Civil Resolution Tribunal

Date Issued: September 13, 2019

File: ST-2018-007448

Type: Strata

Civil Resolution Tribunal

Indexed as: *Kierans et al v. The Owners, Strata Plan EPS 1290*, 2019 BCCRT 1086

B E T W E E N :

Louise Kierans and Hugh Moulton

APPLICANT

A N D :

The Owners, Strata Plan EPS 1290

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Sarah Orr

INTRODUCTION

1. The applicants, Louise Kierans and Hugh Moulton, own strata lot 51 as joint tenants in the respondent strata corporation, The Owners, Strata Plan EPS 1290 (strata).

2. The applicants say the strata has contravened the *Strata Property Act* (SPA) by falsifying council meeting minutes, improperly conducting votes at an annual general meeting (AGM), providing insufficient financial information at an AGM, and improperly managing and accounting for its contingency reserve fund (CRF). The strata denies all of the applicants' allegations and says that at all times it has operated in compliance with the SPA.

3. The applicants are represented by Ms. Kierans and the strata is represented by its council president, D.L.

JURISDICTION AND PROCEDURE

4. 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* (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The tribunal must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the tribunal's process has ended.

5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Some of the evidence in this dispute amounts to a "they said, they said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Bearing in mind the tribunal's mandate that includes proportionality and

a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

6. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

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

8. 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, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

9. The issues in this dispute are:

    a. Did the strata falsify the minutes of its April 11 and May 23, 2018 council meetings, and if so, what is an appropriate remedy?

    b. Was the election of the strata council at the August 2018 AGM in breach of the SPA, and if so, what is an appropriate remedy?

    c. Was the vote for special resolution 18.4 at the August 2018 AGM in breach of the SPA, and if so, what is an appropriate remedy?

    d. Did the strata fail to provide the required financial information in its August 2018 AGM notice packages?

    e. Has the strata's management and accounting of its CRF breached the SPA, and if so, what is an appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, the applicants must prove their claims on a balance of probabilities. This means the tribunal must find it is more likely than not that the applicants' position is correct.

11. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.

12. The strata is a high-rise building created in February 2014 with commercial and residential sections. The Standard Bylaws under the SPA apply, and the strata filed bylaw amendments with the Land Title Office in 2014, 2015, 2016, 2017, and 2018.

13. On April 1, 2018, the strata hired Gammon International (Gammon) to replace First Service Residential (FSR) as its property manager.

14. The strata's fiscal year end is May 31.

15. In their submissions the applicants expressed concern that D.L. is representing the strata in this dispute when many of their allegations against the strata involve him personally. However, the standard procedure under the tribunal's rules requires a member of the strata council to represent a strata corporation. Therefore, I find it is appropriate for D.L. to represent the strata in this dispute.

16. The strata says the applicants changed the scope of their claims throughout the tribunal process which prejudiced the strata. I note that in their submissions the applicants raise numerous accounting issues and details that they did not articulate in their Dispute Notice. However, after the applicants made their submissions the strata was given an opportunity to review them before making its submissions, so I find the strata is not prejudiced in responding to the applicants' claims.

17. The strata says much of the applicants' evidence is prejudicial and should not be admitted or should be given no weight because it contains legal argument, is opinion evidence, or is otherwise irrelevant or unreliable. However, my role as an adjudicator is to assess the parties' evidence in the context of the other evidence

and submissions to make factual findings. I therefore decline to make any blanket findings about the applicants' evidence, rather I address the evidence as required to determine each of the issues set out below.

18. The strata cites *Enefer v The Owner, Strata Plan LMS 1564*, 2005 BCSC 1866 at paragraph 43 and says remedies for the applicants' concerns lie not at this tribunal, but within the "ballot box" at the next strata AGM. However, I address each issue separately below, including any appropriate remedies.

Did the strata falsify the minutes of its April 11 and May 23, 2018 council meetings, and if so, what is an appropriate remedy?

April 11, 2018 Minutes

19. The minutes from the strata council's April 11, 2018 meeting show that a representative from Gammon discussed the renewal of the strata's insurance policy which was scheduled to take effect on April 14, 2018. The minutes state that after a discussion about premiums, the council unanimously approved payment of the insurance premium "via the Contingency Reserve Fund, which is to be paid back in monthly installments" by the strata. It is undisputed that on April 20, 2018 the strata loaned $105,091 from its CRF to its operating fund to pay for its annual insurance premium.

20. The applicants say the strata council did not discuss or approve the CRF loan for the insurance premium payment at the April 11, 2018 meeting, and that it later falsified the minutes from that meeting to show its approval for the loan. The applicants want the strata council members involved with the falsification of the minutes to be removed from council and barred from future election.

21. The minutes from the April 11, 2018 meeting show that 6 of 7 council members were present at the meeting, including Ms. Kierans, as well as B.S. and K.H. from Gammon. The strata says that B.S. from Gammon chaired the meeting and prepared the minutes, and the applicants do not dispute this.

22. The strata submitted a sworn statement from K.H. at Gammon, which includes handwritten notes that she took during the meeting. The notes are written on the meeting's agenda. In the insurance coverage section, the agenda indicates "increased 6%, last yrs value 66million, this yrs value 70,554,000, 135k in claims over 2.5yrs" (reproduced as written) and the handwritten notes next to this section state, "approved from CRF." K.H. says her recollection of the meeting is that the council approved payment of the $105,091 insurance premium as a loan from the CRF, which accords with her notes and the minutes.

23. The strata submitted a sworn statement from its council president and representative in this dispute, D.L., which says he recalled authorizing the $105,091 pre-paid insurance premium at the April 11, 2018 meeting, and he did not recall any objections. The statement says the minutes accord with his recollection of the meeting and he did not alter the meeting minutes. D.L. said the decision to prepay the insurance premium was meant to save on interest costs.

24. The strata submitted emails from 2 council members from February 2019 who both recalled the discussion about the CRF loan at a council meeting the year prior, though neither specified the date of the meeting. Both said they voted in favour of the CRF loan, and both recalled that the motion was approved. Neither council member recalled any other council members voting against this motion. Since the council members wrote these emails almost a year after the April 11, 2018 meeting I find it reasonable that they would not recall the exact date of the meeting.

25. The applicants submitted Ms. Kierans' handwritten notes from the April 11, 2018 meeting. They include reference to insurance and to "105k," but they do not refer to a vote for a CRF loan. However, the notes also state "Blah, Blah," which I find indicates that Ms. Kierans may not have been taking fulsome notes of the content of the meeting or paying close attention. In her sworn statement Ms. Kierans says that at no point during the meeting was payment discussed for the insurance premium, but I find the reference to "105k" in Ms. Kierans notes contradicts this statement.

26. The applicants say that a June 6, 2018 email exchange between Ms. Kierans and another strata council member at the time indicate that the CRF was not discussed at the April 2018 meeting, but I find this email exchange does not refer to the April 2018 council meeting at all.

27. The applicants also say there are no records of who moved or seconded the vote at the April 11, 2018 council meeting, and no record of the vote count. While I agree that this information is not in the minutes, the SPA and bylaws require only that the results of votes be recorded in the minutes (see *Yang v. Re/Max Commercial Realty Associates (482258 BC Ltd.),* 2016 BCSC 2147 (CanLII) at para. 133), and I find this requirement has been met.

28. At its September 19, 2018 council meeting the strata approved an amendment of the April 11, 2018 meeting minutes to show that there was majority approval, not unanimous approval, to pay for the insurance premium through a CRF loan. The strata says it made this amendment in response to the applicants' concerns that Ms. Kierans was not in favour of the motion. The applicants say the revised version of the April 11, 2018 minutes are still falsified and the fact that the strata council revised the minutes to appease Ms. Kierans shows they are willing to alter corporate records.

29. On balance, I prefer the strata's evidence about what happened at the April 11, 2018 council meeting. It provided statements from 3 council members and one representative of Gammon who were all at the meeting and who all say the minutes accurately reflect what happened. I also find Ms. Kierans' evidence about what happened at the meeting to be internally inconsistent, based on her notes. I find the strata's amendment of the minutes at its September 19, 2018 meeting was a gesture of goodwill towards Ms. Kierans which she is now attempting to use against it. Regardless, even if Ms. Kierans did oppose the motion at the April 11, 2018 meeting, it would not have changed the outcome. For these reasons, I find the applicants have not established that the April 11, 2018 meeting minutes were falsified or are otherwise inaccurate, and I dismiss this claim.

May 23, 2018 Meeting Minutes

30. The applicants also say the minutes from the May 23, 2018 strata council meeting are inaccurate by indicating that the minutes from the April 11, 2018 meeting were approved, by misconstruing the discussion about pedestrian trespassing, and by failing to accurately describe damage in the parkade. They want the strata to issue a corrected version of the minutes from this meeting.

Approval of April Minutes

31. B.S. from Gammon chaired the May 23, 2018 strata council meeting and prepared the minutes which show that the council unanimously approved the minutes from the April 11, 2018 council meeting. The applicants say Ms. Kierans did not approve the April 11, 2018 minutes, therefore there was no unanimous approval and the May 23, 2018 minutes are inaccurate. However, aside from Ms. Kierans' sworn statement there is no other evidence to support this contention, and I dismiss it.

Pedestrians

32. The May 23, 2018 minutes state, under the "Business Arising 1. Requests for Council" section,

> b. Pedestrians – The Council received a request to consider options to help alleviate the foot traffic of pedestrians through the driveway. The Council agreed to monitor the situation as the request was received before the encampment under the Granville street on-ramp was removed which should help alleviate foot traffic.

33. The applicants say that no such discussion took place, and council did not agree to monitor the situation. However, in Ms. Kierans' sworn statement she says council did discuss pedestrian trespassing and the encampment under the Granville Street bridge separately, but that the minutes inaccurately show these issues were part of the same discussion. I find the applicants' evidence on this point to be inconsistent and unsupported by any other documentary evidence.

34. The applicants also say that the “meaningful” details of the owners’ requests related to the pedestrian traffic, which came from Mr. Moulton, were not presented or discussed at the meeting. However, the minutes are meant to reflect what was discussed at the meeting, so I find this allegation does not speak to the accuracy of the minutes. There is no indication that Ms. Kierans raised this issue during the meeting, and the council did not vote on any motions related to this issue. I dismiss the applicants’ claim that the May 23, 2018 meeting minutes are inaccurate with respect to the issue of pedestrians.

Parkade Damage

35. The May 23, 2018 minutes also state, under the “Business Arising” section, “5. Parkade Membrane: The Strata Manager would like to advise Owners that the pinning and anchor work north west of the complex had mistakenly pierced the membrane of the parkade. The Strata Manager has filed an insurance claim and will provide Council with updates as the situation progresses.”

36. The applicants say these minutes inaccurately present the parking lot damage as membrane damage when it was actually damage to the foundation. They say council minimized the extent of the damage in the minutes to help a council member who was in the process of selling his strata lot.

37. The applicants submitted an email statement from E.L. who owns 3 strata lots in the strata. E.L. said that based on the May 2018 council meeting minutes he was under the impression the damage to the parking area was minor but was informed by another strata lot owner before the August 2018 AGM that there was, in fact, damage to the foundation. E.L. said the May 2018 minutes grossly understated the damage to the parking area. However, E.L. did not state who informed him of the alleged foundation damage or provide any evidence of the extent of the damage.

38. The applicants submitted another statement from M.I. who said he inspected the parking lot damage before the May 23, 2018 council meeting and saw that the foundation was extensively damaged. He did not explain what qualifications he had to make such a determination, how he made this determination, or indicate that he

notified the strata of his findings. He said the May 23, 2018 meeting minutes misrepresented the extent of the damage and that the strata council president was planning to sell his strata lot shortly after the May 23, 2018 meeting.

39. Mr. Moulton submitted an email to the strata council on June 6, 2018 after reviewing the May 23, 2018 meeting minutes explaining that he had been an engineer for over 30 years and that he could tell the damage in the parkade affected the foundation and that it was a much more serious problem than indicated in the minutes. He submitted 2 photographs showing damage in the parkade, but I cannot determine the nature or extent of the damage from the photos.

40. The applicants have submitted no expert reports or report of any detailed investigation of the parkade damage to establish that the foundation was damaged. The August 2018 AGM minutes indicate that in addition to starting an insurance claim the strata hired an engineer to conduct a report, and the future repairs were likely to be "burdensome." The engineering report is not in evidence.

41. On balance, I find the applicants have submitted insufficient evidence to establish that the damage to the parkade affected the foundation, or that the strata council knew about the alleged foundation damage at its May 23, 2018 meeting. Therefore, I dismiss the applicant's claim that the May 23, 2018 minutes are inaccurate with respect to the parkade damage.

42. In summary, I find the applicants have not established that the May 23, 2018 council meeting minutes were false or otherwise inaccurate, and I dismiss their claims.

Was the election of the strata council at the August 2018 AGM in breach of the SPA, and if so, what is an appropriate remedy?

43. At the August 21, 2018 AGM the owners elected the new strata council for the upcoming year. The minutes indicate that 13 owners were nominated, and the election was held by secret ballot at the request of an owner. The minutes indicate that owners were advised to write down their selections and place them into a ballot box, and that the owners elected 7 council members.

44. The applicants say the election did not conform with the SPA because the council did not approve either the nomination or proxy forms prior to their use at the AGM, and they say the forms were unsuitable for their purpose. They say 33 unsuitable proxy forms were used to vote for council members which changed the outcome of the election, and they want the vote nullified.

45. The strata says the applicants did not raise these issues during the AGM, so it did not have the opportunity to address them at the time. It says both forms were suitable for their purpose and neither form required council approval.

46. Neither the SPA nor the strata's bylaws refer to a nomination form, and they do not require the strata council to approve a nomination form before using it at an AGM. The nomination form included in the August 2018 AGM notice package allowed an owner to nominate themselves as a candidate for council, or to nominate up to 7 other owners as candidates for council. The form indicates that if an owner submitted a blank signed form, this would allow the council president to nominate council candidates on that owner's behalf. It also indicates that an owner wishing to nominate fewer than 7 candidates should cross out any remaining blank entries.

47. The applicants submitted a statement from M.I. who said the nomination form was incomprehensible. I disagree. I find the nomination form's instructions are clear. I also find there is no evidence that any owner misunderstood the nomination form leading to an incorrect or unintended nomination. For these reasons I find there is no basis to nullify the election of council based on the nomination form.

48. Section 56 (2) of the SPA requires a document appointing a proxy to be in writing and signed by the person appointing the proxy. The document may be general or for a specific meeting or a specific resolution. Section 56 (3) of the SPA allows any person to be a proxy except for a strata employee or the strata's property manager.

49. The strata says there is no prescribed proxy form under the SPA or *Strata Property Regulation* (regulation), and that council is not required to vote on revisions to a proxy form. I agree. The proxy appointment form in the regulation is specifically noted as optional. I also note there is no prescribed form or requirement in the

bylaws. The proxy form included in the August 2018 AGM notice package assigned the council president as the proxy unless specified otherwise and gave options for voting on parking rules, amenity room rules, the proposed budget, and all other special resolutions.

50. The applicants say the proxy forms were "nonsensical" because they defaulted to the council president unless another proxy was named, but there was no space to name a different proxy. However, I find an owner could have assigned a different person as a proxy using the form provided. I also find there is no evidence that anyone misunderstood the form such that they accidentally assigned the wrong person as a proxy. The strata's evidence is that it was not aware of any irregularities in the proxy forms or the secret ballot process, and the ballots were destroyed after the meeting to preserve secrecy.

51. On balance, I find the applicants have not established that the election of council at the August 2018 AGM was in breach of the SPA. I find they have not established any other basis on which to nullify that election. I dismiss this claim.

Was the vote for special resolution 18.4 at the August 2018 AGM in breach of the SPA, and if so, what is an appropriate remedy?

52. In the August 2018 AGM notice package the strata notified the owners of 2 options for a proposed LED lighting upgrade (resolution 18.4). The 2 options for the resolution were as follows:

    1. Proceed with zero (0) percent financing of $70,000 for the LED project amortized over 4 years which has been offered by the contractor. This is the only Contractor found that is offering zero (0) percent interest for the LED project.

       OR

    2. Proceed with borrowing up to $60,000 from the CRF which is to be paid back to the CRF in equal monthly payments over four (4) years. This option will

allow for more contractors to quote on the project as financing would no longer be required which may result in a further reduced cost for the LED project.

53. At the August 2018 AGM the owners approved option 2 with 58 votes in favour and 6 opposed.

54. The applicants say the proxies used for the vote on resolution 18.4 were not appropriate and the proposed CRF loan was contrary to the SPA, and they want the vote nullified.

55. I have already addressed the proxy issue above and found that there were no substantive or procedural issues with the proxies, so I dismiss this aspect of the applicants' claim.

56. The remaining issue is whether resolution 18.4 was in breach of the SPA or the regulation. Section 6.3 (1) of the regulation only allows a strata to lend money from the CRF to the operating fund if the loan is repaid by the end of the fiscal year.

57. The strata says it inadvertently used incorrect wording for resolution 18.4, and that the LED expenditure was in fact a CRF expense, not a loan. However, the evidence before me indicates otherwise. The strata's financial statements for the month ending November 30, 2018 show a $60,000 loan from the CRF to the operating fund for the LED upgrade with monthly repayments of $1,250. The evidence indicates that by May 31, 2019, the end of the 2018/2019 fiscal year, the balance of the loan would have been $51,250.00. I find this CRF loan was not repaid by the end of the 2018/2019 fiscal year, and therefore I find it is in breach of the regulation.

58. The applicants say resolution 18.4 should be nullified, however this is not a practical remedy since the strata has already committed funds to the LED project and presumably started work on, if not already completed, the installation of LED lighting. I do not have updated financial statements before me to determine the amount of the loan that has been repaid to date. Without this current financial information, I find it would be inappropriate for me to order the strata to repay the

loan by a specified date. Therefore, I order the strata to address this issue at its next council meeting to determine appropriate steps to repay this loan as soon as possible.

Did the strata fail to provide the required financial information in its August 2018 AGM notice packages?

59. The applicants say the financial statements distributed at the August 2018 strata and residential section AGMs did not meet SPA requirements. They want the strata to immediately distribute to all owners CRF financial statements for the strata and for the residential section for the 2017/2018 fiscal year.

August 2018 AGM Financial Statements

60. Section 103 of the SPA requires the strata to prepare a budget for the upcoming fiscal year for approval by a majority resolution at each AGM. The proposed budget must be distributed to owners with the notice of the AGM and must include a financial statement. The financial statement must include the information required by the regulation.

61. Section 6.7 (1) of the regulation requires the financial statement to include, among other information, the opening balance of the CRF, the current balance of the CRF, and the details of all expenditures out of the CRF, including all unapproved expenditures under section 98 of the SPA. Under sections 6.7 (3) and (4) of the regulation, some of the information in the financial statement circulated with the AGM notice may be in summary form, but the financial statements presented at the AGM must comply with section 6.7 (1).

62. On July 31, 2018 the strata sent all owners an information package for its upcoming AGM on August 21, 2018 which included financial statements and a proposed budget. The applicants say this information package did not contain a CRF financial statement for the 2017/2018 fiscal year or proposed CRF budget for the 2018/2019 fiscal year, which made it impossible for the owners to assess the status of the CRF. However, the SPA does not specifically require the strata to prepare a

separate CRF financial statement or CRF budget as long as the information required in sections 6.6 (1) and 6.7 (1) of the regulation pertaining to the CRF is included in the budget and financial statement.

63. The applicants are not seeking distribution of a revised 2018/2019 budget, so I decline to further address the proposed budget in the AGM notice package.

64. I find the financial statements in the AGM notice package do not include the opening CRF balance or details of CRF expenditures in the fiscal year, in breach of section 6.7 of the regulation. The minutes from the August 2018 AGM that are in evidence do not include the financial statements the owners passed at that meeting.

65. The strata says the financial statements presented at the 2018 AGM were true and accurate to the council's knowledge as received from its former property manager at the time. In her statement, K.H. from Gammon says that when Gammon took over as the strata's property manager on April 1, 2018, the strata's previous property manager, FSR, had to close its bank accounts for the strata. K.H. says that once FSR closed its accounts for the strata it issued one cheque to Gammon for a lump sum which included the remaining balance in several of the strata's different accounts. K.H. says Gammon deposited this cheque into the strata's new joint section operating fund account and awaited further information from FSR about how to allocate this lump sum to the strata's various accounts. K.H. says it did not receive this information from FSR by the end of the strata's 2017/2018 fiscal year, which is why the financial statements in the AGM notice package show money owing from the operating fund to the CRF. The evidence before me indicates that the amount of the cheque Gammon received from FSR has since been accounted for in the strata's various accounts.

66. The strata says the financial statements presented at the 2018 AGM required subsequent adjustments to address the allocation of funds from FSR and updated CRF information. It says the adjusted 2017/2018 fiscal year-end financial statements were included in the September 19, 2018 council minutes. However, the minutes in evidence for the September 19, 2018 council meeting do not include any

financial statements, and it is unclear from the parties' evidence and submissions exactly which financial statements were attached to these minutes.

67. The strata submitted to the tribunal what it described as a summary of 2017/2018 year-end and current (at the time of submissions) financial information and a CRF ledger from the time of account opening to present (at the time of submissions). This summary consists of balance sheets for May 2018 and January 31, 2019, and general ledgers of CRF transactions from January 2018 to January 2019. However, I find these documents do not include the opening balance of the CRF at the start of the 2017/2018 fiscal year nor do they show all CRF expenditures from the 2017/2018 fiscal year. I find this financial summary does not meet the requirements of section 6.7 of the regulation. Therefore, I order the strata to prepare and distribute to all owners revised financial statements for the 2017/2018 fiscal year which comply with section 6.7 of the regulation.

August 2018 Residential Section AGM Financial Statements

68. The applicants say the notice package the strata sent to residential owners for the residential section AGM in August 2018 did not include a residential CRF financial statement, residential CRF budget, or 2017/2018 fiscal year end financial statements.

69. Section 194 of the SPA says a section is a corporation and has the same powers and duties of a strata, including establishing and maintaining its own operating fund and CRF for common expenses, and budgeting. A section cannot delegate these obligations to a strata. Therefore, I find this claim is against the residential section, not the strata. Since the residential section is not a party to this dispute, I dismiss this claim.

Has the strata's management and accounting of its CRF breached the SPA, and if so, what is an appropriate remedy?

70. The applicants have raised numerous concerns about the strata's management and accounting of its CRF, each of which I address below.

$10,000 CRF payment on January 31, 2018

71. The applicants want the strata to properly account for a $10,000 CRF cash disbursement made on January 31, 2018. It is undisputed that at the August 2017 AGM the owners approved a $10,000 payment for a depreciation report, and that the strata paid this out of the CRF in January 2018. The applicants say this payment was not reported in the CRF financial statement for the 2017/2018 fiscal year. However, having already ordered the strata to prepare and distribute revised financial statements for the 2017/2018 fiscal year, this expenditure should be reflected in those revised statements.

$20,000 CRF payment on June 26, 2018

72. The applicants want the strata to properly account for its $20,000 payment in June 2018 to Phoenix Restorations Ltd. (Phoenix) for emergency repairs. The evidence indicates that Phoenix was paid from the residential section operating fund. The applicants say this payment should have come from the strata's joint CRF because the repairs were for damage to non-residential property.

73. The strata says it had discretion to determine whether the payment should have come out of the joint or residential operating fund depending on how it characterized the damage. I disagree. Section 195 of the SPA, section 11.2 (1) of the regulation, and bylaws 8 (1) and (2) and 31 (7) (b) govern this issue.

74. Section 195 of the SPA says strata expenses relating solely to the strata lots in a section are shared by the owners of the strata lots in the section. Section 11.2 (1) of the regulation states that, for the purposes of section 195 of the SPA, if a contribution to the operating fund relates to and benefits only limited common property (LCP) for the exclusive use of strata lots in a section, the contribution is shared only by owners of the strata lots entitled to use the LCP. Bylaw 8 (1) requires the strata to repair and maintain common assets and common property appurtenant to the building. Under bylaw 8 (2), a section must repair and maintain common property appurtenant only to a separate section, and LCP that has been designated for the exclusive use of a strata lot or strata lots in a separate section.

Bylaw 31 (7) (b) says the cost of any necessary maintenance, repair and replacements of the areas that form part of the residential section's duty to repair and maintain under bylaw 8 (2) must be borne by the owners of the residential section.

75. The problem for the applicants is that the evidence about the nature or extent of the water damage is unclear. The applicants submitted the March 29, 2018 invoice from Phoenix which shows it was for emergency repairs of water damage to 2 strata lots and "common areas." The invoice does not specify which common areas were damaged, or whether these areas are designated as LCP or common property. There is no other evidence before me of the exact location or nature of the damage. Without more, I find there is insufficient evidence before me to establish whether the residential section or the strata was responsible for paying the Phoenix invoice.

76. The applicants also say the strata did not account for the $20,000 payment in the CRF financial statements, but since the payment came from the residential section's operating fund, it would not be reflected in the strata's CRF accounting. I dismiss this claim.

$15,000 CRF loan to Operating Fund

77. The July 2017 financial statements in evidence indicate that in April 2017 the strata loaned $15,000 from the CRF to the operating fund to pay bills. The applicants say there is no recorded council vote for this action, but they did not provide the minutes from the April 2017 council meeting to establish this. They also claim that this loan remained outstanding at the end of the 2016/2017 fiscal year in breach of section 6.3 (1) (a) of the regulation. The evidence supports this assertion. However, the applicants have not submitted financial statements for August to November 2017, so I cannot determine whether this loan has since been repaid. However, since I find the applicants have established that the $15,000 loan was not repaid by the 2016/2017 fiscal year end as required by the regulation, I find it was the strata's responsibility to establish that the loan has since been repaid, which I find it has not done. Therefore, if it has not done so already, I order the strata to repay the April

2017 $15,000 CRF loan to the operating fund by the end of the 2019/2020 fiscal year.

CRF loans to Operating Fund for annual insurance premium

78. The applicants claim that in 2017 and 2018 the strata made loans from its CRF to its operating fund to pay for its annual insurance premium. It claims the strata did this in breach of the SPA.

79. Section 95 (4) of the SPA allows a strata to lend money from the CRF to the operating fund as permitted by the regulation. Section 6.3 (1) of the regulation only allows a strata to lend money from the CRF to the operating fund if (a) the loan is repaid by the end of the fiscal year, and if (b) the loan is to cover temporary shortages in the operating fund from expenses becoming payable before the budgeted monthly contributions to the operating fund to cover these expenses have been collected. Section 6.3 (2) of the regulation requires the strata to inform owners as soon as is feasible of the amount and purpose of any loan made under section 6.3 (1) of the regulation.

80. It is undisputed that in April 2017 the strata loaned $92,791 from the CRF to the operating fund to pay for the annual insurance premium. The evidence shows this was repaid by the end of the 2017/2018 fiscal year.

81. It is undisputed that in April 2018 the strata loaned $105,091 from its CRF to its operating fund to pay for the annual insurance premium. It is undisputed that this loan was completely repaid from the operating fund by November 2018.

82. With respect to section 6.3 (1) (b) of the regulation, the applicants say the strata's operating fund had a sufficient balance in both 2017 and 2018 to pay the strata's monthly insurance premiums. However, while the evidence before me indicates that the strata received a discount by paying the annual premium in one payment, there is no indication of what the amount of the monthly payments would have been. As discussed below, since both loans have already been repaid I find nothing turns on this point.

83. With respect to section 6.3 (2) of the regulation, since the applicants did not submit the minutes from the April 2017 council meeting I am unable to determine whether the strata notified the owners of the 2017 loan. I find the minutes from the April 11, 2018 council meeting notified the owners of the 2018 loan.

84. It is undisputed that the strata did not repay the 2017 loan by May 31, 2017 or repay the 2018 loan by May 31, 2018, in breach of section 6.3 (1) of the regulation. However, the evidence indicates that both loans have since been fully repaid. Therefore, I find there is nothing to remedy, and I dismiss this claim.

Notice to Owners of CRF Loans

85. The applicants say the strata has consistently failed to notify owners of CRF loans, and they want the strata to issue a list of all missing and late notices to owners of its CRF loans and expenditures. However, I find this claim is vague and therefore not practical. I have addressed the notice issue with respect to the specific CRF loans explained above. I also note that the revised 2017/2018 financial statements I have ordered the strata to distribute to the owners will include notice of any CRF loans in that year. I also note the strata is required to follow the prescribed notice requirements for any future CRF loans.

Co-Mingling of Funds

86. It is undisputed that between April 19, 2018 and June 6, 2018 the CRF, operating fund, and residential section operating fund were co-mingled as a result of FSR's transfer of the strata's property management duties to Gammon. As addressed above, K.H. of Gammon provided a detailed statement explaining the reason for the co-mingling. The strata also submitted a report which I find shows that all co-mingled funds have since been properly accounted for. I also note that the revised 2017/2018 financial statements which I have ordered the strata to distribute to all owners should reflect some of these transactions.

Deficiencies and Surpluses

87. The applicants say that at the end of the 2017/2018 fiscal year the strata had a CRF deficiency of $11,638, based on their own calculations. They say that because this amount was less than 25% of the total budgeted contribution to the operating fund for the fiscal year, the CRF required further funding, in accordance with section 6.1 (a) of the regulation. However, on the evidence before me I am not satisfied that the strata had such a CRF deficiency. The strata denies this deficiency and says the applicants used improper accounting methods to reach this amount. I have already ordered the strata to prepare and distribute revised financial statements for the 2017/2018 fiscal year, so any CRF deficiency will be reflected in those documents. Regardless, the 2018/2019 fiscal year had already ended, so even if the applicants could establish a CRF deficiency at the end of the 2017/2018, there is no practical remedy at this time.

88. The applicants also say that at the end of the 2017/2018 fiscal year the operating fund had a surplus of $54,964, and the residential section CRF had a surplus of $18,314. The applicants say the strata did not present the owners with a choice of how to deal with these surpluses at the respective 2018 AGMs in breach of section 105 of the SPA. However, I note that the applicants' claim with respect to the residential section CRF surplus is against the residential section, not the strata. Since the residential section is not a party to the dispute, I dismiss the applicants' claim with respect to the surplus in the residential section CRF.

89. Section 105 of the SPA does not require the owners to vote on what to do with an operating fund surplus. Rather, it gives the strata the option of transferring the surplus to the CRF, carrying it forward as a surplus, or using the amount to reduce the total contribution to the next fiscal year's operating fund, unless the strata determined otherwise by a resolution passed by a ¾ vote at a general meeting. Section 105 of the SPA does not require such a resolution. Therefore, I find the strata was not in breach of the SPA with respect to any surplus in its operating fund at the end of the 2017/2018 fiscal year. I dismiss this claim.

Missing Bank Statements

90. The applicants initially said the strata was missing 8 bank statements from March and April 2018. However, it is undisputed that the strata sent the applicants the "missing" bank statements on February 25, 2019, and therefore this is no longer an issue.

TRIBUNAL FEES AND EXPENSES

91. 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. I see no reason in this case to deviate from the general rule. Since the applicants were partially successful, I find they are entitled to reimbursement of half their tribunal fees, in the amount of $112.50. They did not claim any dispute-related expenses.

92. The strata claims $947.38 in dispute-related expenses for Gammon's time and transportation costs dealing with this dispute. In addition to an invoice for $947.38, the strata submitted another invoice from Gammon for $3,717 for additional time and transportation costs related to this dispute. The strata says the applicants' conduct throughout this dispute has been "heavy-handed" and most of their concerns could have been resolved through discussions. I disagree. While the evidence suggests the parties have a difficult relationship, the applicants were ultimately successful with some of their claims, and therefore I would not characterize the applicants' conduct as heavy-handed. The tribunal does not typically order a party to pay legal or representative fees for a dispute, or for a party's time in preparing for the dispute. I do not find this case to be out of the ordinary, and I decline to award the strata its claimed property management fees.

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

DECISION AND ORDERS

94. I order that:

    a. Within 14 days of the date of this decision the strata must pay the applicants $112.50 in tribunal fees,

    b. At its next council meeting the strata must address the issue of the non-compliant LED project loan to determine appropriate steps to repay this loan as soon as possible,

    c. Within 60 days of the date of this decision I order the strata to prepare and distribute to all owners revised financial statements for the 2017/2018 fiscal year which comply with section 6.7 of the regulation, and

    d. If it has not done so already, I order the strata to repay the April 2017 $15,000 CRF loan to the operating fund by the end of the 2019/2020 fiscal year.

95. Under section 57 of the CRTA, a party can enforce this final tribunal decision by filing a validated copy of the attached order in the Supreme Court of British Columbia (BCSC). The order can only be filed if, among other things, the time for an appeal under section 123.1 of the CRTA 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 a BCSC order.

96. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia (BCPC). However, the principal amount or the value of the personal property must be within the BCPC's monetary limit for claims under the *Small Claims Act* (currently $35,000). Under section 58 of the CRTA, the applicants can enforce this final decision by a validated copy of the attached order in the BCPC. The order can only be filed if, among other things, the time for an appeal under section 123.1 of the CRTA 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 a BCPC order.

Sarah Orr, Tribunal Member