



Civil Resolution Tribunal

Date Issued: February 8, 2021

File: ST-2020-001092

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan KAS 3625 v. Drance*, 2021 BCCRT 151

B E T W E E N :

The Owners, Strata Plan KAS 3625

APPLICANT

A N D :

MICHAEL DRANCE

RESPONDENT

A N D :

The Owners, Strata Plan KAS 3625

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about owner occupancy of strata lots in a hotel strata corporation. The applicant, and the respondent in the counterclaim, is a strata corporation, The Owners, Strata Plan KAS 3625 (strata) operates as a hotel. The strata lots are placed in a pool for public hotel use. The respondent, and the applicant in the counterclaim, Michael Drance, owns a strata lot that is not currently available for hotel use. The strata wants Mr. Drance to vacate his strata lot and make it available to hotel guests.
2. Mr. Drance says that he can occupy his strata lot on a temporary basis and he does not need to make it available for public hotel use. Mr. Drance has made a counterclaim arguing that several strata bylaws are invalid. Mr. Drance also claims the strata is improperly interfering with the hotel management. Mr. Drance also requests permission to alter his strata lot and he seeks damages for the strata's alleged misconduct.
3. Mr. Drance is self-represented. The strata council president represented the strata.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (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.
5. The CRT 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.

6. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.
7. 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.
8. 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.

Strata's objections to Mr. Drance's counterclaims

9. The strata argues that Mr. Drance's counterclaims should not be resolved because they allegedly do not relate to the strata's dispute. I disagree. CRT rule 3.2 permits counterclaims and there is no requirement under the CRTA or CRT rules limiting the scope of counterclaims to the applicant's claims. I will consider Mr. Drance's counterclaims in my decision, other than Mr. Drance's counterclaim under section 32 of the *Strata Property Act* (SPA) which I refuse to resolve for the reasons discussed below.

Mr. Drance's claim under Section 31 of the SPA

10. Mr. Drance argues that the strata breached section 31 of the SPA. This provision requires strata council members to act honestly and in good faith with a view to the best interests of the strata corporation, and to exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.
11. However, only a strata corporation, not an individual owner, can bring a claim against a strata council member for breaching SPA section 31 (see *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32). So, I dismiss Mr. Drance's claim that the strata breached section 31 of the SPA.

Mr. Drance's claim under Section 32 of the SPA

12. Mr. Drance asks for a determination that the strata has a conflict of interest with the hotel use pool in violation of section 32 of the SPA. For the following reasons, I find that I do not have jurisdiction to decide this claim.
13. 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.
14. 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 Mr. Drance's claims arising under SPA section 32.
15. Mr. Drance argues that, although the CRT lacks jurisdiction to order a remedy under section 32 of the SPA, the CRT can make a declaration that a conflict of interest exists. I disagree. I find that the CRT does not have jurisdiction to make any findings, including a declaration, under SPA section 32.
16. Further, the CRT generally does not make declaratory orders. In *Fisher v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379, a CRT Vice Chair considered the CRT's jurisdiction to grant declaratory orders. She determined that the CRT may make a declaratory order that is incidental to a claim over which the CRT has jurisdiction. Although *Fisher* is not binding on me, I agree with the Vice Chair's reasoning, and find that the CRT's ability to grant declaratory relief is limited to circumstances in which it is incidental to another claim. Since the enforcement of section 32 of the SPA is not within the CRT's jurisdiction, Mr. Drance's request for a

declaration relating to section 32 is not incidental to a claim within the CRT's jurisdiction.

17. Under section 10(1) of the CRTA, I refuse to resolve Mr. Drance's request for an order determining the strata violated section 32 of the SPA as I find it is outside the CRT's jurisdiction.

Mr. Drance's withdrawn claim about voting

18. Mr. Drance's counterclaim requested an order asking for the strata not to submit votes on behalf of strata owned strata lots at an annual general meeting. This claim was voluntarily withdrawn before this dispute reached the decision stage. So, I do not make any findings about this withdrawn claim.

Late evidence

19. I note that both parties submitted evidence late and both parties were given an opportunity to respond to each other's late evidence. I find that no parties were prejudiced by late evidence because all parties had an opportunity to respond. So, I have allowed the parties' late evidence and I have considered that evidence in my decision.

ISSUES

20. The issues in this dispute are:
- a. Must Mr. Drance vacate the strata lot and make it available for a hotel use?
 - b. Must the strata stop participating in rental pool management?
 - c. Has Mr. Drance breached bylaws 3.1(a) and 35 by not making his strata lot available for hotel use?
 - d. Should bylaws 3.1(a) and 35 be removed?
 - e. May Mr. Drance alter his strata lot?

- f. Does the strata owe Mr. Drance compensation or punitive damages for allegedly causing stress and loss of enjoyment of his strata lot?

EVIDENCE AND ANALYSIS

21. I have read all 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 strata must prove its claims on a balance of probabilities. Mr. Drance has the same burden of proving his counterclaims.
22. The strata was created on February 18, 2009, when the strata plan was filed at the Land Title Office (LTO). The strata consists of about 119 strata lots in 2 buildings. It is located in the District of Summerland (District).
23. The strata repealed and replaced its previous bylaws with a set of bylaws filed with the LTO on May 10, 2017.

Must Mr. Drance vacate the strata lot and make it available for hotel use?

24. The strata says Mr. Drance resides in his strata lot. However, Mr. Drance says he only stays at his strata lot for temporary stays, less than 90 days per stay. Neither party provided evidence of the dates of Mr. Drance's arrivals and departures from the strata lot. In the absence of supporting evidence, I find that the strata has failed to prove to that Mr. Drance stays at the strata lot longer than 90 days per visit as he contends.
25. The strata says Mr. Drance's strata lot occupancy violates bylaw 3(1)(e) which prohibits owners from using their strata lots in an illegal manner.
26. The District zoned a parcel of land owned by Summerland Resort Properties (South) Ltd. (Summerland Resort) as comprehensive development zone 5 (CD5) in March 2006. The strata and Mr. Drance's strata lot were later created from this parcel of land. District municipal zoning bylaw No. 2000-450s.14.6 says the primary use for zone CD5 is hotels which are defined as places used exclusively for temporary

accommodations of the travelling public. The District's bylaws for zone CD5 do not permit owner occupancy.

27. There is also a restrictive covenant registered on the land upon which Mr. Drance's strata lot was later built, and it ran with that land. The covenant was registered at the LTO on March 12, 2005 under registration number KX034552 (covenant). According to the documents attached to the filed covenant, Summerland Resort was the registered owner of the land when the covenant was registered at the LTO as a covenant under section 219 of the *Land Title Act* (LTA). Section 219 allows the registration of a covenant in favour of government organizations, such as the District.
28. The covenant says that strata lots must be used as a public hotel and Summerland Resort, and subsequent owners of the strata lots such as Mr. Drance, can only occupy the strata lots by making a reservation through the hotel reservation system. When the strata lot owners are not occupying the strata lots, the covenant says the strata lots must be available for public hotel use.
29. So, is Mr. Drance's admitted temporary owner occupancy illegal because it violates the municipal zoning bylaws or the covenant?
30. This dispute involves similar issues as the previous CRT decision in *Shawara v. The Owners, Strata Plan KAS 2830*, 2020 BCCRT 890. In *Shawara*, a restrictive covenant on the strata lots limited the strata lot owners' use to temporary stays. The applicant argued that owner occupancy exceeding the restrictive covenant violated a strata bylaw prohibiting the illegal use of strata lots. In dismissing this claim, the Vice Chair noted that the restrictive covenant said that the municipality did not need to enforce the restrictive covenant. Further, the Vice Chair found that the municipality approved the owner's use. So, the Vice Chair found that the owner's use was not illegal even though it was not permitted under the covenant's terms.
31. Although the decision in *Shawara* is not binding on me, I find the reasoning persuasive and apply it here. For the reasons that follow, I find that the District similarly approved Mr. Drance's temporary occupancy in this dispute.

32. On February 24, 2020, the District wrote a letter to the strata saying that it finds that the “resort” use under zone CD5 permits owners’ use of their strata lots in compliance with the covenant.
33. Also, the District sent the strata a March 9, 2020 letter saying that it finds that the District’s zoning and the covenant permit temporary owner occupancy while travelling for up to 90 days at a time. The District also wrote that residential use is not currently permitted, but may be permitted with a compliance agreement or zone amendment bylaw.
34. Further, on March 10, 2020, the District wrote Mr. Drance an email saying that it had no intention of acting against owners occupying their strata lots in a manner inconsistent with the District’s zoning at that time.
35. On August 28, 2020, the District wrote an internal recommendation to the District’s council recommending the denial of multiple strata lot owners’ requests to amend the zoning to permit residential use. The District says the zoning and the covenants only permits temporary owner occupancy, which the District defines as less than 90 days.
36. Based on the District’s letters and emails, I am satisfied that the District finds Mr. Drance’s occupancy of the strata for up to 90 days complies with the municipal bylaws and the covenant. Since the strata has not provided any evidence disproving Mr. Drance’s submission that he has not resided in the strata lot for more than 90 days, I find that the strata has failed to prove that Mr. Drance’s use of the strata lot is illegal.
37. Further, I find that the strata has failed to prove that Mr. Drance has breached bylaw 3(1)(e) by failing to make his strata lot available for public hotel use. Although Mr. Drance’s covenant says that his strata lot must be available for hotel use, positive obligations by an owner, such as Summerland Resort, cannot bind later owners, such as Mr. Drance (see *The Owners, Strata Plan BCS 4006 v. Jameson House Ventures Ltd.*, 2019 BCCA 144 (CanLII).) I find that the covenant’s provision that the strata lots must be available for public hotel use is a positive obligation made by the original owner and covenantor, Summerland Resort. Since positive obligations are not

binding on later owners, such as Mr. Drance, I find that the covenant does not require Mr. Drance to make his strata lot available for hotel use.

38. For the above reason, I find that the strata has failed to prove that Mr. Drance's has breached bylaw 3(1)(e) by using his strata lot in an illegal matter and I dismiss this claim.

Must the strata stop participating in rental pool management?

39. Mr. Drance says the strata council is improperly involved in the hotel rental pool management. Specifically, Mr. Drance says the strata council is involved in decisions about the removal of strata lots from the rental pool, financial decisions about the hotel operation, and the hotel's strategic planning. Mr. Drance says these duties should be performed exclusively by the hotel manager as agreed in the Hotel Management and Rental Pool Agreement (hotel management agreement).
40. The hotel management agreement is a contract between the strata, a property management company and Summerland Resort Rental Pool Owners Association. Article 3 of the hotel management agreement says the property management company will manage the hotel and the rental pool program.
41. Mr. Drance says the strata's involvement with the rental pool's management breaches Section 3 of the SPA which says that strata corporations must manage and maintain the common property (CP) and common assets of the strata corporation for the benefit of the owners. Mr. Drance relies on the CRT decision in *Jedmen Holdings Inc. v. The Owners, Strata Plan NES 3120*, 2018 BCCRT 425. In *Jedmen*, the tribunal member determined that that the strata council was not able to act in the interests of all owners when it was involved in the management of the rental pool. So, the tribunal member ordered the strata council to stop managing the rental pool.
42. Although the decision in *Jedmen* supports Mr. Drance's position, previous CRT decisions are not binding on me and I do not follow the decision in *Jedmen* here. Specifically, I do not agree with the finding in *Jedmen* that a strata corporation has a responsibility to act in the interests of all owners with respect to strata lots under

section 3 of the SPA. Rather, section 3 of the SPA only requires strata corporations to act for the benefit of the owners with respect to CP and common assets. I find that section 3 does not apply to strata lots and this claim is about the strata's right to manage and use Mr. Drance's strata lot and not CP. There are no claims that the strata has not managed the CP or common assets in the interests of all strata lot owners.

43. For the above reasons, I find that section 3 of the SPA does not prevent the strata from participating in the management of strata lots in the rental pool. So, I dismiss this claim.

Has Mr. Drance breached bylaws 3.1(a) and 35 by not making his strata lot available for hotel use?

44. Mr. Drance says the strata wants his strata lot to be available for hotel use. Mr. Drance says that the strata claims he is violating bylaws 3.1(a) and 35 by not complying with the hotel management agreement.
45. Bylaw 3.1(a) says an owner cannot use a strata lot in a way that breaches the hotel management agreement. Bylaw 35 says that owners are parties to the hotel management agreement and bound by the agreement's terms.
46. The strata argues that bylaws 3.1(a) and 35 and the covenant require Mr. Drance to comply with the hotel management agreement. Both parties say the hotel management agreement says Mr. Drance must make his strata lot available for hotel use when he is not using it.
47. However, I find that the hotel management agreement does not specifically require this. Rather, article 3 of the hotel management agreement says that the hotel manager will manage the strata lots and that owners agree to be bound by rental bookings in accordance with the hotel management agreement and the Summerland Rental Pool Rules (pool rules). However, the hotel management agreement does not say that owners must make their strata lots available for hotel use and neither party provided a copy of the pool rules. Presumably, the pool rules discuss the use and

occupancy of the strata lots. However, without reviewing the pool rules, I cannot speculate on the pool rules' terms.

48. Further, I note that bylaws 3.1(a) and 35 do not refer to the pool rules and there is nothing in the bylaws saying that the owners are bound by the pool rules. Further, there is no evidence before me that the pool rules are valid strata rules under SPA section 125.
49. The strata also argues that the covenant requires Mr. Drance to make strata lot available for hotel use. However, as discussed above, I find that positive obligations made by the original owner, Summerland Resort, cannot bind later owners, such as Mr. Drance. So, the covenant does not require Mr. Drance to make his strata lot available for hotel use.
50. For the above reasons, I find that Mr. Drance is not required to rent his strata lot to the public.

Are bylaws 3.1(a) and 35 unenforceable under SPA section 121?

51. Mr. Drance says bylaws 3.1(a) and 35 are unenforceable under section 121 of the SPA because he says the strata cannot force an owner to rent their strata lot. However, as discussed above, I find that the hotel management agreement does not require Mr. Drance to rent his strata lot. As such, I find that section 121 of the SPA is not applicable and I dismiss this claim.

May Mr. Drance alter his strata lot?

52. Mr. Drance says the strata has improperly denied his strata lot alteration request.
53. Mr. Drance submitted a written request to perform multiple renovations to his strata lot on August 29, 2019. The proposed alterations included replacing carpet with vinyl flooring, extending the kitchen countertops, building cabinets in the living room and second bedroom, replacing the range, installing a garbage disposal unit, adding bathroom sink drawers and installing ceiling fans. The strata sent Mr. Drance an email

on November 21, 2019 denying his alteration requests because the strata said the hotel rooms must look similar.

54. Bylaw 5(1) says an owner must obtain the written approval of the strata corporation before making an alteration to a strata lot. Bylaw 5(2) says the strata can withhold alteration approval if the hotel manager believes the change is not in the best interest of the hotel business. Bylaw 5(3) says the owner's ability to make alterations to their strata lot is limited by the restrictions in agreements with the hotel manager.
55. Although Mr. Drance has not said this, I infer that he is arguing that the strata treated him significantly unfairly by not approving his strata lot alterations.
56. I find that section 123(2) of the CRTA gives the CRT authority to issue orders preventing or remedying a significantly unfair action or decision of council (see *The Owners, Strata Plan LMS 1721 v. Watson*, 2018 BCSC 164 at paragraph 119).
57. The courts have described a "significantly unfair" action or decision as one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust and/or inequitable (*Reid v. Strata Plan LMS 2503*, 2001 BCSC 1578, aff'd 2003 BCCA 128; *Gentis v. The Owners, Strata Plan VR 368*, 2003 BCSC 120).
58. In *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, the majority of the Court of Appeal applied a "reasonable expectations" test when considering a discretionary action of council. The test, in short, is to ask whether the objectively reasonable expectation of the petitioner was violated by an action that was significantly unfair. While the "reasonable expectations" test is not a universal test, it has been applied to discretionary decisions of council when deemed appropriate (see discussion in *Kunzler v. The Owners, Strata Plan EPS 1433*, 2020 BCSC 576.)
59. The courts have consistently taken the position that the court should not interfere with discretionary actions of council unless they result in something more than "mere prejudice or trifling unfairness" (*Dollan, Kunzler, Gentis and Radcliffe v. The Owners, Strata Plan KAS1436*, 2015 BCCA 448). I find the same caution applies to the CRT.

60. In this dispute, Mr. Drance emailed TM, general manager of the resort on July 30, 2019 saying his offer to purchase the strata lot was just accepted and he asked TM how much notice was needed to remove his strata lot from the rental pool. TM responded on July 31, 2019 saying that they needed 9-months written notice under the rental pool agreement. However, TM said he had some discretion and Mr. Drance's strata lot could be out of the rental pool by October 1, 2019. Further, TM confirmed, in an April 24, 2020 email to Mr. Drance, that he told Mr. Drance that he could alter his strata lot after it was out of the rental pool. So, I find that Mr. Drance had an expectation that he could remove his strata lot from the rental pool on October 1, 2019 and then alter his strata lot.
61. On October 8, 2019, TM emailed Mr. Drance saying that he was no longer able to discuss the rental pool and Mr. Drance would need to speak with the strata. I find that it was apparent that TM did not have the strata's authority to act as its agent after Mr. Drance received the October 8, 2019. However, TM could have had apparent or ostensible authority to act as the strata's agent before that date if it was reasonable for Mr. Drance to infer from the strata's conduct that it consented to such an agency relationship (See *Siemens v. Howard*, 2018 BCCA 197). The strata emailed Mr. Drance on October 10, 2019 saying that it was aware of the emails exchanged between Mr. Drance and TM. Based on the strata's awareness of TM's emails, and the strata's failure to notify Mr. Drance that TM did not have authority to act on its behalf before October 2019, I find that it was reasonable for Mr. Drance to infer that TM was the strata's agent until October 2019. As such I find it was objectively reasonable for Mr. Drance to rely on TM's representations when he submitted his August 29, 2019 alteration request.
62. The strata held a council meeting on October 4, 2019 and denied Mr. Drance's request for an exemption from the 9-month notice period to leave the strata pool. Further, as discussed above, the strata denied Mr. Drance's alteration requests on November 21, 2019 because it said the hotel rooms must look similar.
63. I find that the strata's refusal to allow Mr. Drance's requested alterations did unfairly violate his expectations. The strata says that the pool rules do not permit exemptions

from the 9-month notice period. However, as discussed above, since neither party provide a copy of the pool rules, I am unable to speculate about the pool rules' terms and there is no evidence before me showing that Mr. Drance could not leave the rental pool when he wished. Further, as discussed above, I find that Mr. Drance is not required to make his strata lot available for hotel use. As such, I find that the strata's argument that Mr. Drance's strata lot must remain similar to the hotel use units is unreasonable.

64. For the above reasons, I find that the strata treated Mr. Drance significantly unfairly by denying his alteration request. I order that the strata reconsider Mr. Drance's August 29, 2019 alteration request and make a new decision about his request within 30 days of this decision. In making this decision, the strata may not consider the use or availability of Mr. Drance's strata lot as a hotel unit as a relevant factor in its decision, for the reasons set out above.

Does the strata owe Mr. Drance compensation or punitive damages for allegedly causing stress and loss of enjoyment of his strata lot?

65. Mr. Drance requests compensation for stress allegedly caused by the strata.
66. As discussed above, section 123(2) of the CRTA gives the CRT authority to issue orders preventing or remedying a significantly unfair action by a strata against an owner.
67. Mr. Drance argues that the strata has acted unfairly by not acting in a prudent, diligent manner and by not acting honestly and in good faith. Mr. Drance also says that the strata has misled him, bullied and threatened him. However, I find that Mr. Drance has not proved these allegations. Upon reviewing the multiple letters and emails exchanged between Mr. Drance and the strata, I am satisfied that Mr. Drance and the strata have significant opinion differences about the enforceability of the strata bylaws, municipal bylaws, the hotel management agreement, the pool rules and the covenant against Mr. Drance's strata lot. However, I find that the parties have a complex legal relationship and I do not find that opinion differences about the validity or application of the parties' complicated agreements is harassment or evidence of

bad faith. Further, I find that Mr. Drance has not proved that the strata has acted in a burdensome, harsh, wrongful, unjust or inequitable manner.

68. For the above reasons, I find that Mr. Drance has not provided sufficient evidence to show that the strata treated him significantly unfairly as contemplated under CRTA section 123(2).
69. I note that I would have arrived at the same outcome under the court-made law of tort.
70. In the CRT decision in *MacPherson (dba MacPherson Woodcrafts) v. Coloma (dba Coloma Guitars)*, 2021 BCCRT 31, a CRT Vice Chair found that there is no tort of harassment in British Columbia. Although this decision is not binding on me, I find the reasoning in *MacPherson* persuasive and apply it here.
71. There are 2 similar, closely associated torts recognized in British Columbia: intentional and negligent infliction of emotional suffering. Both of these styles of infliction of emotional suffering require proof of a visible and provable illness, such as physical harm or a psychiatric illness. For the following reasons, I am not satisfied that the strata's alleged misconduct caused suffer severe or extreme emotional distress. Mr. Drance provided 2 doctors' notes which I discuss below.
72. Mr. Drance provided a May 26, 2020 letter from his primary care physician who says they examined Mr. Drance on December 22, 2019. The doctor wrote that Mr. Drance had an increased heart rate, difficulty sleeping, and increased benign prostatic hypertrophy and pulsatile tinnitus symptoms. The doctor wrote that Mr. Drance's pulse and blood pressure were markedly elevated which was likely caused by the stress of this dispute. The doctor prescribed Ativan to help Mr. Drance relax.
73. Mr. Drance also provided a note from another doctor dated May 31, 2020. The doctor says they first saw Mr. Drance in 2014. However, the note does not say whether the doctor examined Mr. Drance recently. The note says that this dispute has caused Mr. Drance to suffer stress and need medication for stress relief. I do not give the May

31, 2020 doctor's note much weight in my decision since it is unclear whether the doctor has examined Mr. Drance recently.

74. I find that both of Mr. Drance's doctors' notes generally say that the stress of this ongoing dispute has affected his health. However, I find that the doctors' notes do not prove that the strata's alleged wrongful conduct caused Mr. Drance to suffer severe or extreme emotional distress. As such, I find that Mr. Drance has not proved either of the torts of infliction of emotional distress to the required standard.

75. Further, I dismiss Mr. Drance's request for punitive damages because such a claim requires proof of malicious, oppressive and high-handed conduct by the strata. For the above reasons, I find that Mr. Drance has not proved that punitive damages are justified.

CRT FEES AND EXPENSES

76. 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.

77. Since the strata's claims were unsuccessful, I find that the strata is not entitled to reimbursement of its CRT fees. The strata did not request reimbursement of dispute-related expenses.

78. Since Mr. Drance was partially successful in his counterclaim, I find that he is entitled to reimbursement of one-half of his CRT fees. This is \$67.50.

79. Mr. Drance also requests reimbursement of \$29,000 for legal expenses and \$16,060 for his own dispute preparation time. I deny Mr. Drance's request for reimbursement of legal expenses because he has not provided an invoice or receipt proving these expenses. Further, CRT rule 9.5(3)(b) says that the CRT will not order one party to pay another party any fees charged by a lawyer in a strata dispute except in extraordinary circumstances.

80. CRT rule 9.5(4) says the CRT may consider the following when determining whether to order reimbursement of legal fees:

- a. the complexity of the dispute,
- b. the degree of involvement by the representative,
- c. whether a party or representative's conduct has caused unnecessary delay or expense, and
- d. any other factors the tribunal considers appropriate.

81. Mr. Drance has not provided sufficient evidence or submissions showing that this dispute involves extraordinary circumstances under CRT rule 9.5(4) justifying the reimbursement of legal fees. Upon review of the factors in CRT rule 9.5(4), I find that Mr. Drance is not entitled to reimbursement of his claimed legal expenses.

82. Further, the CRT does not generally order reimbursement of a parties' own preparation time for a dispute. So I deny Mr. Drance's request for reimbursement of his personal dispute preparation expenses. For the above reasons, I dismiss Mr. Drance's request for reimbursement of dispute-related expenses.

83. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Drance.

ORDERS

84. I order that within 30 days the strata must pay Mr. Drance \$67.50 as reimbursement of his CRT fees.

85. Mr. Drance is entitled to post-judgement interest from the strata under the *Court Order Interest Act*.

86. I order that the strata reconsider Mr. Drance's August 29, 2019 alteration request and make a new decision about his request within 30 days of this decision. In making this

decision, the strata may not consider the use or availability of Mr. Drance's strata lot as a hotel suite as a relevant factor in its decision.

87. I refuse to resolve Mr. Drance's claims relating to sections 32 of the SPA.
88. Mr. Drance's counterclaim requested an order asking for the strata not to submit votes on behalf of strata owned strata lots at an annual general meeting has been voluntarily withdrawn.
89. I dismiss the rest of the strata's claims, and Mr. Drance's counterclaims.
90. 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