Civil Resolution Tribunal

Date Issued: March 11, 2020

File: ST-2019-005773

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan NW 177 v. Martin*, 2020 BCCRT 285

B E T W E E N :

The Owners, Strata Plan NW 177

APPLICANT

A N D :

ORPHEE MARTIN

RESPONDENT

A N D :

The Owners, Strata Plan NW 177

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: Kate Campbell, Vice Chair

INTRODUCTION

1. Orphee Martin (owner) owns a strata lot in the strata corporation, The Owners, Strata Plan NW 177 (strata).

2. In its dispute application, the strata says the owner installed a canopy or awning on her balcony without permission and contrary to strata bylaws. The strata seeks orders that the owner stop violating the bylaws and remove the awning, and if she does not remove it, the strata may do so at the owner's cost. The strata also seeks reimbursement of its costs of enforcing the bylaws.

3. The owner denies these claims, and says they should be dismissed.

4. The owner and the strata were parties in prior litigation at the BC Supreme Court (BCSC). One of the subjects of the litigation was an awning on the owner's balcony. In her counterclaim, the owner says the strata wrongfully used $35,000.01 from the contingency reserve fund (CRF) to pay its legal bills from the BCSC proceedings. She says the strata also wrongfully authorized a $10,000 CRF expenditure in 2019, to pay its legal costs for this dispute.

5. As remedy, the owner requests an order that the all strata owners, except her, repay these funds to the CRF.

6. The strata admits the 2016 CRF expenditure for to BCSC costs, but says it was approved by a ¾ vote of the ownership, consistent with section 92 of the *Strata Property Act* (SPA). The strata also says the owner agreed that the legal fees could be paid from the CRF, and is bound by that agreement. The strata also says the owner's claim about the 2016 CRF expenditure is barred under the *Limitation Act* (LA).

7. The strata admits there are some problems with the 2019 CRF expenditure, and says it will reimburse the owner for her share.

8. The strata is represented by a strata council member in this dispute. The owner is self-represented.

JURISDICTION AND PROCEDURE

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

10. The tribunal has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.

11. 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 the parties and witnesses questions and inform itself in any way it considers appropriate.

12. 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.

Preliminary Issue – SPA sections 31 and 32

13. In her tribunal submissions, the owner says strata council members acted in bad faith and conflict of interest, contrary to SPA sections 31 and 32. She seeks an order that one council member, RD, be barred from the strata council.

14. Since the owner did not raise these claims in her dispute application or request an amendment to the Dispute Notice, I refuse to resolve them. I find it would be unfair to decide these claims as the strata did not have the opportunity to prove evidence about them. Also, the owner did not name any strata council members as respondents.

15. Even if these claims had been raised in the Dispute Notice, I would refuse to resolve them for the following reasons.

16. SPA section 31 sets out the standard of care for strata council members. It says that in exercising the powers and performing the duties of the strata corporation, each council member must act honestly and in good faith with a view to the best interests of the strata corporation, and must exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.

17. In *Wong v. AA Property Management Ltd,* 2013 BCSC 1551, the BC Supreme Court considered a claim brought by an owner that the strata council members had acted improperly in the management of the strata's affairs. The court considered this claim, and concluded that the only time a strata lot owner can sue an individual strata council member is for a breach of the conflict of interest disclosure requirement under SPA section 32 (see *Wong,* at paragraph 36). Remedies for breaches of SPA section 32 are specifically excluded from the tribunal's jurisdiction, as set out in CRTA section 122(1)(a).

18. Similar to *Wong,* in *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc*., 2016 BCSC 32, the BC Supreme Court said that the duties of strata council members under SPA section 31 are owed to the strata corporation, and not to individual strata lot owners (see paragraph 267). This means that a strata lot owner cannot sue a strata council member for a breach of section 31.

19. These court decisions are binding precedents, and the tribunal must apply them. Following *Wong* and *Sze Hang* and I would therefore refuse to resolve the owner's section 31 claims.

20. SPA section 32 addresses conflict of interest by strata council members. It says that when a strata council member has a direct or indirect interest in a contract or transaction with the strata, or a decision before the strata council, that council member must disclose their interest, abstain from voting, and leave the strata council meeting during the discussion and vote.

21. In *Dockside Brewing Company Ltd. v. The Owners, Strata Plan LMS 38371,* 2007 BCCA 183, the BC Court of Appeal said that all remedies for breaches of SPA section 32 are set out in SPA section 33. CRTA section 122(1) specifically says the tribunal has no jurisdiction in relation to a claim under section 33. Such claims may only be dealt with by the Supreme Court. CRTA section 10(1) says the tribunal must refuse to resolve a claim over which it has no jurisdiction. For these reasons, I would refuse to resolve the applicants' claims arising under SPA section 32

ISSUES

22. The issues in this dispute are:

    a. Should the tribunal refuse to resolve the strata's claim about the awning because it was already decided by the BCSC?

    b. If not:

        i. Is the strata's claim about the awning barred under the LA?

        ii. Does the owner's awning violate strata bylaws?

        iii. Were the strata's actions significantly unfair?

        iv. What remedies are appropriate?

        v. Did the strata require ¾ vote authorization to file its tribunal claim?

        vi. Is the strata entitled to reimbursement of bylaw enforcement costs?

    c. Is the owner's claim about the 2016 CRF expenditure barred under the LA?

    d. If not, was the strata entitled to pay its 2016 legal fees from the CRF?

    e. What remedy is appropriate for the 2019 CRF expenditure?

BACKGROUND – BCSC PROCEEDING

23. Court documents in evidence show that the owner filed 2 petitions with the BCSC in 2016. In those petitions, she asked the court for various orders, including an order that she be allowed to install a cover on her balcony.

24. The strata also filed a petition with the BCSC in 2016. The strata also requested various remedies, including the following:

    a. A declaration that the owner had contravened strata bylaws 8.1 and 8.2 by placing an awning on her balcony.

    b. An order that the owner stop contravening bylaws 8.1 and 8.2.

    c. An order that the owner remove the balcony awning with 7 days, and if she failed to do so, the strata could remove it at the owner's cost.

    d. An order that the owner pay costs of the proceeding.

25. The BCSC heard the parties' petitions at the same time, and Madam Justice Dardi provided oral reasons for judgement on September 7, 2016. A copy of those reasons was provided as evidence in this tribunal dispute.

26. Dardi J.'s reasons are detailed, and include findings on issues that are not relevant to this dispute. However, the decision contains the following relevant findings:

    a. The owner's balcony is part of her strata lot. The balcony had no cover when she purchased the strata lot in 2013.

    b. Strata bylaws 8.1 and 8.2 are binding on the owner, and specifically prohibit owners from installing balcony covers or awnings without written permission from the strata.

    c. In March 2016, the owner applied to the strata to install a fixed-glass cover over her balcony. The strata denied the application for various reasons, including because deck covers and awnings were prohibited under the

bylaws, it would likely require building penetration or alteration which could void warranties, and to preserve uniform building appearance.

d. The strata's denial of the balcony cover was reasonable, consistent with the SPA and bylaws, and not significantly unfair.

e. The owner went ahead and installed a balcony awing without strata permission.

f. The owner's awning is a partial enclosure of her balcony, and "clearly contravenes" bylaws 8.1 and 8.2.

g. There was no principled basis to allow the owner to retain the unauthorized awning, so the owner's petition for an order to keep it was denied.

27. Despite these findings, Dardi J. denied the strata's request for an order that the owner remove the balcony awning, or that the strata be allowed to remove it. Dardi J. refused to grant this remedy because she found the strata had not complied with SPA section 171(2). That section requires authorization by a ¾ vote of the strata ownership before the strata may sue as a representative of all owners.

28. In paragraph 96 of her decision, Dardi J. said that the failure to obtain a ¾ vote did not defeat the strata's petition, due to the operation of another provision, SPA section 173.1. However, Dardi J. said it was in the interests of justice that the strata's petition be stayed until it complied with section 171(2). She said the strata could take no further steps until it addressed that matter.

REASONS AND ANALYSIS

29. I have read all of the evidence provided but refer only to evidence I find relevant to provide context for my decision. In a civil proceeding like this one, the applicant owner must prove her claim on a balance of probabilities. Similarly, the strata must prove its counterclaim.

Was the strata's claim about the awning already decided by the BCSC?

30. The strata says the canopy matter was fully decided by the BCSC, and the owner is barred from opposing the strata's claim because it is *res judicata* (already decided).

31. *Res judicata* does not bar a respondent from opposing a claim. Rather, *res judicata* is a defence to a claim. As explained by Tribunal Chair Salter in *East Barriere Resort Limited et al v. The Owners, Strata Plan KAS1819*, 2017 BCCRT 22, if a matter was or should have been the subject of a previous process, or if an issue has already been decided in another process, an applicant cannot raise that same issue before the tribunal in a new dispute.

32. I have considered whether the tribunal should refuse to resolve the strata's claim about the awning because the matter was already decided by the BCSC. However, the parties agree that the owner actually removed the awning considered in Dardi J.'s decision, sometime in late 2016 or early 2017. Around November 1, 2017, the owner installed a second awning.

33. Since the subject of this tribunal dispute is a different awning than the one considered by Dardi J., I find the claim was not already decided by the BCSC. I therefore find it is appropriate for the tribunal to resolve this dispute.

Is the strata's claim about the awning barred under the LA?

34. The owner says the strata's claim about the awning is barred because it was filed outside the 2-year limitation period set out in the LA. The owner says the strata knew at the time of Dardi J.'s September 7, 2016 decision that its petition to remove the awning was stayed, and it needed to obtain a ¾ vote of the ownership to pursue that claim.

35. I disagree. For the following reasons, I find the strata's awning claim is not barred under the LA.

36. Section 13 of the CRTA says the LA applies to tribunal claims.

37. A limitation period is a specific time period within which a person may pursue a claim. If the time period expires, the right to bring the claim disappears. Section 6 of the LA says that the basic limitation period is 2 years, and that a claim may not be commenced more than 2 years after the day on which the claim is discovered.

38. CRTA section 13.1 says the limitation period stops running after a claim is filed with the tribunal. The strata filed its tribunal dispute application on July 23, 2019. Thus, it must have discovered the claim no earlier than July 23, 2017.

39. Section 8 of the LA says a claim is "discovered" on the first day that the person knew or reasonably ought to have known that loss or damage had occurred, that it was caused or contributed to by an act or omission of the person against whom the claim may be made, and that a court or tribunal proceeding would be an appropriate means to seek to remedy the damage.

40. As previously stated, the evidence before me establishes that the owner removed the awning that was the subject of Dardi J.'s decision, after the decision was released on September 7, 2016. In a March 15, 2017 letter to the strata council, the owner wrote, "I took my existing balcony structure down".

41. The emails in evidence indicate that the owner had a new awning installed on November 1, 2017.

42. I find the strata discovered its claim about the new awning when it was installed on November 1, 2017, within the 2-year limitation period. As explained above, I find the claim about the new awning is separate and distinct from (although factually similar to) the claim about the old awning considered by Dardi J.

43. For these reasons, I find the strata's claim was filed within the 2 year limitation period, and is not barred under the LA.

Does the owner's new awning violate strata bylaws?

44. In November 2013, the strata filed new bylaws at the Land Title Office (LTO). The LTO filings show that the strata repealed and replaced all of its previous bylaws, with the exception of 2 bylaws about rentals that are not relevant to this dispute.

45. The strata filed additional amendments to its bylaws in 2019, but I find these are not relevant to this dispute because they are about cannabis and short-term accommodations. I find the bylaws applicable to this dispute are those filed at the LTO in November 2013.

46. Bylaw 3.16 says no owner, tenant, or occupant shall fasten, affix, or attach any object to the premises in a way which may affect, damage, puncture or penetrate the building envelope or exterior of the building.

47. Bylaw 8.1 says no owner, tenant, or occupant shall permit the full or partial enclosure of a balcony or patio, or the installation or placement of plastic, glass, other material on a balcony or patio for any purpose, including to block wind or sun.

48. Bylaw 8.2 says no owner, tenant, or occupant shall, without the written consent of the strata corporation, install or cause to be installed, shades, awnings, window or balcony guards, screens, ventilators, heating or cooling units, in or about the premises.

49. I note that bylaws 3.16, 8.1 and 8.2 have not been amended since Dardi J. issued her decision in September 2016. Dardi J. specifically considered those bylaws. She found in paragraph 59 that the awning installed by the owner "clearly contravened" bylaws 8.1 and 8.2 because it was an unauthorized partial enclosure of the balcony, installed to block wind and sun.

50. As previously explained, since Dardi J.'s decision in 2016, the owner removed the first unauthorized awning and installed a new one.

51. I find that the evidence before me, including an email the owner sent to a strata council member on November 1, 2017, establishes that owner's new awning was installed without written (or other) authorization from the strata. This is contrary to bylaw 8.2, which requires written permission before any awning is installed.

52. Based on the evidence before me, I find the new awning is not substantially different from the old one that Dardi J. found to violate bylaws 8.1 and 8.2. In her tribunal submissions, the owner describes the 2 awnings as "materially similar".

53. The photos show that the new awning's frame covers the entire balcony, and extends past it on at least 2 sides. The awning's frame sits on vertical posts, and holds translucent material that covers most of the balcony's footprint. As Dardi J. found with the old awning, I find the new awning is a partial enclosure of the balcony, installed to block the sun. I therefore conclude that it violates bylaw 8.1.

54. For these reasons, I conclude that the new awning contravenes bylaws 8.1 and 8.2.

Were the strata's actions about the awning significantly unfair?

55. Under CRTA section 123(2), the tribunal may make an order directed at the strata corporation, the council or a person who holds 50% or more of the votes, if the order is necessary to prevent or remedy a significantly unfair action, decision or exercise of voting rights. This is similar to the BCSC's power under SPA section 164.

56. The owner says the strata's actions were significantly unfair in 2 ways. First, she requested a meeting about her proposed new awning in March 2017, and the strata never held the meeting. Second, she says it was significantly unfair for the strata to deny approval of the new awning.

57. The BC Court of Appeal considered the language of section 164 of the SPA in *Dollan v. The* Owners*, Strata Plan BCS 1589*, 2012 BCCA 44. The test

established in Dollan was restated by the BCSC in *The Owners, Strata Plan LMS 1721 v. Watson*, 2018 BCSC 164 at paragraph 28:

a. What is or was the expectation of the affected owner or tenant?

b. Was that expectation on the part of the owner or tenant objectively reasonable?

c. If so, was that expectation violated by an action that was significantly unfair?

58. I find the evidence does not establish significant unfairness in this case.

59. I agree that the strata council did not hold a meeting with the owner, as she requested in her letter of March 15, 2017. SPA section 34.1 says that by application in writing stating the reason for the request, an owner may request a hearing at a strata council meeting. After such a request, the council must hold the hearing within 4 weeks. Section 4.01 of the *Strata Property Regulation* defines "hearing" as an opportunity to be heard in person at a council meeting.

60. The owner's correspondence did not request a hearing, and she did not request to attend a council meeting. Rather, she asked for a "meeting", and said she was available in the next 2 weeks. She asked the strata to contact her to arrange a time and date. I accept that even though the owner did not use the word "hearing", and did not request to attend a council meeting, her request triggered SPA section 34.1.

61. However, I find there was no significant unfairness arising from this breach. The courts have described actions that are "significantly unfair" as being burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable. See *Reid v. Strata Plan LMS 2503*, 2003 BCCA 128.

62. I find the strata's failure to meet with the owner was a technical breach, and did not result in substantive unfairness. The correspondence in evidence shows that the owner presented her arguments about the awning to the strata numerous times in writing, and understood the council's position on the issue. For this reason, I find

the strata's failure to meet with the owner was not significantly unfair in the circumstances, particularly given the history of related litigation.

63. Also, even if it was significantly unfair for the strata not to hold a hearing, I find that the proper remedy would not be to allow the owner to keep her awning, but rather to order a hearing. Since the owner has already installed the awning, I find such an order would serve no practical purpose.

64. The owner says she agreed that the strata could pay legal fees out of the CRF in exchange for a promised hearing, which never occurred. I deal with the CRF expenditure, and the alleged agreement about it, later in my reasons.

65. I also find the strata's decision to deny permission for the second awning was not unfair. I agree that the strata did not provide detailed reasons for this decision. However, it had already done so for the first awning, and those reasons were discussed in detail by Dardi J., who concluded they were not significantly unfair. The owner has not provided evidence in this dispute to prove the second awning was visually or structurally different from the first awning. Rather, she described them as "materially similar". For that reason, I find it was reasonable for the strata not to provide detailed reasons for the second denial of a similar awning.

66. I also find the owner's expectation that the strata would approve her request for the second awning was not objectively reasonable. This is because, as stated already, the second awning was materially similar to the first. Also, bylaw Bylaw 8.1 specifically prohibits an owner from installing a full or partial enclosure of a balcony or patio, or the installation or placement of plastic, glass, other material on a balcony or patio for any purpose, including to block wind or sun. For the reasons discussed above, I find the owner's second awning meets the definition of a structure prohibited by bylaw 8.1. Since the owner's balcony had no awning when she bought her strata lot, and since bylaw 8.1 was in force before she bought it, I find the owner's expectation that the strata would waive bylaw 8.1 was not objectively reasonable.

67. The owner argues that the strata breached bylaw 8.6, which says it may not unreasonably withhold approval of a request to alter "premises" (defined as any part of the strata). However, I find that bylaw 8.6 does not require the strata to approve a request to install a structure prohibited under bylaw 8.1, as in this case. I find this is particularly true since there is no evidence before me indicating that bylaw 8.1 has been waived for any other strata lot owner.

68. For all of these reasons, I find the strata's actions about the second awning were not significantly unfair.

Remedies for Bylaw Breach

69. The strata requests an order that the owner stop violating the bylaws and remove the awning. The strata also requests an order that if the owner does not remove the awning, the strata may do so at the owner's cost.

70. As noted by Dardi J., the balcony is part of the owner's strata lot, as stated on page 1 of the strata plan.

71. I find that the orders requested by the strata are appropriate, given my finding that the owner's new awing violates bylaws 8.1 and 8.2. In making this finding, I rely in part on SPA sections 133(1) and (2). Section 133(1)(a) permits a strata corporation to do what is reasonably necessary to remedy a bylaw contravention, including doing work on or to the strata lot. Section 133(2) says the strata corporation may require that the reasonable costs of remedying a bylaw contravention by paid by the person who may be fined for the contravention.

72. I therefore order the owner to remove the awning within 90 days of this decision. If the owner does not do so, the strata may arrange for the awning to be removed and charge the invoiced cost of the contractor who performs this work to the owner's strata lot account. The owner must permit the strata reasonable access for this purpose, upon receiving 48 hours written notice.

¾ Vote Authorization

73. The owner submits that the strata's claim should be stayed, as it did not obtain a ¾ vote of the ownership approving the tribunal claim.

74. I find that ¾ vote authorization is not required for a tribunal dispute. Section 171(2) says that before a strata corporation may **sue** as a representative of all owners, the **suit** must be authorized by a resolution passed by a ¾ vote of the ownership at an annual or special general meeting (my emphasis added).

75. "Sue" is defined in SPA section 1(1) as "the act of bringing any kind of court proceeding". "Suit" is defined as "any kind of court proceeding". Since the tribunal is not a court, I find a tribunal claim is not a "kind of court proceeding", and is therefore not a "suit". Since SPA section 171(2) only applies to "suing" and "suits", as defined in section 1(1), I conclude that ¾ vote authorization is not required for a tribunal proceeding.

76. I note that SPA section 189.4 supports the conclusion that section 171(2) does not apply to the tribunal. Section 189.4 specifies that some specific provisions about court proceedings to apply to the tribunal, but section 171(2) and the ¾ vote authorization for a proceeding is not included in these. Thus, the SPA supports the distinction that section 171(2) does not apply to tribunal proceeding.

Reimbursement of Bylaw Enforcement Costs

77. In its dispute application, the strata requested reimbursement of its costs incurred to enforce the bylaws, including legal costs in accordance with SPA section 133. The strata did not provide evidence to establish such costs.

78. Also, as explained in *Hallman et al v. The Owners, Strata Plan KAS 1821*, 2019 BCCRT 1179 at paragraphs 47 to 49, the law is currently unclear about whether legal expenses for a tribunal dispute are recoverable under SPA section 133. In *Hallman,* I concluded that the BCSC's reasoning in paragraph 91 of *The Owners,*

Strata Plan NW3075 v. Stevens, 2018 BCSC 1784 suggested that legal costs for tribunal disputes are not recoverable under SPA section 133.

79. I rely on that reasoning, although it is not binding. Based on it, and the lack of evidence of non-legal bylaw enforcement costs, I dismiss the strata's claim for reimbursement bylaw enforcement costs.

Is the owner's counterclaim about the 2016 CRF expenditure barred under the LA?

80. The strata says that on October 29, 2016, the owner signed an agreement with the strata, consenting to payment of legal fees from the CRF (the Agreement).

81. The document provided in evidence is dated October 29, 2016, and says the owner agrees that the strata's legal fees for the 3 BCSC petitions were to be paid from the strata's "common funds".

82. At some points in her submissions, the owner says she did not sign the Agreement. At other points, she says she did sign it "contingent on a verbal condition that I have fair meeting with council to discuss acceptable plan for a canopy." Elsewhere in her submissions, the owner wrote "I sign new agreement. Signed or not, I had verbally agreed on the condition that I get a fair hearing with council." At another point, the owner said she did not remember signing, but could not say with certainty she did not sign.

83. I find the evidence before me establishes that the owner did sign the Agreement. I place particular weight on an April 26, 2017 email to strata council member M, in which the owner wrote, "I expect my signed consent to be rescinded, and confirmed by letter".

84. Other emails from the owner also support the conclusion that she signed the Agreement. In an email dated November 24, 2019, the owner wrote that she agreed to the legal payments. In an April 27, 2017 email to M, the owner wrote,

"Could you give me a copy of the form Ray had me sign." The accompanying documents establish that the "form" mentioned in the email is the Agreement.

85. Based on these emails, I accept that the owner did sign the Agreement on October 29, 2016.

86. The strata admits that it paid the 2016 legal fees from the CRF, which included contributions from the owner. It says this payment was permitted under the Agreement and the SPA, and even if it was not, the owner's claim is barred under the LA.

87. As previously explained, the limitation period for a claim like this one is 2 years. The owner filed her dispute with the tribunal on July 23, 2019. This means the claim must have been discovered by no earlier than July 23, 2017.

88. As noted above, I find the evidence establishes the owner signed the Agreement on October 29, 2016. I agree with the strata that this means she knew or reasonably ought to have known about her claim from that time. I therefore conclude that the owner's claim about the 2016 CRF payment is barred under the LA. For that reason, I dismiss this claim.

2019 CRF Expenditure

89. The owner says the strata wrongfully paid its legal fees for this dispute from the CRF.

90. SPA section 167(2) says an owner who brings a suit against the strata is not required to contribute to the expense of defending the suit. SPA sections 171(5) and 171(6)(a) say that if the strata sues an owner, the owner being sued is not required to contribute to the expense of suing.

91. SPA section 189.4 says that the provisions of sections 167 and 171(5) and (6) apply to expenses incurred in bringing or defending tribunal disputes where the strata is a party.

92. The strata admits that under these provisions, the owner was not required to contribute to its legal expenses related to this tribunal dispute. The $10,000 for legal fees was taken from the CRF, to which the owner contributed. The strata says it agrees to return the owner's proportionate share of the $10,000 to her.

93. I agree that this is the proper remedy for this claim. If the strata has not already done so, I order it to refund the owner's proportionate share of the $10,000 legal expenditure to her, based on the unit entitlement of her strata lot. The unit entitlement for the owner's strata lot is 5,399 out of a total of 100,000. This means her proportional share of the $10,000 legal expenditure is $539.90. I order the strata to reimburse this amount, plus $6.69 in interest under the *Court Order Interest Act* (COIA) from the date of the owner's counterclaim, which is July 23, 2019. The reimbursement and interest equal $546.59.

94. I note that the evidence before me is not entirely clear about whether the entire $10,000 approved by ownership was spent. However, as the strata has not indicated otherwise, and agreed in its submissions to return a proportionate share of $10,000, I find that the amount above is appropriate.

95. I deny the owner's request for an order that all owners, except her, refund the $10,000 for legal fees to the CRF. In *Dockside Brewing Co. v. Strata Plan LMS 3837*, 2005 BCSC 1209, the BCSC confirmed that legal fees are an extraordinary expense that generally should be paid from the CRF. The minutes of a May 27, 2019 special general meeting (SGM) show that the owners approved a ¾ vote resolution to spend up to $10,000 from the CRF on legal fees for this dispute. I find this meets the requirements for a CRF expenditure, so no remedy is appropriate.

TRIBUNAL FEES AND EXPENSES

96. As the strata was substantially successful in this dispute, in accordance with the CRTA and the tribunal's rules I find it is entitled to reimbursement of $225.00 in tribunal fees. The owner was partially successful, so I find she is entitled to

reimbursement of half of the $125.00 she paid in tribunal fees, which equals $62.50.

97. Setting off $62.50 from $225.00, I find the owner must reimburse the strata $162.50 for tribunal fees.

98. I have also set off the $162.50 the owner must pay the strata from the $546.59 the strata must pay the owner. This equals $384.09. I therefore order the strata to reimburse the owner a total of $384.09.

99. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to the owner.

ORDERS

100. I order the following:

a. The owner must remove the awning within 90 days of this decision.

b. If the owner does not remove the awning within 90 days, the strata may arrange for the awning to be removed and charge the invoiced cost of the contractor who performs this work to the owner's strata lot account. The owner must permit the strata reasonable access for this purpose, upon receiving 48 hours written notice.

c. If the strata has not already done so, I order that within 30 days of this decision it reimburse the owner $384.09. This amount is made up of $539.90 for the 2019 CRF expenditure, plus $6.69 in COIA interest, minus the $162.50 I found the owner must pay for tribunal fees.

101. I dismiss the strata's claim for reimbursement of bylaw enforcement costs. I dismiss the owner's counterclaim about the 2016 CRF payment.

102. The owner is entitled to post-judgement interest under the COIA, as applicable.

103. Under CRTA section 57, 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). Once filed, a tribunal order has the same force and effect as a BCSC order.

104. 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, a party can enforce this final decision by filing a validated copy of the attached order in the BCPC. Once filed, a tribunal order has the same force and effect as a BCPC order.

Kate Campbell, Vice Chair