Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Borland-Spry v. The Owners, Strata Plan EPS4534*, 2021 BCCRT 339

B E T W E E N :

DONNA BORLAND-SPRY and DAVID SPRY

APPLICANTS

A N D :

The Owners, Strata Plan EPS4534 and Apartment Section of The Owners, Strata Plan EPS 4534

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Trisha Apland

INTRODUCTION

1. This is a dispute over several issues in a strata corporation with 2 separate "sections" as defined under the *Strata Property Act* (SPA).

2. The applicants, Donna Borland-Spry and David Spry, co-own a strata lot in the respondent strata corporation, The Owners, Strata Plan EPS4534 (strata). The

applicants' strata lot is in the respondent section, Apartment Section of The Owners, Strata Plan EPS 4534, (apartment section). The other section is the townhouse section and is not a party to this dispute.

3. As against the strata, the applicants say the strata improperly changed the formula for calculating a caretaker's expense without unanimous owner approval, made an unapproved expenditure for tree removal services, and unreasonably withheld its approval for them to install an air conditioning unit (AC unit) in their strata lot. The applicants seek the following remedies against the strata:

    a. "An order to reverse decision by strata council to change the formula for calculating the caretaker's salary back to original unit entitlement formula from % calculation as per bylaw 37 & SPA 99"

    b. An order that the strata hold a Special General Meeting (SGM) to "disclose unapproved expenditures over $2000.00 that required ¾ vote as per SPA 98"

    c. An order to approve the applicants' "renovation request to install air conditioning unit in our suite".

4. As against the apartment section, the applicants claim it made unapproved expenditures relating to paddleboard storage, "accessibility buttons", and mulch. Further, they claim that it significantly changed 2 storage rooms by permitting paddleboard storage without the required approval, and that it failed to provide notice and minutes of its executive meetings. The applicants seek the following remedies against the apartment section:

    a. An order that the apartment section hold an SGM to "disclose unapproved expenditures over $2000.00 that required ¾ vote as per SPA 98"

    b. An order that the apartment section hold an SGM to "disclose to owners that the executive council members approved the repurposing of common property without 3/4 vote approval by the owners"

c. An order that the apartment section hold an SGM to "disclose to the owners that the executive council members are conducting meetings in contravention of Bylaw 21"

5. The respondents dispute the applicants' claims and request that they be dismissed.

6. The applicants are represented by Donna Borland-Spry, the primary applicant. The strata is represented by a council member. The apartment section is represented by a section executive member.

JURISDICTION AND PROCEDURE

7. 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.

8. 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.

9. 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.

10. 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.

Section Names

11. The CRT documents incorrectly show the name of the respondent apartment section as "Strata Corporation APARTMENT of Strata Plan EPS4534". Under section 193(4) of the SPA, when a bylaw creating a section is filed in the Land Title Office (LTO), the section is created bearing the name "Section [number of section] of [name of strata corporation]". In this dispute, the bylaws creating the sections do not set out the section names as numbers but rather create an "Apartment Section", consisting of the apartment strata lots, and a "Townhouse Section" consisting of the townhouse strata lots. Bylaw 53 says the apartment section's name is "Apartment Section of The Owners, Strata Plan EPS 4534". Given the parties operated on the basis that the correct section name was used in their documents and submissions, I have exercised my discretion under section 61 to direct the use of the apartment section's name as written in bylaw 53. Accordingly, I have amended the strata's name above.

Late Evidence

12. All the parties submitted evidence after the CRT's time frame for parties to submit evidence, but before this dispute was referred to me for a decision. I have discretion under the CRTA and the CRT rules to accept relevant, necessary, and appropriate evidence as discussed above. I find the late evidence is related to the issues raised by the parties and is not controversial. I find the CRT provided the parties with a reasonable opportunity to review the evidence and respond to it with submissions. I accepted the late evidence as I find there is no actual prejudice in allowing it.

Additional Claims

13. In their argument, the applicants make new claims and raise allegations about strata and section governance that I find are not directly relevant to the claims set out in the Dispute Notice. Some of the matters arose after the Dispute Notice was filed. The strata objects and says it would be prejudicial to decide new claims.

14. The CRTA and CRT rules permit a party to make a request to amend the Dispute Notice to add new claims or remedies, which was not done here. The purpose of the Dispute Notice is to define the issues and provide fair notice to the respondents of

the claims against them. CRT rule 1.17 says that the Dispute Notice will only be amended after the dispute entered the CRT decision process where exceptional circumstances apply. I find no exceptional circumstances before me to allow adding new claims at this late stage in the CRT process.

15. Also, a basic principle of administrative fairness is that a party have an opportunity to respond to the case against them. The purpose of the Dispute Notice is to frame and narrow the claims so that the respondents know the case against them. I find the respondents have not received fair notice of the applicants' claims made only in argument to allow them to adequately respond. Accordingly, I find I must decide this dispute on the claims as set out in the Dispute Notice.

ISSUES

16. The issues in this dispute are:

    a. Does the SPA permit the strata to allocate the caretaker expense on a percentage formula?

    b. Did the strata make an unapproved expenditure for tree removal contrary to the SPA?

    c. Must the strata approve the applicants' request to install an AC unit?

    d. Did the apartment section make unapproved expenditures contrary to the SPA?

    e. Did the apartment section make a significant change to common property under SPA section 71 by allowing paddleboard storage?

    f. Did the apartment section hold executive meetings contrary to the bylaw?

    g. What, if any, are the appropriate remedies?

EVIDENCE AND ANALYSIS

17. In a civil claim such as this, the applicants must prove their claims on a balance of probabilities. The parties made extensive submissions that are not all relevant to the issues that I need to decide. While I have reviewed all the submissions, I have only referred to what is necessary to explain and give context to my decision.

18. The strata plan was filed in the LTO on September 22, 2017. It shows the strata complex is fairly large with several multi-floor buildings. The strata plan shows there are 3 apartment-style buildings on one side of a common property driveway and 5 townhouse-style buildings on the other side. The land immediately surrounding each of the 8 buildings shows as limited common property (LCP) as defined in SPA section 1. The plan shows that the LCP is designated for the exclusive use of the respective adjacent building's strata lots.

19. The strata filed a consolidated set of bylaw amendments in the LTO on July 5, 2019 and later amendments on February 27, 2020. The bylaws set out the respective responsibilities of each section and the strata. I explain the relevant bylaws when discussing the issues as they arise below.

20. The owner developer (developer) created sections under Part 11 of the SPA. As described in *Lim v. Strata Plan VR2654,* 2001 BCSC 1386 a section is essentially a "mini-strata corporation". It has the same duties and powers as the strata corporation on matters that relate solely to that section. However, the strata corporation still retains its powers and duties over matters of common interest to all owners.

21. It is undisputed that during 2018 and 2019 all of the members of the apartment section executive were also members of the strata council, and except one, all of the members of the townhouse section executive were members of the strata council. Mr. Spry was on the strata council and a member of the apartment section executive at various times. Mr. Spry was involved in decisions relating to the issues in this dispute. However, I find nothing much turns on this fact in assessing the respondents' compliance with the SPA.

Does the SPA permit the strata to allocate the caretaker expense on a percentage formula?

Background

22. On October 2, 2017, the strata entered into a 1-year employment contract with a resident caretaker for the entire strata complex on a yearly salary, with subsidized rent. That caretaker left their employment and the strata then hired temporary non-resident caretakers also on salary. On June 1, 2019, the strata entered into a building management contract with CPB Consulting Inc. (CPB). The CPB contract required the strata to pay CPB on a set monthly rate, plus fees for extra services. I infer the CPB caretaker invoiced the strata because it was the only other party to the contract but the invoices are not before me. For the purpose of this discussion, I refer to the expense from the employment and CPB contracts as the "caretaker expense".

23. At the first AGM, the strata and sections approved budgets that the strata says were based on the developer's interim budget. The developer had created an interim budget in 2017 under section 13 of the SPA. The strata says during its first year of operation it learned the budgets did not accurately project all the expenses. The strata says it also determined that some expenses should have been allocated solely to a section but were not.

24. The strata says that over the course of 2018, the council and section executives worked to resolve the expense allocations and develop a more appropriate budget for 2019. As part of this work, they decided to review the caretaker's work duties and had the caretaker record their time for their various tasks (the review).

25. The review showed that the caretaker carried out distinct tasks for strata lots in each section as well as common tasks related to common property and takes related to LCP. Based on the review results, the council and section executives decided to change the budgets going forward and reapportion the caretaker's expense by a percentage split. I understand from the witness statements that they attempted to split the caretaker's expense based on the approximate time the caretaker spent on tasks that related entirely to one or the other section or that related to both. They

apportioned the caretaker expense as 55% to the apartment section, 5% to the townhouse section, and 40% to the strata. I find this percentage split was imprecise but approximately matched the review results. The strata and the sections then prepared their separate 2019 and 2020 budgets for the caretaking expense according to this split. The ownership approved the budgets at the strata and section Annual General Meetings (AGMs).

Parties'Positions

26. The applicants say the caretaker expense was a strata expense. They argue that the SPA does not permit the strata to apportion the expense to the 2 sections by a percentage formula. They say absent a unanimous vote, the caretaker expense must be allocated by unit entitlement. The applicants also object to aspects of the caretaker contracts. I have not discussed their objections about the contracts because I find it is not directly relevant to the issue I must decide here.

27. The strata says that splitting the caretaker expense by percentage of services was consistent with SPA section 195 and its bylaws as supported by the review results. The apartment section took no position on this claim.

Analysis

28. A strata corporation is responsible for maintaining and repairing common property, under SPA section 72. Similarly, under strata bylaw 15, the strata must repair and maintain common assets and common property of the strata corporation.

29. Bylaw 15 says the strata must repair and maintain LCP that is not a section's responsibility. The strata's responsibility for LCP is restricted to repair and maintenance that occurs less than once per year, or no matter how often it occurs, to the building structure, the building exterior, plus balconies, exterior windows, and some other exterior items.

30. Bylaw 58.1 says that each section must repair and maintain all of the LCP "appurtenant" to that section, but the duty does not include repair and maintenance of the items noted in bylaw 15, which are the responsibility of the strata as a whole.

31. The strata's bylaws 37, 38 and 39 set out formulas for calculating a strata lot's contribution to common expenses.

32. SPA section 91 says the strata corporation is responsible for the common expenses of the strata. In general, common expenses that occur at least once a year are paid for out of the strata's operating fund, and common expenses that occur less often than once a year are paid for out of the contingency reserve fund (CRF).

33. Under SPA sections 92 and 99, strata lot owners must pay strata fees, which fund both the operating fund and the CRF.

34. In *The Owners, Strata Plan LMS 1537 v. Alvarez,* 2003 BCSC 1085 at paragraph 35, the BC Supreme Court cited SPA sections 91 and 99, and said that the general rule within a strata corporation is that "you are all in it together". To that end, common expenses of a strata corporation must be allocated in proportion to unit entitlement under section 99 of the SPA, unless:

    a. the strata corporation has by a unanimous vote under SPA section 100 agreed to use a different formula for the allocation of contributions to the operating fund and contingency reserve fund, other than those set out in section 99 and the Strata Property Regulation (Regulation),

    b. the strata corporation has by a unanimous vote established a "fair division" of expenses for a special levy under SPA section 108(2),

    c. "sections" have been created under Part 11 of the SPA and the Regulation (SPA section 195), or

    d. the strata corporation has by a unanimous vote changed the unit entitlement of one or more strata lots under SPA section 261

    (see for example, *Coupal v. Strata Plan LMS 2503,* 2004 BCCA 552 at paragraph 34 and *Poloway v. Owners, Strata Plan K69*, 2012 BCSC 726 at paragraph 54).

35. For a strata with sections, SPA section 195 says that expenses that relate solely to the strata lots in a section are shared by the owners of strata lots in the section unless a different formula was approved under section 100. No different formula was approved under section 100 here.

36. In *Section 1 of The Owners, Strata Plan BCS 3495 et al v. The Owners, Strata Plan BCS 3495*, 2019 BCCRT 707 (*Section 1*), a Vice Chair considered SPA section 195 in relation to the apportionment of water utility billing in a sectioned strata. The strata had apportioned the full expense of a city water meter billing to the commercial strata lots because they used most of the metered water. The residential use was minimal.

37. The Vice Chair considered the meaning of "solely" in SPA section 195. He noted the meaning of the word "solely" is "to the exclusion of all else" as defined in the Merriam-Webster dictionary. He concluded that if the expense benefits more than 1 section it does not relate "solely" to a particular section as contemplated by section 195. Given that the residential section used some of the metered city water, the expense did not "solely" benefit the commercial strata lots. The Vice Chair concluded that it was therefore, a strata expense, and contrary to SPA sections 99 and 195 to limit the contribution of the expense only to the commercial strata lots.

38. In *Hou v. Strata Plan EPS 1069*, 2018 BCCRT 855 (*Hou*), cited by the strata, a CRT member considered the allocation of HVAC repair expenses that were only apportioned to the office section in a sectioned strata. The CRT member held that the apportionment was permitted under SPA section 195 because the HVAC system only benefited the office section.

39. Though prior CRT decision are not binding, I agree with their interpretation of "solely" in section 195. I find these CRT decisions are also consistent with the discussion of section 195 in *Yang v. The Owners, Strata Plan LMS 4084,* 2010 BCSC 453.

40. I am not satisfied that SPA section 195 permitted the caretaker's expense to be split by the approximate percentage that the services benefited each section as was done here. Unlike the HVAC repair in *Hou,* I find the caretaker expense did not relate "solely" or exclusively to any 1 section. I find the caretaker expense is more akin to

the metered water in *Section 1*, because both the apartment section and the townhouse section benefited from the services. In this case, I find the caretaker's expense was a strata expense that should have been apportioned by unit entitlement under SPA section 99.

41. The applicants ask that I order the strata to reverse its allocation decision back to the original apportionment. In other words, they seek an order that the strata allocate the caretaker expense by unit entitlement under SPA section 99. However, the strata and the sections undisputedly entered into separate caretaker contracts as of January 2021. As there is no longer 1 single caretaker contract held by the strata, I find the original apportionment is no longer relevant. As for reimbursement, I find the applicants are not entitled to claim a payment on behalf of all apartment section owners and they did not seek an individual remedy. For these reasons, I decline to make the requested order.

Did the strata make an unapproved expenditure for tree removal contrary to the SPA?

42. In 2019, the strata hired AAA Tree Service Ltd. (AAA) to remove some trees on LCP for $3,097.50. AAA removed the trees in January 2020, but its invoice is dated December 2019. It is agreed that the tree removal expense was drawn from the strata's 2019 operating fund.

43. The applicants allege the owners were misled by "the information in the budget". They say the tree removal costs were buried and the owners had not approved the tree removal as a 2019 budget line item. They seek an order that the strata hold an AGM to disclose the alleged "unapproved expenditure over $2000.00 that required 3/4 vote as per SPA 98".

44. SPA section 98(1) states that if a proposed expenditure has not been put forward for approval in the budget or an AGM or SGM, the strata may only make the expenditure in accordance with section 98. Section 98(2) says the expenditure may be made out of the operating fund if the expenditure is less than an amount set out in the bylaw or $2,000 or 5% of the total contribution to the operating fund, which ever is less. Here

I find the strata's unapproved expenditure limit was $2,000. Section 98(3) says the expenditure may be made out of the operating fund or CRF if there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage, whether physical or otherwise.

45. The strata says the tree removal was part of its ongoing remediation efforts to correct the developer's deficiencies. It says the tree removal expense was already approved as part of the landscaping expense in the 2019 budget. The apartment section takes no position on this expense.

46. The 2019 AGM Notice to owners included a Landscape Committee Annual Report that specifically mentioned tree removal under the title "Landscape Adjustment Planning". It said that as a new development the landscaping needed adjusting and this would involve moving trees planted too close to buildings or in inappropriate locations, increasing space between shrubs, and other such changes. It said the "major adjustments have been incorporated into the 2019 budget". It informed the ownership that the strata's landscaping contracts would include "removal/relocation of 15 new/dead trees on property". Based on this report, I find tree removal was specifically before the ownership in 2019 as part of the strata's ongoing efforts to remediate the landscaping and as part of the budget.

47. The 2019 budget shows that it included $12,500 for landscaping. The budget was approved at the 2019 AGM. In approving the budget, I find the owners authorized the strata to spend up to $12,500 for general landscaping and landscape remediation, including tree removal. The 2019 financial documents show the landscaping expenditures came in under budget after paying the tree removal costs. So, I find the tree removal was an approved expense under SPA section 98(1).

48. The applicants say they believed the trees would be removed at no cost to the strata. I note the submitted emails show that in 2019 the landscape company had offered to remove the trees for free if the strata renewed its contract. However, the strata did not renew the contract and it paid AAA to remove the trees instead. I find the free

offer inconsequential. I find the tree removal expense was already approved as part of the 2019 budget approval.

49. As I find the applicants have not proven the tree removal was an unapproved expense, I find no need to decide whether tree removal was required on an emergency basis under SPA section 98(3). I dismiss their claim on this issue.

50. The parties also made submissions on whether the tree removal was a significant change in appearance of common property under SPA 71. I find this issue was not directly before me and so, I have not discussed it here.

Must the strata approve the applicant's request to install an AC unit?

51. In May 2019, the applicants applied to the strata to install a 220 volt (220V) AC unit on the LCP balcony attached to their strata lot. At the time of their submissions here, the strata had not yet made a decision. The applicants say the strata's delay is unfair and was done to target them. The applicants ask the CRT to intervene and order the strata to approve their request to install the AC unit.

52. The strata disputes that it is targeting or treating the applicants unfairly. The strata says their application was put on hold in 2019 along with all other 220V alteration requests because it needed to review the strata's electrical grid capacity before making a decision. The review was undisputedly complicated and delayed due to COVID-19. The strata says the committee completed its work in October 2020 and it planned to discuss the findings at the 2021 AGM. The strata says there is no basis on which the CRT should step in to require the strata approve the applicants' AC unit installation. For the reasons that follow, I agree with the strata on this issue.

53. I turn first to the bylaws. For a strata lot alteration, bylaw 6 says the strata's approval cannot be unreasonably withheld but may require the owner agree in writing to take responsibility for any expenses in relation to the alteration as a condition of strata's approval.

54. However, it is agreed that the applicants' proposed AC unit installation will require penetrating the building envelope and an 220V electrical alteration. So, I find bylaw

7.1 applies to this request. Bylaw 7.1 says an owner cannot alter common property without first obtaining written approval of the strata corporation. I find the building's electrical and envelope are common property as defined under SPA section 1.

55. I find bylaw 3.2.10 also applies. It says no one may install "air conditioning devices" in or about the strata lot except when approved in writing by the council or originally installed by the developer. Based on these bylaws, I find the strata has considerable discretion in deciding the applicants' request.

56. The courts have been cautious when interfering with a strata's discretion unless it was exercised in a way that was significantly unfair as contemplated by SPA section 164 (see *Gentis v. The Owners, Strata Plan VR 368*, 2003 BCSC 120 at paragraph 28). I find the same caution must apply to the CRT.

57. CRTA section 123(2) provides the CRT with the authority to remedy a significantly unfair action, threatened action, or decision of the strata corporation, including the council, in relation to an owner or tenant. I find the words "significantly unfair" refers to conduct that is oppressive or unfairly prejudicial as described in *Reid v. Strata Plan LMS 2503,* 2003 BCCA 128 at paragraph 47. "Oppressive conduct" means conduct that is burdensome, harsh, wrongful, lacking in probity or fair dealing, or has been done in bad faith. "Unfairly prejudicial conduct" means conduct that is unjust and inequitable.

58. In *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, Madam Justice Garson applied a "reasonable expectations" test when considering whether a discretionary action of council was significantly unfair. The test, in short, is to ask whether an objectively reasonable expectation of the petitioner was violated by an action that was significantly unfair. Recently, the British Columbia Court of Appeal clarified in *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342 that the consideration of a party's reasonable expectations is simply one of the relevant factors in considering significant unfairness.

59. Turning to the applicants' claim, I find no evidence that the strata engaged in harsh, bad faith, or wrongful conduct. I find the strata treated the applicants' application like

other applications by putting it on hold to consider the potential impact of additional 220V connections on the strata's overall electrical grid. I find the strata kept the applicants regularly informed of the process by Mr. Spry's involvement in the committee, through email and in townhall meetings. The only evidence of other AC unit approvals was in 2018 and they did not require building envelope penetration or a 220V alteration. I find the applicants had no reasonable expectation that their application would be decided when other applications were on hold. While the applicants do not agree with the strata's approach, I find it was a reasonable one that considered the best interests of the strata as a whole.

60. Further, there is no data on the temperatures in the applicants' strata lot or other evidence that the 220V AC unit approval was required, such as for health reasons. It is also undisputed that the strata already permits portable AC units that use existing 110V outlets. Overall, I find the delay was an inconvenience that was neither oppressive nor prejudicial. I find the applicants have not proven significant unfairness and I dismiss the applicants' claim on this issue.

61. I turn now to the applicants' claims against the apartment section.

Did the apartment section make unapproved expenditures contrary to the SPA?

<u>*Accessibility buttons*</u>

62. In 2019, the apartment section owners approved a special levy for $6,000 to install an "automatic opener" in the parkade for a door leading to the lobby. The parties refer to the automatic opener as "accessibility buttons", so I will use that language here.

63. After the special levy was passed, the apartment section executive realized the quote was for only 1 accessibility button and they needed 2 buttons. The apartment section executive says it decided to immediately proceed with the installation to accommodate the needs of a person with disabilities. As a result, the apartment section had the contractor install accessibility buttons, which cost $8,073.06.

64. The apartment section says it decided to use funds from the operating fund under the line item “security systems/devices” to help pay for the accessibility buttons (additional funds). It says this line item was approved by the apartment section owners in the 2019 budget at the AGM. The actual 2019 budget line item is “Security/Enterphone Lease” with a $44,000 budget. I find the automatic buttons were likely unrelated to the lease. I find the accessibility buttons were not approved under SPA section 98(1) as part of the operating budget.

65. To spend money from the operating fund the expense must “usually occur either once a year or more often than once a year” (see SPA section 92(a)). On the records before me, I find the accessibility buttons were not an operating expense because they were a unique purchase. I find the expense falls under the definition of CRF expense funds as set out in see SPA section 92(b).

66. SPA section 96 says a CRF expenditure must be pre-approved by a 3⁄4 vote at an AGM or SGM, unless it was related to a depreciation report (which does not apply here), or was permitted under SPA section 98(3). As noted, SPA section 98(3) says that an expenditure may be made out of the operating fund or CRF if there are reasonable grounds to believe that an immediate expenditure was necessary to ensure safety or prevent significant loss or damage, whether physical or otherwise.

67. I accept there was a resident in the building who had a disability and the apartment section had a duty to accommodate. However, there is insufficient evidence before me about the person’s disability to establish what accommodation was required. Further, the evidence does not show that the accessibility buttons were needed on an emergency basis to ensure safety or prevent significant loss or damage. So, I find the expense was not permitted under SPA section 98(3) from the operating fund or the CRF.

68. For the above reasons, I find the apartment section breached the SPA by purchasing the accessibility buttons without approval for the additional funds. I find it was only permitted to spent up to the $6,000 special levy for the accessibility buttons.

69. Turning to the requested remedy, I find no need to order the apartment section to call a SGM just to disclose the unapproved expenditure. I find the accessibility buttons' cost was essentially disclosed at the 2020 apartment section AGM. I also find the apartment section dealt with the expenditure and resulting deficit by passing a special levy in 2020. So, I decline to grant the requested order.

Bark Mulch

70. As part of its landscaping the apartment section decided to add bark mulch annually to the LCP on a recommendation from the landscaping committee. The landscaping committee was composed of representatives from the townhouse and apartment sections.

71. The applicants say the strata created the landscaping committee and assigned it "powers to oversee the landscaping". They say the strata had no authority to decide landscaping matters related to sections. They argue that the landscaping committee decisions, budgets, and approvals within the apartment section were therefore, unauthorized.

72. The respondents describe the landscape committee as an advisory committee made up of council members and section executives. They say its role was to gather information and make recommendations regarding the common property landscape. I accept this was its function as it is consistent with its reports and email communications in evidence. I find the strata council members and the section executives were permitted to delegate their powers and duties under bylaws 26 and 69 to create a landscape committee to serve this function.

73. As shown in the 2020 Landscape Committee Annual Report, the committee recommended that the landscaping budget include adding bulk mulch to the apartment section LCP. The landscaping report and proposed budget were provided to owners as part of the apartment section's AGM package. I find the information in the landscaping report was detailed and reasonably clear. The apartment section's overall budget as proposed at their 2020 AGM included $40,000 for landscaping. The minutes show the apartment owners approved the budget at the AGM.

74. The applicants argue there was no separate line item for mulch in the overall budget. However, I find no requirement in the SPA, Regulation or the bylaws that each expense be specified. Section 6.6 of the Regulation says that estimated operating fund expenditures must be itemized by "category of expenditure". I find mulch fits within the "landscaping" expenditure category and it did not need to be itemized.

75. Based on the evidence before me, I find the mulch was an annual expense that was part of the regular LCP landscape maintenance. I find the apartment section owners approved the mulch as part of the overall landscaping budget and so it falls under SPA section 98(1). Because of this, I find the apartment section was entitled to spend the operating funds on the mulch without going back to the owners for further approval. As I find the expenditure was approved, I dismiss this aspect of the applicants' claims.

Paddleboard Racks

76. The apartment section has storage rooms that are designated LCP for the benefit of the apartment section strata lots. On May 14, 2019, the apartment section executive approved an expense to purchase kayak racks for the storage rooms to a maximum cost of $3,000 plus tax. Though the approval was for "kayak" racks, the apartment section actually purchased racks specific for paddleboards. They already had kayak racks in at least one of the storage rooms. However, owners were also storing paddleboards and there was insufficient space on the kayak racks for them. The quote in evidence shows the paddleboard racks cost about $2,900.80 including tax.

77. The apartment section says the 2019 budget had a line item for "cages" that were ultimately determined to be unnecessary. It used the "cages" funds, plus revenue from "move in/move out" fees to purchase the paddleboard racks without returning to the owners for approval.

78. I find the racks were not approved under SPA section 98(1) as part of the 2019 operating budget. I find that purchasing paddleboard racks was a unique, one-time expense and not, therefore, an operating expense. Subject to section 98(3), I find the money should have been taken from the CRF (SPA section 92(b)) or alternatively,

from a special levy under SPA section 108 and only after the section obtained the required approval.

79. The apartment section argues that the paddleboard racks were a necessary purchase in response to a Fire Inspection Report and permitted under SPA section 98(3) to ensure safety and prevent loss. I disagree.

80. The February 26, 2019 Fire Inspection Report directed the apartment section to "remove excess storage from Electrical Room and the Storage Room by the Bike Room". The report did not specifically mention the paddleboards. While I appreciate the racks helped organize the paddleboards, I am not satisfied the expense was immediately necessary to ensure safety or prevent damage and loss. First, the racks were not purchased for several months after the report. Second, if there were too many paddleboards, I find the apartment section could have required the owners to remove their paddleboards by a certain date. I am not satisfied that the expense fell under SPA section 98(3). I find the apartment section purchased the paddleboard racks without the required approval contrary to the SPA.

81. As a remedy, the applicants seek an order that the apartment section hold a SGM to disclose this unapproved expenditure. I find the purchase was disclosed in the section's communication to owners and there is evidence that it would cost the apartment section over $1,000 to hold an SGM. I find it would be disproportionate to order an SGM to disclose the expenditure and I decline to make the order.

Did the apartment section hold executive meetings contrary to the bylaws?

82. The apartment section executive holds scheduled meetings that it refers to as "Formal AE Meetings". The evidence shows that it uses a web-based "Board Calendar" on the property manager's website to notify owners of these Formal AE Meetings and keeps minutes of these meetings that are made available to apartment section owners.

83. In addition to the Formal AE Meetings, the apartment section executive holds regularly scheduled bi-weekly meetings. It says the bi-weekly meetings are to discuss

day-to-day operations and come to a consensus on various matters. It says it began a practice of taking and keeping "notes" at the meetings. However, it says the meetings are actually just informal "gatherings" attended by some or all of the executive in connection with their "duties and interests".

84. The applicants argue that the bi-weekly meetings are in fact "executive meetings" and the apartment section executive must provide prior notice and minutes to the owners under the bylaws and are not doing so. The applicants seek an order that the apartment section disclose to owners that the executive council members were conducting meetings in contravention of bylaw 21.

85. I find bylaw 21 applies to the strata calling council meetings and bylaw 63 applies to sections. Bylaw 63.1 says that any executive member may call an "executive meeting" by giving the other executive members at least 1 week's notice of the meeting and specifying the reasons for calling the meeting.

86. Bylaw 66.1 permits executive meetings to be held by electronic means, so long as all executive members and other participants can communicate with each other. Bylaw 66.2 permits owners to attend the executive meetings as observers with certain exceptions. Bylaw 67.3 requires that all executive meeting votes are recorded in the executive meeting minutes. Bylaw 68 says the executive must inform owners of the minutes of all executive meetings within 2 weeks of the meeting, whether or not the minutes have been approved.

87. The BC Supreme Court in *Kayne v. The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610, discussed requirements around council meetings that I find also apply to section executive meetings. One of the issues in *Kayne* was that council met without keeping minutes. The court held that the meeting in question was an informal gathering and the council was not required to keep minutes. The court said that informal meetings of council or an executive are not "meetings of the council" and it would be unrealistic to expect minutes to be kept of such meetings. However, the SPA requires that minutes are kept of council or section executive meetings where a decision is taken. The court cautioned that "no decision taken at any such meeting

would have validity until it is taken or ratified by a properly constituted and minuted meeting of council" (at paragraph 23).

88. My interpretation of *Kayne* is that it would be an unrealistic burden on council and executives to document every informal discussion in minutes about strata and section related matters. As in *Kayne,* I find the apartment executive was not required to provide notice or minutes of its informal gatherings. However, I find the question before me is whether the bi-weekly meetings were in substance "executive meetings" for the purpose of bylaw 68 rather than informal meetings as contemplated in *Kayne*.

89. I find that referring to the meetings as "gatherings" or "casual meetings with no formal minutes" is not determinative of their nature. I find it is necessary to look at the substance and form of the meetings. The bi-weekly meetings conducted in 2020 were regularly scheduled. The bi-weekly meeting "notes" before me follow an agenda and record not only discussions but also action items and the executive's decisions. Based on their content, I find the bi-weekly meetings were substantially "executive meetings" as contemplated by bylaw 68. As an example, the March 31, 2020 bi-weekly meeting had an agenda and referred to the meeting as "Apartment Executive Council Meeting". The March 31, 2020 "Notes of the Apartment Executive Council Meeting" include decisions approving prior meeting minutes and a vote over a lien.

90. I find bylaw 68 required the apartment section to inform the apartment owners of the bi-weekly meeting minutes. I find the "notes" were essentially meeting "minutes", particularly since they contained decisions and approval of previous minutes. I find the apartment section contravened bylaw 68 by not informing the owners of the "notes" of the meetings within 2 weeks.

91. The applicants say the bylaws also require advance notice of the executive meetings. They argue that without notice a person does not know about the meeting and there is no meaningful opportunity to attend under bylaw 66.2. While I appreciate this may occur, I find bylaw 66.2 only permits owners to attend the executive meetings and does not require it. I find the bylaws do not require the executive to give advance notice of the meetings. It only requires notice of minutes following the meeting.

92. The apartment section was required to inform the apartment owners of the bi-weekly meeting minutes and it has not done so. Because of this, I find it appropriate to use my discretion under CRTA section 61 to order the apartment section to provide such notice. I see no prejudice in making this order and it will provide some finality on this issue. So, I order that within 30 days of this decision the apartment section must inform the apartment strata lot owners of the 2020 bi-weekly meeting “notes” by email, website posting, or letter format. I decline to also order that the apartment section hold an SGM as requested because I find there would be no practical benefit in doing so.

CRT FEES AND EXPENSES

93. 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 find the applicants were partially successful in their claims. I find the apartment section was primarily the unsuccessful party and must reimburse the applicants a total of $112.50 as ½ their paid CRT fees. The respondents paid no CRT fees and none of the parties claimed dispute-related expenses.

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

ORDERS

95. Within 30 days of this order, I order the apartment section to:

    a. inform the apartment section strata lot owners of the 2020 bi-weekly meeting “notes” by email, website posting, or letter format, and

    b. pay the applicants a total of $112.50 in CRT fees.

96. The applicants’ remaining claims are dismissed.

97. 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.

Trisha Apland, Tribunal Member