



Civil Resolution Tribunal

Date Issued: August 14, 2019

File: ST-2018-002618

ST-2018-007648

Type: Strata

Civil Resolution Tribunal

Indexed as: *Lawlor et al v. The Owners, Strata Plan KAS 1459*, 2019 BCCRT 968

B E T W E E N :

Tracy Lawlor and Nicole Leonard

APPLICANTS

A N D :

The Owners, Strata Plan KAS 1459

RESPONDENT

A N D :

Tracy Lawlor

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This decision addresses 2 disputes that I considered together. Tracy Lawlor and Nicole Taylor (applicants) each own a strata lot in the strata corporation, The Owners, Strata Plan KAS 1459 (strata).
2. In ST-2018-002618, the applicants claim against the strata seeking the following orders:
 - a. That there be an audit of the strata's operating and contingency accounts for the fiscal years 2013 through 2018.
 - b. That the strata allow them to review all strata council meeting minutes from January 2014 through April 2018.
 - c. That the strata allow them to review the strata's financial reports with the expenditures accounted for on a line by line basis from 2014 through 2018.
 - d. That the strata comply with all sections of the *Strata Property Act* (SPA) and the *Strata Property Regulation* (Regulation), and in particular, sections 14, 40-41, 91-98, 102-106, 111 and 128 of the SPA and sections 4.1, 6.1, 6.3, 6.6 and 6.7 of the Regulation.
3. In ST-2018-007648, the strata claims against Ms. Lawlor for \$707.53 in unpaid strata fees and \$1,600.00 in fines.
4. In ST-2018-007648, Ms. Lawlor counterclaims against the strata, seeking the following orders:
 - a. That the strata call a special general meeting (SGM) to inform the owners of the outcome of these disputes.
 - b. That the "problem" strata council members resign and a new council of 3 other owners be elected.
 - c. That the contract with the strata's property manager be cancelled.

- d. That her strata fee arrears are resolved, that the strata commit to removing the lien on her strata lot, and that her right to vote be restored.
5. Ms. Leonard is not a party in ST-2018-007648.
6. Ms. Lawlor is representing herself and Ms. Leonard. The strata is represented in both disputes by a member of strata council.

JURISDICTION AND PROCEDURE

7. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 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.
8. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
9. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
10. 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.
11. Tribunal documents incorrectly show the name of the respondent as The Owners, Strata Plan Strata Plan KAS 1459. Based on section 2 of the SPA, the correct legal name of the strata is The Owners, Strata Plan KAS 1459. 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. Accordingly, I have amended the style of cause above.

ISSUES

12. As mentioned above, one of the applicants' requested orders is for the strata to comply with the SPA and Regulation, followed by a list of specific sections. Unfortunately, the applicants do not identify what specific orders they want because of the strata's alleged breach of each of these sections.
13. The strata must comply with the SPA and Regulation whether I order it to or not. Therefore, a general order that the strata comply with the SPA and Regulation would be unenforceable and unhelpful. As such, I decline to make the general order requested. In light of the applicants' failure to ask for more detailed orders, I have inferred what specific remedies the applicants want based on their submissions.
14. With that in mind, I find that the issues in these disputes are:
 - a. What strata fee arrears, if any, does Ms. Lawlor owe to the strata?
 - b. Should I make any other orders about Ms. Lawlor's strata lot account?
 - c. Did the strata comply with section 135 of the SPA before imposing fines against Ms. Lawlor?
 - d. Has the strata complied with the SPA and Regulation provisions about the contingency reserve fund, budgets, financial statements and expenditures? If not, what remedy is appropriate?
 - e. Should I order that the strata's finances be audited?
 - f. Has the strata complied with the SPA provisions about annual general meetings (AGMs)? If not, what remedy is appropriate?

- g. Has the strata complied with sections 35 and 36 of the SPA?
- h. Has the strata complied with the SPA and Regulation provisions about depreciation reports? If not, what remedy is appropriate?
- i. Did the strata impose the special levy contrary to section 108 of the SPA? If not, what remedy is appropriate?
- j. Should I order the cancellation of the strata's contract with the property manager?
- k. Should I order the strata to hold an SGM?
- l. Should I order the removal of any strata council members?

BACKGROUND AND EVIDENCE

- 15. In a civil claim such as this, the applicants must prove their claims on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
- 16. The strata consists of 8 townhouse-style residential strata lots in 2 buildings. As mentioned above, Ms. Lawlor and Ms. Leonard each own a strata lot.
- 17. The strata filed a complete set of bylaws in the Land Title Office on October 14, 2011. The bylaws allow for fines up to \$200 for bylaw infractions.
- 18. The current conflict in the strata appears to date back to early 2014, although there is some evidence of chronic interpersonal conflict before this time. At the AGM on December 14, 2013, the owners passed a budget that included a modest increase in strata fees. Shortly thereafter, several owners called an SGM to consider, among other things, electing a new strata council and adopting a new budget that did not include a strata fee increase.
- 19. The SGM was held on January 8, 2014. The applicants and another owner objected to how the strata provided notice of the SGM and they walked out of the SGM

before the owners voted on any resolutions. The remaining owners “voided” the results of the 2013 AGM, approved a new budget and elected a new council.

20. The strata’s property manager resigned in June 2016.
21. It is not disputed that without the guidance of a property manager, the strata’s compliance with the SPA and Regulations got worse. At the beginning of June 2016, the strata had over \$10,000 in its operating fund and over \$7,000 in its contingency reserve fund. Based on the bank statements in evidence, the strata had maintained steady finances since January 2014 even though several owners were in arrears on their strata fees.
22. In June 2016, the strata spent nearly \$4,500 in legal fees. The purpose of these fees is not in evidence it appears that at least some of them related to attempts to collect unpaid strata fees. I infer from the evidence that the strata did not budget for these legal fees. In August 2016, the strata bounced a cheque to pay for its annual insurance.
23. In October 2016, the strata transferred \$6,000 from its contingency reserve fund to its operating fund and used those funds to pay for its insurance. At the end of October 2016, the operating fund had a balance of just under \$3,500 and the contingency reserve fund had a balance of under \$1,400.
24. Despite the deterioration of its financial position, at the AGM on November 23, 2016, the owners passed a budget with total revenue of \$13,631.76 and total expenses of \$25,751, including a \$5,000 contribution to the contingency reserve fund, for an operating deficit of over \$12,000.
25. In October 2016, the strata took steps to enforce strata fee arrears against Ms. Lawlor, first by registering a lien on title to Ms. Lawlor’s strata lot. The lien is not in evidence before me, but it is undisputed that it remains on title.
26. On October 28, 2016, the strata started an action in the BC Provincial Court against Ms. Lawlor for \$4,674 in unpaid strata fees and court fees. The Court dismissed the claim at a Settlement Conference on April 24, 2017.

27. The strata hired a new property manager prior to its AGM on March 17, 2017. The new property manager advised the owners that it could take up to 2 years to bring the strata into compliance with the SPA. The owners passed a new set of bylaws that added a bylaw that no owner may cast a vote if there are any amounts owing to the strata. These bylaws were filed at the Land Title Office on December 13, 2017.
28. In 2017, the strata started tribunal disputes against each of the applicants for unpaid strata fees. In *The Owners, Strata Plan KAS 1459 v. Leonard*, 2018 BCCRT 159, the tribunal ordered Ms. Leonard to pay \$1,619.54 in strata fee arrears plus \$13.53 in interest. The tribunal ordered that Ms. Leonard make the payment by May 16, 2018, which she did.
29. In *The Owners, Strata Plan KAS 1459 v. Lawlor*, 2018 BCCRT 263 (previous dispute), the strata claimed \$1,464 in unpaid strata fees for November 2016 through October 2017. The tribunal ordered Ms. Lawlor to pay \$976 in strata fee arrears plus \$231.77 in tribunal fees and interest by July 18, 2018. The tribunal dismissed the strata's remaining claims. Ms. Lawlor paid the judgment on August 14, 2018.
30. At the AGM on March 12, 2018, the owners passed a budget that included collecting \$4,000 in strata fee arrears. Without collecting those arrears, it would have been another deficit budget. The budget also included a small increase in strata fees.
31. At the time of the 2018 AGM, the strata's operating account had a balance of under \$1,000 and the contingency reserve fund had a balance of just under \$2,500. The strata bounced an insurance payment in July 2018. On July 20, 2018, the strata moved \$1,000 from the contingency reserve fund to the operating fund so that it could pay its insurance instalment.
32. On August 30, 2018, the strata wrote the owners outlining the strata's dire financial situation. The strata said that it was due to owners not paying their strata fees, not financial mismanagement. The strata said that it needed to approve a special levy to raise funds.

33. To that end, the strata had an SGM on September 17, 2018, to consider a resolution to impose a special levy of \$8,000 “to be deposited in the contingency reserve fund to provide for insurance and/or potential building repairs”. The resolution passed.

ANALYSIS

What strata fee arrears, if any, does Ms. Lawlor owe to the strata?

34. The strata claims strata fee arrears against Ms. Lawlor as follows:

- a. \$122.23: October 2016
- b. \$488.92: November 2017 through February 2018 (4 months at \$122.23 per month)
- c. \$97.15: April 2018 through November 2018 underpayments after a strata fee increase.

35. Ms. Lawlor overpaid her March 2018 strata fees by \$0.77, so the strata’s total claim for unpaid strata fees is \$707.53.

36. Ms. Lawlor admits that she owes \$488.92 for November 2017 through February 2018. She started paying strata fees in March 2018 but did not increase her payments when the strata raised her strata fees starting April 1, 2018.

October 2016

37. Ms. Lawlor does not dispute that she did not pay her strata fees for October 2016. Her submissions raise 2 issues.

38. First, Ms. Lawlor mentions the *Limitation Act* in her Dispute Response, although she did not make submissions explaining her position on how it applies to her strata fee arrears. That said, I find that I have enough evidence before me to consider whether the limitation period has expired for Ms. Lawlor’s October 2016 strata fees.

39. Under section 13 of the Act, the *Limitation Act* applies to tribunal claims. The *Limitation Act* provides for a 2-year limitation period for most claims, which I find includes the recovery of strata fee arrears. A limitation period is a specific time period within which a person can pursue a legal claim, such by bringing a tribunal claim. If the limitation period expires, the right to bring the claim disappears. The tribunal issued the Dispute Notice on November 13, 2018, more than 2 years after Ms. Lawlor's October 2016 strata fees were due.
40. However, section 24 of the *Limitation Act* says that if a person acknowledges liability for a claim, the limitation period resets. The strata says that Ms. Lawlor acknowledged the claim in her Reply in the Provincial Court action, which she filed on November 14, 2016. In the Reply, Ms. Lawlor admitted that she is liable for strata fee arrears for October 2016. I find that Ms. Lawlor acknowledged the claim on November 14, 2016. Therefore, the strata brought its claim within the limitation period.
41. Ms. Lawlor also relies on the fact that the Provincial Court dismissed the strata's claim. I infer from this submission that Ms. Lawlor believes that the strata should not be able to bring its claim for any strata fee arrears that the Provincial Court has already dismissed. This raises the issue of whether this aspect of the strata's claim is "*res judicata*", which is a legal concept that means that a person cannot bring a tribunal claim about something that has already been adjudicated in another process.
42. The tribunal described the 2 types of *res judicata* in *East Barriere Resort Limited et al v. The Owners, Strata Plan KAS1819*, 2017 BCCRT 22, which are known as cause of action estoppel and issue estoppel.
43. The test for cause of action estoppel has 4 parts. They are:
- a. There must be a final decision of a court of competent jurisdiction in a prior action.
 - b. The parties to the 2 actions must be the same.

- c. The new action and the prior action must not be separate and distinct.
 - d. The basis of the new action either was argued in the prior action or could have been argued in the prior action if the parties had exercised reasonable diligence.
44. The test for issue estoppel has 3 parts. They are:
- a. The question in the new action must have already been decided in the prior action.
 - b. The prior action must be a final decision.
 - c. The parties to the 2 actions must be the same.
45. I find that *res judicata* does not apply to the Provincial Court action. The Settlement Conference Record says that the Provincial Court dismissed the strata's claim because the "Provincial Court does not have jurisdiction regarding liens against the defendant's condo or governance issues". Because the dismissal was based on a lack of jurisdiction, I find that it was not a final decision of a court of competent jurisdiction. Therefore, cause of action estoppel does not apply. Along similar lines, I find that the Provincial Court did not decide the question of whether Ms. Lawlor owed strata fee arrears. Therefore, issue estoppel does not apply.
46. However, as mentioned above, the strata brought a prior tribunal dispute about Ms. Lawlor's strata fee arrears. In the prior dispute, the strata asked for arrears between November 2016 and October 2017. The strata does not explain why it did not ask for arrears for October 2016 in that dispute. I find that with reasonable diligence, the strata could have claimed arrears for October 2016 but failed to do so. I find that all 4 parts of the test for cause of action estoppel apply to the prior dispute. I therefore find that the strata's claim for October 2016 is *res judicata*. I dismiss this aspect of the strata's claim for strata fee arrears.

April to November 2018

47. Ms. Lawlor does not dispute that she has underpaid strata fees since April 2018 when they increased from \$122.23 to \$134.47. Ms. Lawlor calls this increase “arbitrary” and says that the notice for the 2018 AGM “failed to meet the standards” under the SPA. She does not explain this submission further other than to allege that she did not receive the notice. The minutes for the 2018 AGM indicate that the strata mailed the notice to the owners within the timeframes required by the SPA. I find that Ms. Lawlor bears the burden of proof on this issue, and in the absence of any conclusive evidence either way, I am unable to conclude that the strata failed to provide proper notice of the 2018 AGM. In any event, because of her strata fee arrears, Ms. Lawlor would not have been permitted to vote at the 2018 AGM even if she had attended. I therefore decline to invalidate the increase in Ms. Lawlor’s strata fees, which I infer is the outcome she seeks.
48. Most of Ms. Lawlor’s submissions about why she should not pay the increase in strata fees focus on her disagreement with how the strata has managed its finances. She refuses to pay the strata fee increase until there is an audit, which I address below. However, as the tribunal found in her previous dispute, Ms. Lawlor cannot refuse to pay strata fees just because she disagrees with how the strata is spending its money or managing its affairs. I find that Ms. Lawlor must pay the shortfall in strata fees from April 2018 to November 2018.
49. Upon reviewing Ms. Lawlor’s strata lot account and the bank records in evidence, I am satisfied that Ms. Lawlor paid \$122.23 in strata fees from April to October 2018 and, for reasons that are not explained, \$123.00 for November 2018. She therefore paid \$978.61 out of \$1,075.76 owed. I find that Ms. Lawlor must pay the difference of \$97.15, as claimed by the strata.
50. In its submissions, the strata asks for an order that includes strata fee arrears going past November 2018 because it says that Ms. Lawlor has continued to underpay. In her counterclaim, Ms. Lawlor asks for an order that all cancels all her strata fee arrears. However, I find that I do not have enough evidence to deal with the claims beyond November 2018. For example, the strata provided a copy of how Ms. Lawlor “paid” her December 2018 strata fees, which was by stapling a cheque to a letter

with 17 staples, which the strata refused to accept. There are no bank statements in evidence past November 2018, so I cannot conclude whether Ms. Lawlor has since paid her December 2018 strata fees or, if she did, how much she paid.

51. Therefore, I find that the strata has proven part of its claim for strata fee arrears and order Ms. Lawlor to pay the strata \$585.30.

Should I make any other orders about Ms. Lawlor's strata lot account?

52. In her counterclaim, Ms. Lawlor asks for orders that all her strata fee arrears be "resolved", that the strata commit to removing the lien on her property, and that her right to vote be restored.

53. As discussed above I decline to address any strata fee arrears that may have accrued since November 2018. However, a review of Ms. Lawlor's strata lot account, dated February 27, 2019, shows that the strata has not properly tracked her strata fee arrears, which has led to the strata demanding much more from Ms. Lawlor than she may actually owe. Because of the nature of the strata's errors, it is necessary to discuss this issue in detail.

54. Ms. Lawlor's strata lot account begins with a \$0 balance as of January 1, 2017. From January 2017 through March 2018, the strata charged Ms. Lawlor strata fees of \$122.23, except for January and February 2018, when the strata fees are inexplicably \$122.00, which I find is an administrative error. Starting in April 2018, Ms. Lawlor's strata fees are increased to \$134.47 and the strata charged this amount until February 2019.

55. The strata also added 5 "invoices" dated August 22, 2018 for strata fee arrears from 2014, 2015, 2016, 2017 and 2018, respectively. The invoices for 2014 through 2017 are for \$1,446.76, which represents 12 months of strata fees at \$122.23. The 2018 invoice is for \$366.69, which is 3 months of strata fees at \$122.23.

56. The most obvious error arising from the strata adding further invoices is that Ms. Lawlor has been charged strata fees for 2017 and the first 3 months of 2018 twice.

57. The strata compounded this error because it failed to take into account the tribunal's decision in the previous dispute. In that dispute, the strata claimed \$1,464.00 in strata fees from November 2016 through October 2017, which is 12 months at \$122 per month (the strata does not explain why it did not claim \$122.23 per month, which would have been the correct amount). The tribunal found that the strata had only proven that Ms. Lawlor owed \$976 and ordered Ms. Lawlor to pay the strata \$1,207.77 for those arrears, tribunal fees and interest. Ms. Lawlor paid \$1,207.87 on August 14, 2018 (the extra 10 cents is not explained), but the strata did not adjust its records to account for the tribunal's order. Instead, the strata added the invoices that double counted Ms. Lawlor's strata fees for that period after Ms. Lawlor paid the judgment.
58. Given the outcome of the previous dispute, there should be no strata fees on Ms. Lawlor's strata account from November 2016 to October 2017 other than those ordered by the tribunal in that dispute. Because of her August 14, 2018 payment, Ms. Lawlor does not owe any strata fees for this time period.
59. By the same token, given the outcome of this dispute, there should be no strata fees for October 2016 and November 2017 to November 2018 other than those that I have ordered. Therefore, once Ms. Lawlor has paid the arrears that I have ordered, there should be a \$0 balance on her account from October 2016 to November 2018.
60. Accordingly, I order that the strata cancel all strata fees on Ms. Lawlor's strata lot account from October 2016 and November 2018, including any arrears captured on the August 22, 2018 invoices, other than those that the tribunal ordered in the previous dispute and in this dispute. For clarity, only the amount of the tribunal's order in the previous dispute and this dispute and Ms. Lawlor's August 14, 2018 payment should appear on Ms. Lawlor's strata lot account for the period from November 2016 to October 2017.
61. As for the lien itself, I find that the question of whether it should be removed is not properly before me. Ms. Lawlor asks for an order that "the strata council commits to

remove the lien”. She does not ask for an order that the lien be removed. Neither party provided the lien in their evidence, and neither party provided evidence or submissions about the strata fees that the strata claimed as part of the lien. Therefore, I find that the parties did not believe that Ms. Lawlor requested an order that the lien be removed. I decline to order the strata to “commit” to remove the lien because the strata’s obligation to do so is specifically set out in section 116(6) of the SPA.

62. Nothing in this decision should be taken as a comment on whether, or to what extent, the lien is enforceable because it could be the subject of a future legal action. That said, I strongly encourage the parties to promptly address the lien, which I expect will continue to cause friction for as long as it remains unresolved.
63. Turning to Ms. Lawlor’s claim that all strata fee arrears be resolved, I do not know how much of the strata fee arrears from before October 2016 are included in the lien because the lien is not in evidence. Therefore, I decline to make an order about any strata fee arrears that arose before October 2016. That said, if there are arrears from before October 2016 that are not included in the lien, it is unlikely that the strata can collect on them because of the expiration of the limitation period and because of *res judicata*. I strongly encourage the strata to be proactive in assessing whether it may be reasonable to cancel any such arrears.
64. Along the same lines, if Ms. Lawlor has continued to underpay her monthly strata fees, I strongly encourage her to promptly pay those arrears, which would likely be less than \$75.00, and to pay the correct amount going forward.
65. As discussed above, strata bylaw 28(8) says that an owner may not cast a vote, except for a vote requiring 100% participation, if they owe the strata any money, including strata fees. Because my order does not deal with all of Ms. Lawlor’s strata fee arrears, I dismiss her claim for a restoration of her voting rights.

Did the strata comply with section 135 of the SPA before imposing fines against Ms. Lawlor?

66. The strata fined Ms. Lawlor \$200 per month from April to November 2018, for a total of \$1,600, for failing to pay her strata fees. The strata seeks an order that Ms. Lawlor pay the fines.
67. Section 135 of the SPA provides a mandatory process that a strata corporation must follow before either imposing a fine. A strata corporation must receive a complaint, give the owner the particulars of the complaint, provide a reasonable opportunity to answer the complaint, including a hearing if requested, and give written notice of its decision. A strata corporation must put the owner on notice of its intention to impose fines before imposing them. The strata must strictly comply with section 135 of the SPA or the fines will be cancelled. See *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449.
68. Ms. Lawlor says that she was never properly notified of the fines or given an opportunity to be heard.
69. The strata wrote letters to Ms. Lawlor that included reminders about the strata fee arrears on March 22, 2018, July 6, 2018, September 5, 2018. The strata does not mention the possibility of fines in any of these letters. There is no evidence that the strata ever notified Ms. Lawlor of its intention to impose fines. Therefore, I find that it was not entitled to impose fines.
70. I order that the monthly \$200 fines that the strata imposed from April through November 2018 be cancelled. If the strata has imposed any fines since November 2018, I encourage the strata to be proactive in cancelling them if it did not comply with section 135 of the SPA before imposing them.

Has the strata complied with the SPA and Regulation provisions about the contingency reserve fund, budgets, financial statements and expenditures? If not, what remedy is appropriate?

71. A considerable amount of the applicants' submissions focus on allegations that the strata has not complied with the provisions of the SPA and Regulation that govern the strata's finances. The strata does not dispute that it has, at times, failed to comply with the SPA and Regulation but says that it is working with the property manager to bring itself into compliance.

72. For many of the issues that the applicants have raised, the only possible remedies are declarations about whether the strata complied with the SPA and Regulation and orders that it comply in the future. As mentioned above, orders that the strata comply with the SPA and Regulation generally have little utility because the strata is already required to do so. However, the parties have been embroiled in conflict over the strata's governance and finances for years, which is unlikely to de-escalate while old grievances remain unresolved. With that in mind, I find that there is a potential benefit to the parties in making declarations about some of the strata's past conduct and in making specific orders about certain aspects of its future conduct. To that end, I adopt the Court's comments and approach from *Mitchell v. The Owners, Strata Plan KAS 1202*, 2015 BCSC 2153:

Part of reducing conflict and misunderstanding is knowledge. Accordingly, this decision focuses on imparting knowledge through reminding and informing those affected.

73. That said, even though the applicants' complaints date back to late 2013, I will limit my analysis to more recent events because I do not see any practical use in making findings about conduct far in the past.

Contributions to the Contingency Reserve Fund

74. Section 93 of the SPA requires the strata to contribute to the contingency reserve fund in accordance with the Regulation. Section 6.1 of the Regulation sets out the

specific formula for how much the strata must determine its annual contribution to the contingency reserve fund.

75. The bank statements in evidence show that the strata has consistently contributed \$70 per month to the contingency reserve fund, which works out to \$840 per year.
76. The formula that applies to contributions to the contingency reserve fund depends on the contingency reserve fund's balance relative to the amount that the strata contributes to its operating fund in a fiscal year (operating budget). Section 6.1(a) of the Regulation says that if the balance is less than 25% percent of the operating budget, the strata must contribute either 10% of the operating budget or the amount necessary to bring the contingency reserve fund up to 25% of the operating budget, whichever is less. Section 6.1(b) of the Regulation says that if the contingency reserve fund's balance is at least 25% of the operating budget, then the strata may make further contributions after considering its depreciation report, if it has one.
77. Since the strata took \$6,000 out of the contingency reserve fund in October 2016, the contingency reserve fund has been below 25% of the operating budget. However, the strata did not increase its contributions to the contingency reserve fund as required by section 6.1 of the Regulation.
78. In summary, I find that the strata breached section 93 of the SPA by failing to make the minimum contribution to the contingency reserve fund after October 2016. Prior to its next AGM, I order the strata to prepare a budget that includes contributions to the contingency reserve fund in accordance with section 6.1 of the Regulation and provide it to the owners with the notice to the AGM.

Withdrawals from the Contingency Reserve Fund

79. As mentioned above, the strata made 2 withdrawals from the contingency reserve fund to the operating fund: \$6,000 in October 2016 and \$1,000 in July 2018. The strata relies on section 98(3) of the SPA to justify the withdrawals, which allows the strata to spend money from the contingency reserve fund in an emergency if there

is an immediate need to spend the money to prevent a significant risk of loss. Section 98(3) specifically includes losses that are not “physical”.

80. I find that both withdrawals from the contingency reserve fund to the operating fund addressed emergencies within the meaning of section 98(2). In each case, the strata had bounced a cheque to pay for insurance that is mandatory under the SPA. I find that it would create a significant risk of loss if the strata allowed itself to become uninsured.
81. However, according to financial records, the strata paid for the first 3 months of the new property manager’s fees directly out of the contingency reserve fund. I find that these payments breached section 96 of the SPA, which says that the strata can only spend money out of the contingency reserve fund if it is for an expense that only occurs once per year or is approved by the owners under section 96(b).

Budgets and Financial Statements

82. Prior to the 2017-2018 budget and financial statement, the applicants are correct that financial reporting by the strata was sporadic and incomplete. Indeed, some years appear to have had no meaningful financial reporting at all. This increased the applicants’ distrust of the strata, especially when combined with the depletion of the strata’s bank accounts. Again, the strata does not dispute its past failures.
83. Section 103 of the SPA sets out the requirements for the strata’s budget and financial statement, including that they must be distributed with the notice for the AGM. Section 6.6 of the Regulation says what must be in a budget. Section 6.7 of the Regulation says what must be in the financial statement.
84. The most recent budget in evidence is for the 2018-2019 fiscal year. I find that it does not comply with section 6.6 of the Regulation. In particular, the budget does not include the opening balance of the operating fund and contingency reserve fund, does not indicate how much will be contributed to the contingency reserve fund, and does not estimate the balance of the operating fund and contingency reserve fund at the end of the fiscal year. I order the strata to present a budget at its

next AGM that complies with the SPA and the Regulation. Because the strata's current budget is not in evidence, I decline to make an order that the strata call an SGM to pass a new budget prior to its next AGM. However, I encourage the strata to review its current budget for compliance with the SPA and Regulation, and if its current budget does not comply, I encourage the strata to be proactive by addressing any deficiencies before its next AGM, for example by calling an SGM to pass a new budget.

85. I decline to make an order about the strata's other past budgets because doing so would provide no practical benefit because the strata has already spent the money under those budgets, which cannot be undone. I note that the applicants take considerable issue with the fact that the strata passed a deficit budget in 2016. I agree with the reasoning in *Townsend et al v. The Owners, Strata Plan NW 2545* that the SPA does not prohibit deficit budgets. However, as noted in *Townsend*, section 105 of the SPA requires the strata to make up the deficit in the next fiscal year. I do not have sufficient evidence to conclude whether the strata did, in fact, make up the deficit because the owners passed a new budget only 4 months after the 2016 AGM. That budget is not in evidence.

86. As for the strata's financial statements, the 2018-2019 budget included a profit and loss statement for the previous fiscal year that satisfied some of the requirements in section 6.7 of the Regulation. However, it does not include the opening and current balance of the operating fund and contingency reserve fund and does not include the details of the strata's income and expenditures. Under section 6.7(3) of the Regulation, the financial statement that the strata distributes prior to an AGM may include a summary of income and spending, but that does not relieve the strata of its obligation to prepare a financial statement that includes those details.

87. The applicants have asked for a "line by line" explanation of the strata's expenditures. I interpret this to be a request for the details that are supposed to be in the strata's financial statements. I order the strata to prepare financial statements for the 2017-2018 fiscal year and 2018-2019 fiscal year in accordance with section 6.7 of the Regulation and distribute them to the owners.

88. I decline to make any orders requiring the strata to create financial reports for any previous years. The strata did not have a property manager before March 2017 so it would likely take significant effort to prepare a financial statement. Furthermore, the passage of time makes the disclosure of these details relatively less relevant and useful. I find that ordering the production of 2 years of financial records strikes the right balance between transparency and closure. I find that it is consistent with the tribunal's mandate to recognize ongoing relationships to discourage the parties from dissecting transactions from several years ago, especially since the bank statements show that the strata's expenses were largely self-explanatory.

Should I order that the strata's finances be audited?

89. The applicants ask for an audit of the strata's finances. The strata does not oppose an audit in principle but is concerned about the cost. The strata says that it received quotes of between \$5,000 and \$15,000. The strata says that the outcome of an audit would not do anything other than confirm what the parties already know, which is that the strata has had a deteriorating financial situation for several years.

90. I have ordered that the strata create financial statements for the past 2 fiscal years. I find that an audit is redundant. I decline to order an audit.

91. In response to the strata's concerns about the cost of an audit, the applicants argue that the 4 strata council members who have governed the strata over the relevant time period should have to pay for it. Even if I had found that an audit was warranted, I would have refused to resolve this issue. In *Wong v. AA Property Management Ltd.*, 2013 BCSC 1551, the BC Supreme Court confirmed that individual owners in a strata have no right to sue strata council members other than for the remedies set out in section 33 of the SPA. Section 33 of the SPA is expressly outside the tribunal's jurisdiction under section 122(1)(a) of the Act.

Has the strata complied with the SPA provisions about AGMs? If not, what remedy is appropriate?

92. Sections 40 and 41 of the SPA require the strata to hold an AGM no later than 2 months after the end of the strata's fiscal year end, unless certain conditions are met that do not apply here.
93. The applicants say that the strata has not had a "proper AGM" in years. I find that the strata has held several AGMs in recent years, albeit not on a consistent schedule. The strata has provided minutes for AGMs on December 13, 2013, May 11, 2015, November 23, 2016, March 17, 2017 and March 12, 2018.
94. The timing of an AGM is governed by the strata's fiscal year end, so the failure to hold regular AGMs suggests that the strata has not had a regularly recurring fiscal year. Section 102 of the SPA sets out how the strata may change the date of the strata's fiscal year end. None of the AGM or SGM minutes indicate that the strata formally changed its fiscal year end, but the budgets in evidence are not for the same 12 month periods. I find that the strata breached section 102 of the SPA by using an inconsistent date as its fiscal year end.
95. The 2017 and 2018 AGMs both took place in March under the guidance of a property manager. The applicants say that the strata's fiscal year end was historically July 31. The 2018 budget was for a fiscal year from February 1 to January 31. I order that unless the strata changes the fiscal year end under section 102 of the SPA, its fiscal year end is January 31. Accordingly, for as long as January 31 is its fiscal year end date, the strata must hold an AGM before March 31 of each year unless the owners waive the AGM under section 41 of the SPA.
96. As for the running of the AGMs and SGMs, the applicants do not believe that the strata "properly" runs the meetings. For example, they say that old business is not properly tracked and new business is not properly introduced. While the SPA does not place any specific obligations on the strata for how meetings are run, bylaw 28 provides a specific order of business for AGMs and SGMs. It does not appear from the minutes that the strata has consistently adhered to bylaw 28. I order the strata

to conduct all future AGMs and SGMs in accordance with bylaw 28 unless the strata amends its bylaws to provide for a different order of business.

Has the strata complied with sections 35 and 36 of the SPA?

97. The applicants ask for orders that the strata allow them to review all strata council meeting minutes from January 2014 through April 2019 and the strata's financial records from 2014 through 2018.

98. Section 35 of the SPA sets out the strata's obligation to create and retain records. The relevant sections are:

- a. Section 35(1)(a): The strata must prepare minutes of AGMs, SGMs and strata council meetings, including the results of any votes.
- b. Section 35(1)(d): The strata must prepare books of account showing money received and spent and the reason for the receipt or expenditure.
- c. Section 35(2)(l): The strata must retain bank statements, cancelled cheques and certificates of deposit.

99. Section 4.1(3) of the Regulation says that the strata must retain the above records for 6 years.

100. In effect, the strata has admitted that it breached section 35(1)(d) by failing to prepare the necessary financial records. The severity of the breach varied over time, and the evidence suggests significant improvement since hiring the current property manager. In light of my order that the strata prepare past financial statements, I decline to order it to create books of account as such an order would be redundant.

101. Section 36 of the SPA says that the strata must provide an owner with any requested records, either by making copies or by making them available for inspection. Section 4.2 of the Regulation allows the strata to charge a maximum of 25 cents per page to copy records.

102. As part of this dispute, the strata provided bank statements from January 2013 through November 2018, the minutes of AGMs, SGMs and strata council meetings, and financial records that I infer were created by the strata's 2 property managers. It is clear from the strata's history that it has not always consistently held strata council meetings, or if it did, that it kept strata council minutes as the SPA requires.
103. In light of this finding, I find that the applicants' request for orders for document disclosure is moot, with the exception of the strata's budgets. I am satisfied that the strata has disclosed the rest of the financial records and minutes that exist. I find that any gaps in these records are not the result of the strata's current failure to disclose them, but the strata's past failure to create and retain them. I therefore find that an order that the strata provide access to any of the requested records would have no effect.
104. The exception is the budgets. Neither the budget passed at the May 2015 AGM nor the March 2017 AGM are in evidence, but I find that they likely exist. I order that the strata disclose these 2 budgets to the applicants or, in the alternative, provide a written explanation to the applicants about why they are not available.
105. The applicants also say that the minutes were inadequate. I find that the minutes complied with the requirements of the SPA. The only requirement in the SPA is that the minutes include the results of any votes. While it may be good practice for the strata to include more detail, it is not mandatory. See *Kayne v. The Owners Strata Plan LMS 2374*, 2007 BCSC 1610.
106. The parties have had a lengthy disagreement about how the strata responded to the applicants' requests for records. Because each party focused on this disagreement in their submissions, I will comment on their arguments in an effort to assist them move forward.
107. The applicants say that they were effectively denied access to the records they requested. The strata says that it tried to arrange a document viewing session, but the applicants never took advantage. The strata says that it has also offered to copy the records as long as the applicants paid the required fee.

108. I find that the strata did not reasonably respond to the applicants' request for records. First, the strata demanded \$150, and later \$300, as a prepayment for copying. Based on the volume of records disclosed in this dispute and the maximum charge of 25 cents per page, I find that the strata's demands were well above the amount that it would have cost to copy the records and were not a genuine pre-estimate of the actual cost. Second, the strata offered to allow Ms. Lawlor to inspect the records during business hours at the strata's property manager's office, which was in a town nearly an hour's drive away from the strata. These responses were particularly unreasonable because many of the records were in electronic form that could have been emailed.

Has the strata complied with the SPA and Regulation provisions about depreciation reports? If not, what remedy is appropriate?

109. There are no depreciation reports in evidence and the strata has not obtained one since before December 2013. At the May 2015 AGM, the owners voted to waive a depreciation report. It does not appear that there was any discussion of a depreciation report at the November 2016 or March 2017 AGM. At a strata council meeting in May 2017, the strata council indicated that it would formally waive the requirement of a depreciation report at the next SGM, but the minutes of the October 2017 SGM do not include any discussion of a depreciation report. The minutes of the 2018 AGM indicate that a depreciation report was "discussed" but there were no resolutions about a depreciation report.

110. Under section 94 of the SPA and section 6.2 of the Regulation, the strata must obtain a depreciation report 3 years after it last obtained one. The strata may waive this requirement by passing a $\frac{3}{4}$ resolution at an AGM or SGM. If the strata waives the requirement to obtain a depreciation report, it must either obtain one or pass another $\frac{3}{4}$ resolution waiving the requirement within the following 18 months. I find that the strata breached section 94 of the SPA by failing to either obtain a depreciation report or waive one at the 2017 and 2018 AGMs.

111. I am reluctant to order the strata to obtain a depreciation report, especially since the applicants did not specifically ask for such an order. That said, depreciation reports are an important means for the strata to make long-term plans for maintenance and repair of the building, which is particularly important given the state of the strata's contingency reserve fund. If the strata is going to continue to defer a depreciation report, it must do so transparently and democratically with the required $\frac{3}{4}$ resolution. I order that the strata comply with section 94 of the SPA by either passing a resolution waiving the requirement for a depreciation report at the next AGM or, if the strata does not waive the requirement, by obtaining a depreciation report within 6 months of the next AGM.

Did the strata impose the special levy contrary to section 108 of the SPA? If not, what remedy is appropriate?

112. The applicants say that the 2018 special levy did not meet the SPA requirements. In particular, the applicants say that the "strata cannot levy for operating expenses". The parties both raised the issue of the special levy in their submissions, but neither seeks any orders about it. Notably, the strata says in its submissions that Ms. Lawlor has not paid the special levy, but did not ask for an order that Ms. Lawlor pay it. Nevertheless, I will address some of the parties' arguments.

113. Section 108 of the SPA sets out how the strata can raise money with a special levy. I find that the resolution that the strata passed to approve the special levy met the requirements of section 108(3) of the SPA, based on the minutes of the SGM. To respond to the applicants' specific point, the purpose of the special levy is not simply to supplement the strata's operating fund. The resolution identifies the purposes as building maintenance and insurance, which I find are valid purposes for a special levy. I find that the question of whether the strata complied with section 108(4) of the SPA, which governs how the strata must deal with the funds raised by a special levy, is not properly before me because I have no evidence about it.

114. I decline to order Ms. Lawlor to pay the special levy because I find that this issue is also not properly before me. That said, I have found that the special levy is valid and I encourage Ms. Lawlor to be proactive about paying it if she has not already done so.

Should I cancel the strata's contract with the property manager?

115. Ms. Lawlor asks for an order that the property manager be removed. She says that when the strata hired the property manager, they said that it could take 2 years to bring the strata into compliance with the SPA. Ms. Lawlor says that it has been 2 years, but little has changed.

116. While progress may have been slower than the applicants wished, I find that the management of the strata is improving with the help of the property manager. For example, the strata has held regular AGMs and presented budgets and financial statements that are far superior to what it presented in the past, even if they were imperfect. I find that there is no basis to interfere with the democratic will of the owners. If the majority of the owners are unsatisfied with the property manager's performance, section 27 of the SPA provides a process for the majority to direct the council to hire a new property manager or self-manage.

Should I order the strata to hold a SGM?

117. The applicants ask for an order that the strata hold an SGM to tell the owners about the outcome of this dispute. Tribunal decisions are published on the tribunal's website and are available to any member of the public. I find that there is no reason for an SGM to inform the owners about the outcome of this dispute.

Should I remove any strata council members?

118. Ms. Lawlor asks for an order that the current strata council be removed and replaced with a new strata council.

119. The tribunal’s jurisdiction under section 123 of the Act may allow the tribunal to remove a strata council member. I find that this would be an extraordinary remedy reserved for extraordinary circumstances. While the strata has had its difficulties under the current strata council, I find that there are no circumstances that would warrant the tribunal’s intervention in the democratic will of the majority of the owners. I find that bylaw 11 provides the proper process for the removal of a strata council member. As stated by the Court in *Oakley et al v. Strata Plan VIS 1098*, 2003 BCSC 1700, “those who choose communal living of strata life are bound by the reality of all being in it together for better or for worse”.

CONCLUSION

120. This dispute is part of a years-long dispute within the strata, which has resulted in considerable distrust between the parties. I recognize that this dispute does not deal with all the outstanding disputes between the parties, such as the lien. To paraphrase the Court’s comments in *Macdonald v. The Owners, EPS 522*, 2019 BCSC 876, I am hopeful that the strata will change some of its conduct and that the applicants will put to rest some of the issues they have repeatedly raised, and I encourage the parties to work constructively to resolve any remaining issues.

TRIBUNAL FEES, EXPENSES AND INTEREST

121. 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 each of the parties had mixed success in their claims. Taking all the claims together, I find that the appropriate outcome is that the parties each bear their own tribunal fees and dispute-related expenses.

122. Under section 107 of the SPA, the strata may only claim interest on unpaid strata fees if allowed under a bylaw. The strata does not have such a bylaw. However, the strata is entitled to interest under the *Court Order Interest Act* (COIA), which I have calculated to be \$14.23.

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

DECISION AND ORDERS

124. I order that:

- a. The strata immediately cancel all strata fees on Ms. Lawlor's strata lot account from October 1, 2016 through November 1, 2018, inclusive, other than those that the tribunal ordered Ms. Lawlor to pay in this decision and the decision in Dispute # ST-2017-005976.
- b. The strata immediately cancel all fines on Ms. Lawlor's strata lot account from April 1, 2018 through November 1, 2018, inclusive.
- c. The strata's fiscal year is February 1 to January 31, unless it changes its fiscal year under section 102 of the SPA.
- d. The strata conduct all future AGMs and SGMs in accordance with bylaw 28 unless the strata amends its bylaws to provide for a different order of business.
- e. In the notice to the strata's next AGM, the strata:
 - i. Include financial statements prepared in accordance with section 6.7 of the Regulation and present them to the owners, and
 - ii. Include a budget prepared in accordance with section 6.6 of the Regulation, including by replenishing the contingency reserve fund in accordance with section 6.1 of the Regulation.
- f. The strata comply with section 94 of the SPA by either passing a resolution waiving the requirement for a depreciation report with a $\frac{3}{4}$ resolution under section 94(3) of the SPA at the next AGM, or, if the strata does not waive the requirement, by obtaining a depreciation report within 6 months of the next AGM.

- g. Within 14 days of the date of this decision, the strata provide the applicants with copies of the budgets passed at the 2015 AGM and the 2017 AGM or, in the alternative, provide a written explanation to the applicants about why they are not available.
 - h. Within 30 days of the date of this order, Ms. Lawlor pay the strata a total of \$599.53, broken down as follows:
 - i. \$585.30 in strata fee arrears, and
 - ii. \$14.23 in prejudgment interest.
 - i. Within 90 days of the date of this order, the strata prepare financial statements that comply with section 6.7 of the Regulation for the 2017-2018 and 2018-2019 fiscal years, which must include the details of the expenditures from the operating fund and contingency reserve fund and of the strata's income, and distribute them to the owners.
125. I dismiss all the parties' remaining claims in both disputes.
126. The strata is entitled to post judgement interest under the COIA, as applicable.
127. 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.
128. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia. However, the principal amount or the value of the personal property must be within the Provincial Court of British Columbia's monetary limit for claims under the *Small Claims Act* (currently \$35,000). Under section 58 of the Act, the Applicant can enforce this final decision by filing in the Provincial Court of British Columbia a validated copy of the order which is attached to this decision. The order can only be filed if, among other things,

the time for an appeal under section 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 Provincial Court of British Columbia.

Eric Regehr, Tribunal Member