Civil Resolution Tribunal

Date Issued: June 7, 2021

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Civil Resolution Tribunal

Indexed as: *Sabell v. The Owners, Strata Plan KAS 3635*, 2021 BCCRT 620

B E T W E E N :

COLLIN SABELL, ROY DICKSON, JOHN ZERBIN, CHRIS SMITH, MIKE KING and JIM KLIKACH

APPLICANTS

A N D :

The Owners, Strata Plan KAS 3635

RESPONDENT

REASONS FOR DECISION

Tribunal Member: J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute about a strata corporation's alleged failure to enforce bylaws, and alleged actions contrary to the *Strata Property Act* (SPA).

2. The applicants, Collin Sabell, Roy Dickson, John Zerbin, Chris Smith, Mike King and Jim Klikach, each co-own strata lots in the respondent bare land strata corporation, The Owners, Strata Plan KAS 3635 (strata). Mr. Sabell represents the applicants, and a strata council member represents the strata.

3. The applicants submit the owners of strata lot 37 (SL37), who are not parties to this dispute, are in breach of the strata's bylaw 7(4) because they altered the landscaping at the front of their strata lot contrary to the bylaws. They say the strata has failed to enforce the bylaw breach. They also say the strata council did not act reasonably or objectively when it reversed a previous strata council decision to enforce the bylaws and caused a Civil Resolution Tribunal (CRT) dispute between the strata and the SL37 owners to be withdrawn. In submissions, the applicants say some strata council members were in a conflict of interest.

4. The applicants also submit the strata failed to conduct a council hearing when requested by each of the applicants, as required under SPA section 34.1.

5. Finally, the applicants submit the strata acted contrary to SPA section 98 when the strata council authorized a $5,000 legal fee expense to defend the strata in this dispute and spent $4,281.21 for legal fees from the strata's operating fund.

6. The applicants seek the following orders:

    a. That the strata council did not act reasonably or objectively when it decided that the SL37 owners did not violate bylaw 7(4) and caused a pending CRT dispute to be withdrawn.

    b. That the SL37 owners remain in breach of bylaw 7(4) as determined by the previous strata council in its April 7, 2020 letter to the SL37 owners.

    c. That the alleged unauthorized alterations to SL37 be corrected.

d. That the strata council did not have discretion to deny the applicants a council hearing under SPA section 34.1 and was wrong in doing so.

e. That the strata council was not permitted to authorize a $5,000 legal fee expense.

f. That payment of the strata's incurred legal fees of $4,281.21 from the operating fund is contrary to the SPA.

7. The strata denies the applicants claims. It submits the SL37 owners did not breach bylaw 7(4) as the landscape alterations were authorized and completed by the owner developer under the terms of a registered building scheme. The strata submits it has discretion not to conduct council hearings based on CRT decisions that made such findings. Finally, the strata says it did not authorize a $5,000 legal fee expense and has only incurred $2,195.38 in legal fees related to this dispute, which it says is not contrary to the SPA.

8. The strata asks that the applicants' claims be dismissed. It also seeks an order that the applicants reimburse it $2,195.38 for legal fees it has incurred.

9. For the reasons that follow, I refuse to resolve the applicants' claims about strata council members being in a conflict of interest. I dismiss the applicants' remaining claims, and the strata's request for reimbursement of legal fees.

JURISDICTION AND PROCEDURE

10. These are the formal written reasons of the 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.

11. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, email, 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.

12. Under CRTA section 10, 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.

13. 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.

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

15. 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 Issue about a previous CRT dispute

16. I find this dispute has arisen largely because a new strata council, elected in July 2020, reversed the prior strata council's decision that the SL37 owners breached bylaw 7(4), and caused a CRT dispute ST-2020-003287 (previous CRT dispute) to be withdrawn. The previous CRT dispute involved the same issues about the SL37 owners' alleged breach of bylaw 7(4). In that dispute, the SL37 owners sought an order to set aside a bylaw citation requiring them to replace plants in the front yard of their strata lot. The strata counterclaimed for an order allowing it to enter SL37 and replace the landscaping.

17. In an August 28, 2020 summary decision, a CRT member ordered the SL37 owners' claims and the strata's counterclaim withdrawn based on the parties' requests, stating the CRT would treat the dispute as resolved and close the dispute file under CRT rule 6.1(4) in place at that time. Rule 6.1(4) permits a CRT dispute file to be re-opened only if the CRT permits a party to pursue a withdrawn claim.

18. In October 2020, the applicants' initial application in this dispute sought an order that the strata council be required to re-open the previous CRT dispute file and that the CRT continue to adjudicate that dispute. However, the applicants were advised that the previous dispute could not be re-opened but that they could bring forward claims from the previous dispute, which they did. The applicants then re-worked their claims and requested remedies and a Dispute Notice was issued in October 2020. An amended Dispute Notice was issued January 21, 2021 during the case management phase of the CRTs' dispute resolution process. The strata provided a Dispute Response on February 5, 2021. The issues identified in the January 2021 amended Dispute Notice and February 5, 2021 Dispute Response are before me here.

Preliminary Issues involving the current strata council

Conflict of Interest

19. In submissions, the applicants say some council members were in a conflict of interest when they voted to withdraw the strata's counterclaim in the previous CRT dispute, and seek withdrawal of the SL37 owners' claim. I find such a claim is outside the CRT's jurisdiction.

20. In *Wong v. AA Property Management Ltd., 2013 BCSC 1551,* the BCSC concluded that the only time a strata lot owner can sue an individual strata council member is for a breach of the conflict of interest disclosure requirement under section 32 of the SPA (at paragraph 36). However, remedies for breaches of SPA section 32 are specifically excluded from the CRT's jurisdiction under section 122(1)(a) of the CRTA. Thus, the CRT does not have jurisdiction over claims brought by an owner against an individual strata council member.

21. Following *Wong* and CRTA section 122(1)(a), I find the CRT has no jurisdiction to decide the applicants' SPA section 32 claim set out above. Therefore, I refuse to resolve the claim under section 10(1) of the CRTA, because they are outside the CRT's jurisdiction.

22. Accordingly, I exercise my authority under CRTA section 10 to amend the claims in this dispute to remove those that are outside the CRT's jurisdiction and adjudicate the remaining claims.

Strata Council Members' Standard of Care

23. I dismiss the applicants' claim that the current strata council did not act reasonably or objectively for the following reasons. Although specific strata council members are not named, I find the applicants' claim is essentially that the individual strata council members breached their standard of care, contrary to SPA section 31.

24. Section 31 says that each council member must act honestly and in good faith, with a view to the best interests of the strata, and exercise the care, diligence, and skill of a reasonably prudent person in comparable circumstances.

25. Section 31 applies to individual strata council members and not to the strata council as a whole or to the strata. I find this has been confirmed by the British Columbia Supreme Court (BCSC) in *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc., 2016 BCSC 32.* In *Sze Hang* the BCSC found that the duties of strata council members under SPA section 31 are owed to the strata corporation, and not to individual strata lot owners (at paragraph 267). This means that a strata lot owner cannot be successful in a claim against a strata corporation for duties owed by its strata council members under section 31. Following *Sze Hang*, I dismiss this claim.

26. I find a separate but related issue raised by the applicants about whether the strata council has authority to change or reverse a prior council decision is not covered under SPA section 31. I address this narrow issue below.

ISSUES

27. The remaining issues in the dispute are:

    a. Did the strata council have authority to change or reverse a prior strata council decision?

    b. Did the owners of SL37 breach bylaw 7(4) and, if so, has the strata failed to enforce the bylaw?

    c. Did the strata fail to conduct a council hearing as requested by the applicants, contrary to SPA section 34.1 and, if so, what is an appropriate remedy?

d. Did the strata authorize a $5,000 legal fee expense contrary to SPA section 98 and, if so, what is an appropriate remedy?

e. Are the applicants responsible for the strata's legal fees of $2,195.38 relating to this dispute?

BACKGROUND

28. In a civil proceeding such as this, the applicants must prove their claims on a balance of probabilities. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.

29. Strata plan KAS 3635 filed with the Land Title Office (LTO) shows the strata is a phased bare land strata corporation created in February 2009. It includes 162 bare land strata lots and is subject to a Statutory Building Scheme also filed with the LTO under registration #LB283415 (building scheme), which is registered against the strata lots. I note the "Developer" referenced in the building scheme is the owner developer of the strata as shown on the strata plan. This is important because it is the owner developer that was acting as the contractor to build houses and install landscaping for individual strata lot owners under the building scheme.

30. Among other things, the building scheme contains provisions that restrict a strata lot's landscape design and plantings to those approved by the strata's owner developer. The building scheme also permits the owner developer to grant "special approval" for landscape designs to unsold strata lots that do not comply with the provisions of the building scheme. The building scheme requires an approved landscape design to be in writing and to include drawings and specifications marked "approved" by the owner developer for submission to the District prior to the issuance of a building permit. The building scheme also contains a provision that all owner developer approvals contained in the building scheme will "transfer to and fall within the sole jurisdiction of the [strata] for enforcement" within 3 months after the last occupancy permit is obtained, or an earlier date agreed between the owner developer and the strata.

31. The strata registered a complete new set of bylaws with the Land Title Office (LTO) on May 17, 2013, except for the pet bylaw, which was amended. The Form I shows the bylaw amendments were passed at an annual general meeting (AGM) of the strata held April 16, 2013 and that the Standard Bylaws were replaced. On August 1, 2013, the strata registered another complete set of new bylaws with the LTO, except for the pet bylaw, which was amended. The August 1, 2013 Form I states the new bylaws were registered to address a numbering issue and notes the amendments were passed at the same April 16, 2013 AGM as the earlier bylaw amendments. The April 2013 AGM minutes are not before me, but I accept that the August 2013 bylaws were properly approved as the parties do not argue otherwise. I find these are the bylaws, appropriately numbered, that are relevant to this dispute. I address applicable bylaws below as necessary.

EVIDENCE AND ANALYSIS

Does the strata council have authority to change or reverse a prior strata council decision?

32. In submissions, the applicants questioned the authority of the strata council to change or reverse a prior council decision. The strata did not provide a direct response. Given this appears to be a significant argument of the applicants, I will briefly address it without discussing whether the strata council members' actions were objectively reasonable under SPA section 31, which I have found is outside the CRT's jurisdiction.

33. Under SPA sections 4 and 26, the elected strata council must exercise the powers and perform the duties of the strata according to the SPA, *Strata Property Regulation* (regulations) and bylaws, including bylaw enforcement. The SPA, regulations, and bylaws are silent on issue of revisiting council decisions and I could not locate any case law directly on point. Absent any express prohibition for a strata council to change its decision on a particular matter, I find it is entirely appropriate, practical, and reasonable for a strata council to do so. There could be various reasons a strata council would want to change its position or point of view. These might include further consideration of the issue or new information, and as is the case here, could include reversing a decision of previous strata council.

34. Based on my review of the legislation, I find it is the elected strata council that has authority to exercise the powers and perform the duties of the strata. Therefore, I find the elected strata council has the authority to change or reverse a decision, even if that decision was made by a prior strata council.

Did the owners of SL37 breach bylaw 7(4) and, if so, has the strata failed to enforce the bylaw?

35. Among other things not relevant here, strata bylaw 7(4) says that no owner may alter the landscaping on their strata lot or the common property.

36. The applicants have adopted the position of the previous strata council in the previous CRT dispute. They say the SL37 owners altered the landscaping on SL37, or permitted the owner developer to alter the landscaping, after the SL37 owners occupied their home, contrary to bylaw 7(4).

37. The strata says the SL37 landscaping is original and was approved by the owner developer consistent with the building scheme. It is the strata's view that the owners themselves did not alter the SL37 landscaping and therefore, they are not in breach of bylaw 7(4).

38. For the reasons that follow, I find the SL37 owners did not breach bylaw 7(4).

39. The arguments of both parties include interpretation of an April 8, 2020 letter from the owner developer to the SL37 owners. The part of the letter at issue states the owner developer's "recollection that the initial landscaping installed by [the owner developer] was modified, at [the SL37 owners'] request, to eliminate the tall grasses". The applicants say the letter clearly indicates the modification took place after the grasses were removed. The strata disagrees and says the letter can also be interpreted to read the modifications took place before the grasses were planted by the owner developer. I find the letter can be interpreted both ways. As noted, it is up to the applicants to prove their claim, which I find based solely on the April 8, 2020 letter, they have not.

40. The applicants also rely on certain parts of the disclosure statement. However, a disclosure statement is not binding on the strata as it sets out the owner developer's

intentions. The strata is bound by the legislation and its own bylaws and rules. If an owner developer fails to follow through with its stated intention set out in a disclosure statement, the strata is not responsible for the inaction.

41. The applicants also rely on the building scheme. Based on my reading of the building scheme, it is clear the owner developer maintained control of the entire development, including granting "special approvals" for landscaping as noted above, until its authority was transferred to the strata council. A February 16, 2021 letter from the owner developer to the strata directly addresses these issues and the owner developer's practice for providing "special approval". It stated the owner developer considers

> …the landscape installation on each strata lot… to have a special approval for a custom design based on several factors:
>
> 1. Lot Size
> 2. Lot Characteristics
> 3. Availability of plant material at time of installation
> 4. Individual customer preference

42. In the letter, the owner developer also recognized that it did not properly follow the requirements of the building scheme entirely as, at times, it sought approval for landscape modifications from the strata. However, it added that it and previous strata councils acted in good faith when approving any landscape changes and that it considered all landscape changes to be approved by the owner developer. Based on the date of the letter, I find the SL37 landscape installation had special approval from the owner developer and therefore met the building scheme requirements.

43. The letter also stated that the final occupancy permit for a strata lot was issued on January 22, 2021 and that the owner developer would be transferring its authority under the building scheme to the strata before April 22, 2021. Therefore, although the strata may have been involved in strata lot landscaping alterations, it did not have final authority about such alterations until April 22, 2021 at the earliest.

44. In summary, I find the February 2021 owner developer letter confirms the SL37 landscape modifications were made by the owner developer under the special approval authority granted to it in the building scheme. That the owner developer may not have precisely followed the requirements of the building scheme for landscape modification approvals, such as approving drawings, does not restrict its ability to make special approvals, which it did. Finally, the applicants did not provide any contrary evidence that the landscape modifications were not made and approved by the owner developer, such as that the SL37 landscaping installation is contrary to any permits issued by the District.

45. For these reasons, I find the SL37 owners did not breach bylaw 7(4). As a result, I dismiss the applicants claim that the strata has failed to enforce bylaw 7(4).

Did the strata fail to conduct a council hearing contrary to SPA section 34.1 and, if so, what is an appropriate remedy?

46. SPA section 34.1 says an owner may request a council hearing by written application stating the reason for the request. If a compliant request is made, the strata council must hold a hearing within 4 weeks after the request, and if the purpose of the hearing is to seek a decision of strata council, the strata council must give the applicant a written decision within 1 week after the hearing. Section 4.01 of the regulations defines a "hearing" under SPA section 34.1 as "an opportunity to be heard in person at a council meeting".

47. A plain reading of SPA section 34.1 indicates a council hearing is mandatory. If the proper procedures are followed by an applicant, the strata does not have discretion to refuse a requested hearing. The CRT has routinely found this to be the case. See for example, *The Owners, Strata Plan NES3135 v. T.R.F. Enterprises Ltd.*, 2021 BCCRT 271, and *Roberts v. The Owners, Strata Plan LMS 1901,* 2020 BCCRT 854.

48. The CRT has also found where an applicant's request for a hearing is "unclear, conditional or ambiguous", section 34.1 is not triggered: *Lee v. The Owners, Strata Plan EPS1290*, 2021 BCCRT 533 at paragraph 43.

49. The applicants say they each requested a written decision from the strata under SPA section 34.1 as to why the owners of SL37 were not in breach of bylaw 7(4) or were

exempt from the bylaw. Despite the applicants' claim about their hearing requests, based on the correspondence from the 6 applicants to the strata in August 2020, I do not find any of the requests asked for a decision from the strata. Rather, I find all but 1 owner referenced the August 11, 2020 strata council minutes where the strata decided to take steps to withdraw its counterclaim in the previous CRT dispute and reimburse CRT fees paid to the SL37 owners. Most of the applicants' letters requested an explanation why the strata council had agreed to withdraw the previous CRT dispute, 1 requested an explanation on how the strata could reimburse the SL37 owners their CRT fees, while 1 simply requested a hearing "to discuss the retraction of the [previous CRT dispute]". Having said that, I find it was clear from the correspondence that each applicant requested a hearing.

50. The strata agrees it denied each of the applicants' an opportunity for a council hearing. In its response to the applicants, the strata relied on the CRT decisions in *MacDowell vs Owners of Strata Plan 1875,* 2018 BCCRT 11, and *Hales vs the Owners of Strata Plan NW 2924*, 2018 BCCRT 91, as its authority to deny the applicants' requests for a council hearing.

51. In *McDowell*, the CRT member considered if it was reasonable for a strata council to refuse to conduct a hearing based on an owner's repeated and numerous requests about the strata's governance ***after*** it had already held a hearing requested by the owner. Following a detailed review of the SPA, the member concluded that the strata council governs the strata and there can be circumstances where a strata council may deny a hearing request. The CRT member said the following non-exhaustive circumstances in *McDowell* justified refusing the owner's hearing request:

    a. The owner had not been fined or penalized,

    b. The owner had made previous requests and was granted a hearing,

    c. The owner outlined demands in his hearing request, and also said he would be making further demands,

    d. The owner wished to discuss a number of strata wide governance issues not specific to him, and

e. The reasons for the request was about strata governance, and were more properly addressed at a meeting of the owners, or by majority direction of the owners.

52. In *Hales v. The Owners, Strata Plan NW 2924*, 2018 BCCRT 91, the same CRT member applied similar factors to those in *McDowell*, and again concluded that the strata had reasonably denied the owner's hearing requests based on similar circumstances, including the abusive conduct of the owner at a previous council hearing.

53. I find the circumstances in the case before me are quite different from those in *McDowell* and *Hales*. In particular, I find the factors that the CRT member found justified refusing a hearing are not present here. Specifically, there is no evidence that the applicants had requested or attended previous hearings before their August 2020 requests. As I have mentioned, the hearing requests were clearly about the strata council's decision to withdraw its counterclaim, and request the SL37 owners withdraw their claim, which was not explained in the August 2020 strata council meeting minutes.

54. Also, I find the applicants' concerns were not about the strata's governance, and would not be more properly addressed at a general meeting or by majority direction. I say this because SPA section 27(2)(b)(i) expressly prohibits owners from interfering with the strata council's discretion to determine whether a bylaw has been breached. I find the strata council's decision to reverse decisions of a previous strata council about a bylaw breach was significant and the only issue the applicants wanted to address at their requested hearings. In the circumstances here, I find the applicants were entitled to speak directly to the strata council about its decision. Therefore, I find it was unreasonable for the strata to refuse the applicants August 2020 hearing requests based on *McDowell* and *Hales*.

55. As remedy, the applicants request an order that the strata may not deny a council hearing if one is requested by an owner. However, as noted above, that is not what section 34.1 says or how it has been interpreted. Rather, section 34.1 says the strata must hold a hearing if the request is in writing and states the reason for the request. Also, the CRT has found there are circumstances where a council may deny an owner's request, such as those set out in *Lee, McDowell* and *Hales* above, which are not binding

on me but which I find persuasive. For these reasons, I decline to make the order requested by the applicants.

Did the strata authorize a $5,000 legal fee expense contrary to the SPA and, if so, what is an appropriate remedy?

56. There are 2 parts to the applicants' claim here. First, the applicants say the strata council approved a $5,000 legal fee expense at its November 16, 2020 strata council meeting and spent $4,281.21, when SPA section 98 and the bylaws only permits a maximum expense of $2,000. Second, the applicants say the strata council members are incurring legal costs on behalf of the strata to defend their own actions, as "the legal fees are not related to any strata corporation business".

Alleged breach of the SPA

57. The strata disagrees that it approved a $5,000 legal expense and says it understands the SPA requires a ¾ vote to authorize unapproved expenses over $2,000. The strata says it obtained legal advice and assistance as a result of the applicants starting this dispute and has spent a total of $2,195.38 in legal fees relating to the dispute. The strata also says it received advice that the additional $195.38 over the $2,000 limit, is likely covered under SPA section 98(3).

58. I will first address the issue of the amount of legal fee expense approved at the November 16, 2020 strata council meeting. The minutes show the strata council discussed obtaining legal advice because it was a respondent "in this CRT case" against the strata. Given the previous CRT dispute was withdrawn by November 2020, I find the referenced CRT dispute is the one before me here. The minutes go on to say "retaining a lawyer to *provide advice and legal opinion* in submitting responses to the CRT will cost up to $5,000." A resolution was then passed to "retain *legal advice* regarding the CRT case". (my emphasis added)

59. I appreciate the November 2020 minutes could be interpreted to mean a $5,000 expense was approved for a legal opinion and advice, but I find they could also be interpreted to mean an undefined amount was approved to obtain legal advice only, without a legal opinion. It is reasonable to assume the approved expense for legal

advice would be less that the $5,000 amount stated for advice and a legal opinion. In any event, I find that nothing turns on the amount of legal expense approved because it is the actual expense paid, and not an approved amount, that is addressed in the SPA, as I discuss below.

60. I will next address the discrepancy in the amount of legal fees incurred. There are 2 legal invoices in evidence. The first is an invoice covering the period November 16 through December 2, 2020 which totals $1,241.72. The second covers the period December 2, 2020 through February 10, 2021 with some of the described services redacted or blacked out. However, the invoice total of $3,039.49 is clear. Together, both invoices total $4,281.21, which agrees with the applicants' submission. However, the strata says that the redacted parts of the second invoice are not related to this dispute so the invoice should be discounted by $2,085.83, leaving a balance of $953.66. The total of the first invoice and the discounted second invoice is $2,195.38, which agrees with the strata's submission.

61. SPA section 98(1) and (2) provide, in part, that if a proposed expenditure has not been put forward for approval in the budget or at a general meeting, the strata may only make such expenditure out of the operating fund where that expenditure, together with all other unapproved expenditures for that fiscal year, is:

    a. less than the amount set out in the bylaws, or

    b. if the bylaws are silent as to the amount, less than $2 000 or 5% of the total contribution to the operating fund for the current year, whichever is less.

62. Section 98(3) further provides that despite section 98(1) and (2), an unapproved expenditure described in section 98(1) and (2) can be made by the strata only if there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage. In such a case, the expenditure can be made from the operating fund or the contingency reserve fund (CRF).

63. The invoices in evidence show the total legal fee expense incurred by the strata is $4,281.21, as the applicants say. That the total legal fee expense includes fees for

things other than related to this dispute does not matter. This is because section 98 refers to paid expenses rather than incurred expenses.

64. The parties agree the bylaws are silent about unapproved expenses and there was no ¾ vote passed to approve the legal fee expense from the CRF. I also agree with the applicants that the 2020 – 2021 budget did not set out any legal fee expenses. Based on the contribution to the 2020 - 2021 budget of about $288,000, I find the maximum unapproved expense is $2,000 under section 98.

65. As noted, the strata submits the amount over the maximum amount is covered under section 98(3). Although the strata's argument is based only on the amount it says relates to this dispute, I find any legal fee amount over $2,000 is unapproved within the meaning of SPA section 98. I do not agree with the strata that the excess legal fees meet the requirements of section 98(3). Specifically, I disagree that the legal expenses were necessary to prevent a "significant loss of [strata owners'] rights with regards to equal and fair bylaw enforcement". The strata's statement appears contrary to its argument that the applicants' claims were vexatious. Further, as noted, the strata admits to obtaining legal advice that does not relate to this dispute costing about $2,085.

66. Based on these facts, I find the maximum unapproved or discretionary expense available to the strata was $2,000, which the strata appears to have exceeded. However, there is no evidence before me to show the invoices were paid, and if they were paid, when they were paid. Therefore, I find I have insufficient evidence to find the strata in breach of SPA section 98. Given the burden of proof is with the applicants and they did not prove their claim, I dismiss the applicants' claim that the strata breached the SPA in regard to the legal fee expenses it incurred.

Alleged personal use of strata funds

67. As for the second part of the applicants' claim that the legal fees incurred by the strata were unrelated to "strata corporation business", I disagree for 2 reasons. First, although neither invoice description is detailed, the descriptions do refer to reviewing documents, telephone and video calls, and drafting and revising a CRT Dispute Response. Second, in submissions, the applicants say the redacted portions of the second invoice described

above relate to a "Section 219 Covenant that the District of Lake Country requires [the strata] to register at Land Titles". LTO documents show a covenant under section 219 of the *Land Title Act* is registered against the title of SL37.

68. Based on these reasons, I find both invoices do involve the strata corporation and not involve the use of strata funds for personal reasons. I dismiss this aspect of the applicants' claims.

69. For all of these reasons, I dismiss the applicants' claim that the strata breach SPA section 98.

CRT FEES AND EXPENSES

70. As noted, 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 to deviate from this general rule. I find the strata was the most successful party in this dispute but did not pay CRT fees. Therefore, I order none.

71. The strata claims legal fees of $2,195.38 as dispute-related expenses. As the strata acknowledges, CRT rule 9.5(3)(b) states the CRT will not order one party to pay to another party any fees charged by a lawyer or another representative in the CRT dispute process except in extraordinary circumstances. Under CRT Rule 9.5(4), when considering whether and to what degree to order reimbursement of legal fees the CRT may consider the complexity of the dispute, the degree of involvement of a parties representative and whether the representative caused any unnecessary delay expense, or any other factors the CRT considers appropriate.

72. I do not find extraordinary circumstances exist here, nor do I find the dispute to be complex. The dispute is really about interpretation of bylaws and the building scheme. Since there were no approved representatives for either party, I find the representative factors do not apply. I also find that no party caused any unnecessary delay or expense despite the strata's claim that it was necessary for it to obtain legal advice. I also find that even though the strata was the most successful party, its limited success is not

sufficient to justify reimbursement of its legal fees. In particular, I found the strata breached SPA section 34.1 for failing to conduct hearings as required and may have breached SPA section 98, but the applicants failed to prove the expense was paid, so no orders were necessary. I find these are factors that weigh against reimbursing the strata's legal fees. Finally, I do not find the applicants' claims to be vexatious as the strata suggests.

73. Accordingly, I dismiss the strata's claim for reimbursement of legal fees.

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

ORDERS

75. Under CRTA section 10(1), I refuse to resolve the applicants' claim that certain strata council members acted in a conflict of interest contrary to SPA section 32.

76. I order the applicants' remaining claims dismissed.

77. I also order the strata's claim for legal fees dismissed.

J. Garth Cambrey, Vice Chair