



Civil Resolution Tribunal

Date Issued: October 15, 2020

File: ST-2020-002497 and ST-2020-003828

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan BCS 3358 v. Colbert*, 2020 BCCRT 1166

B E T W E E N :

The Owners, Strata Plan BCS 3358

APPLICANT

A N D :

HAZEN COLBERT

RESPONDENT

A N D :

The Owners, Strata Plan BCS 3358

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This matter involves 2 disputes. The Owners, Strata Plan BCS 3358 (strata) is a residential strata corporation. Hazen Colbert is the owner of strata lot 61 (SL61).
2. The strata filed dispute ST-2020-002497 claiming Mr. Colbert owes \$850 in bylaw fines and \$213.40 for damage to a common property (CP) door. Mr. Colbert denies these claims.
3. Mr. Colbert filed dispute ST-2020-003828 claiming the strata miscalculated his strata fees, improperly prevented access to a strata paper shredder, failed to properly prepare a depreciation report, improperly removed common assets, prevented access to CP, improperly removed him from strata council, failed to provide a list of owners, improperly obtained an owners' resolution to use the contingency reserve fund, failed to investigate bylaw complaints and breached his rights to peace, quiet enjoyment and privacy.
4. Mr. Colbert says he intended to file dispute ST-2020-003828 as a counterclaim to the strata's dispute. The Civil Resolution Tribunal (CRT) has the authority to make any order it thinks necessary to achieve the objects of the CRT under section 61 of the *Civil Resolution Tribunal Act* (CRTA). Since these disputes involve the same parties and related issue, and Mr. Colbert intended to file his dispute as a counterclaim, I find that these disputes should be linked. This will conserve the CRT's resources and avoid inconsistent findings of fact. I direct that the ST-2020-002497 and ST-2020-003828 be linked and Mr. Colbert's dispute ST-2020-003828 will be considered as a counterclaim to the strata's dispute. So, this decision applies to both dispute ST-2020-002497 and dispute ST-2020-003828.
5. The strata is represented by a strata council member. Mr. Colbert is self-represented.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the CRT. The CRT has jurisdiction over strata property claims under section 121 of the CRTA. The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.
7. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
8. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
9. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

Preliminary Matter – Anonymization Request

10. Mr. Colbert asks the CRT to anonymize his name in the decision. Mr. Colbert did not provide a reason for this request. The CRT's decisions generally identify the parties because these are considered open proceedings. This is done to provide transparency and integrity in the justice system. The CRT generally anonymizes decisions in certain limited situations such as disputes that involve a vulnerable

party, such as a child. The CRT may also anonymize decisions in disputes that include sensitive information, such as medical issues. Other than these circumstances, the CRT generally discloses the parties' names. I decline Mr. Colbert's request to anonymize his name because he has not provided a satisfactory reason to remove his name from this decision.

Preliminary Matter – Withdrawal Request

11. Mr. Colbert asked to withdraw his claim relating to messages posted about him on the strata bulletin board. Mr. Colbert requested the withdrawal because he acknowledges that the deadline to file this claim under the *Limitation Act* has expired. CRT Rule 6.1 says a party can ask the tribunal member to withdraw a claim. Rule 6.1(5) says that, when considering a request to pursue a withdrawn claim the CRT may consider the following:
 - a. the reason for the withdrawal,
 - b. any prejudice to the other parties,
 - c. whether the limitation period for the claim has expired,
 - d. the tribunal's mandate,
 - e. whether it is in the interests of justice and fairness, and
 - f. any other factors the tribunal considers appropriate.

12. The issue of whether requests for withdrawal should be granted was considered by this tribunal in *Grand-Clement v. The Owners, Strata Plan KAS2467*, 2017 BCCRT 45 (*Grand-Clement*). In that matter, the CRT stated that an applicant's request for withdrawal will generally be granted unless the respondent is significantly prejudiced. Although this decision is not binding on my decision in this matter, I find the reasoning in *Grand-Clement* to be persuasive and I follow it here.

13. The strata did not oppose Mr. Colbert's withdrawal request and the strata has not provided any evidence showing that it will be significantly prejudiced the withdrawal of this claim.
14. Based on the above, I grant Mr. Colbert's request to withdraw his claim relating to strata bulletin board messages.

ISSUES

15. The issues in this dispute are:
 - a. Does Mr. Colbert owe the strata bylaw fines? If so, how much?
 - b. Does Mr. Colbert owe the strata \$218.40 for damaging a CP door?
 - c. Is Mr. Colbert entitled to a \$600 reimbursement for strata fees overpayment?
 - d. Does the strata owe Mr. Colbert compensation for not permitting access to its paper shredder?
 - e. Did the strata breach the SPA by not properly preparing a depreciation report? If so, what is the remedy?
 - f. Did the strata breach the SPA by improperly removing common assets? If so, what is the remedy?
 - g. Did the strata breach the SPA by improperly restricting access to CP? If so, what is the remedy?
 - h. Should Mr. Colbert be appointed to the strata council?
 - i. Must the strata provide Mr. Colbert with a list of the strata owners?
 - j. Did the owners' resolution approving the allocation of \$50,000 for legal expenses breach the SPA? If so, what is the remedy?
 - k. Did the strata breach the SPA by failing to investigate his bylaw complaints? If so, what is the remedy?

- I. Did the strata breach Mr. Colbert's rights to peace, quiet and privacy? If so, what is the remedy?

EVIDENCE AND ANALYSIS

16. In a civil claim such as this, the strata must prove its case on the balance of probabilities. Mr. Colbert has the same burden for his counterclaim.
17. 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.
18. I will consider the strata's claims first.

The strata's claim for bylaw fines of \$850

19. The strata was created in 2009 and it consists of residential strata lots in 3 buildings.
20. Section 119 of the *Strata Property Act* (SPA) allows strata corporations to govern the use of common property with bylaws.
21. The strata filed a complete new set of bylaws at the Land Title Office (LTO) on June 7, 2011, which are relevant to this dispute. Bylaw 49 was subsequently amended on September 17, 2014. The strata's bylaws include the following:
 - a. Bylaw 3(1) says an owner must not use a strata lot, CP or common assets in a way that causes a nuisance or unreasonably interferes with the rights of others.
 - b. Bylaw 3(2) says an owner must not damage CP.
 - c. Bylaw 23 says the maximum fine for each bylaw violation is \$200.
 - d. Bylaw 49(1) says owners will indemnify the strata for the cost of repairs caused by the owners.

Bylaw fines for nuisance

22. The strata says Mr. Colbert committed multiple nuisance violations of bylaw 3(1) by sending the strata emails after the strata asked him not to so.
23. SPA section 135 says that before fining an owner for a bylaw contravention, the strata must give the owner written particulars of the complaint and a reasonable opportunity to respond. The strata sent complaint notices for nuisance on May 15, May 23, May 30, June 10, 2019, July 9, September 30, and October 1, 2019. These complaint notices advised Mr. Colbert of his right to respond or request a hearing. The strata sent notices of fines issued for nuisance on June 11, June 24, August 7, and October 21, 2019.
24. Mr. Colbert says he requested a hearing for each of these bylaw violation notices but the strata did not provide a hearing. The strata did not dispute this submission so I accept it as accurate. SPA section 135(1) says the strata must provide a hearing if requested. Based on my finding that the strata did not provide the requested hearings, I find that the strata violated section 135(1) and I dismiss the strata's claim relating to these bylaw fines.
25. Further, even if the strata had complied with section 135(1), I would still find that these bylaw fines are not valid. Bylaw 3(1) says an owner must not "use a strata lot, the CP or common assets" in a way that causes a nuisance. The SPA defines a strata lot as a lot shown on a strata plan. CP is defined as the part of land and buildings shown on a strata plan not part of a strata lot. Common assets are defined as property held by the strata. I find that the definitions of strata lots, CP and commons assets do not include emails. So, I find that Mr. Colbert's delivery of emails was not a "use [of] a strata lot, the CP or common assets" within the scope of bylaw 3(1).
26. For the above reasons, I dismiss the strata's claim for bylaw fines relating to nuisance.

Bylaw fines for violation of privacy

27. The strata says Mr. Colbert violated owners' privacy by posting documents on the strata's bulletin boards which included private owner information. The strata sent complaint notices for privacy violations on June 6, 2019 and August 16, 2019. The strata sent notices of fines issued for privacy violations on August 16, 2019.
28. Mr. Colbert says he also requested a hearing for each of the bylaw violation notices relating to privacy violations but the strata did not provide a hearing. Since the strata did not dispute this submission either, I accept it as accurate and find that the strata breached SPA section 135(1) by failing to provide Mr. Colbert's requested hearing.
29. Further, even if the strata had complied with section 135(1), I would still find that these bylaw fines are not valid because the strata has not provided any evidence or submissions in support of its privacy violation fines. In the absence of evidence, I find that strata has failed to prove this bylaw violation.
30. For the above reasons, I dismiss the strata's claim for bylaw fines relating to privacy violations.

Bylaw fine for CP damage

31. The strata says Mr. Colbert breached bylaw 3(2) which prohibits owners from damaging CP. The strata says Mr. Colbert banged on the exterior door of the amenity room and damaged it. The strata says the property manager heard the banging noise and saw Mr. Colbert leaving the alcove area of the amenity room. The strata provided a video showing an individual walking away immediately after the incident. The strata also provided a photograph which appears to show 2 marks on a portion of a door and a July 15, 2019 repair invoice.
32. The strata sent a complaint notice to Mr. Colbert on June 24, 2019 claiming he damaged a CP door on the amenity room on June 18, 2019. The notice warned Mr. Colbert that the strata could impose a fine and request a chargeback for the repair costs. The strata fined Mr. Colbert \$200 on August 16, 2019 for damaging the CP.

33. Mr. Colbert says he requested a hearing but the strata did not provide it. Mr. Colbert provided a July 10, 2019 letter addressed to a law firm demanding a hearing. The letter says the law firm represents the strata. Since the strata did not dispute receiving a hearing request, I accept Mr. Colbert's submission as accurate and find that the strata breached SPA section 135(1) by failing to provide a requested hearing.
34. Further, even if the strata had complied with section 135(1), I would still find that these bylaw fines are not valid because I find that the strata has not provided sufficient evidence to prove that Mr. Colbert damaged the door. There is no evidence before me that anyone witnessed Mr. Colbert causing the damage. The property manager says they saw Mr. Colbert leaving the area after hearing a banging noise. However, the property manager does not explain how close Mr. Colbert was to the door when he was observed or whether other individuals were also nearby. Further, I do not find the video evidence helpful because the person in the video was not identified as Mr. Colbert. I find that the strata has not provided sufficient evidence to prove that Mr. Colbert damaged the door.
35. For the above reasons, I dismiss the strata's claim for bylaw fines relating to privacy violations.

The strata's claim that Mr. Colbert owes compensation of \$218.40 for damaging CP

36. The strata claims compensation of \$218.40 for damaging the CP door. As stated above, the strata sent Mr. Colbert a June 24, 2019 letter warning him that the strata could demand a chargeback for the repair costs. The strata issued a chargeback letter to Mr. Colbert on September 17, 2019 for this repair cost.
37. Section 135 of the SPA says a strata corporation cannot require an owner to pay the costs of remedying a contravention unless it has received a complaint, given the owner written particulars of the complaint, and a reasonable opportunity to answer the complaint, including a hearing (see: *Terry v. The Owners, Strata Plan NW 309*,

2016 BCCA 449 and *The Owners, Strata Plan NW 3075 v. Stevens*, 2018 BCPC 2). For the reasons discussed above, I find the strata has failed to meet these requirements by not providing Mr. Colbert a requested hearing. Further, for the reasons discussed above, I find that strata has failed to prove that Mr. Colbert damaged the door.

38. Since the strata did not meet the SPA section 135 hearing requirements to impose a chargeback under SPA section 133(2), I find the chargeback is invalid and I dismiss the strata's claim for payment of the repair costs. I make no order for the strata to reverse the chargeback because the respondent did not file a counterclaim requesting reversal.
39. I will now discuss Mr. Colbert's counterclaims.

Mr. Colbert's claim for \$600 reimbursement of alleged strata fees overpayment

40. Mr. Colbert says has been overcharged strata fees. He says the strata's unit entitlement records are inaccurate. Mr. Colbert argues the strata plan provided by the CRT is "not complete" because the strata changed the buildings after the strata plan was lodged. Mr. Colbert refers to a room located in building 2 on the strata plan which has subsequently been built into five rooms including a gym and two bathrooms. Mr. Colbert also says his unit entitlement is incorrect and an "as built" strata plan is needed to reconcile the unit entitlements.
41. I am satisfied that the CRT's strata plan is an accurate copy. I find that the strata plan appears to show the boundaries of the land, a description of the title, the boundaries of the strata lots, the area of the strata lots and the strata plan was certified by a BC Land Surveyor. I am satisfied that the strata plan complies with the requirements under section 244 of the SPA. Further, I find that the strata plan was deposited at the LTO in compliance with section 239 of the SPA.
42. I find the SPA does not require the registration of an "as built" strata plan. I infer that Mr. Colbert is asking for an amendment of the strata plan, which is discussed at Part

15, Division 1 of the SPA. However, the SPA does not require a strata plan amendment when a CP area is physically divided into multiple CP rooms. I dismiss Mr. Colbert's request for the preparation of an "as built" or amended strata plan.

43. Mr. Colbert also says his unit entitlement is incorrect. Mr. Colbert argues that his strata lot is the exact same size as another strata lot but the title records for that strata lot show a different size. Section 246(3) of the SPA sets out a series of rules that must be followed in calculating unit entitlement for various types of strata lots. Under these rules, the unit entitlement for a residential strata lot is the habitable area, in square metres, of the strata lot, as determined by a BC land surveyor, rounded to the nearest whole number. The strata plan says SL61 has an area of 83.4 square metres. The strata says SL61's unit entitlement is calculated according to this area. Further, the strata lot shows that the other strata lot that Mr. Colbert referred to also has the same area and the same unit entitlement.
44. I find Mr. Colbert has failed to prove that his unit entitlement is incorrect or that his strata fees were miscalculated. Mr. Colbert's request for reimbursement of strata fees is dismissed.

Mr. Colbert's claim about paper shredding

45. Mr. Colbert says he needed to dispose of 8 years of strata records which he stored as a former strata council member. Mr. Colbert says the strata refused to let him access the strata's shredder. Mr. Colbert says this caused him to incur expenses of \$21 to shred the documents at a commercial facility. The strata says Mr. Colbert did not ask to use the strata's shredder. The strata says it told Mr. Colbert that he could deliver the documents to the property manager for destruction. Mr. Colbert says he had already paid to a third party to destroy the documents by that time.
46. Mr. Colbert says the strata's refusal to reimburse the shredding costs is an unjust enrichment. The legal test for unjust enrichment is that the applicant must show that that the respondent was enriched, that the applicant suffered a corresponding deprivation or loss, and there is no valid basis for the enrichment (see *Kosaka v. Chan*, 2009 BCCA 467).

47. I am not satisfied that the strata was unjustly enriched. Mr. Colbert has not provided an adequate explanation why he needed to incur the \$21 in disposal costs instead of returning the documents to the strata's custody. I find that Mr. Colbert has failed to prove unjust enrichment so I dismiss this claim. For the same reasons, I also dismiss Mr. Colbert's claim for \$150 damages for lack of access to the strata's paper shredder.

Mr. Colbert's claim about the depreciation report

48. Mr. Colbert asks for an order requiring the strata to redo the depreciation report because he says it is inaccurate and it was submitted late.

49. Under section 94 of the SPA and regulation 6.2, the strata is obligated to obtain a depreciation report. In essence, a depreciation report is a replacement cost estimate of common expenses that usually occur less often than once per year or do not usually occur. The report is based on a physical inspection of common property building components and common assets for which the strata is responsible.

50. The SPA requires the strata to complete a depreciation report every 3 years, unless it opts out by passing a 3/4 vote at a general meeting.

51. At present, the SPA and regulation do not require the strata to act on a depreciation report. That is, there is no requirement for the strata to fund the estimated replacement cost or take any other action associated with a depreciation report. Once obtained, a depreciation report is simply a tool to assist the strata in estimating the amount and timing of its future capital expenses.

52. Mr. Colbert says the depreciation report is inaccurate. Specifically, he says the depreciation report does not account for expected withdrawals from the contingency reserve fund. Also, Mr. Colbert says the depreciation report failed to account for \$220,000 in expected parkade repairs and approved withdrawals of \$36,000 and \$50,000. Further, Mr. Colbert says the depreciation report was based on outdated data. Mr. Colbert also argues that the depreciation report did not properly assess the strata property. Mr. Colbert says that seals in chimneys have a shorter lifespan

than the plumbing stacks. Mr. Colbert also says the annual cost of replacing fire safety equipment should be in the depreciation report.

53. Although Mr. Colbert says the depreciation report is incorrect, the depreciation report was not provided. Without reviewing the depreciation report, I am unable make any findings about the contents of the report. Further, there is no provision in the SPA or the Strata Property Regulations that says a depreciation report is subject to review for accuracy even if the report had been provided. So, I dismiss Mr. Colbert's request to redo the depreciation report.
54. Mr. Colbert also says the depreciation report was late. He says the depreciation report was due in 2017. Mr. Colbert says the previous depreciation report was completed in October 2014 and the most recent report was submitted in May 2020. The strata says the most recent depreciation report was completed December 2, 2019. However, regardless of whether the depreciation report was completed in December 2019 or May 2020, I find that the depreciation report was late.
55. A similar situation was considered by the Vice Chair in *Zane v. The Owners, Strata Plan BCS 4476*, 2019 BCCRT 991. In *Zane*, The strata did not complete the depreciation report or obtain the necessary 3/4 waiver within the 3 year deadline. However, the owners subsequently passed a 3/4 vote resolution to waive the depreciation report. The Vice Chair found that the owners' subsequent waiver of the depreciation report cured the strata's delay in completing the report. While this decision is not binding on me, I find the reasoning persuasive and I apply it.
56. While the strata's delay in completing the depreciation report was a breach of the SPA, I find this breach was cured by the strata's subsequent completion of the report. So, I dismiss this claim.

Mr. Colbert's claim about the strata's sale of common assets

57. Mr. Colbert says the strata improperly disposed of common assets.

58. SPA 82(3) says the strata must get prior approval by 3/4 of the owners to dispose of personal property worth more than \$1,000.
59. Mr. Colbert says the strata removed items from the strata storage locker without owner approval. The strata denies the allegation.
60. I am not satisfied that the value of the items removed from the storage locker exceeded \$1,000. Mr. Colbert wrote an email to strata on August 8, 2018 saying that some of the items were useful to repair CP but the rest of the items were outdated and of little value such as old door handles, expired paint and grout, and old light fixtures that may not meet current building codes. Based on Mr. Colbert's own characterization of the items in storage locker, I am not satisfied that these items were worth more than \$1,000.
61. So, I find that the strata did not need 3/4 owners' approval to remove the items and I dismiss this claim.

Mr. Colbert's claim about access to CP

62. Mr. Colbert says he has been denied access to CP. He says he is unable to access the floor above him or enter other buildings. Mr. Colbert says he would like to access other buildings so he can get to his vehicle without going outside. He says he had access to all CP until 2018. Mr. Colbert says this restriction was retaliatory. The strata says CP access was restricted for all owners for security and safety reasons.
63. The issue of access to CP was recently considered by the Vice Chair in the dispute of *Creasy v. The Owners, Strata Plan BCS 4064*, 2020 BCCRT 724. In *Creasy*, the Vice Chair said the strata can reasonably restrict access to CP, subject to section 71 of the SPA. Under section 71 of the SPA, the strata must not make significant changes to the use or appearance of common property unless the change is first approved by a 3/4 vote, or there are reasonable grounds to believe the change is necessary to ensure safety or prevent significant loss or damage.

64. I find the access restrictions to CP to be a significant change in use. The owners had unfettered access to all CP since 2009 but they are now limited to their respective floors. I find that this is a significant restriction of the owners' access to CP.
65. Mr. Colbert says there were no resolutions to approve the access restrictions. The strata did not dispute this submission so I accept it as accurate and find that the strata did not obtain approval of 3/4 of the owners for this change.
66. The strata is only permitted to make a significant change in the use of common property without owner approval if the change is necessary for safety or to prevent significant loss or damage. Although the strata says the restriction was put in place for safety and security reasons, the strata did not provide any evidence in support of this reason. In the absence of evidence, I am not satisfied that the CP access restrictions are necessary for safety.
67. For the above reasons, I find that the strata's CP access restrictions imposed in 2018 violated section 71 of the SPA. I order that these access restrictions be removed. Nothing in this decision prevents the strata from re-imposing these restrictions upon the approval of 3/4 of the owners, in compliance with section 71 of the SPA.
68. I find that Mr. Colbert has not provided sufficient evidence to support his claim for \$750 damages for lack of access to the CP. Mr. Colbert has not explained how he calculated the \$750 damage claim or the nature of his loss, if any. I dismiss this claim.

Mr. Colbert's request for an order to be placed on the strata council

69. Mr. Colbert says he was improperly removed from the strata council and he wants to be re-appointed.
70. Mr. Colbert says that when he was the strata council president in 2017, he had a disagreement about the depreciation report and he agreed to resign. He says he

submitted a resignation conditional on the strata appointing the vice-president as the president. Mr. Colbert says the strata appointed someone else as president.

71. According to section 25 of the SPA, the strata council is elected at annual general meetings. The SPA does not provide for the appointment of strata council by the CRT.
72. However, section 123(2) of the CRTA enables the CRT to make an order necessary to prevent or remedy a significantly unfair action, decision or exercise of voting rights. This is similar to the BC Supreme Court's power under SPA section 164.
73. The courts and the CRT have considered the meaning of "significantly unfair" in a number of contexts, equating it to oppressive or unfairly prejudicial conduct. In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 128, the BC Court of Appeal interpreted a significantly unfair action as one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith and/or unjust or inequitable.
74. 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?
75. Applying the test to the facts before me, I do not find that the strata acted significantly unfairly. Based on Mr. Colbert's own submission, he voluntarily resigned as president.
76. Mr. Colbert also says the vice-president should have been appointed as president after he resigned. Bylaw 13(3)(b) says that the vice-president will assume the

president's powers for the remainder of the president's term if the president ceases to hold office. So, Mr. Colbert is correct and the vice-president should have become the president under the bylaws. However, since there are new council elections each year, I find the appointment of the president in 2017 is now moot.

77. For the above reasons, I dismiss this claim.

Mr. Colbert requests a list of owners

78. Mr. Colbert has requested a list of the owners.

79. Section 35(c)(i) of the SPA says the strata must maintain a list of owners, with their strata lot addresses, mailing addresses if different, strata lot numbers as shown on the strata plan, parking stall and storage locker numbers, if any, and unit entitlements. Section 36(1)(a) of the SPA says the strata must make this information available to owners. The strata says Mr. Colbert has not requested this information but the strata is willing to provide it.

80. So, based on section 36(1)(a) of the SPA and the agreement of the strata, I order the strata to provide Mr. Colbert with the information stated in section 35(c)(i) of the SPA within 30 days of this decision.

Mr. Colbert requests the cancellation of the owners' resolution approving the withdrawal of \$50,000 from the contingency reserve fund for legal expenses

81. Mr. Colbert says the strata improperly removed \$50,000 from the contingency reserve fund. Mr. Colbert says this was approved by an owners' resolution at the September 18, 2019 special general meeting (SGM). Mr. Colbert says this resolution was prohibited by the SPA. Mr. Colbert requests the cancellation of the resolution, an apology, the "sanctioning" of the strata's lawyers, a prohibition on putting the resolution to the owners for 5 years and an opportunity for Mr. Colbert to address the owners at the next AGM.

82. Mr. Colbert provided a copy of the owners' resolution from the September 18, 2019 SGM which authorized the withdrawal of up to \$50,000 from the contingency reserve fund for legal expenses relating to the enforcement of Mr. Colbert's bylaw fines.
83. Section 92(b) of the SPA says the contingency reserve fund is to be used for common expenses that usually occur less often than once a year or that do not usually occur. Section 96(b)(i)(B) of the SPA says approval of 3/4 of the owners at an annual general meeting (AGM) or SGM is needed to withdraw funds from the contingency reserve fund.
84. Section 45(1) says the strata must give 2 weeks of written notice to every owner before an SGM. Mr. Colbert says he did not receive notice of the SGM and security personnel blocked his entrance. The strata did not dispute these allegations so I accept these as accurate. I find that the strata breached section 45(1) of the SPA by failing to give Mr. Colbert proper notice of the SGM.
85. Section 47 of the SPA says that the failure to give proper notice of an AGM or SGM does not invalidate a vote taken at the meeting as long as the strata corporation made a reasonable attempt to give the notice in accordance with that section. However, there is no evidence before me that the strata made any attempt to notify Mr. Colbert of the September 18, 2019 SGM.
86. Further, under CRTA section 123(2), the CRT has the authority to make findings and orders to remedy significantly unfair actions by a strata corporation. I find that Mr. Colbert would have a reasonable expectation of being able to attend the SGM. Based on Mr. Colbert's undisputed allegation that security personnel blocked his entry to the SGM, I find that the strata has treated Mr. Colbert significantly unfairly.
87. For the above reasons, I find that all owners' resolutions approved at the September 18, 2019 are invalid. If the strata has already removed funds from the contingency reserve fund pursuant to the September 18, 2019 resolutions, the strata must return the funds or obtain 3/4 owner approval for such withdrawal at a properly noticed AGM or SGM, in compliance with the requirements stated in Division 4 of the SPA.

88. Mr. Colbert's request for an apology is denied. The CRT generally does not order apologies because forced apologies are not productive or helpful, and I agree (see *Wang v. Educare Systems Inc.*, 2019 BCCRT 527). I decline to order the strata to apologize to Mr. Colbert.
89. The strata's lawyers are not parties to this action so I decline to make any orders against them.
90. I deny Mr. Colbert's request to prohibit the strata from introducing this resolution again for 5 years. This request is seeking a form of injunctive relief which restricts what the strata can do in the future. The CRT does not generally grant prospective orders (see *Bourque et al v. McKnight et al*, 2017 BCCRT 26; *James v. B.A. Blacktop Ltd. et al*, 2018 BCCRT 528).
91. There is no provision in the SPA that can compel the strata to let Mr. Colbert address the owners at an AGM. So, I dismiss this request.

Mr. Colbert's claim the strata has not investigated his bylaw complaints

92. Mr. Colbert says the strata has not investigated his bylaw complaints. He says he made numerous written complaints about an owner attaching an awning to CP and an owner's child riding their bicycle on CP in violation of the bylaws. The strata does not deny these claims. However, the strata says it no longer investigates Mr. Colbert's complaints because Mr. Colbert has made an "unreasonable number of complaints."
93. Section 26 of the SPA says that a strata corporation must enforce its bylaws and rules, subject to some limited discretion, such as when the effect of the breach is trivial (see *The Owners, Strata Plan LMS 3259 v. Sze Hang Holdings Inc.*, 2016 BCSC 32). The strata council has some discretion over whether to enforce its bylaws in certain circumstances, but that discretion is limited, particularly in circumstances where the strata owners have a reasonable expectation that the bylaw will be consistently enforced. A strata corporation need not enforce a bylaw, even if there

is a clear breach, where the effect of the breach on other owners is trifling (see *Ranchod v. The Owners, Strata Plan KAS 2112*, 2019 BCCRT 1001).

94. A strata may investigate bylaw contravention complaints as it sees fit, provided it complies with the principles of procedural unfairness and is not significantly unfair to any person appearing before the council (see *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148). The standard of care that applies to a strata council is not perfection, but rather “reasonable action and fair regard for the interests of all concerned” (see *Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74 at paragraph 61)
95. In consideration of all of the factors, I find that the strata has not reasonably met its duty to investigate Mr. Colbert’s complaints and enforce its bylaws. I find the strata summarily dismissed Mr. Colbert’s complaints based on the frequency of his complaints. I find that it is unfair to arbitrarily reject all of an owner’s complaints simply because the owner makes a lot of complaints. I am not deciding that the strata’s bylaws were violated or that Mr. Colbert’s complaints were founded. Rather, I find that the strata acted significantly unfairly by not fully considering Mr. Colbert’s complaints before summarily rejecting them.
96. I direct the strata to re-investigate Mr. Colbert’s complaints and decide whether bylaws were violated and whether enforcement is appropriate.

Mr. Colbert’s claim for peace, quiet and privacy

97. Mr. Colbert says the strata breached his rights to peace, quiet enjoyment and privacy by removing foliage near his strata lot, failing to clear snow from the pathway to his strata lot, making false police reports, restricting his access to the CP, harassing him to encourage him to sell his strata lot, threatening to run him over with a vehicle, leaving items on his patio, vandalizing his property and planting cannabis on his property. Mr. Colbert says these are retaliatory actions. I find that Mr. Colbert is, in essence, arguing that the strata treated him significantly unfairly. The strata denies these claims.

98. The strata says the landscaping was performed by a contractor and was not retaliatory. Further, there is no evidence before me that the landscaping was performed differently near Mr. Colbert's strata lot as opposed to other strata lots. Applying the test in *Dollan* discussed above, I find that Mr. Colbert has not established that his expectation of maintaining foliage near his strata lot was objectively reasonable or that the removal was significantly unfair.
99. The strata says the snow clearing is also provided by a contractor. The strata says Mr. Colbert's path is shared by many owners and they are all treated the same. The strata says that path is not cleared because the path is gravel and it is impractical to clear. Mr. Colbert says the gravel has eroded and the path could be cleared. However, since multiple owners share the same path, I find that the strata has not treated Mr. Colbert differently by not removing the snow. Applying the test from *Dollan*, I find that the strata did not treat Mr. Colbert significantly unfairly since he was not treated differently than other owners sharing the path.
100. I do not find Mr. Colbert's access restriction to evidence of unfair treatment, because, as discussed above, the strata's access restrictions applied to all owners. Further, I find that Mr. Colbert has not provided sufficient evidence to prove that the strata harassed him or threatened him. I find that that Mr. Colbert has failed to provide that his claims of leaving items on his patio, vandalizing his property and planting cannabis on his property were performed by the strata.
101. For the above reasons, I am not satisfied that the strata treated Mr. Colbert significantly unfairly so I dismiss this claim.

CRT FEES AND EXPENSES

102. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. Since the strata was not successful, I find it is not entitled to reimbursement of its CRT fees.

103. The strata requests reimbursement of \$720.73 of legal fees because Mr. Colbert served his Dispute Notice on the strata's lawyers. The strata says this caused the strata to unnecessarily incur legal expenses. However, based on the May 22, 2020 email, I am not satisfied that the strata had any contractual obligation to pay the claimed legal fees because the strata's lawyer sent a May 22, 2020 email waiving her legal fees. Further, the CRT only orders order reimbursement of legal fees in exceptional circumstances, which do not apply here. I find that the strata is not entitled to reimbursement of its legal fees.
104. Since Mr. Colbert was partially successful, I find he is entitled to one-half of his CRT fees. This is \$62.50.
105. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Colbert.

ORDERS

106. I order the strata to pay Mr. Colbert \$62.50 for reimbursement of his CRT fees within 30 days.
107. The strata must remove the CP access restrictions imposed in 2018 within 30 days.
108. The strata must provide Mr. Colbert with the information stated in section 35(c)(i) of the SPA within 30 days.
109. The strata must return any funds removed funds from the contingency reserve fund pursuant to the September 18, 2019 owners' resolutions or obtain 3/4 owner approval for such withdrawal at a properly noticed AGM or SGM, in compliance with the requirements stated in Division 4 of the SPA.
110. The strata must re-investigate Mr. Colbert's bylaw complaints within 60 days.
111. Mr. Colbert's claim relating to strata bulletin board messages is withdrawn.
112. The strata's claims and Mr. Colbert's remaining claims are dismissed.

113. Mr. Colbert is entitled to post-judgement interest under the *Court Order Interest Act*.

114. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

Richard McAndrew, Tribunal Member