Civil Resolution Tribunal

Date Issued: May 13, 2022

File: ST-2020-007865

Type: Strata

Civil Resolution Tribunal

Indexed as: *Tran v. The Owners, Strata Plan NW468*, 2022 BCCRT 575

B E T W E E N :

CAO MY HANH TRAN and HOA NGUYEN

APPLICANTS

A N D :

The Owners, Strata Plan NW468

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Eric Regehr

INTRODUCTION

1. Cao My Hanh Tran and Hoa Nguyen are the owners of strata lot 9 (SL9) in the strata corporation The Owners, Strata Plan NW468 (strata). Ms. Tran lives in SL9 with her spouse, AA, who is not a party to this dispute. Ms. Nguyen assigned her powers and duties as an owner to AA under section 147 of the *Strata Property Act* (SPA). The

applicants are dissatisfied with many aspects of how the strata has treated them since they purchased SL9 in 2019.

2. In the Dispute Notice, the applicants divide their dispute into 5 separate claims with 8 requested orders. However, the claims overlap, and some of the requested orders contain multiple sub-orders. In addition, the applicants clarified some of their requested orders in submissions. I have attempted to organize the issues and consolidate the requested orders to address them efficiently. As a result, the issues and requested orders as set out in this decision do not align perfectly with the claims as set out in the Dispute Notice.

3. First, the applicants claim that the strata has refused to address their concerns about conflicts of interest. They ask for an order that the strata provide a list of all conflicts of interest between strata council members and contractors. The strata asks me to refuse to resolve this claim because it says it is outside the Civil Resolution Tribunal's (CRT) jurisdiction.

4. Second, the applicants claim that the strata has prevented them from remotely attending strata council meetings as observers. They ask for an order that the strata provide a link and password for each strata meeting at least 1 week in advance. The strata says that it has agreed to send the applicants this information, but 1 week's notice is impractical and unnecessary.

5. Third, the applicants say that the strata failed to address complaints they made about bylaw infractions. They ask for an order that the strata enforce its bylaws as required. The strata says that it has appropriately addressed all of the applicants' bylaw complaints.

6. Fourth, the applicants say that the strata installed new lights on the exterior walls of some strata buildings, which are so bright they cause a nuisance. They also say that the new lights are a significant change to the appearance of common property that required owner approval under section 71 of the SPA. They ask for an order that the strata install motion sensors or lower brightness bulbs, or remove the new lights entirely. The strata says that it has adjusted the lights in response to the applicants'

complaints. The strata says that the lights are necessary to deter crime and, in any event, do not unreasonably interfere with the applicants' use and enjoyment of SL9.

7. Fifth, the applicants say that the strata has not done necessary common property repairs around their strata lot. They say that the strata failed to reasonably repair and maintain their fence, siding, gutters, catch basins, a retaining wall, and a concrete pathway. They also say that the strata acted significantly unfairly by repairing the pathway in front of their house with asphalt. The applicants ask for an order that the strata do the outstanding repairs and pay $8,000 in damages for the alleged significant unfairness. The strata says that it has appropriately exercised its duty to repair and maintain common property by prioritizing the most important projects.

8. Sixth, the applicants claim that the strata failed to provide records as required by section 36 of the SPA. They ask for an order that the strata provide the allegedly outstanding records. The strata says that it has provided all of the records it is required to provide.

9. Finally, the applicants say that the strata's overall behaviour towards them has caused a loss of enjoyment of SL9. They say that the strata's actions have been vindictive and deserving of rebuke. They claim $7,500 in general damages and $5,000 in punitive damages. The strata says that it has treated the applicants fairly

10. The applicants are self-represented. The strata is represented by a strata council member.

11. For the reasons that follow, I refuse to resolve the applicants' claims about the alleged conflict of interest and dismiss their remaining claims. I also dismiss the strata's claims for dispute-related expenses, including legal fees.

JURISDICTION AND PROCEDURE

12. These are the CRT's formal written reasons. 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.

13. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, the parties of this dispute call into question the credibility, or truthfulness, of each other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

14. 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.

15. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the tribunal 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.

16. In its submissions, the strata argues that the CRT should refuse to consider some of the applicants' claims because the applicants did not request a strata council hearing. The applicants undisputedly had a council hearing but it did not cover everything at issue in this CRT dispute. Section 189.1 of the SPA requires owners or tenants to request a council hearing before starting a CRT dispute. Section 189.1(2)(b) says that the CRT may waive this requirement. I find that it is appropriate to waive the requirement in this dispute given the parties' long and acrimonious history. I find that the parties' relationship would prevent them from reaching any agreements, so a council hearing would likely be pointless.

17. Before turning to the applicants' claims, I will address several procedural issues.

AA's Standing

18. As mentioned above, Ms. Nguyen assigned her powers and duties as an owner to AA, who I infer is a tenant. The strata said in its Dispute Response that AA should be a named applicant. However, the applicants chose not to add AA as an applicant despite having the opportunity to do so. I agree that the applicants do not have standing, or the legal right, to assert remedies on AA's behalf. That said, I find that AA's dealings with the strata were in his capacity as Ms. Nguyen's designate. So, while AA does not have standing in his own right, I find that I can consider all of the applicants' claims as presented.

19. I will also note here that AA and Ms. Tran shared the responsibility for dealing with the strata. Some emails are from Ms. Tran's email address and some are from AA's email address. Many of the emails are signed with both Ms. Tran and AA's names. For clarity and readability, and because of AA's role as Ms. Nguyen's designate, I include AA when I refer to the "applicants" except where the context requires more specificity.

New Orders Raised in Submissions

20. As mentioned above, in their submissions, the applicants added several requested orders. I find that most of them are simply clarifications, and I have considered them on that basis. The strata did not object to this, and given my decision, I find the strata was not prejudiced in any event.

Applicants' Demand for Evidence

21. The applicants say in their reply submissions that they could not properly reply to the strata's submissions because the strata failed to provide all relevant evidence as required by the CRT's rules. They provided a list of 12 demands for more evidence. The strata provided submissions about the applicants' demand.

22. The strata provided 12 additional documents in response to the request. The strata denies having many of the requested documents, and I find that the applicants have not proven otherwise. The strata also questioned why the applicants demanded email

chains that included the applicants, which the applicants already had. I agree with this point.

23. I find that the remaining contested records are recordings of an August 27, 2020 meeting and an October 28, 2020 strata council hearing. The strata denies that the applicants are entitled to them under section 36 of the SPA, which is a substantive issue I address below. I find that this is a different issue than whether the strata must disclose them as relevant evidence as required by CRT rule 8.1.

24. Turning first to the August 27, 2020 meeting, in its main submissions the strata says that it does not have a recording of the meeting. The strata says that it stopped recording when the parties could not agree on an agenda. However, in response to the applicants' demand, the strata says that it will disclose "digital recordings of meetings" if the CRT orders it to do so. At first glance, these positions appear contradictory, but I find that the strata likely is admitting only to having a recording up to the point where it decided to stop recording. I infer that it still has a recording of this small portion of the meeting. I find that the applicants have not proven that there is a recording of the entire meeting.

25. The applicants list 6 factual disputes this recording will resolve. For the most part, I find that they have marginal, if any, relevance. In any event, I find it unlikely that the parts of the meeting that were recorded would resolve any of the factual disputes because the disagreement about the agenda occurred at the beginning of the meeting. In other words, I find that none of any potentially relevant parts of the meeting were recorded.

26. As for the October 28, 2020 strata council hearing, the applicants recorded the hearing and provided the recording as evidence. I do not understand why a second recording of the same hearing is necessary.

27. For these reasons, I decline to order the strata to disclose further evidence.

Request to Provide More Evidence

28. When the applicants made their reply submissions, they also asked to provide 29 additional pieces of evidence. CRT staff allowed the applicants to provide an additional video but left the remaining requests for me to consider. The applicants provided a list that described each proposed new piece of evidence and explained why they thought the evidence was necessary. I have taken at face value that what the applicants say is contained in the new evidence is accurate. With that assumption in place, I find that I am able to consider whether each proposed new piece of evidence would impact the outcome of this dispute. I will address each category of evidence in turn.

29. Some of the evidence is about an incident where the applicants called the police on a strata council member, BM. As discussed below, the strata raised this issue as part of its claim for legal fees, a claim I dismiss. So, I find that the applicants are not prejudiced by me not reviewing this evidence.

30. Some of the evidence is about bylaw enforcement proceedings about the applicants' carport light, which the strata started while this CRT dispute was ongoing. As discussed below, I find that it is premature for me to comment on this alleged bylaw infraction.

31. There are 2 invoices that the applicants do not describe other than to say they are seeking reimbursement as part of this dispute. I infer from this that they are invoices for dispute-related expenses, such as legal fees. As outlined below, I dismiss the applicants' claim for dispute-related expenses.

32. There are several photos that the applicants say prove that the new exterior lights are not all replacements of old lights. As outlined below, I find that nothing turns on this detail.

33. The applicants also want to provide more photos showing that there is still light shining onto their deck, yard, and inside their living room. As outlined below, I accept light shines into the main floor of SL9 but disagree that it is unreasonable. I therefore

find that more photos showing the same light would not change the outcome of that claim.

34. The applicants have statements from other residents who are also unhappy with how the strata has treated them or addressed their complaints. I find that other residents' experiences with the strata are irrelevant to this dispute.

35. The applicants want to provide a doctor's note about the mental health impacts of the ongoing conflict on Ms. Tran. I find that this evidence is relevant to the quantum of Ms. Tran's damages. However, as outlined below, I dismiss the applicants' damages claim so there is no need for me to assess how much compensation she would have been entitled to.

36. The applicants ask to provide 2 videos that show that their gutters were overflowing in February 2022. I have accepted the applicants' evidence that their gutters, like many gutters in the strata, overflow at times. Even with that, I have determined that the strata's general practice of twice-yearly cleanings, with targeted cleanings as needed, is overall reasonable. The fact that the applicants' gutters overflowed about 2 months after the most recent cleaning does not change my conclusion.

37. The applicants also ask to provide an email from the strata manager that they say contradicts the strata's evidence about why a contractor did not clean the applicants' catch basin. I find that nothing turns on this because regardless of why there was a delay in cleaning the applicants' catch basin, a strata council member cleaned it the day after the applicants complained.

38. The applicants also have a recording of their conversation with the contractor who repaired their retaining wall. In that recording, the contractor said that they proposed removing (and presumably replacing) the retaining wall, but the strata chose a less expensive option. As outlined below, I find that the applicants failed to prove that the retaining wall needs to be repaired or that the repairs the strata did were ineffective. I find that the mere fact that the strata chose a less expensive option than the contractor suggested does not mean that the strata's decision was unreasonable.

39. Finally, the applicants ask to provide a recording of a conversation between AA and the strata manager where the strata manager says that they might be able to "work out some magic invoicing". The applicants suggest that this indicates that the strata council members and strata managers are willing to commit tax fraud, and that it therefore undermines their credibility. I find that this is a vague statement and disagree that it impugns anyone's overall credibility.

40. For these reasons, I find that none of the proposed new evidence would impact my decision if admitted. I decline to allow the applicants to provide any further evidence.

Conflict of Interest

41. The strata argues that the applicants' allegations about conflicts of interest are outside the CRT's jurisdiction. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction.

42. Section 32 of the SPA sets out a process for when a strata council member has an interest in a contract or transaction. In *Wong v. AA Property Management Ltd.*, 2013 BCSC 1551, the court found that the only remedies for breaching section 32 are found in section 33 of the SPA. Section 122(1)(a) of the CRTA says that the CRT does not have jurisdiction to make orders under section 33 of the SPA.

43. I acknowledge that the applicants' claim does not ask for a remedy to correct a conflict of interest. Instead, they ask for information and records about suspected conflicts of interest. However, part of section 32 sets out what a strata council member must disclose if there is a conflict of interest. With that, I find that the applicants' claim is captured by sections 32 and 33 of the SPA. I also find that information and documents about the alleged conflict of interest would be producible in a BC Supreme Court action under section 33 of the SPA: see *The Owners, Strata Plan NWS 1018 v. Hamilton*, 2019 BCSC 863, at paragraph 27. I therefore find that this claim is outside the CRT's jurisdiction, and I refuse to resolve it under section 10 of the CRTA.

New Evidence

44. The applicants provided another new piece of evidence as part of their reply. It is an audio recording of a September 28, 2021 strata council meeting. The strata objected because this evidence was available when the applicants uploaded their initial evidence in October 2021. The strata says it would be procedurally unfair to allow the applicants to provide this new evidence in reply because the strata had no opportunity to respond.

45. The applicants provided this recording to prove that the strata has documents relating to an alleged conflict of interest. However, the applicants' recording is in a non-standard file format, so I was unable to listen to it. Given my finding that the applicants' claim about documents related to the alleged conflict of interest is outside the CRT's jurisdiction, I find that the recording is likely irrelevant to the claims before me. On balance, I do not admit this evidence on that basis.

ISSUES

46. The issues in this dispute are:

    a. Are the applicants entitled to receive a link and password for online council meetings a week in advance?

    b. Did the strata fail to investigate and enforce its bylaws?

    c. Does the CRT have jurisdiction to consider whether the exterior lights are a nuisance?

    d. Did the strata act unreasonably by installing the new exterior lights?

    e. Are the exterior lights near SL9 a significant change to the appearance of common property under section 71 of the SPA?

    f. Did the strata fail to repair and maintain common property?

    g. Did the strata treat the applicants significantly unfairly by repairing their concrete pathway with asphalt?

h. Must the strata disclose any further records?

i. Did the strata treat the applicants significantly unfairly? If so, are the applicants entitled to damages, including punitive damages?

BACKGROUND

47. In a civil claim such as this, the applicants must prove their case on a balance of probabilities, which means "more likely than not". While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

48. The strata consists of 40 townhouse-style residential strata lots in 6 buildings. The applicants purchased SL9 in June 2019. Ms. Tran and AA moved into SL9 in July 2019. AA is also a co-owner of another strata lot in the strata, which is rented out.

49. The strata filed a complete set of bylaws in the Land Title Office (LTO) on March 26, 2002, and several amendments since then. I will discuss the relevant bylaws as they arise.

EVIDENCE AND ANALYSIS

Are the applicants entitled to receive a link and password for online council meetings a week in advance?

50. The applicants say that the strata has deliberately attempted to exclude Ms. Tran and AA from council meetings. They ask for an order that the strata provide a link and password for all future council meetings at least 1 week prior to the meeting.

51. When the applicants bought SL9, the strata's bylaw 21.4 said that owners and their spouses could attend strata council meetings as observers with the president's prior permission. On June 11, 2021, the strata filed a bylaw amendment in the LTO removing the requirement for the president's permission. It is therefore undisputed that the applicants have a right to attend council meetings as observers.

52. The applicants say that section 17 of the SPA requires the strata to provide them with the meeting details 1 week in advance. From context, I infer that the applicants are referring to standard bylaw 17 under the SPA, which is about council meetings. As mentioned above, the strata's bylaw 21 is about council meetings, so I find that standard bylaw 17 does not apply. I find that there is nothing explicit in the SPA or the strata's bylaws about how to provide notice about council meetings.

53. It is undisputed that the strata declined to allow the applicants to attend the May 2020 strata council meeting. The parties dispute why, but I find that this was within the strata president's discretion at the time, since the old version of bylaw 21.4 was still in force.

54. It is also undisputed that in October 2020, the applicants told the strata manager they wanted to attend all future meetings as observers, but the strata manager did not consistently provide them with the link. The applicants say this was deliberate, which the strata denies. I find no evidence of a deliberate attempt by the strata to keep the applicants from attending strata council meetings.

55. In any event, on July 21, 2021, the strata emailed its strata manager that they should provide the applicants with the details of all future council meetings. I see no legal basis for requiring the strata to proactively and indefinitely invite the applicants. Rather, I find that if the applicants want to observe a meeting, they must take the initiative to contact the strata. I find that demanding anything further from the strata is unreasonable. I dismiss this claim.

***Did* the *strata* fail to *investigate* and *enforce its bylaws*?**

56. Section 26 of the SPA requires the strata to enforce its bylaws. The BC Supreme Court has said that how vigorously the strata must enforce particular breaches must be "tempered with prudence and good faith". See *Abdoh v. Owners of Strata Plan KAS 2003*, 2013 BCSC 817, at paragraph 26. The strata also has limited discretion to decide not to enforce bylaw breaches if the breach is insignificant or trivial. See *Abdoh*, at paragraphs 19 to 23.

57. The applicants allege that the strata has failed to properly investigate and enforce 5 complaints they have made. I will address them each in turn.

58. First, the applicants say that on July 13, 2019, a strata council member, EY, yelled and swore at AA as AA was picking up leaves. AA says that EY accused him of not being a strata resident and threatened to "vote against any decision" about SL9. AA's friend and Ms. Tran both provided statements setting out similar accounts of what happened. According to EY, AA was evasive and argumentative, but EY admits to swearing after getting frustrated by AA's behaviour.

59. The applicants complained to the strata manager about this incident on July 16, 2019. On July 19, 2019, the strata manager texted AA that "there will be no repeat" and that EY would "step back somewhat". In a September 11, 2020 letter, the strata's lawyer clarified that the strata council had decided that EY would not take part in any council decisions about SL9.

60. The applicants say that EY breached bylaws 4.9 and 4.10, which require "respectful communication" between residents. The applicants say that the strata failed to properly investigate the complaint. However, the strata passed the respectful communication bylaws on March 4, 2020, so I find that they do not apply to this incident. However, it is possible that EY's behaviour breached bylaw 4.1(c), which prohibits owners from unreasonably interfering with another resident's use and enjoyment of a strata lot or common property.

61. Assuming that the applicants' account of what happened is accurate and that EY breached bylaw 4.1(c), I find that the strata's response was reasonable and appropriate. I find that the strata effectively addressed any bylaw breach by having EY recuse himself from any discussions or decisions involving SL9. I note that this is precisely what the applicants had asked the strata to do in their July 16, 2019 email.

62. Second, the applicants say that on January 14, 2021, EY "charged" AA with "metallic golf equipment" (presumably golf clubs). AA reported the incident to the strata manager on January 15, 2021. He said that "an individual" (who he did not identify until later as EY) walked past him on a path and "invaded [his] space", forcing him to

move out of the way. AA asked what the strata intended to do to prevent a reoccurrence. EY says that AA was blocking the path, forcing him to walk off the path to get around AA.

63. I find that I do not need to determine what happened between AA and EY. Assuming that the incident happened as AA alleges, and assuming that it was a bylaw breach, I find that it was a trivial breach. While I acknowledge AA's allegation that EY came to within 30 centimeters of him when public health authorities recommended physical distancing, the incident was outdoors and momentary. Also, even if EY acted aggressively by walking directly towards AA, AA does not explain why he did not simply get out of the way. The photos in evidence show a relatively narrow gravel path surrounded by flat grass, so I find AA easily could have moved. At worst, EY was inconsiderate. In these circumstances, I find that the applicants' complaint did not warrant the strata's attention.

64. I note that the applicants also complain about how the incident was portrayed in the strata council minutes. I find this complaint unfounded. I find that the minutes set out both sides of the incident, reminded residents to follow public health orders, and said the strata would take no further action.

65. Third, the applicants say that EY and BM started leaving their carport lights on all night, which shine into SL9. AA emailed the strata manager on December 23, 2020, to complain about BM's lights and on January 25, 2021, to complain about EY's lights. The applicants rely on bylaw 4.1(a), which prohibits owners from using common property in a way that causes a nuisance.

66. According to emails between strata council members, BM and EY had installed 60 watt bulbs, apparently replacing 40 watt bulbs. In a February 2, 2021 email, the strata responded in detail to the applicants' complaint. The strata said it had consistently recommended residents leave their carport lights on as a security measure. The strata said that leaving the lights on did not appear to breach any strata bylaws.

67. The photos in evidence suggest that the carport lights are visible from inside SL9 from a distance. I am not satisfied from the photo evidence that it was a bylaw breach

to leave the carport lights on. I find that the lights were not bright enough to cause a nuisance to anyone inside SL9.

68. Fourth, the applicants say that on August 19, 2020, EY's dog wandered into their yard, unattended and unleashed. Bylaw 5.2 requires residents to keep dogs leashed on common property. EY admits that this happened.

69. The applicants say that the strata never investigated or reported the complaint in its minutes. However, the November 10, 2020 minutes clearly indicate that the strata sent a bylaw infraction letter to EY. In the letter, the strata said that future infractions could result in fines.

70. It is unclear why the applicants are unhappy with the strata's investigation given that the strata agreed with them. As for enforcement, the strata has discretion about how to enforce bylaws. Section 129(2) of the SPA says that the strata may give a person a warning instead of a fine or other enforcement measure. I find that the strata's decision to warn EY was reasonable in the circumstances, given that the dog was only momentarily in SL9's yard.

71. Fifth, the applicants say that a strata council member, LJ, breached bylaw 4.10, which says that any resident may inform any other resident that they no longer wish to communicate directly. On December 19, 2020, AA emailed the strata manager to request that LJ stop communicating directly with the applicants. LJ emailed AA and others on June 24, 2021, about AA's tenant smoking on common property. LJ followed up on June 27, 2021. The applicants complained to the strata manager on August 22, 2021. They requested a fine.

72. The strata says that the strata manager did not send AA's December 19, 2020 email to the strata council or LJ, so LJ's breach was accidental. The applicants dispute this, but I find nothing turns on it. Even if LJ intentionally breached bylaw 4.10, I find that the breach was so insignificant that it did not justify strata involvement. I find that LJ's emails were respectful and polite, and about a legitimate concern between neighbours. My conclusion leaves aside the question of whether bylaw 4.10 is even enforceable, given that its sole function appears to be to govern interpersonal

relationships between residents, which is likely outside the scope of a strata's authority to pass bylaws under section 119 of the SPA.

73. In summary, I find no fault in how the strata addressed any of the applicants' bylaw complaints.

74. I also note that the applicants make allegations about the strata's response to complaints from other residents. I find these allegations are not properly before me because the applicants do not have standing (legal authority) bring claims on behalf of other people.

Does the CRT have jurisdiction to consider whether the exterior lights are a nuisance?

75. The strata undisputedly installed new exterior lights near SL9 in February 2020. The applicants allege that these exterior lights cause a nuisance because they shine into SL9.

76. The applicants' position is somewhat confusing. They ask me to decide whether the lights were a nuisance and grant an injunction that the strata stop the nuisance. However, they say that their claim for an injunction is "without prejudice to a claim for damages", which they say they may bring in a different forum. That said, they say that if I determine that damages should be addressed in this decision, I should give them the opportunity to amend their claim and make further submissions.

77. As mentioned above, section 121 of the CRTA sets out the CRT's jurisdiction over strata disputes. Specifically, section 121 says that the CRT has jurisdiction over claims "in respect of" the SPA. I agree with the reasoning and conclusion in *Alameer v. Zhang*, 2021 BCCRT 435, that the CRT does not have jurisdiction under its strata property jurisdiction to decide tort claims because they are not in respect of the SPA. Nuisance is a tort at common law. In short, I find that I do not have jurisdiction to consider a nuisance claim. However, I find that this does not end the matter.

78. In *Ryan-Glenlon v. Section 1 of The Owners, Strata Plan LMS 2532*, 2021 BCCRT 871, I found that the same situation can give rise to multiple legal claims. I found that

if a claim could alternatively be brought under the SPA or under the common law, it is in respect of the SPA and the CRT may decide it.

79. I find that the applicants' claims about the exterior lights' impact on their use and enjoyment of SL9 can alternatively be brought as a nuisance claim or under section 72 of the SPA. Under the law of nuisance, the applicants would have to prove that the strata caused an unreasonable interference with the use or enjoyment of SL9, balancing the nature, extent, and duration of the interference with the utility of the impugned conduct. See *Sutherland v. Canada (Attorney General)*, 2001 BCSC 1024.

80. Under section 72 of the SPA, the strata must repair and maintain common property. It is well established that the standard the strata is held to in the exercise of this duty is reasonableness. Specifically, the strata must make repair and maintenance decisions that reasonably balance competing interests between owners. See *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784. I find that the applicants' claim about the exterior lights can be assessed under this framework because the strata must prove that it reasonably balanced the utility of the exterior lights with their impact on individual residents, like the applicants. I therefore find that the CRT has jurisdiction to consider the parties' substantive arguments about the exterior lights.

81. I did not ask the parties for submissions about jurisdiction. I find it would have been pointless to do so because neither party disputed the CRT's jurisdiction. I infer from this that the parties want me to decide this claim on its merits.

82. The same goes for the applicants' requested remedy. The applicants rely on the common law surrounding the granting of injunctions. However, as mentioned above, section 123 of the CRTA gives the CRT the power to order a party to do or stop doing something, which is essentially the same thing. With that, I turn to the merits of the applicants' claims about the exterior lights.

Did the strata act unreasonably by installing the new exterior lights?

83. As mentioned above, the strata installed brighter exterior lights near SL9 in February 2020. SL9 is an end unit in a row of townhouses. There is a footpath along the side

of SL9. Strata lot 8 (SL8) is across this footpath from SL9. At the back of SL8 and SL9, the footpath turns and continues behind SL8's building. Strata lot 15 (SL15) is behind SL9. There are 2 sets of lights at issue: one on SL8 and one on SL 15. In short, the applicants say that these exterior lights shine an unreasonable amount of light into SL9, causing sleep disturbance.

84. The parties dispute when the applicants first complained about the lights. The applicants say that they verbally complained in March 2020, but there is no written record of this. Given the frequency of the applicants' emails to the strata manager throughout 2020, and their persistence in pursuing complaints, I find it unlikely that the applicants verbally complained without following up in writing. I also note that the applicants' first written complaint to the strata manager on August 17, 2020, mentions other residents complaining about the lights but does not say that the applicants had previously complained.

85. I therefore find that the applicants first complained about the lights on August 17, 2020. They referred to the SL15 lights and did not mention the SL8 lights. The applicants say that the SL15 lights shine into an upstairs bedroom.

86. The strata wrote the applicants on September 1, 2020. The strata said that in 2019, the strata decided to address issues with all of the exterior lights in the complex. The strata also said it had adjusted the lights on August 18, 2020.

87. In a November 23, 2020 meeting between AA and the strata manager, AA said that the light was better than it had been. A recording of this meeting is in evidence.

88. The strata also says it installed a "shroud" on December 28, 2020. The strata says that taken together, their adjustments to the SL15 lights effectively turned a floodlight into a spotlight.

89. According to its January 26, 2021 strata council meeting minutes, the strata surveyed residents around some of the new lights to make sure they were not shining into their property. The strata says that the lights no longer bothered anyone but the applicants. The strata provided a statement from an SL 8 resident, who said that initially the new

lights were very bright but after the strata made changes, they no longer found the light bothersome.

90. The parties each provided photos that they say support their position. I find the strata's evidence more persuasive. First, I find that the applicants' evidence about the severe impact of the lights on their well-being is at odds with the fact that they did not complain about them for around 6 months after they were installed. I also find the applicants' position in this dispute is inconsistent with AA's clear statement in November 2020 that the strata's efforts had helped.

91. More importantly, I find the strata's photos support its position that the steps it took to redirect and shroud the SL15 lights significantly reduced their impact on SL9. I find from the strata's photos that the SL15 lights no longer shine directly onto the back of SL9, where the bedroom windows. I accept that the SL15 lights contribute to the strata generally being brightly lit, along with nearby exterior lights, carport lights, and municipal streetlights. I therefore accept that they contribute indirectly to how much light comes into SL9 at night. However, I am not satisfied that the SL15 lights create unreasonably bright conditions within SL9. I note that the applicants did not provide any photos from inside their bedrooms after the strata had installed the shroud.

92. I turn next to the SL8 lights. As mentioned above, these lights are mounted across from the side of SL9, lighting the pathway between the 2 buildings. The only windows on the side of SL9 are 2 frosted windows on the main floor. I agree with the applicants that the SL8 lights are bright enough that they illuminate SL9's dining room, kitchen and living room area at night. However, I do not agree that this is unreasonable. First, I find that it is objectively less intrusive to have an illuminated kitchen and dining room at night. Unlike bedrooms, there is no compelling reason for these areas of a house to be completely dark at night. I also agree with the strata that the if the applicants could easily mitigate the brightness by using blinds or some other window covering, which they have not done.

93. I find that the strata's obligation to act reasonably in its repair and maintenance obligation require it to balance these impacts against the benefits of having a brightly

lit strata complex. First, I find that the strata's desire to brightly light the pathways in the strata is reasonable. The strata provided evidence showing multiple break-ins and attempted break-ins in the strata over the past several years. For example, the strata provided multiple security camera photos showing people checking parked cars for unlocked doors. While the applicants say that crime and trespassing is still an issue in the strata, I find that ensuring that common areas are brightly lit is a sensible way to deter such activity. I find that the strata reasonably balanced the community's interest in security with individual residents' ability to live comfortably, particularly after it adjusted the lights in response to residents' concerns. I find that the strata did not breach its obligation to reasonably maintain common property.

94. I note that the applicants have consistently raised the issue that the original installation of the new lights in February 2020 was done without a municipal permit. The strata essentially conceded this point long ago. The strata had the installation retroactively approved and received a permit on December 2, 2020. I therefore find that the permit issue is no longer relevant.

Are the exterior lights near SL9 a significant change to the appearance of common property under section 71 of the SPA?

95. Under section 71 of the SPA, the strata cannot make a significant change in the use or appearance of common property unless change is approved by a ¾ vote at an annual or special general meeting. The applicants argue that the new lights are a significant change within the meaning of section 71. It is undisputed that the strata did not put the installation of the lights to a ¾ vote.

96. The leading case about what constitutes a "significant change" is *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333. In that case, the court set out a non-exhaustive list of factors to consider, including whether the change is visible and whether it affects the use or enjoyment of a strata lot.

97. The applicants rely on *O'Neill v. Strata Plan LMS 898*, 2018 BCCRT 20. In that dispute, the CRT determined that the installation of a series of trail lights along the back of a strata corporation's land was a significant change in the appearance of

common property. I find the facts of that dispute are different because the area where the lights were installed had previously been "entirely unlit greenspace". Here, the change was an increase in brightness in an urban, brightly lit area.

98. I accept that changing the light configuration to be brighter is a change to the appearance of common property, and in that sense, it is a "visible change". While the applicants focus on the fact that the new lights were not all replacements of old lights, I find it makes no difference whether the number or location of the lights is exactly the same. Rather, I find that the overall effect of the new lighting is what matters. I am not satisfied that the increase in brightness was significant within the meaning of section 71 of the SPA. In addition to the fact that the strata was already brightly lit, I rely on the fact that the other residents in the strata are not bothered by any increase in light.

99. I therefore find that the strata did not need to get owner approval before installing the exterior lights. I dismiss the applicants' claim about the exterior lights.

Did the strata fail to repair and maintain common property?

100. The applicants say that the strata has consistently failed to address repair and maintenance issues that affect SL9. In this dispute, they raise 6 issues: a fence, siding, gutters, catch basins, a retaining wall, and a concrete walkway. It is undisputed that all of the applicants' allegations relate to common property that the strata must repair and maintain under the SPA and the strata's bylaws.

101. The strata says that that the complex is over 45 years old and has many competing repair and maintenance concerns. The strata says none of the issues the applicants identified was an emergency that would justify spending outside its budget.

102. Before I address the individual complaints, I will set out the law.

103. When assessing whether the strata has fulfilled its repair and maintenance obligation, the starting point for the CRT is to defer to the strata. The reason for this deference is that the strata must act in the owners' best interest, which often requires it to balance competing interests and work within a budget that the owners have

approved. With that in mind, when there are multiple projects that need to be completed over time, the strata may need to prioritize some over others based on considerations like their relative urgency or cost. The strata may also choose a lower standard of maintenance for financial or practical reasons, which is acceptable as long as the decision is reasonable. As the court put it in *Weir*, the strata may reasonably choose a good repair option over the best repair option.

104. In considering the strata's choices, I find that it is also relevant that the strata is pursuing a wind-up and sale. At the 2021 AGM, the owners passed a resolution to hire a lawyer to for this purpose with 26 votes in favour and 3 opposed. At the same AGM, the owners rejected 2 special levies for repair and maintenance. While the possibility of a wind-up does not mean that the strata may stop repairing and maintaining common property entirely, I find that the strata may reasonably take it into account when deciding what to repair and maintain, and to what standard.

105. With that background in mind, I will address each allegation in turn.

Fence

106. SL9 is at a higher elevation that the neighbouring strata lot. The fence between SL9 and this strata lot sits on top of a retaining wall. The 2 fenceposts in this part of the fence go into gaps in the retaining wall down to the ground.

107. The strata manager sent a notice to all owners in May 2020 about fence repairs, asking residents to advise if their fences needed repairs. It was undisputedly not sent to the applicants. On June 9, 2020, the applicants asked why they were not included. On June 12, 2020, the strata manager apologized for the error and invited them to respond to the initial notice. The applicants say this is evidence of the strata intentionally excluding them and trying to avoid repairing their fence. I reject this assertion, which I find speculative. I accept that this was an inadvertent error.

108. The strata undisputedly only had its contractor repair the applicants' gate, not the entire fence. The strata says that this was the only repair it could fit within the 2020

budget. The strata says that in 2021, it added metal flashing to one of the fenceposts to better secure it to the retaining wall. This is confirmed by photos in evidence.

109. The applicants do not say what other repairs are required. It is noteworthy that all of the photos they rely on show the fence before the 2021 repair. I find that the photos of the fence show that it is somewhat old and worn but not obviously in need of immediate replacement. I dismiss the applicants' claim for fence repairs.

Retaining Wall

110. The applicants say that the retaining wall is "on the verge of collapsing". They say the strata's failure to properly repair the retaining wall has meant that the yard is unsafe for their toddler to use. The strata admits that the retaining wall has shifted over time, which I find is obvious from the photos in evidence. However, the strata denies it is unsafe. In any event, the strata says that the applicants accepted responsibility for the retaining wall as part of the strata's approval of the applicants' request to level their yard. The strata also provided photos showing it repaired the retaining wall in May 2020 by installing 3 concrete pipes to stabilize it.

111. I find that the applicants have not proven that the retaining wall needs imminent repair or is unsafe or unstable. Again, the applicants' photos are all from before the strata's repair in May 2020. In any event, when a person makes an allegation that is outside the common knowledge of an ordinary person, they generally must prove it with expert evidence. See *Bergen v.* Guliker, 2015 BCCA 283. I find that the stability or safety of a retaining wall is outside common knowledge, so it must be proven with expert evidence, which the applicants did not provide. With that conclusion, I find that I do not need to address the indemnity agreement.

Siding

112. It is undisputed that during a siding repair project in December 2020, the strata only repaired a small portion of SL9's siding. The applicants say that the strata should repair more of SL9's siding.

113. The strata says it only had a budget for targeted repairs to the most rotten and at-risk siding. The strata says that SL9 was treated no differently than any other strata lot. According to the November 10, 2020 strata council meeting minutes, this phase of the siding replacement project included "high priority and urgent siding replacements" for 6 strata lots, including SL9.

114. The applicants provided several photos of their siding from October 2021. I agree that they show areas of rot that are unsightly. The strata provided photos of nearby strata lots with siding in a similar condition. Without expert evidence that there is an urgent need for further repairs to SL9's siding to prevent damage or loss, I find that the applicants have not proven that the strata acted unreasonably by only partially repairing SL9's siding. I dismiss the applicants' claim for further siding repairs.

Catch Basins

115. The applicants say that in January 2021, the strata hired a contractor that cleared all of the strata's catch basins except theirs. The applicants emailed the strata on February 4, 2021, to complain about this.

116. The strata says that it divides the strata's catch basins into 2 groups. The first group can be reached by a contractor's hose and truck. These were cleaned in January 2021. The catch basins around SL9 are not in this group because the contractor cannot reach them, so they are cleaned by a separate plumbing company. The applicants dispute this.

117. I find that the applicant's claim about the catch basins is moot. The strata provided photos of a council member cleaning SL9's catch basin on February 5, 2021, the day after the applicants complained. The applicants provided no photos after February 5, 2021, to show an ongoing problem. There is no evidence that the strata council member's work was ineffective, so I dismiss this claim.

Gutters

118. The applicants say that the strata has consistently ignored their reports of clogged gutters. The applicants first emailed the strata manager on September 16, 2019, that

their gutters were clogged. The applicants demanded that the strata unclog the gutters within 4 days of their email. The strata manager emailed on September 19, 2019, that the gutters would be cleaned in late November as scheduled. The strata says that it typically waits until after the leaves have finished falling before cleaning gutters. The strata says that it cleans the strata's gutters twice a year.

119. The applicants next emailed the strata manager about the gutters on January 14. 2021. They said that their gutters overflowed onto their deck. The strata admits that in 2020, only some gutters were cleaned. The strata says WorksafeBC issued a stop work order against its contractor, which halted work. The strata says the contractor cleaned the remaining gutters in early 2021.

120. According to the April 13, 2021 council meeting minutes, the applicants and 6 other residents reported deficiencies with the contractor's work. According to emails between the applicants and LJ, the contractor returned to clean SL9's gutters on April 25, 2021.

121. The applicants provided photos from September and October 2021 that show water collecting in their gutters. They also provided a video that shows water dripping over the gutters onto their deck in heavy rain. The strata provided videos showing other gutters in the complex overflowing in a similar way.

122. According to the September 28, 2021 council meeting minutes, several owners had reported overflowing gutters following heavy rainfall. The strata says it reviewed the complaints and determined that 12 strata lots' gutters required urgent and targeted cleaning. SL9 was not one of them.

123. According to a December 5, 2021 email from the strata's gutter contractor, SL9's gutters had a 2 inch basket over a 3 inch gutter hole, which may have impeded flow. The contractor said they would replace it. The contractor also said that it flushed SL9's gutters with "no issues".

124. I accept that the applicants' gutters overflowed at times. This appears to be a regular occurrence in the strata, which includes many tall trees that inevitably shed

leaves and needles that impact the gutters' performance. I find that the strata's practice of twice-yearly cleanings with targeted cleanings as needed is reasonable. I find that the applicants have not proven that the strata's decision not to include SL9 in its targeted cleaning in September 2021 was unreasonable. In reaching this conclusion, I rely primarily on the small amount of water shown overflowing onto their deck in their video. This suggests that the gutters were only partially blocked. There is no evidence that the overflowing water was causing any damage. I dismiss this claim.

Pathway

125. The photos in evidence show that when the applicants moved into SL9, there was a pathway made of pebbled concrete pavers leading to their front door. It is undisputed that the concrete pavers were cracked. The photos suggest that the pathway was slightly uneven at some parts, both where there were cracks and at the seams between pavers.

126. On September 8, 2019, the applicants emailed the strata manager that the pathway was unsafe for Ms. Tran, who was pregnant at the time, and Ms. Nguyen, who they described as elderly. The applicants followed up on September 16, 2019.

127. On September 19, 2019, the strata manager confirmed that the pathway would be repaired as part of a larger project but they were waiting on a quote. The applicants followed up again on October 7, 2019. The applicants considered the need for repair very urgent.

128. The applicants and strata council members spoke on the phone on November 6, 2019. The applicants provided a recording of this conversation. The strata objects to the admissibility of the recording, calling it "illegal". I agree with the applicants that it was not illegal for the applicants to record the conversation because they were active participants. However, I listened to the recording with headphones at maximum volume. AA's voice came through very loudly but the voice on the other end of the line was barely audible. I could make out the occasional word or phrase but could not

follow what they were saying despite my best efforts. So, I have placed no weight on this recording.

129. It is undisputed that the strata asked for medical evidence that the moss and cracks on the sidewalk were particularly dangerous for Ms. Tran. The strata says that it considered the applicants' request for expedited repairs based on Ms. Tran's pregnancy to be a request for accommodation under the *Human Rights Code* (Code).

130. The applicants provided 2 medical notes, both dated November 8, 2019. In one, Ms. Tran's obstetrics doctor said that they "understood the access to her unit is challenging, with high risk of falling" and asked that the issue be addressed "urgently". In the other, the doctor said that the moss "causes a risk of falls" and asked that it be removed.

131. The strata decided that Ms. Tran was not entitled to immediate concrete repairs as an accommodation under the Code. I agree with the strata on this point. I find that the medical notes were vague and subjective. There is no indication that the doctor viewed photos of the pathway as opposed to simply relying on the applicants' description. In the absence of a proven need for accommodation under the Code, based on the photos I am not satisfied that the pathway was so uneven that the strata needed to address it immediately. I find that it was reasonable for the strata to wait to repair the pathway as part of the larger project.

132. On November 12, 2019, the strata wrote to the applicants advising them of its decision. The strata said that it was awaiting a quote for a concrete repair project that would include the pathway. The strata offered to install temporary handrails as an interim solution, which the applicants did not accept.

133. On December 9, 2019, the strata's contractor repaired the pathway by replacing it with asphalt. According to the contractor's invoice, the repair project included 3 other strata lots.

134. The applicants say that the asphalt is uneven and mossy. They also say that it is a "cheap" repair that reduced the value of their property. They say theirs is the only

strata lot with asphalt instead of concrete. They say that this was a significant change in the use or appearance of common property that required a ¾ vote. They also say it was significantly unfair and ask for $8,000 in damages.

135. I disagree with the applicants about the asphalt repair. First, I find that it was a reasonable way to repair the pathway. I find that it is similar to the concrete it replaced. It is darker in colour, but uniform in appearance. From the photos, it does not appear to be uneven as alleged, and there are no photos of a moss problem. I find the applicants' assertion that it reduced SL9's value to be speculative. According to the quotes in evidence, replacing the pathway with concrete would have cost thousands of dollars more. I find that it was not unreasonable for the strata to choose the less expensive option.

136. Also, the strata provided photos of other parts of the strata with asphalt pathways. Given that it is in character with the rest of the strata, I find that replacing concrete with asphalt was not a significant change in the appearance of common property under section 71 of the SPA.

137. As for significant unfairness, the CRT can make orders to remedy significant unfairness by a strata corporation under section 123(2) of the CRTA. In *Reid v. The Owners, 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, unjust or inequitable. Here, the evidence shows that the strata repaired multiple parts of the strata with the same type of repair at the same time. I find that the strata treated the applicants no differently than anyone else. Having concluded that asphalt repair was a reasonable option, I find that the strata did not treat the applicants significantly unfairly in choosing an asphalt repair. I dismiss the applicants' claims about the pathway repair.

Must the strata disclose any further records?

138. I note at the outset that the applicants' requested order in the Dispute Notice is that the strata produce "all requested records". I find this somewhat vague given that the applicants have made several records requests over the years. In submissions,

the applicants make arguments about several categories of records. For some, they ask for a specific order that certain records be disclosed. I interpret this to be a clarification of its initial general order and have only considered the records requests that the applicants specifically refer to in their submissions.

139. The applicants also make submissions about how the strata responded to their records requests. They say the strata intentionally delayed responding and deliberately avoided being fully transparent. They ask that I consider these submissions when assessing their damages claim below, which I have done.

140. Before turning to the requested orders, I will set out the applicable law. Section 35 of the SPA sets out a lengthy list of records that the strata must either create or retain. Section 36 of the SPA says that the strata must provide access to or copies of any section 35 records to an owner within 2 weeks of a request.

141. In *Hamilton*, the court concluded that the CRT has no authority to order production of strata records other than those set out in section 35 of the SPA. The court also confirmed the finding in *Kayne v. The Owners, Strata Plan 2374*, 2007 BCSC 1610, that sections 35(1)(d) and 36 of the SPA require the strata to provide owners with financial records that explain each receipt and expense, but do not require the strata to produce invoices or receipts.

142. With respect to strata council meeting minutes, the court in *Kayne* found that the only requirement in section 35 of the SPA is to include the results of any votes. Beyond that, while many strata corporations put more detail in their minutes, they have no legal obligation to do so. Also, the court found that it would be "unrealistic" to expect the strata to prepare minutes of informal meetings between strata council members.

143. With that legal background in mind, I turn to the applicants' claims.

August 27, 2020 Meeting

144. The applicants met with the strata council on August 27, 2020. The parties dispute what the meeting's purpose was. The applicants say it was just supposed to be about

the exterior lights, while the strata says it wanted to address all of the outstanding disputes between them.

145. The applicants say that the strata agreed to record the meeting and take minutes. They say that despite this agreement, the strata has failed to provide them with the recording or take minutes. The strata admits that it initially agreed to record the meeting and take minutes but changed its mind after it became clear that the applicants would not agree to the strata's proposed agenda. The strata says there is no recording of the rest of the meeting. The applicants accuse the strata of lying and supressing the recording.

146. The applicants argue 2 reasons why the strata should produce the recording of this meeting and provide minutes. First, they say that it was a strata council meeting within the meaning of section 35 of the SPA. Second, they say that the parties had an oral contract that the strata would share the recording and provide minutes. The strata says the meeting was not a formal council meeting, and denies any agreement.

147. I agree with the strata that it is clear from context that the meeting was an informal opportunity for the strata to try to resolve the ongoing conflict with the applicants. The meeting was arranged by email between the applicants and the strata. The strata manager was not present, and there is no suggestion that other owners were notified about the meeting and given the opportunity to observe it. Also, it occurred just over 2 weeks after a formal strata council meeting. I find that the SPA did not require the strata to take minutes of the August 27, 2020 meeting.

148. As for the recording, as mentioned above, I find that the applicants have not proven that there is a recording of the entire meeting. There is no obligation under section 35 of the SPA that the strata record meetings, so the applicants have no right under section 36 to receive a copy of the strata's recording. As for the alleged agreement, even if the strata initially agreed to record the strata meeting, I am satisfied that the strata ultimately chose not to after it became clear that the parties were at odds about the meeting's purpose. I find that there was no enforceable agreement to provide a recording because there was no meeting of the minds.

October 28, 2020 Hearing

149. The applicants had a hearing at the October 28, 2020 strata council meeting. They say that the strata agreed to record the meeting and take minutes. The minutes for the October 28, 2020 council meeting simply said that the hearing took place and that the strata responded to the applicants directly in writing. The minutes included no other detail. The applicants want an order that the strata amend the minutes to include the details of the hearing and distribute them to the owners. They also want an order that the strata provide a copy of the recording of the hearing.

150. I will address the issue of the recording first. As mentioned above, the applicants have no right to a copy of the recording under the SPA.

151. As for the allegation that the strata agreed to provide minutes and a recording, I have listened to the applicants' recording and disagree that it did so. The strata manager confirmed that someone was taking minutes but said nothing about distributing them to the applicants or anyone else. Section 35 of the SPA places no obligation on the strata to prepare minutes of hearings or to include details of hearings in strata council meeting minutes. The strata therefore has no obligation to provide a copy of these minutes under section 36.

Documents Related to the Alleged Conflict of Interest

152. As mentioned above, I have refused to resolve the applicants' records request to the extent they relate to the strata's obligation to disclose information about conflicts of interest under section 32 of the SPA. I therefore limit my analysis to whether the applicants are entitled to the requested records under section 36 of the SPA.

153. The applicants request that the strata amend its strata council meeting minutes to include details of the alleged conflict of interest. The applicants also ask for all invoices from the contractor alleged to be involved in the conflict of interest and all quotes from the strata's electrician. The applicants also request a document that sets out the priority of repairs for different strata lots within the strata. I find that section 36 of the SPA does not require the strata to provide any of these records because they are not listed in section 35.

154. The applicants also request all correspondence with contractors or electricians related to the installation of the exterior lights. Section 35(2)(k) requires the strata to retain correspondence sent or received by the strata, so I find that it must provide these records under section 36. The strata says it has already complied with this request. It provided in evidence an email chain between the strata manager and a contractor about the exterior lights from 2019. In the first email, the strata manager introduces themself so I accept there are no previous emails. The strata says there is no other correspondence, and I find that the applicants have not proven there is anything more for the strata to provide.

155. The applicants request all permits and reports related to the contractor who installed the exterior lights. The strata provided the applicants with a copy of the municipal permit for the exterior lights in May 2021. The strata says that there is nothing more to disclose, and I find that the applicants have not proven otherwise.

156. I dismiss the applicants' requested order for disclosure under section 36 of the SPA.

Are the *applicants entitled* to *damages*, *including punitive damages*, *because of the strata's conduct*?

157. As mentioned above, the applicants ask for $7,500 in general damages and $5,000 in punitive damages. Their arguments are limited to Ms. Tran because AA is not a party to this dispute. Most of the applicants' arguments about why they should be awarded damages relate to the substantive claims I have already addressed above and dismissed. There are 4 other specific allegations that I will address here.

158. First, the applicants say that the strata delayed providing financial disclosure. On September 16, 2020, the applicants emailed the strata manager requesting copies of financial records. The strata says that due to a "technical glitch", it did not receive the request from the strata manager until October 27, 2020. The strata then told the applicants they would respond within 2 weeks of that date, which the strata did through its lawyer. The applicants did not accept this explanation. They believe that the strata delayed because it was trying to hide something.

159. This complaint is part of a larger problem with the strata manager. It was not the only time that the strata manager, whether through error or technological problems, did not receive or failed to act appropriately in response to the applicants' emails. The applicants say that this was deliberate, designed to hamper the applicants' efforts to hold the strata accountable. While the communication issues were undoubtedly frustrating, I find that there is no evidence that the strata or strata manager deliberately failed to communicate with the applicants. On the contrary, the emails between strata council members show that they too were frustrated by these communication issues, which did not just affect the applicants. For example, in a January 10, 2021 email to the rest of strata council, the president advised that they had asked for a meeting with the strata manager's president about "missing emails, lack of response, delays in requests etc.".

160. The second allegation is that the strata has used council meeting minutes to shame applicants and isolate them from their neighbours. They raise 2 examples.

161. First, in the November 10, 2020 council meeting minutes, the strata said that it would send a letter to the applicants about misusing the recycling bins. In the minutes for the January 26, 2021 council meetings, the strata said that a warning letter was going to 3 strata lots, including SL9, for putting unacceptable materials in the recycling bins. It is undisputed that the strata manager failed to send SL9 a warning letter. On September 25, 2021, the strata manager wrote to the applicants that in error they had forgotten to send the letter and apologized for the delay. The strata manager then sent SL9 a warning letter about recycling. The strata took no enforcement action. The strata explained what had happened in the September 28, 2021 council meeting minutes.

162. The applicants provided evidence that the other 2 strata lots listed in the January 26, 2021 minutes also never received warning letters. Contrary to the applicants' submissions, I find that this evidence supports the strata's contention that it did not target at the applicants to make them look bad. I therefore accept the strata's explanation.

163. Second, the June 14, 2021 council meeting minutes refer to "SL9" writing to the strata "about issues with ants". The minutes said that the strata's pest control contract only covered external treatment for ants and that owners had to deal with their own treatment for ants within their strata lots. As it turned out, AA had written to the strata about ants within the strata lot he co-owns and rents out, not SL9.

164. The minutes also referred to the applicants' request for the strata take care of a wasp nest in their backyard. The minutes said that its pest control contractor would address it, and that "residents are advised to clean up/sweep the area and do their own treatment when possible".

165. The applicants argue that the strata intentionally included these statements to make them appear unclean. While I agree that the minutes left the impression that the interior ant problem was in SL9, I do not agree that this was intentional. As for wasps, I do not agree that a general reminder that residents should keep outdoor areas clean and free of clutter could be reasonably interpreted as an implication that the applicants were unclean, as the applicants suggest.

166. In any event, on October 22, 2021, the strata circulated revised June 14, 2021 meeting minutes confirming that wasps are a common problem in the strata because of the wood structures and surrounding vegetation, and the strata did not intend to imply that the applicants were unclean. The strata also clarified that AA had sent an email about ants about the other strata lot, not SL9. I find that the strata corrected any possible misapprehension about the June 14, 2021 minutes.

167. The applicants' third allegation is that the strata took enforcement action about lights on the applicants' carport in bad faith. On October 1, 2021, the strata wrote to the applicants alleging that there were unapproved alterations to the electrical writing in the carport. The strata required the applicants to remedy the contravention. The applicants say this was unjust because the previous owners had installed the lights. The applicants say that this is evidence of targeted and vengeful action.

168. This issue arose during the tribunal decision phase of this CRT dispute. The outcome of the strata's enforcement process is not before me, so I find that it is

premature to draw any conclusions about the strata's motivations. I therefore have not considered this bylaw infraction letter in my decision about the applicants' entitlement to damages.

169. Finally, the applicants take issue with the strata's description of their ongoing dispute in meeting minutes. For example, in the November 10, 2020 council meeting minutes, the strata noted that it had spent over 180 hours in volunteer time just dealing with the applicants. The strata said it was working with legal counsel to address the applicants' issues and warned the owners of possible legal fees if SL9 started a CRT dispute. The strata said it was "actively working" with the applicants to "resolve the issues amicably".

170. I agree with the applicants that the strata did not have to say anything about the parties' ongoing issues in the minutes, given the very limited legal requirements set out in *Kayne*. However, I am not satisfied that there was anything inaccurate in what the strata wrote. I find that the strata council members likely spent many hours addressing the applicants' records requests, complaints, repair requests, and other correspondence. The correspondence in evidence shows that the strata and the applicants did try to resolve the parties' issues amicably, even though these efforts were unsuccessful. The applicants did start a CRT dispute, and the strata did incur legal fees as a result. I appreciate that the applicants felt like these details were designed to portray them as unreasonable. I also accept that the strata may have been at least partially motivated by frustration when it included these statements. However, I find that the strata had a legitimate purpose in informing the rest of the owners about the volume of issues involving the applicants because of the potential for a CRT dispute and resulting legal and other costs.

171. Overall, in reviewing the considerable volume of correspondence between the parties and the strata council's internal correspondence, I find that the strata at all times acted reasonably in addressing the applicants' correspondence. I see no reason to award the applicants damages. I dismiss this claim.

TRIBUNAL FEES AND EXPENSES

172. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. The applicants were unsuccessful, so I dismiss their claim for CRT fees and dispute-related expenses. The strata did not pay any CRT fees.

173. The strata claims several dispute-related expenses. First, it claims the cost of 55 pages of printing at $0.50 per page. The strata did not explain why this printing charge was necessary given the CRT's process is entirely online. I decline to order reimbursement of the strata's printing costs.

174. The strata also claims legal fees. The CRT's authority to order legal fees is limited to "extraordinary circumstances" under rule 9.5(3). CRT rule 9.5(4) says that the CRT may consider the complexity of the dispute, the lawyer's degree of involvement, and whether the other party caused unnecessary delay or expense. The strata concedes that none of the applicants' claims on its own was particularly complex or unusual for the CRT. I agree. The strata says that the sheer number of claims, each with multiple sub-claims, makes this dispute extraordinary. The strata says that the applicants pursued moot repair claims and generally made this dispute more complicated than it needed to be. The strata points to the volume of evidence and length of submissions, which I agree are significantly higher than a typical CRT dispute. The strata also says that its legal fees were reasonable because it did a lot of work itself and only used a lawyer as a helper.

175. CRT rule 9.5(4)(d) says that the CRT may also consider any factor it considers appropriate. Several CRT decisions, such as *Kornylo v. The Owners, Strata Plan VR 2628*, 2019 BCCRT 1387, have noted that the CRT may apply the law of special costs in deciding whether to award legal fees.

176. The leading case on special costs is *Garcia v. Crestbrook Forest Industries Ltd.*, 1994 CanLII 2570 (BC CA). The court said that special costs are awarded for reprehensible conduct in the course of litigation that is deserving of rebuke. The strata says that the applicants' conduct is deserving of rebuke.

177. The strata says that the applicants initially only provided a 3 minute excerpt from the recording of the meeting between the strata manager and AA, which it says was misleading. The applicants later provided the whole recording. I am not persuaded that this represents a deliberate attempt to mislead the CRT.

178. The strata also says that in May 2021, the applicants called the police on BM based on a false accusation of voyeurism. The strata says this was vengeful behaviour that was related to the ongoing CRT dispute. The applicants say that they had a legitimate concern. While I find that the level of animosity between the parties likely influenced the applicants' decision to call the police for a relatively minor issue, I am not satisfied that it is sufficiently related to the CRT dispute to be considered when deciding whether to award legal fees.

179. Finally, in *Moon Development Corporation v. Pirooz*, 2015 BCCA 213, the court confirmed that persisting in unfounded allegations of fraud can attract an award of special costs. I find that the applicants made multiple allegations of bad faith, fraud, and other blameworthy conduct that were not proven on the evidence.

180. I carefully considered the strata's arguments, because I agree that there are some aspects of the applicants' behaviour that could support an award of legal fees. On balance, however, I find that the applicants were generally motivated by a misguided but genuine belief that the strata was not complying with its legal obligations. I find that this overarching finding outweighs the specific and occasional instances where the applicants crossed the line into unproven allegations of dishonesty. I decline to award the strata compensation for its legal fees.

181. The strata also claims compensation for the time of 2 strata council members. The strata has a bylaw allowing strata council members to receive compensation for "special projects". Under that bylaw, LJ and BM each received $550 in compensation for the combined 411.5 hours they say they spent on this CRT dispute. The strata requests reimbursement of that $1,100.

182. CRT rule 9.5(5) says that the CRT will not order a party to pay compensation for time spent dealing with a CRT proceeding except in extraordinary circumstances. I

find that the strata's claim for reimbursement of BM and LJ's "special project" compensation is analogous for a claim for compensation for time spent.

183. The rule does not set out any factors for the CRT to consider. As mentioned above, this dispute involved a far greater volume of evidence and submissions than a typical CRT dispute. I find that none of the issues, on their own, was particularly complex. I also note that the strata was responsible for uploading well over half of the evidence that I reviewed, and uploaded many pieces of evidence multiple times. While I acknowledge that responding to the applicants' claims required considerable effort, I am not satisfied that the dispute is so extraordinary to justify departing from the CRT's general rule that parties represent themselves and are not compensated for their time.

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

DECISION AND ORDERS

185. I refuse to resolve the applicants' claim about alleged conflicts of interest under section 10 of the CRTA.

186. I dismiss the applicants' remaining claims. I dismiss the strata's claim for dispute-related expenses.

Eric Regehr, Tribunal Member