Civil Resolution Tribunal

Original Date Issued: October 29, 2021

Amended Date Issued: November 23, 2021

File: ST-2020-005030

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan NW 3214 v. 1236913 B.C. LTD.*, 2021 BCCRT 1151

B E T W E E N :

The Owners, Strata Plan NW 3214

APPLICANT

A N D :

1236913 B.C. LTD.

RESPONDENT

A N D :

The Owners, Strata Plan NW 3214

RESPONDENT BY COUNTERCLAIM

AMENDED REASONS FOR DECISION

Tribunal Member: Trisha Apland

INTRODUCTION

1. This dispute is about common property alterations.

2. The respondent and applicant by counterclaim, 1236913 B.C. LTD. (913), owns strata lot 11 (SL11) in the strata corporation, The Owners, Strata Plan NW 3214 (strata). The strata is the applicant and respondent by counterclaim in this dispute.

3. The strata says 913 performed common property alterations contrary to its bylaws and despite the strata specifically denying its approval. The strata seeks orders that:

   a. 913 make no further alterations of the strata's common property without the prior written consent of the strata, and

   b. under the specifications provided by, and under the supervision of the engineers engaged by the strata at 913's expense, 913 return to its original condition the common property/common assets which it has modified, including, without limitation, the concrete slab floor, the land lying below the floor and the sewer system.

4. 913 says it needed to alter the plumbing in and around SL11 for a live seafood packaging and distribution business. It says it also needs to upgrade the electrical service and install compressors on the strata building roof to optimally operate seafood tanks and the walk-in freezer. 913 says none of these modifications negatively affect the common property or other units. It says the strata has treated it significantly unfairly and unreasonably in opposing them, which the strata denies.

5. In the counterclaim, 913 seeks a declaratory order that the strata has acted significantly unfairly, plus an order that the strata retroactively approve its plumbing modifications and permit its other proposed modifications.

6. The strata is represented by its council president, Aiden Phillip Butterfield who is a lawyer. 913 is represented by lawyer, Marvin Lithwick.

7. For the reasons that follow, I allow the strata's claim and I dismiss 913's counterclaim.

JURISDICTION AND PROCEDURE

8. 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). CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.

9. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.

10. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

11. Under CRTA section 123, 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

12. Section 189.1(2)(a) of the *Strata Property Act* (SPA) says an owner may not make a request for CRT dispute resolution unless the owner has requested a hearing under SPA section 34.1.

13. SPA section 34.1 states that by application in writing stating the reason for the request, an owner or tenant may request a hearing at a council meeting. If the written request is made under this section, the council must hold a council meeting to hear the applicant within 4 weeks after the request and give the applicant a written decision within one week if the purpose of the hearing is to seek a decision of council.

14. The strata says 913 only requested a SPA section 34.1 hearing to increase the electrical service and thus, its other "complaints" are not validly before the CRT.

15. The parties' records show that 913 requested a section 34.1 hearing about the strata council's denial of its request to increase electrical service to SL11. The hearing was held on June 10, 2020. On the hearing day, 913's former lawyer, Adam M. Van Noort, wrote to the council requesting they approve 913's electrical upgrade, plus allow 913 to install 7 rooftop compressors. He said the electrical upgrade was, at least in part, needed for the compressors. His letter included 913's submissions on both issues.

16. As set out in the council's June 23, 2020 decision, the council decided the electrical upgrade issue. The council refused to add the compressor request to the section 34.1 hearing because it said it was complicated and was not requested with adequate advance written notice. The parties did not then hold a separate section 34.1 hearing over the compressor request.

17. SPA section 189.1 does not require that the hearing be approved or held. It only requires that the request be made under SPA section 34.1.

18. My interpretation of Mr. Van Noort's letter is that he was asking to add 913's compressor request to the June 10, 2020 section 34.1 hearing. I accept, as a matter of fairness, the council required more time and did not have to hold a hearing about the compressor that day. However, I find 913 technically met the section 34.1 requirement, which specifies no notice period. I find I am not barred by SPA section 189.1 from considering 913's counterclaim about the compressor.

19. As for the plumbing modifications, the strata makes the claim about that issue, not 913. The SPA has no parallel requirement for a strata corporation to hold a hearing under section 189.1 prior to bringing a claim against an owner. I find 913's counterclaim is essentially the same as its response to the strata's claim. In light of this, I conclude that 189.1 does not bar me from considering 913's significant unfairness counterclaim over the plumbing modifications, which I have dismissed.

ISSUES

20. The broad issues in this dispute are:

    a. Did 913 breach the bylaws and if so, which ones?

    b. Did the strata act in a manner that was significantly unfair to 913?

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

EVIDENCE AND ANALYSIS

21. In a civil claim such as this one, the strata must prove its claims on a balance of probabilities (meaning "more likely than not"). 913 has the same burden on the counterclaim.

22. The parties submitted a large volume of evidence and submissions. I have read those submissions and weighed the parties' evidence, but only refer to that which is necessary to explain my decision.

Background

23. The strata is a commercial development located in an industrial business park in the City of Richmond. The strata plan filed in the Land Title Office (LTO) shows it consists of fourty 2-level strata lots in 2 separate buildings.

24. As set out in a January 11, 2020 Contract of Purchase and Sale (Contract), Shin Grand Food Trading Ltd. (Shin) initially intended to purchase SL11 from the vendor, Dore Industries Inc. (Dore). The Contract Schedule states that Dore had been

renting SL11 to “events supplies” and cleaning companies. Shin is a wholesale live seafood distribution company and intended to use SL11 for its seafood business, which requires seafood tanks, a stand-up freezer and refrigerator to store the seafood. Shin was already operating its business out of another location. These facts are not disputed.

25. In early January, Shin’s realtor wrote to the strata to request approval to use SL11 for this live seafood business purpose. On behalf of the strata, the council president responded that the council would consider the request but informed the realtor the decision would take time, was unlikely to be approved, and for them to provide comprehensive drawings of any intended renovations and descriptions of its operations. Neither Shin nor the realtor responded to the strata’s letters.

26. On January 17, 2020, Shin assigned the Contract to 913 under an Assignment of Contract of Purchase and Sale. As shown in the LTO Title Search, 913 is the sole registered owner of SL11. The Contract Schedule included terms that the buyer, now 913, was aware that the electricity supply to the subject property is strictly limited to 35 amps at 585 volts with no increase in power allowed and that it was “suitable” to the buyer’s proposed use of the unit. It also included a term that the buyer would provide the strata with all diagrams and engineer’s drawings submitted to, and approved by, the City of Richmond as part of 913’s applications for any major modifications or renovations to SL11.

27. On January 22, 2020, 913 informed the strata that it was purchasing SL11, with a completion date scheduled for January 29, 2020. It asked for a Form B Information Certificate, which is a document that discloses information about a strata lot and the strata corporation. I describe its contents below.

28. As set out in his January 23, 2020 letter, the strata council president informed 913 that Dore, who still owned SL11 at that time, had asked the council to consider Shin’s realtor’s request to renovate SL11 and the common property for the seafood business. He wrote that the council unanimously voted against the request. He said council did not receive the requested renovation particulars and the council

anticipated they might engage SPA section 71. SPA section 71 says a strata corporation must not make a significant change in the use or appearance of common property or land that is a common asset unless the change is approved by a ¾ vote at an annual or special general meeting (SGM) or there is an immediate safety or loss risk.

29. The president's January 23, 2020 letter states that if 913 sent full drawings/plans and a detailed written description of all aspects of the proposed renovations and operations, together with an undertaking, council would put a resolution before the ownership to see if a ¾ vote "can be found". The president also wrote that "preliminary enquiries suggest that there exists amongst the ownership at large the same very strong opposition as was evidenced at the council meeting". The president enclosed all his prior correspondence with Dore and Shin's realtor.

30. The January 28, 2020 Form B requires a strata corporation to disclose if there are any amendments to the bylaws that are not yet filed in the LTO. The strata included "notes" that the council unanimously rejected a request for approval of alterations, which would enable SL11 to be used as a live seafood handling business facility. It says a proposal for a bylaw amendment to prohibit live seafood from the complex is being prepared together with a request under SPA section 71 for renovation approval. It says the bylaw amendment is likely to obtain the required ¾ vote.

31. After purchasing SL11, 913 wrote to the strata that it bought SL11 for Shen's seafood business. I infer 913 licenced or intends to licence or lease SL11 to Shen to operate this business. In its submissions, 913 refers to the seafood business in a way that also suggests it has an interest in the business. It is undisputed that 913 has the same director and controlling shareholder as Shen. However, the extent of 913's interest in the seafood business is not before me in evidence.

32. Based on the correspondence, I find 913 did not request approval for any of its intended renovations with copies of requested diagrams, engineer drawings, or other requested particulars. It is undisputed that 913 started its renovations despite this.

33. On June 17, 2020, the council president wrote to 913's former lawyer, Adam M. Van Noort, that he saw people jackhammering holes in SL11's common property concrete floor, that such common property alterations require strata approval, and 913 must stop work. Mr. Van Noort responded that he confirmed with 913 that it is not making alterations "beyond the midway point of the structural portion of the floor". He said the plumbing work was all within SL11 and strata approval was not required for such alterations under the bylaws.

34. 913's submitted emails with Mr. Van Noort suggest 913 either did not inform him about the extent of its renovations or 913 performed further excavation after his letter. It is undisputed that 913 did not stop at the midway point or confine its alterations to within SL11.

35. As shown in several photographs, 913's contractor removed most of SL11's concrete slab to expose the soil underneath, excavated 5 feet below into the substrate, and installed framing within the concrete. It is undisputed that 913's contractor installed and connected several new drainage pipes to existing underground sewer line access points. The photographs show that 913 also covered up the underground work with concrete. The strata says this prevented it from inspecting the plumbing work, which I accept. There is no suggestion that 913 had given the council the opportunity to inspect.

36. The strata called an SGM to vote on 913's renovations, plus a proposed new bylaw to prohibit live seafood handling in a strata lot, as it had stated back in January 2020 was its intention. In 913's SGM submissions, 913 described "significant changes" it made or was making to the common property and explained its need that they be approved. 913 also stated that it was performing other renovations inside SL11 that did not require approval and were not part of the resolution vote. 913's provided submissions seeking for approval. The SGM Notice shows that the council's position was opposed to the ownership approving 913's common property alterations. The internal SL11 alterations were not at issue. I note it was the council and not 913 who put forward the resolution.

37. The August 6, 2020 SGM minutes show the ownership voted on a ¾ vote resolution that the strata corporation approve the "changes to the common property floor, substrate and sewer system proposed, made, and being made in and around strata lot 11". The resolution was defeated, with 73% opposed and 27% in favour. The ownership also voted on the proposed bylaw to prohibit live seafood handling in a strata lot, which was also defeated.

38. In September 2020, 913 requested retroactive approval from the council for the unapproved alterations. As set out in its September 10, 2020 letter, the council denied 913's retroactive approval request and directed 913 to restore the common property at 913's cost. 913 did not then restore the common property, which is the subject of the strata's claim.

39. I note the parties submitted their extensive correspondence, which I did not summarize in full above. It shows that they largely disagreed, at different points in time, over what bylaws apply and what renovations require strata's approval.

Did 913 breach the bylaws and if so, which ones?

40. The strata was created in 1990 under the *Condominium Act* (CA), a predecessor to the SPA. The strata filed a full set of bylaw amendments in the LTO on April 14, 1992 under the CA, plus 1 bylaw amendment on March 10, 2000. As shown in the LTO Index, the strata never repealed and replaced its filed bylaws after the SPA came into force and it is not required to.

41. *Strata Property Regulation* 17.11 says the SPA Schedule of Standard Bylaws are deemed to be the bylaws for all strata corporations created under the CA except to the extent that conflicting bylaws are filed in the LTO. If a strata corporation filed a bylaw that conflicts with a Standard Bylaw, the filed bylaw prevails. Based on my review of the relevant filed and Standard Bylaws, I find the strata has a mix of both filed bylaws and Standard Bylaws.

42. 913 references filed bylaw 1(8) and Standard Bylaw 5, which are both about alterations to strata lots. As this dispute is about common property alterations and

the strata is not disputing 913's interior strata lot alterations, I find these 2 bylaws are not relevant. 913 also references 20(8), which is also irrelevant because it is about "For Sale/Lease/Rent" signage.

43. Filed bylaw 20(3) says (spaces added for readability):

    a. Structural alterations to the interior or exterior of the building shall not be made without the prior approval of the Strata Council. Such approval shall not be unreasonably withheld.

    b. No exterior alterations to wiring, plumbing, piping or other services shall be made, either on the Strata Lot or the common property.

    c. Interior alterations to wiring, plumbing, piping or other services may be made providing they comply with all building codes and do not affect any other Strata Lot.

    d. Municipal permits for wiring and plumbing must be obtained prior to any alteration.

44. Standard Bylaw 6(1) says an owner must obtain the strata corporation's written approval before making an alteration to common property, including the limited common property, or common assets. Bylaw 6(2) says the strata corporation may require the owner to agree, in writing, to take responsibility for any expenses, as a condition of its approval.

45. SPA section 1 defines common property as part of the land and buildings shown on a strata plan that is not part of a strata lot and pipes, wires, cables, chutes, ducts and other facilities for the passage or provision of water, sewage, drainage, electricity, heating and cooling systems, or other similar services, if they are located:

    a. within a floor, wall or ceiling that forms a boundary between a strata lot and another strata lot,

    b. between a strata lot and the common property,

c. between a strata lot or common property and another parcel of land, or

d. wholly or partially within a strata lot, if they are capable of being and intended to be used in connection with the enjoyment of another strata lot or the common property.

46. Considering the common property definition, I find Standard Bylaws 6 is broader than the filed bylaws but does not conflict with them. So, I find Standard Bylaw 6 is a deemed bylaw of this strata in addition to the filed bylaws above and the bylaws must be read together.

47. I find filed bylaw 20(3) does not apply to 913's plumbing alterations that were inside SL11 and 913 says it made no structural alterations. I read bylaw 20(3) to prohibit "exterior" plumbing or piping alterations. The strata does not say the ownership meant this bylaw to also prohibit underground plumbing and piping as well and it did not clearly treat it that way. I find I do not need to make a specific finding about its application here. As I explain next, I find Standard Bylaw 6 applies and 913 breached that bylaw.

48. In particular, I find 913 altered the common property by removing the concrete floor past the midpoint and excavating into the substrate. This is because SPA section 68 says the floor past the structural midway point is outside the boundaries of a strata lot and forms part of the common property. I find the existing underground sewer line and those portions of the SL11's pipes under the floor's midway point are also part of the common property as defined under SPA section 1. So, I find 913 necessarily altered the common property to connect its pipes to the underground sewer line. I find 913 required the strata's approval under Standard Bylaw 6 and it had none.

49. In *Allwest International Equipment Co. Ltd. v. The Owners,* Strata LMS 4591, 2018 BCCA 187, the BC Court of Appeal (BCCA) held that immaterial changes to common property will not be "alterations" for the purpose of Bylaw 6(1): *Allwest* at paragraph 23.

50. I find that removing a concrete floor past the midpoint, excavating the land underneath, installing several new pipes and connecting them to the underground sewer line are material changes to the common property. I find they are alterations for the purpose of Bylaw 6(1).

51. 913 says the strata and City bylaws do not prohibit the use of SL11 for a seafood business and it has the necessary permits from the City for its alterations. SGM says the "plumbing modifications" were inspected and approved and asserts they do not negatively affect the common property nor any other strata lot. Nevertheless, I find Standard Bylaw 6 clearly required strata approval for common property alterations and 913 did not have that approval. I find 913 breached Standard Bylaw 6 by altering the common property without approval.

52. The courts have concluded that the strata is required to enforce its bylaws subject to some limited discretion, such as when the effect on the owners is insignificant: *Strata Plan LMS 3259 v. Sze Holding Inc*., 2016 BCSC 32. However, I find this is not an insignificant or trivial breach. 913 connected several new pipes to discharge into the sewer line used by the rest of the strata lot occupants without strata approval. While the City inspection test passed, I find this does not necessarily mean the alterations will not negatively impact other strata lots or the common property. I do not accept 913's assertion about this. I find an assessment on the impact of plumbing works is outside ordinary knowledge would require expertise: *Bergen v. Guliker,* 2015 BCCA 283 There is no expert evidence, such as an engineer's report, in evidence about this issue.

53. As mentioned, the strata brought this dispute to the CRT for an order that 913 remedy the breach by reversing the unapproved alterations and restoring the common property at 913's own cost. In response to the strata's claim and the counterclaim, 913 asks to be allow to keep the common property alterations on the basis that the strata's decisions or actions were allegedly significantly unfair.

Did the strata act in a manner that was significantly unfair to 913?

The Legal Framework

54. SPA section 3 says the strata corporation is responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners. The strata's powers are exercised through its elected council.

55. Under Standard Bylaw 6, a strata corporation has discretionary authority to allow or prohibit common property alterations so long as the decision is not significantly unfair: see *Allwest* at paragraphs 20 and 27-30.

56. SPA section 71 also applies where an owner requests strata approval of a common property alteration: see *Foley v. The Owners, Strata Plan VR 387,* 2014 BCSC 1333 that sets out a non-exhaustive list of criteria for determining what is a significant change in use and appearance. In deciding an owner's request under Standard Bylaw 6, the strata must consider whether the alteration will result in a significant change in the use or appearance of common property. If the alteration will result in a significant change then the council itself does not have discretion to approve or deny it under Standard Bylaw 6. This is because SPA section 71(a) says the decision must be made by a 3/4 ownership vote at a general meeting. The exception to this under SPA section 71(b) is where there are reasonable grounds to believe that immediate change is necessary to ensure safety or prevent significant loss or damages.

57. The courts have held that some decisions or actions of a strata corporation will be unfair to one or more strata lot owners in that the will of the majority may often serve the interest of the majority of owners to the detriment of a minority. Thus, to obtain relief, an owner must establish significant unfairness*:* see *Ernest & Twins Ventures (PP) Ltd. v. Strata Plan LMS 3259 (2004),* 34 B.C.L.R. (4th) 229, 2004 BCCA 597, at paragraphs 23-24.

58. CRTA section 123(2) gives the CRT authority to issue orders preventing or remedying a significantly unfair action or decision of a strata corporation in relation to an owner or tenant.

59. Similar to CRTA section 123(2), SPA section 164 says the court may make any order it considers necessary to prevent or remedy a significantly unfair action or decision of the strata corporation in relation to an owner or tenant. In that context, the courts have interpreted "significantly unfair" to mean conduct that is oppressive or unfairly prejudicial. "Oppressive" means conduct that is burdensome, harsh, wrongful, lacking in fair dealing or done in bad faith. "Unfairly prejudicial" conduct means conduct that is unjust and inequitable: *Reid v. Strata Plan LMS 2503,* 2001 BCSC 1578, aff'd 2003 BCCA 126. I apply the same significant unfairness definition to my considerations under CRTA section 123(2).

60. Where the significant unfairness question involves allegedly oppressive conduct, a modified reasonable expectations test forms part of the inquiry: *King Day Holdings Ltd. v. The Owners*, Strata Plan LMS3851, 2020 BCCA 342 and *Time Share Section of the Owners, Strata Plan N 50 v. Residential Section of The Owners, Strata Plan N 50,* 2021 BCSC 486.

61. The reasonable expectations test was restated in the BC Supreme Court (BCSC) decision, *The Owners, Strata Plan LMS 1721 v. Watson,* 2018 BCSC 164:

    a. What is or was the owner's expectation?

    b. Was that expectation objectively reasonable?

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

Analysis and Conclusions

62. 913 argues that the strata corporation, though its council, discriminated and acted significantly unfairly in its dealings with 913. It says it performed the alterations based on a misunderstanding from its former lawyer that they were permissible. It says the strata unreasonably and arbitrarily denied its alteration requests knowing

that 913 had essentially completed plumbing modifications "critical" to the seafood business, which allegedly cost it considerable financial resources and it allegedly had to halt the business. I note there is very little evidence about the business or finances. The strata disputes 913's allegations.

63. The question I must decide is whether the strata's conduct and decisions about the common property alterations was significantly unfair to 913. 913 has the burden to prove, on a balance of probabilities, that the strata's conduct was significantly unfair to it and that it is entitled to a remedy under CRTA section 123(2). As discussed, I conclude that 913 has not met that burden.

64. I find 913 must have been aware that it would need to apply for the strata's approval with the necessary supporting information if it wanted to make extensive renovations. The requirements were clearly incorporated into the Contract terms, the Form B, and council's letters. There is nothing to suggest that the strata or its council promised or led 913 to believe its renovations would be approved. Conversely, the council president communicated in writing that approval was unlikely. 913 has not shown the strata approved similar renovations requests for others. While I accept 913 wanted to perform the renovations for the seafood business, it has not established, with evidence, that it had an objectively reasonable expectation that its renovations would be permitted or approved.

65. 913 says reasonableness is a factor in the significant unfairness analysis and argues that the strata's decisions were unreasonable and arbitrary and its denial was a means to an end to prevent the seafood business. 913 refers to the recent BCSC decision *Simon Fraser University Foundation v. The Owners, Strata Plan BCS 1345*, 2021 BCSC 360 (*SFUF*). At paragraph 60 the court stated, "the absence of any explanation or evidence addressing how and why the Council made its decision, is a factor to consider in the unfairness analysis".

66. In *SFUF,* a strata lot owner installed an air conditioning system without obtaining prior approval of the strata council as required under the bylaws. The owner petitioned the court for an order to (retroactively) permit it to install and operate the

air conditioner. The court concluded that the decision making process was opaque and the council gave the owner no clear explanation for their denial. However, the court still concluded the strata, though its council, had not treated the owner significantly unfairly and dismissed its claim. The court considered, in part, that the owner accepted the risk by performing the work rather than "down tooling" pending the council's decision: see paragraphs 62 and 65.

67. In this dispute, I find the decision making process was clear and transparent. The correspondence shows that the council told 913 what was required of it and gave 913 repeated opportunities to submit the particulars of its intended renovations, which it did not then provide. I find the council's requests were consistent with 913's obligations under the bylaws and the strata's own duty to manage the common property. The council provided 913 with its written position and I find its decisions and directions were supported with relevant reasons and were not arbitrary.

68. I accept there was an initial dispute over the strata lot boundaries. However, I find 913 should have down tooled its renovations by at least June 2020 as the council had directed it. As discussed above, the evidence shows 913 continued with the renovations after affirming it would confine its plumbing to inside SL11 and not excavate the floor past the midway point. In light of what it knew at the time, I find 913 could have had no reasonable expectation that it was permitted to work beyond the floor's midpoint even if it was initially mistaken. Similar to *SFUF*, I find 913 took a risk by proceeding with its extensive unapproved renovations.

69. Next, 913 argues that the SGM process was significantly unfair. It says the strata failed to conduct general meetings for years and then proposed the 2 SGM resolutions specifically targeted against 913. It says the August 2020 SGM Notice was inflammatory and it campaigned against 913.

70. I find the SGM Notice could have been more neutral. That said, I find any impact of the Notice, which is not proven, was likely mitigated by 913's own July 23, 2020 submission letter that included its detailed position and that was distributed to the ownership for the SGM.

71. I agree with 913 that the resolution to change the bylaws to prohibit live seafood businesses was specifically targeted against the seafood business. SPA section 119(2) permits the strata ownership to pass bylaws for the control, management, maintenance, use and enjoyment of the strata lots, common property and common assets. I find this could include a bylaw restricting certain types of business uses within the strata complex. In any event, I do not need to consider the proposed bylaw further because the resolution did not pass by the necessary ¾ vote and the bylaws were not changed.

72. The strata says due to the sheer magnitude of 913's alterations, the council did not have the authority to approve them without a ¾ vote at a general meeting under SPA section 71. Given that 913 did not provide the strata the requested engineering report, the alterations were to common property plumbing, and the strata had no opportunity to inspect them itself, I accept the strata did not know the exact nature of the alterations and concluded they might engage SPA section 71. If they were a significant change, then the council did not have authority to retroactively approve them. I find the decision to hold the vote was a reasonable one in the circumstances. I find I do not need to decide whether 913's alterations actually fell within the definition SPA section 71 because the ownership already voted them down.

73. I find the proposed resolution was not targeted "against" 913. It was worded in the affirmative for the outcome that 913 was seeking, retroactive approval of its common property plumbing modifications. Although 913 takes a different position now, in 913's SGM submissions it described the underground plumbing modifications as "significant changes" to common property. In the circumstances, I find it was not significantly unfair for the strata to hold a vote under SPA section 71.

74. Considering the outcome of the August 2020 SGM vote, I find the council was acting in accordance with the will of the owners in denying 913's subsequent retroactive alteration request and requiring 913 to restore the common property.

75. In *Lum v. Strata Plan VR519 (Owners of),* 2001 BCSC 493, the court stated at paragraph 12 that the court should only interfere with or override a strata's

democratic governance when absolutely necessary. I find this caution applies to the CRT as well.

76. I find 913 has not established that the strata's conduct or decisions about the unapproved common property alterations were significantly unfair to it. I find I must defer to the strata ownership's decision. I dismiss 913's counterclaim for an order that the "plumbing modifications" be approved. I also dismiss its claim for declaratory relief.

Must 913 restore the common property at its expense?

77. 913 submitted no financial documents, witness statements, or other evidence to show its level of hardship, if any, to restore the common property. Even if it had, hardship is not determinative.

78. In the BCCA *Allwest* decision cited above*,* an owner installed a heat pump on the exterior of the strata building. Before doing so, the owner had sought council approval, which was denied on the basis that air conditioning units were prohibited under the strata's bylaws. The owner nevertheless proceeded with the installation. The BCCA upheld the lower court's decision that ordered the owner to remove the heat pump and plumbing and restore the wall at its cost. While there was some evidence this would be a hardship for the owner, the court concluded that degree of unfairness was compromised because the unit was installed without approval: see paragraph 15.

79. I find 913 showed a flagrant disregard for the bylaws and the interests of the other owners by altering the common property without approval and in direct contravention of the council's directions in 2020. As in *Allwest,* I find this compromises any unfairness in requiring 913 to remedy the contravention by restoring the common property.

80. Given the ownership denied the common property alterations and my finding of no significant unfairness, I conclude the unapproved common property alterations cannot remain. For this reason, I find 913 must restore the common property to the

original condition at its own expense. This includes the concrete slab floor, the land lying below the floor, the sewer system and any other parts of the common property or common assets that it altered without the strata's approval. Since the work will be done to common property, I agree with the strata that the work must be done under the supervision of a qualified engineering hired by the strata, at 913's own cost.

81. I order that 913 must make no further alterations to the strata's common property without the prior written consent of the strata as required by the bylaws.

Must the strata permit 913's other proposed modifications?

Electrical Supply

82. 913 requested permission in March 2020 to access the common property electrical room for its contractor so they could determine the requirements needed to increase the electrical supply in SL11 to 100 amps.

83. Council denied 913's request. The council president wrote that electrical service is restricted to 35 amps based on its prior load studies and only the strata's contractors have access to the electrical room. He stated that if 913 nevertheless wishes to have a study conducted, the strata will, on receipt of a request and appropriate undertaking, commission another load study. He enclosed a 2011 letter to a former owner for a similar electrical service upgrade that was defeated after a vote by the ownership.

84. For reasons that are not explained, 913 did not then take the strata up on the offer to commission a load study. Instead, 913's own expert, Sy Teh Engineering Ltd (Sy) somehow got access to the main electrical room to study the electrical power usage without the council's permission. According to Sy's April 16, 2020 letter, Sy concluded the strata's total power demand is enough to allow SL11's requested service upgrade.

85. Filed bylaw 20(5) says that requests for increased electrical services from the main electrical room must be made in writing to the strata council prior to any alterations and the council has "the right to accept or reject any application".

86. Consistent with this bylaw, 913 asked for permission to upgrade the SL11 electrical service up to 60 amp service in the strata's common property electrical room.

87. After a June 2020 section 34.1 hearing, the council denied 913's request. The council's June 23, 2020 decision states that they refused the request primarily because 35 amps is, (allegedly), the power allocation that allows each strata lot its "proportionate share of power availability". The council explained past load studies concluded each strata lot's power should ideally be capped at a 35 amp limit barring an upgrade to the entire complex. The council also stated that if 913's request were approved, it would put the strata in the position of having to monitor the rate of electricity and replace fuses blown by increased loads. The past load studies results are not in evidence and it is not clear that the strata has them as they are outside the required retention period under the SPA Regulations.

88. In the June 23, 2020 decision, the council also explained that it put no weight on the Sy study because they found it was flawed. Sy measured only 1 of the 2 buildings, included no details of the load measurements such as when they were taken and the equipment used and Sy did not consider the electricity needs of other strata lots.

89. Subject to significant unfairness, I find filed bylaw 20(5) gave council discretion to approve or deny 913's electrical upgrade request even if the total building load would allow it.

90. I find the strata afforded 913 a reasonable opportunity to make its case, including by offering to commission a new load study. While 913 clearly disagrees with the strata's decision, that does not mean the decision was arbitrary. I find the council considered relevant factors for their reasons decision to deny. I also find nothing wrong with the council's cautious approach.

91. I also find 913 has not established that it had any reasonable expectation that it would be permitted to increase the power to SL11 and that its request be approved. First, the Contract terms specifically say that 913 was aware that the electrical supply to the subject property is strictly limited to 35 amps with no increase in power. The electrical supply restriction was also included in the Form B and in the strata's written communications. Second, the only evidence of strata lots with higher amp service is that they likely received that upgrade in 1990. Third, 913 specifically agreed through the Contract that 35 amps "is suitable to the buyer's proposed use of the unit". Fourth, I find its request is interrelated with the unapproved plumbing for the seafood tanks and it is not clear it requires it at all anymore.

92. I conclude that the council's decision to deny the electrical upgrade request was not burdensome, or harsh, or otherwise, significantly unfair. I dismiss this aspect of 913's counterclaim.

Compressors and Roof Modifications

93. As set out in its various correspondence, 913 requested several times for permission from council to install 7 compressors on the common property roof and asked for specific permission to drill 16 2-inch holes in the roof. The compressors are needed for the seafood tanks and stand-up freezer or fridge.

94. Based on the drawings, each compressor would be mounted on two 6x6 timber "sleepers" and affixed to the roof. The drawing also shows that they would require 16 holes in the building roof for electrical wire and plumbing and refeed lines. 913 promised in writing that all work would be done according to 913's building permit and applicable Building Code provisions, it would work with the same company that installed the roof, the compressors would be similar to other compressors or vents on the roof, each compressor will emit sound levels below the City's allowable maximum decibels, and if not, it would consider installing sound barriers. I note it submitted no engineering report or other expert report about the impact if any, on the building, from installing the 7 compressors on the roof.

95. I find Standard Bylaw 6 applies to this request because permanently affixing compressors and penetrating the building envelope would necessarily alter the common property. I find filed bylaw 20(3) also applies to any the interior and exterior wiring work that might be needed for the compressors.

96. The council denied 913's requests primarily because the compressors would require more than 35 amps, might cause unreasonable noise, alter the common property roof, and are interrelated to the unapproved plumbing alterations. I find these are relevant considerations.

97. 913 says council's decision is inequitable and significantly unfair, in part, because it allowedly allowed other such requests as can be seen by the compressors and vents on the roof. I find this is not proven.

98. I have reviewed 913's photographs. I find installing a group of 7 compressors on a single portion of the roof, as requested by 913, is unlike the few single compressors that are visible there. I find compressors are not at all similar to the small rooftop vents. The evidence also does not establish exactly what the other compressors or vents are used for, or who installed them, and they might be part of the common property or common assets. I find 913 has not shown the strata treated it inequitably by refusing its request for the 7 new compressors.

99. It is undisputed that the seafood tanks require the plumbing alterations and compressors to operate. So, I agree with the strata that the compressor requests overlap with the unapproved plumbing alterations. As with the other alterations discussed above, I find the strata gave 913 a reasonable opportunity to make its case. I find 913 had no objectively reasonable expectation that the council would approve the additional rooftop modifications considering the vote result for the related plumbing alterations.

100. I conclude that 913 has not proven that the council's decision or actions were oppressive or unfairly prejudicial to it. I find no significant unfairness and so no basis for the CRT to intervene with the council's decision over these requests. I dismiss 913's counterclaim.

CRT FEES AND EXPENSES

101. 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. I therefore order 913 to reimburse the strata $275[i] for its paid CRT fees and I dismiss 913's fee reimbursement claim. Neither party claimed other specific[ii] dispute-related expenses.

102. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against 913.

ORDERS

103. I order that:

a. As soon as reasonably possible, 913 must return, to its original condition, the common property and common assets which it has modified, including, without limitation, the concrete slab floor, the land lying below the floor, and the sewer system, at 913's own expense.

b. 913 must perform the work referred to in paragraph 103(a) above under the specifications and supervision of an engineer hired by the strata at the strata's sole discretion and at 913's own expense, and

c. 913 must make no further alterations of the strata's common property without the prior written consent of the strata.

d. Within 30 days of this decision, 913 must pay the strata $275[iii] for CRT fees.

e. The strata is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.[iv]

f. 913's counterclaims are dismissed.

104. 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

[i] Amended pursuant to CRTA section 64(1) to correct an arithmetic error in calculating paid CRT fees.
[ii] Amended pursuant to CRTA sections 51(1) and 64(1) to correct an inadvertent omission to clarify decision.
[iii] Amended pursuant to CRTA section 64(1) to correct an arithmetic error in calculating paid CRT fees.
[iv] Amended pursuant to CRTA section 51(1) to clarify order.