted in accordance with the terms of a contract, which is what I have concluded. I therefore dismiss the owner's claim she was treated in a significantly unfair manner when the strata declined to reimburse her claimed heating expenses.

85. For all of these reasons, I find the owner is not entitled to reimbursement of $11,000.00 for the strata's heating system under the terms of the agreement and I dismiss this part of the owner's claim.

86. I note the agreement as written, does not address special levies that may include repair and replacement of the strata's heating system combined with other expenses. I encourage the strata to abide by the terms of its agreement with the owner with respect to its heating system repairs and, if there are expenses that relate exclusively to the strata's heating system, those expenses should be raised by a separate special levy that does not include expenses for any other purpose.

87. I also note the strata's argument that a unanimous resolution is required under section 108(2) of the SPA in order to exclude the owner from paying any special levy approved by the strata. The strata argues paragraph 6 of the agreement is an attempt to circumvent the SPA and is arguably "unenforceable or void". There is no ability for the strata to pass a bylaw that addresses special levy contributions in advance as section 100 of the SPA only applies to strata fees and contributions to the operating fund and CRF. I encourage the strata to abide by the terms of paragraph 6 of the agreement by considering a unanimous vote under section 108(2), if or when there is special levy required to address the strata's heating system. Not to do so, could be considered an act of significant unfairness toward the owner.

88. As noted, the second part of this claim is it relates to $2,500 for a potential upgrade to an exterior door. This is referred to in the agreement as a "deferred credit" which is a fixed amount set out in Schedule "C" to the agreement.

89. I find the strata provided a reasonable description of the "deferred credit" concept in its arguments, which I find in essence and very general terms, provided flexibility to the owner about what additional upgrades she could complete to the second-floor deck sliding door. As I understand it, the owner was permitted to upgrade the sliding door with approval, and would receive a credit from the strata, equivalent to the standard of the strata's contemplated repair. The strata's approval was contingent upon the owner obtaining the City of Vancouver's approval, which the owner did not obtain.

90. The strata says it was always contemplated that the owner would proceed with her upgrades while the strata corporation was undertaking its building envelope remediation, and not several years later.

91. The owner provided submissions on updated costs of windows stating the costs have increased from 2008. The owner says she is convinced the strata would not allow them to complete the work contemplated under the deferred credit portion of the agreement but there is no evidence the owner has sought the City of Vancouver's approval or made such an application to the strata. The strata argues the owner's intentions may not be approved by the City because of the finished alterations may exceed the City's floor space ratio for habitable space under the development permit.

92. I find the owner's claim for $2,500.00 under the deferred credit portion of the agreement is premature. For that reason, I dismiss the owner's claim in this regard.

93. If the owner wants to alter any exterior windows of SL13, she should apply to the City for approval before making an application to the strata. I note alterations not covered by the agreement still require strata approval under bylaw 6, which the strata may unreasonably refuse.

Should I order the strata to provide financial information for its legal defence of tribunal disputes?

94. The owner admits the strata is able to seek legal and property manager advice about defending tribunal disputes started against it but says the strata must separate any expenses in this regard, and provide the details and processes involved to the owner on request. The owner seeks an order that the strata provide "full, true and plain" disclosure of the financial administration of the money to the owner on a quarterly and annual basis. While I find the owner's claim vague, I infer she alleges she is entitled to know everything about the monies raised by the strata to defend the tribunal disputes which she has started or will start.

95. The strata says the remaining strata owners, other than the owner, have raised funds to defend the owner's numerous tribunal disputes. It says the owner has not contributed to "fund" and that the money has been raised by special levy, excluding the owner. The strata says it provides financial information as required under the SPA and that the owner is not privy to the requested financial information because it is related to the disputes the owner has with the strata.

96. For the reasons that follow, I agree with the strata.

97. As the strata notes, section 103 of the SPA requires the strata to provide financial information to all strata owners with its AGM Notice. There are no requirements either under the SPA or the bylaws to require financial statements be distributed more frequently than once per year. Regulation 6.7 sets out the format the financial information may take.

98. Based on my review of the January 2018 and February 2019 AGM notices, the financial information meets the criteria required by the SPA and regulation. The financial information also discloses a "Special Levy Legal" fund (legal fund), which I have inferred is the fund for which the owner seeks more information.

99. Section 189.4 of the SPA states that sections 167 and 169 apply to tribunal disputes. Under section 167(2), an owner who is suing a strata corporation is not required to

contribute to the defence costs. I accept the strata's submission that the legal fund represents the money raised by the strata owners, excluding the applicate owner, to defend the owner's tribunal claims. I also accept the strata's submission that no legal fees have been expenses through the operating fund as there are no line items that identify legal fees and the owner has not suggested otherwise.

100. Under section 169(1)(b), an owner who sues a strata corporation does not have a right to information or documents relating to the suit. I interpret this section to mean that the owner is not entitled to any information relating to the owner's claims against the strata, including details or financial information on monies raised to defend the owner's clams.

101. Put simply, I find the strata is required to provide the balance of its legal fund with its financial information included in its AGM notice packages, but is not required to provide any other information about the fund to the owner, including how the money was raised or spent.

102. I find the strata has met its disclosure requirements about its legal fund and I dismiss the owner's claim in this regard.

Has the strata acted contrary to the SPA and, if so, what is an appropriate remedy, if any?

103. Having already addressed the owner's claim for financial information relating to the legal fund, I conclude from the arguments and evidence that the owner is unsatisfied about 3 remaining document requests. They relate to financial information about the heating system, including invoices and the fund they were paid from, between June 2008 to May 31, 2017, a list of all attendees of the June 18, 2018 SGM, and a January 14, 2018 Dunbar Masonry report about a CP chimney adjacent to SL13.

<u>Section 35 request for records and documents</u>

104. The strata's obligation to disclose records and documents is set out in sections 35 and 36 of the SPA. These sections set out what records and documents must be prepared and kept by the strata, and how and by whom this information can be

obtained. *Strata Property Regulation* (regulation) 4.1 sets out the period the strata must retain the records and documents.

105. Among other things, section 35 requires the strata to:

    a. prepare books of account showing money received and spent and the reason for the receipt or expenditure (35(1)(d),

    b. retain copies of correspondence sent and received by the strata and strata council (35(2)(k)),

    c. retain reports obtained by the strata respecting repair and maintenance of major items (35(2)(n.2)).

106. Regulation 4.1 requires books of account to be kept for at least 6 years, correspondence for at least 2 years, and reports until the item to which the report relates is disposed of or replaced.

107. In *Kayne v. The Owners Strata Plan LMS 2374*, 2007 BCSC 1610, the BCSC found that a record or document that is not set out in section 35 of the SPA is generally not available to an owner. The court also found that an owner is entitled to review (or obtain copies of) books of account and financial statements but not underlying bills, invoices or receipts reflected in the financial statements. The court stated that the purpose of the SPA is to provide information as to how money is spent, and the books of account must show money received and spent.

108. As for the heating system request, the strata provided the owner with 7 years of the general ledger records between June 2010 and June 2017. The owner says the general ledger records are not complete and expects to receive the missing general ledger information and copies of invoices for the 9-year period she requested. Based on *Kayne*, I find the strata's provision of the general ledger information for the 7-year period meets the criteria of section 35 of the SPA. The strata is not required to provide invoices relating to the heating system or other information extending back more than 6 years. I find the strata has met its obligation under section 35 and 36 of the SPA as it relates to the owner's request for financial information.

109. As for the list of attendees of the June 18, 2018 SGM, I agree with the strata that this is not a record or document the strata is required to prepare or retain under section 35 of the SPA. I dismiss the owner's claim for this information.

110. As for the Dunbar Masonry report, it is clear from the evidence that the report was single page with an attached quotation to rebuild the chimney. The strata admits it did not provide a copy of the quotation to the owner stating only that is reluctant to provide any more information than what is required. While that may be true, I find the quotation forms part of the report and the owner is entitled to a copy of it. It does not matter that the chimney may be in need of repair or that the parties cannot agree what repair, if any, should be done. The chimney repair issue is not before me. Therefore, I order the strata to provide the owner with a copy of the quotation to rebuild the chimney adjacent to SL13 that was attached to the single page report of Dunbar Masonry dated January 18, 2018. The owner has already received the report itself.

<u>Requests for the strata to answer questions</u>

111. The owner has requested various orders that the strata answer questions posed in correspondence she has provided to the strata. The strata's position is that it is not required to answer all correspondence and I agree.

112. There is nothing in the SPA or the strata's bylaws that requires the strata to respond to every question the owner may have about the strata or its operation. The owner has failed to prove the strata as acted contrary to the SPA in this regard and I dismiss the owner's claims that the strata be ordered to respond.

TRIBUNAL FEES AND EXPENSES

113. Under section 49 of the CRTA, 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. The strata was the successful party but did not pay tribunal fees or claim dispute-related expenses. I therefore make no order for tribunal fees or dispute-related expenses.

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

DECISION AND ORDER

115. I refuse to resolve the owner's claims that the strata council president or property manager acted contrary to section 31 of the SPA.

116. I order the strata, within 14 days of the date of this decision, provide the owner with a copy of the quotation to rebuild the chimney adjacent to SL13 that was attached to the single page report of Dunbar Masonry dated January 18, 2018.

117. I dismiss the owner's remaining claims.

118. 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 123.1 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.

J. Garth Cambrey, Vice Chair