



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan BCS 3202 v. Paz*, 2022 BCCRT 457

B E T W E E N :

The Owners, Strata Plan BCS 3202

APPLICANT

A N D :

MICHAEL PAZ

RESPONDENT

A N D :

The Owners, Strata Plan BCS 3202

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute about alleged unapproved alterations to common property (CP) and limited common property (LCP).
2. The applicant and respondent by counterclaim, The Owners, Strata Plan BCS 3202 (strata) is a strata corporation existing under the *Strata Property Act* (SPA). The strata is represented by a strata council member.
3. The respondent and applicant in the counterclaim, Michael Paz, owns strata lot 132 (SL132) in the strata and is self-represented.
4. The strata says Mr. Paz completed a large exterior renovation involving CP planters and an LCP deck without authorization from the strata as required under the bylaws, and without obtaining municipal permits. The strata says the renovation includes the installation of new balcony railings at a different location than original, which was not approved by the strata owners at a 2019 general meeting when a proposed $\frac{3}{4}$ vote failed to pass. The strata also says the relocated railings interfere with the privacy of the strata lot balcony below.
5. The strata also says Mr. Paz added electrical boxes and wiring to an interior CP hallway without the strata's authorization and without municipal permit approval. I find the strata essentially seeks orders that Mr. Paz relocate the railings to their original location, obtain $\frac{3}{4}$ vote approval of the strata owners for all of his unapproved alterations, and provide all necessary permits for any completed work, including the electrical boxes and interior wiring.
6. Mr. Paz says the strata improperly maintained the LCP deck and CP planters and balcony railings. He says the strata unreasonably refused permission for him to complete his requested alterations. He denies there is a privacy issue with the new railing location and says the strata has no standing (legal authority) to allege any privacy issues. Mr. Paz says he acted in the best interests of the strata by doing the work and says the strata should allow his alterations.

7. In his counterclaim, Mr. Paz says the strata failed to properly repair the balcony, planter boxes, plants and railings and that he replaced the railings with modern, new railings. He says the strata treated him significantly unfairly when it did not approve his proposed alterations. He says bylaw 3(3) permits him to repair and maintain the LCP designated to SL132 and that bylaw 23(2) bars the strata from unreasonably withholding its approval of his alterations. He also says a strata council member trespassed on his property and caused him to lose the use and enjoyment of his property. Mr. Paz seeks the following orders:
 - a. \$5,000 for loss of use and enjoyment of his property,
 - b. \$500 for the strata council member's trespass,
 - c. Approval of alterations he has made to the deck, planter boxes, plants, and railings, and
 - d. Dismissal of the strata's claims.
8. In its Dispute Response, the strata says it has "no opinion" on Mr. Paz' claims. It reiterates the strata owners' refusal to approve the requested alterations and Mr. Paz' failure to provide copies of permits for any of the work. The strata denies trespass occurred and I infer the strata also denies responsibility to pay Mr. Paz for his alleged loss of use and enjoyment of his strata lot.
9. As explained below, I find in favour of the strata and make the orders described below.

JURISDICTION AND PROCEDURE

10. 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.

11. 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.
12. 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.
13. 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 Issues

14. Mr. Paz has requested \$500 in damages as compensation for a strata council member allegedly trespassing on his SL132. While the strata denies this, I find this is effectively a claim against the strata council member who allegedly committed trespass, suggesting the strata council member acted contrary to their standard of care under SPA section 31. I decline to address Mr. Paz' arguments for 2 reasons. First, he did not name any strata council members as respondents. Second, there were no section 31 claims in Mr. Paz' counterclaim Dispute Notice nor was the Dispute Amended to include such a claim. I find it would be procedurally unfair for me to make orders against non-parties or consider arguments that were not contained in a Dispute Notice, or an Amended Dispute Notice.
15. More importantly the BC Supreme Court has found that individual strata lot owners do not have standing to make claims for breaches of SPA section 31. (See *Rochette v. Bradburn*, 2021 BCSC 1752.)
16. In submissions, Mr. Paz notes the strata has fined him under its bylaws for the alterations he completed, and has not taken steps to address replacement of the

membrane below the LCP deck. There is no evidence before me about the bylaw fines and neither party has requested any remedy about bylaw fines, so I have not considered them in my decision.

17. As for the roof membrane repair, there are reports on its condition before me. However, neither party requested a remedy about the membrane replacement, so I have not addressed it.

ISSUES

18. The issues in this dispute are:

- a. Must Mr. Paz obtain the strata's approval to retain his completed alterations?
- b. If yes, does the strata have authority to require him to obtain permits and relocate the deck railings to their original location?
- c. Did the strata treat Mr. Paz significantly unfairly?
- d. Did the strata cause Mr. Paz to lose use and enjoyment of his property?
- e. What remedies are appropriate, if any?

BACKGROUND, EVIDENCE AND ANALYSIS

19. In a civil proceeding such as this, the strata, as applicant, must prove its claims on a balance of probabilities, meaning more likely than not. Mr. Paz must also prove his counterclaims on the same basis. I have read all the submissions and evidence provided by the parties, but refer only to information I find relevant to explain my decision.

20. The strata was created in November 2008 under the SPA. It consists of 245 strata lots located in 2 high rise buildings. The strata plan shows SL132 is a 2-storey strata lot located on the top 2 floors of 1 building on levels 28 and 29. Strata lot 132 shares the west side of level 28 with SL133, but SL132 is the only strata lot located on level 29. A large part of level 29 is a deck designated as LCP for the exclusive use of Mr.

Paz as the owner of SL132 (LCP deck). A CP planter is located along the entire west elevation of the building on level 29 along the perimeter of the LCP deck, and directly above strata lot 133 below. The entire level 29 is set back from the building exterior of level 28. Put another way, level 29 is terraced back from level 28 such that the footprint of level 29 is smaller than level 28. It is the CP planters and LCP deck located on level 29 that are subject of this dispute, plus an unidentified interior building hallway that I address later in this decision.

21. I find this dispute involves 2 separate alteration requests the strata received from Mr. Paz that I describe in greater detail below. The first is about relocating the portion of the LCP deck railings along the west side of the building next to the planters. The second is about an interior alteration request. The background facts and information follow.
22. On January 15, 2019, Mr. Paz' consultant emailed the strata through its strata manager seeking permission to remove and replace the railings on level 29, including relocating the level 29 LCP deck railings along the west side of the building. The email included a January 11, 2019 letter from Mr. Paz to the strata explaining his request. Attached to the letter were drawings prepared by a landscape architect, and completed "Assumption of Liability" and "Alteration Agreement" forms apparently used by the strata when considering alteration requests. The January 11, 2019 letter explained that Mr. Paz felt the maintenance of the CP garden areas in the planters next to the LCP deck on the west side of the building was lacking and that he proposed "taking it over". In order to do so, Mr. Paz said he needed to relocate the railings from the planter walls next to the LCP deck "closer to the building perimeter (railing alteration), so that maintenance could be done from the safe side of the [railing]." Mr. Paz also proposed updating the railings to a "more modern, frameless rail". The letter also explained that Mr. Paz would pay for all work, obtain "the necessary City of Vancouver" approvals and provide the [strata] with signed and sealed engineering drawings for review".
23. The strata manager responded the same day noting the request could be considered a change in use of CP which required the strata owners' approval, but that the alteration request would be discussed at the next strata council meeting scheduled

for February 3, 2019. Further emails were exchanged, and it appears Mr. Paz' consultant attended the February 3, 2019 strata council meeting to discuss the proposed alterations.

24. On February 7, 2019, the strata manager emailed Mr. Paz and his consultant explaining that the strata could only grant him exclusive use of CP for a 1-year period. The strata also stated it considered the proposed railing relocation a change in use of CP given it would enclose the CP planters for Mr. Paz' sole use. The email proposed a $\frac{3}{4}$ vote resolution changing the planter areas to LCP be presented to the strata owners at the upcoming annual general meeting (AGM) scheduled for March 12, 2019. If the resolution passed, the strata said would approve the level 29 railing proposed by Mr. Paz, "subject to some terms (assumption of liability, maintaining greenspace, etc.)."
25. Minutes of the March 2019 AGM are not before me, but the parties agree the proposed $\frac{3}{4}$ vote resolution did not pass. This is also confirmed in the April 5, 2019 email from Mr. Paz' consultant to the strata manager. In that email, it was suggested that Mr. Paz wanted to work with the newly elected strata council to address concerns expressed at the March 2019 AGM in order to move forward with Mr. Paz' desired alterations.
26. Based on written statements from the strata council president and Mr. Paz, a meeting with the newly elected strata council and Mr. Paz' consultant took place on May 1, 2019. It is undisputed that the strata council did not agree with nor approve any proposed alterations as a result of the meeting.
27. On May 19, 2020, the strata wrote to Mr. Paz approving his request for what I find are interior alterations, involving "framing, electrical, plumbing and lights: new flooring through, new millwork & new wine room" (interior alterations). Although a "Renovation Approval Request Form" was attached to the approval letter in evidence, there are no other particulars provided in evidence, nor any drawings. Therefore, I cannot determine exactly where these alterations were located. However, given the letter also referenced attached bylaws about alterations to a strata lot, I find at least some

of the requested alterations were to SL132. I discuss the interior alterations in greater detail below.

28. It is undisputed that Mr. Paz started the new railing installation, which the strata says was without its approval. Although the date is unclear, I infer it was sometime in early 2021 based on the date the strata said it first became aware the alterations had started. In his written statement, Mr. Paz admits he has installed new upgraded railings and relocated them on the west building perimeter, re-engineered the CP planter boxes to make them “more watertight and updated”, and replaced the dead plant material in the planters with “fresh vegetation”. Mr. Paz also admits to replacing some of the “old decaying and cracked pavers”, which I infer were paving stones located on the LCP deck.
29. It was during replacement of the pavers that Mr. Paz says he discovered the state of the roofing membrane below the pavers and in the planters was poor. He retained a roofing consultant in June 2021 and the strata retained its own roofing consultant in September 2021. Mr. Paz says there has been no work completed on the membrane as recommended by both consultants and that problem “continues to worsen”. I infer the lack of membrane repairs has resulted in Mr. Paz halting his work on level 29 and in particular, the LCP deck.

Bylaws

30. When the strata was created, the owner developer filed bylaws with the Land Title Office (LTO) that were different from the Standard Bylaws. On April 28, 2010, the strata filed a complete new set of bylaws that repealed and replaced all filed bylaws. Although the April 2010 bylaws stated the filed bylaws were in addition to the Standard Bylaws, I find many of the filed bylaws are different, so many of the Standard Bylaws did not apply. Several bylaw amendments were filed after April 2010, but I find they are not relevant to this dispute. On March 18, 2019, the strata filed a new set of bylaws that replaced the Standard Bylaws and previously filed bylaws, except for the pet and rental restriction bylaws. I find that many of the March 2019 bylaws, including those relevant to this dispute, contain the same or similar wording to those filed in April 2010 but are numbered differently.

31. I find the April 2010 bylaws applied to the railing alterations because Mr. Paz made his request in January 2019 before the March 2019 bylaw amendments were passed and filed with the LTO. I find the March 2019 bylaw amendments apply to the interior alterations because Mr. Paz made his request in May 2020. I discuss the relevant bylaws below as necessary.

Does Mr. Paz need the strata's approval to retain his completed alterations?

32. For the following reasons, I find Mr. Paz requires the strata's approval to retain the alterations as he requests.

33. SPA section 72 makes the strata responsible for repair and maintenance of CP and permits the strata, through its bylaws, to make an owner responsible for LCP the owner has a right to use, which the strata has done. I discuss this in further detail below

34. SPA section 1(1) defines LCP as CP designated for the exclusive use of the owners of 1 or more strata lots. As mentioned, the 29th level deck is LCP for SL132.

35. I find the request history provides context for my conclusions. Therefore, I will first review the history of Mr. Paz' 2 alteration requests and then determine if he may keep the alterations he has made.

Railing alteration request and other completed alterations

36. As noted above, in January 2019 Mr. Paz requested the strata's permission to remove the level 29 railings, replace them with different more "modern" looking railings, and relocate the railings along the west side of the building to the outside of the planters near the perimeter of the building. Although Mr. Paz completed additional work that I discuss below, this is extent of his request for railing alterations in 2019.

37. I first consider the strata's bylaws, which address alterations to strata lots, CP, and LCP. As mentioned, I have found the April 28, 2010 bylaws apply to Mr. Paz' railing alteration request. Bylaw 6 expressly says an owner **must** obtain the written approval of the strata council **before** altering CP or LCP (my emphasis).

38. Mr. Paz argues the strata expressly endorsed his proposed replacement of the railings. He cites the February 7, 2019 email he received from the strata manager as proof of the strata's agreement. The email said if the ownership approved the $\frac{3}{4}$ vote resolution at the March 2019 AGM, "the council would approve the railing on the upper deck subject to some terms (assumption of liability, maintain greenspace, etc.)". I disagree with this argument as I find it is clear from the email that the strata only agreed to the railing replacement if the $\frac{3}{4}$ vote passed, which it did not.
39. I find the strata considered that Mr. Paz' railing alteration request involved relocating the railings, effectively resulting in Mr. Paz incorporating the CP planters into his private area, and advised Mr. Paz that approval of the strata owners was required at the March 2019 AGM. While the strata could have approved Mr. Paz' railing request conditional upon the strata owners' approval, I find it was reasonable for the strata to seek the owners' approval at a general meeting before approving the request. My reasons follow.
40. Although the strata did not cite specific sections of the SPA, it did advise Mr. Paz that it could only give him the use of the CP planters for 1 year. I find the strata was referring to SPA section 76 that expressly permits it to give an owner exclusive use of CP for periods of up to 1 year. In order to avoid any issues with section 76, the strata proposed to designate the CP planters as LCP for the exclusive use of Mr. Paz as owner of SL132 at the March 2019 AGM. Under SPA section 74, designation of LCP requires the strata to pass a $\frac{3}{4}$ vote at a general meeting.
41. I also find that SPA section 71 applies to this dispute. SPA section 71 says a strata corporation must not make a significant change to the use or appearance of CP unless the change is first approved by a $\frac{3}{4}$ vote. I find the strata was referring to this provision when it advised Mr. Paz that the railing relocation was a change in use of CP. I note also that section 76 is subject to section 71. This means that designation of CP for the exclusive use of an owner under section 76 cannot be made by the strata without the owners passing a $\frac{3}{4}$ vote to approve a significant change in the use of appearance of CP.

42. *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333 is the leading case about SPA section 71. In *Foley*, the BC Supreme Court considered a similar set of facts where a strata lot owner extended the rooftop deck railings beyond what the strata corporation had approved. Although the court in *Foley* set out a number of factors to consider when determining what is a significant change in use or appearance of CP, it clearly stated at paragraph 24, that incorporating CP into a private area that could not be used by all strata lot owners was a significant change on its own. Given the proposed $\frac{3}{4}$ vote failed at the AGM, I find the strata correctly declined to approve Mr. Paz' LCP alteration request to relocate the railings.
43. Following *Foley*, I find in order for Mr. Paz to keep the level 29 railings at their current (unapproved) location, the strata must first pass a $\frac{3}{4}$ vote resolution. The evidence shows it has not.
44. As for any additional alterations that Mr. Paz admits he completed, such as waterproofing of the CP planter boxes, replacing dead plant material, and replacing paving stones on the LCP deck, it is clear from the submissions and evidence that he did not obtain the prior written approval of the strata. It is unclear when these alterations were made, but I find it was after March 18, 2019, so the bylaws filed with the LTO on that date apply. Bylaw 24 has the same wording as the April 2010 bylaw 6 and expressly says an owner **must** obtain the written approval of the strata council **before** altering CP or LCP (my emphasis). Therefore, under bylaw 24, I find Mr. Paz must obtain the strata's written approval in order to retain these alterations.
45. Mr. Paz argues that bylaw 3(3) filed March 18, 2019 permits him to repair and maintain LCP. Bylaw 3(3) states (my emphasis):

An owner who has the use of limited common property must repair and maintain it, except for repair and maintenance that is the responsibility of the strata corporation under these bylaws.

46. I disagree with Mr. Paz for 2 reasons. First, bylaw 3(3) addresses repair and maintenance, not alterations such as relocating railings. Second, and most important, the bylaw must be read in conjunction with bylaw 30 that sets out the strata's duty to

repair. Bylaw 30(2) requires the strata to repair and maintain CP that has not been designated as LCP. Here that includes the railings, plant material, and planter waterproofing. Bylaw 30(1)(c)(i) requires the strata to repair and maintain LCP if the repair and maintenance ordinarily occurs less often than once per year and bylaw 30(1)(c)(ii)(E) requires the strata to repair and maintain “railings...that enclose...balconies”. This includes some railings and paving stones which Mr. Paz admits to replacing. With this in mind, I find Mr. Paz did not have authority under bylaw 3(3) to relocate or replace the railings.

47. Mr. Paz also argues that bylaw 23(1)(e) bars the strata from unreasonably withholding approval of his alteration requests for the railings. However, I find Mr. Paz is incorrect as bylaw 23 only addresses alterations to strata lots and the subject railings here are CP and not part of SL132.

Interior alterations

48. There is no additional evidence about Mr. Paz’ interior alteration request other than the evidence I described above about “framing, electrical, plumbing and lights: new flooring through, new millwork & new wine room”. As I have mentioned, the strata approved Mr. Paz’ request. Based on the evidence before me, the request did not expressly note the installation of electrical boxes on CP, so I find the strata’s approval did not include such approval. Both the location of the electrical boxes and wiring, and the date the installations were made is unclear. The strata says the boxes and wires were installed in a CP hallway and that it first became aware of it in June 2021. Given Mr. Paz did not address this aspect of the strata’s claim, I accept the strata’s position that the boxes and wiring were installed in a CP hallway in about June 2021.
49. As earlier mentioned, I find the April 2019 bylaws apply to the interior alterations because Mr. Paz’ request was made in May 2020 after the March 2019 bylaws came into force. The purpose of the installed electrical boxes and wires is unclear. While they are likely related to interior alterations, it is also possible they are not. Either way, I find the strata’s position that it discovered the installation in June 2021 means Mr. Paz was still required under bylaw 24 to obtain the strata’s prior written approval before altering CP, which he did not.

50. For all these reasons, I find Mr. Paz requires the strata's approval to retain his completed alterations.

Does the strata have authority to require Mr. Paz to obtain permits or to relocate the LCP deck railings to their original location?

51. I find the completed alterations for which Mr. Paz seeks orders include the relocation of the deck railings, other alterations to level 29 planters and the LCP deck described above, and the electrical boxes and wiring alterations in a CP hallway. I have found the strata did not approve these alterations so any new alteration requests would fall under the March 2019 bylaws. Put another way, Mr. Paz completed his alterations without the mandatory strata permission.

52. I note bylaw 25(2) requires Mr. Paz to remove any unauthorized alterations at his expense if the strata council orders the alterations removed. However, the strata has not sought this remedy. Rather, it seeks an order that Mr. Paz relocate the railings to their original location, and provide necessary permits for his completed alterations. I discuss this in greater detail below when addressing remedies.

Permits

53. I find the strata has authority to require Mr. Paz to obtain "applicable building permits" under bylaw 25(3) which says in its entirety:

The owner will be responsible to obtain the applicable the applicable building permits prior to commencing the work, and obtaining such permits is a condition of the council's approval.

54. Even though the strata provided Mr. Paz with conditional approval such that the owners must first approve the proposed $\frac{3}{4}$ vote resolution, I find the end result is the same. That is, whether the approval was conditional or not, the strata is authorized to require Mr. Paz to obtain and provide copies of any applicable building permits.

55. Further, in his January 11, 2019 letter requesting to relocate and update the railings, Mr. Paz expressly said he would obtain "the necessary City of Vancouver approvals and provide the [strata] with signed and sealed engineering drawings for review".

56. Similarly, in Mr. Paz' May 2020 request for the interior alterations which the strata approved, he signed an assumption of liability form that required him to comply with all municipal bylaws and building codes and to provide a copy of "any building permit" to the strata manager.
57. Given the language used in bylaw 25(3) and the signed assumption of liability form, I find the onus of providing copies of permits falls to Mr. Paz. I find it follows that if building permits are not required, Mr. Paz should provide the strata with evidence of that, such as a letter from the City or a copy of an applicable municipal bylaw.
58. For these reasons, I find the strata has authority to require Mr. Paz to provide copies of permits for the unapproved alterations. Given the alterations have been completed, I find the strata may require Mr. Paz to provide it with copies of permits before it approves the alterations.

LCP deck railing relocation

59. As discussed above, the SPA has mandatory requirements that relate to exclusive use of CP by an owner, designating CP as LCP, and approving significant changes to CP. The strata has considered these options. Designations of LCP under SPA section 74 and approving significant changes such as the railing relocation, both require the strata owners to pass a $\frac{3}{4}$ vote. The designation of exclusive use of CP to a specific owner under SPA section 76 may be approved by a majority vote of the strata council and does not require owner approval. However, this option is limited to periods of up to 1 year, with 1-year renewals, and must be cancellable on reasonable notice. Therefore, this option is likely not practical. It is also at the discretion of the strata.
60. Given these provisions of the SPA, and the strata's bylaws that require its written approval of an alteration, I find the strata has the authority to require Mr. Paz to relocate the level 29 railings along the west side of the building to their original locations.
61. As for Mr. Paz' argument that the strata does not have evidence or standing to raise a privacy argument about the railings' location, I disagree. There is evidence that the

owner of strata lot 133 complained of privacy concerns to the strata about the new location of the railings above their balcony. It is the strata's responsibility to act in accordance with the SPA and its bylaws, and under SPA section 26, to enforce its bylaws. I find this includes a duty to reasonably address any privacy concerns raised by an owner about the relocation of balcony railings.

62. For these reasons, I find the strata has the authority to require Mr. Paz to relocate the railings to their original location, before or in conjunction with approving the alterations.

Did the strata treat Mr. Paz significantly unfairly?

63. The CRT has jurisdiction to determine claims of significant unfairness. See *The Owners, Strata Plan BCS 1721 v. Watson, 2018 BCSC 164*.

64. The courts and the CRT have considered the meaning of "significant unfairness" in many contexts and have equated it to oppressive or unfairly prejudicial conduct. In *Reid v. Strata Plan LMS 2503, 2003 BCCA 126*, the BC Court of Appeal interpreted a significantly unfair action as one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith and/or unjust or inequitable. See also *Kunzler v. The Owners, Strata Plan EPS 1433, 2021 BCCA 173*.

65. In *Kunzler*, the Court of Appeal confirmed that an owner's expectations could be considered a relevant factor in assessing significant unfairness, which I find is the case here. The following test from *Watson* applies:

- a. What is or was the expectation of the affected owner?
- b. Was the owner's expectation objectively reasonable?
- c. If so, was that expectation violated by an action that was significantly unfair?

66. The issue here is whether the strata treated Mr. Paz significantly unfairly by not permitting him to keep his railings at the new location. Despite Mr. Paz' argument to the contrary, I find the strata does not object to the new railing design.

67. I find Mr. Paz' expectation that the strata should approve the railing location without a $\frac{3}{4}$ vote of the owners is not objectively reasonable. I say this because to approve the railing relocation without the owners passing a $\frac{3}{4}$ vote, the strata must act contrary to sections 71 and 76 of the SPA. Therefore, I find the strata did not treat Mr. Paz in a significantly unfair manner when it declined to approve the railing relocation without its owners passing a $\frac{3}{4}$ vote.
68. To the extent that Mr. Paz argues the strata treated him significantly unfairly by not approving any additional alterations, I also disagree. This is because Mr. Paz admits that he completed the alterations without approval when he knew or ought to have known the strata's bylaws required the prior written permission of the strata.
69. Therefore, I dismiss Mr. Paz' counterclaim that the strata treated him significantly unfairly.

Did a strata cause Mr. Paz to lose use and enjoyment of his property?

70. I also dismiss Mr. Paz' counterclaim that the strata caused him to lose use or enjoyment of his property. The strata denies this claim.
71. Mr. Paz' claim is that the strata failed to properly maintain the planters and railings which were an eyesore to him. He also says the railings were "outdated in design and blocked much of the views". I find Mr. Paz' claim that the railings blocked his view was because they were constructed of metal railings and posts, which he changed to only glass.
72. The strata says Mr. Paz did not approach it about the condition of the planters, but in his January 2019 letter request, Mr. Paz clearly states the planting is dead and has become an eyesore to him. However, given my findings above that Mr. Paz did not have the required strata permission to make the alterations he did to the railings and the planters, and that the strata did not treat him significantly unfairly, I find Mr. Paz' claim must fail. The fact that Mr. Paz made alterations without the required strata permission because he believed the appearance of the planters and railings were an eyesore or obstructed his view is not sufficient reason to support a claim for lost use and enjoyment. There are other things Mr. Paz could have requested the strata do to

correct the condition of the railings and planters to make them more appealing to his eye. This includes cleaning or painting the railings and replanting the planters. There is also nothing in the SPA or bylaws that require the strata to replace CP or common assets to improve an owner's view.

73. To the extent Mr. Paz claims the unfinished condition of the LCP deck and planters has caused him to lose use and enjoyment of his property, I find the unapproved changes he made to the LCP deck were his own doing. As such, I do not find the strata at fault.

74. For these reasons, I dismiss Mr. Paz' claim for lost use and enjoyment of SL132.

What remedies are appropriate?

75. In summary, I have found in favour of the strata and dismissed all of Mr. Paz' counterclaims.

76. The strata seeks orders that Mr. Paz relocate the railings to their original location and provide necessary permits for his completed alterations. Such an order implies that the strata will not approve the alterations if it does not receive the permits. Further, such an order would not provide guidance to the parties about what should occur if Mr. Paz does not provide the permits or if permits are not required. I find it reasonable, appropriate, and consistent with the CRT's mandate to add to the strata's requested remedy to address these alternative circumstances.

77. Accordingly, I make the orders detailed below.

CRT FEES AND EXPENSES

78. Under CRTA section 49 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.

79. The strata is the successful party. It paid \$225 in CRT fees and claims no dispute-related expenses. Therefore, I order Mr. Paz to reimburse the strata \$225 for CRT fees.

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

ORDERS

81. I dismiss Mr. Paz' counterclaims.

82. I order Mr. Paz to reimburse the strata \$225 within 30 days of this decision.

83. The strata is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

84. I make the following orders about the unapproved alterations completed by Mr. Paz:

- a. Within 60 days of this decision, the parties, acting reasonably, shall work together to finalize a $\frac{3}{4}$ vote resolution that addresses all unapproved alterations completed by Mr. Paz in compliance with SPA sections 71, 74, and 76 (or some of them) that both parties agree to. The resolution must not include other matters about the railings, CP planters, or LCP deck that are not covered in this decision, such as the roof membrane and pavers, but these things can be addressed at the same general meeting in a different resolution. If the parties cannot agree on the $\frac{3}{4}$ vote resolution wording, Mr. Paz will, within 120 days of this decision and at his cost, relocate the level 29 railings to their original locations along the planter walls next to the LCP deck and, to the extent possible, restore the CP and LCP areas to their original condition. The railing design may be the same design used by Mr. Paz, or the design of the original railings removed by Mr. Paz. Mr. Paz will also remove the electrical boxes and wiring from the CP hallway and restore the hallway to its original condition at his cost.
- b. Within 90 days of the date of this decision, the strata will hold a special general meeting (SGM) to consider the $\frac{3}{4}$ vote resolution agreed to by the parties.
- c. If the $\frac{3}{4}$ vote resolution fails, Mr. Paz will, within 90 days of the SGM and at his cost, relocate the level 29 railings to their original locations along the planter

walls next to the LCP deck and to the extent possible restore the CP and LCP areas to their original condition.

- d. If the resolution passes, Mr. Paz will complete any alterations approved by the resolution within 90 days of the SGM and at his cost.
 - e. Whether the SGM is held or not, as soon as they are issued, Mr. Paz will provide the strata with copies of building permits for all the alterations he has undertaken and proof that the permits are complete. If permits are not required, Mr. Paz will provide the strata with proof satisfactory to the strata that permits are not required.
 - f. If Mr. Paz fails to do anything set out in this order, or if Mr. Paz takes steps to sell SL132, the strata may take reasonable steps to restore the CP and LCP alterations completed by Mr. Paz to their original condition and location at Mr. Paz' sole expense.
 - g. The parties may amend the deadlines ordered above by mutual written consent.
85. 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.

J. Garth Cambrey, Vice Chair