



Civil Resolution Tribunal

Date Issued: November 22, 2022

File: ST-2022-001350

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS1083 v. 1028677 B.C. Ltd.*,
2022 BCCRT 1261

B E T W E E N :

The Owners, Strata Plan LMS1083

APPLICANT

A N D :

1028677 B.C. LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about alterations to a commercial strata lot. The respondent, 1028677 B.C. Ltd. (102), owns strata lot 6 (SL6) in the applicant strata corporation, The Owners, Strata Plan LMS1083 (strata). The strata says 102 breached strata bylaws by 1) making several unauthorized alterations to SL6, 2) failing to sign an assumption

of liability form prior to making the alterations, and 3) failing to provide the strata proof of third-party liability insurance.

2. The strata seeks orders 1) for 102 to pay \$16,000 in in bylaw fines for the period of February 18, 2021 onwards, 2) for 102 to reverse the unauthorized alterations at 102's cost and within 30 days of this decision, and 3) if 102 fails to do so within 30 days, to allow the strata to reverse the alterations and charge back the cost to SL6's strata lot account.
3. The strata also seeks orders that, once the reversals are complete, 4) for 102 to provide the strata at 102's cost a letter from a licensed structural engineer confirming compliance with building codes and noting all issues, 5) for 102 to provide the strata at 102's cost a letter from a licensed fire code consultant confirming compliance with building codes and noting all issues, 6) for 102 to permit at 102's cost the strata's home inspector to access SL6 and inspect the reversals, and 7) for 102 to take steps to rectify all issues identified by the inspector within 30 days and at 102's cost. The strata also seeks orders for 102 to 8) promptly notify the strata of any damage caused to or risk posed to SL6, neighbouring units, and common property caused by the reversals, and 9) for 102 to immediately take steps to rectify any damage or risk caused by the reversals at 102's cost. Finally, the strata seeks 10) an order for 102 to refrain from making any further alterations to SL6, except as required by the reversals or with prior written permission from the strata.
4. 102 disagrees with the strata's claims. It says 1) the strata provided permission for 102's alterations in August or September 2015, 2) the strata's claims are out of time under the *Limitation Act* (LA) in any event, 3) the strata sent one of its letters about bylaw enforcement to the wrong address, and 4) the strata's claims are stopped by the doctrines of estoppel, acquiescence, laches, or the law of significant unfairness. 102 also says the strata should reasonably authorize the alterations now in the event I find that they were unauthorized. However, 102 did not file a counterclaim.
5. 102's director and president, Matthew Dosen, represents it. A strata council member represents the strata.

6. For the reasons that follow, I find the strata has proven part of its claims.

JURISDICTION AND PROCEDURE

7. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). 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.
8. 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. Some of the evidence in this dispute amounts to a "they said, they said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.
9. 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.

10. Under CRTA section 123, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

Preliminary Issue: Are the strata's claims out of time?

11. As noted earlier, 102 relies on the LA to argue that the strata's claims are out of time. Under section 13, the LA applies to disputes before the CRT. A limitation period is a time period within which a person may bring a claim. The current LA came into force on June 1, 2013, which predates the events in this dispute.
12. Section 6 of the LA says the basic limitation period is 2 years from the date a claim is discovered. If that period expires, the right to bring the claim ends, even if the claim would have otherwise been successful. Section 8 says that a person discovered a claim when they knew or reasonably ought to have known that they had a claim against the respondent and that a court or CRT proceeding was an appropriate means to seek a remedy. Notably, the LA defines a claim as "a claim to remedy an injury, loss or damage that occurred as a result of an act or omission".
13. 102 cites *The Owners, Strata Plan VR 279 v. Morin*, 2018 BCCRT 483 (*Morin*) in support of its position. In that dispute, the CRT member found that the strata corporation discovered its claim when it knew or ought to have known that the owner had completed installing a washer and dryer without the strata council's approval. The CRT member held the strata corporation discovered its claim in May 2015, and the limitation period expired 2 years later, a few days before the CRT issued the Dispute Notice.
14. In contrast, the strata cites other CRT decisions that have held that the LA did not apply because the applicant's claims were not to remedy an injury, loss, or damage. For example, the CRT found the LA did not apply to 1) a claim about reinstalling a balcony railing, 2) a claim about accessing a strata corporation's common property, and 3) a claim about powering a common property gate with electricity. See *The Owners, Strata Plan K82 v. Hunchak*, 2020 BCCRT 1164 (*Hunchak*), *Creasy v. The*

Owners, Strata Plan BCS 4064, 2020 BCCRT 724, and *Musial v. The Owners, Strata Plan BCS 3017*, 2019 BCCRT 1431.

15. Additionally, several CRT decisions have followed *The Owners, Strata Plan KAS 3549 v. 0738039 B.C. Ltd.*, 2015 BCSC 2273 (*0738039 B.C. Ltd.*), aff'd 2016 BCCA 370, and concluded that bylaw fines are a penalty. As such, claims to enforce bylaw fines are not subject to the LA because they are also not claims to remedy an injury, loss or damage. See, for example, *Wang v. The Owners, Strata Plan LMS 2970*, 2022 BCCRT 931 at paragraph 31.
16. CRT decisions are not binding but I find the reasoning in *Hunchak* persuasive and applicable. In *Hunchak* the strata corporation's claim was about reinstalling a balcony railing. The strata corporation did not say it suffered any injury, loss or damage. I find the strata's claims about 102's alterations are similar. I find they are not claims to remedy an injury, loss or damage. So, I find the LA does not apply. I depart from the reasoning in *Morin*, as that decision did not consider this particular issue. So, I find the strata's claims about 102's alterations are not out of time. Likewise, I find I am bound by the authority of *0738039 B.C. Ltd.* and conclude the strata's claims to enforce the bylaw fines at issue are in time.
17. For all those reasons, I find the strata's claims are not barred under the LA.

ISSUES

18. The issues in this dispute are as follows:
 - a. Did 102 breach the bylaws by altering SL6 without the strata's authorization?
 - b. If so, must 102 pay any of the fines claimed?
 - c. Are any other remedies appropriate?

BACKGROUND, EVIDENCE AND ANALYSIS

19. In a civil proceeding like this one, the strata as applicant must prove its claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence, including cited decisions, but refer only to the evidence and argument that I find relevant to provide context for my decision.
20. I begin with the undisputed background. The strata consists of 26 commercial strata lots. A title search shows that 102 became the registered owner of SL6 in March 2015. The evidence and submissions before me indicate that 102 began operating a business out of SL6 soon after.
21. The strata's bylaws are registered in the Land Title Office (LTO). In September 2001, the strata repealed and replaced all its bylaws. As of September 2001, bylaw 5 said that an owner, tenant, or occupant must obtain the written approval of the strata before making an alteration to a strata lot that involves any of the following: a) the structure of the building, b) the exterior of the building, c) chimneys, stairs, balconies, or other things attached to the exterior of a building, d) doors, windows, or skylights on the exterior of a building, or that front on the common property, e) fences, railings or similar structures enclosing a patio, balcony or yard, f) common property within the boundaries of the strata lot, or g) those parts of the strata lot that the strata must insure under SPA section 149.
22. I note that under SPA section 149(1)(d), the strata must insure fixtures built or installed on a strata lot, if the fixtures are built or installed by the owner developer as part of the original construction on the strata lot.
23. The version of bylaw 5(2) in force as of September 2001 said that the strata must not unreasonably withhold its approval under section 5(1) but may require as a condition of its approval that the owner agree, in writing, to take responsibility for any expenses relating to the alteration.
24. Bylaw 5 was amended on October 19, 2016, and the amended version was registered in the LTO on December 2, 2016. Bylaw 5(1) currently says an owner, tenant or

occupant must obtain the written approval of the strata corporation before making an alteration, change or improvement to a strata lot that involves any of the following: a) the structure of a building, b) the exterior of a building, c) chimneys, stairs, balconies or other things attached to the exterior of a building, d) doors, windows or skylights on the exterior of a building, or that front on the common property, e) common property located within the boundaries of a strata lot or flooring, f) any portion of the plumbing, electrical, heating or fire suppression/detection systems, or g) those parts of the strata lot which the strata corporation must insure under SPA section 149.

25. I note that the 2 versions are similar, and no party submits that anything turns on which version is applicable. However, I will discuss this further below.
26. Bylaw 6(1) is mentioned in some correspondence, though it is not of central importance in this dispute. It generally requires an owner, tenant, or occupant to obtain the written approval of the strata council before making an alteration to common property, including limited common property, or common assets. It was not amended since September 2001.
27. I turn to the chronology of events. The parties agree that around August or September 2015, 102 made the following alterations: 1) cut holes in the front and back walls of SL6 and installed an exhaust fan and vents, 2) changed the height of the roll up exterior bay door of SL6 from full height to half height, 3) installed a gate across the exterior roll up bay door of SL6, 4) installed cameras on the exterior wall of SL6, 5) constructed a mezzanine level (second floor) inside SL6, 6) constructed a caretaker suite inside SL6, and 7) installed an HVAC unit on the roof above SL6. I will refer to these collectively as 102's alterations. 102 agrees the list of 102's alterations is accurate.
28. The evidence, including an architect's August 28, 2015 proposal letter, shows Mr. Dosen intended to live in SL6. Mr. Dosen's family member, KD, provided a July 15, 2022 statement. KD provided the following background. Mr. Dosen became 1 of 3 strata council members at the August 25, 2015 AGM. This happened while SL6's renovations were underway. The City of Surrey issued a final building approval

document on December 24, 2015. KD and Mr. Dosen moved into SL6 after this and provided caretaker or groundskeeping services. There were no further renovations to SL6 after the end of 2015.

29. The parties disagree on whether the strata provided written authorization for 102's alterations. I find 102 lacked any authorization, written or otherwise. I explain why in detail below.
30. I turn to more recent events. The strata manager sent 102 an October 7, 2020 letter, advising that the strata had received a complaint that SL6 had breached bylaws 5(1), 6(1), 6(2), and 6(3). I note the strata manager misnumbered the bylaws in the letter, but as it quoted the bylaws, I find nothing turns on this. Correspondence shows that the strata levied a \$200 fine for the alleged breaches. However, the strata later reversed the fine. The strata council meeting minutes of January 19, 2021 show that the council did so because it felt it did not provide enough details in its bylaw enforcement letters.
31. The following letters are of greater importance to this dispute. On February 3, 2021, the strata manager wrote that the strata had received a complaint that 102 had breached bylaw 5(1)(d). I note that both versions of the bylaw say that the owner must obtain the strata's permission to alter a strata lot's doors, windows, or skylights on the building exterior, or that front on the common property. The strata alleged that someone had cut a large hole in SL6's back wall for an exhaust fan and changed the front door from full height to half height. The strata provided 102 an opportunity to respond either in writing or by requesting a hearing. It warned that a failure to respond could result in a fine, including multiple fines or continuing contraventions, or other actions.
32. 102 disagreed in a February 17, 2021 email. It claimed that it had permission from the strata council for the alterations.
33. The strata did not immediately decide on the allegations in the February 3, 2021 letter. At the time, SL6 was listed for sale. In February or March 2021, someone offered to buy SL6 from 102. The strata then advised Mr. Dosen's realtor in a March 26, 2021

email that the Form B issued under SPA section 59 had an additional notation. It said, "There are some unapproved alterations in SL6 and the new owner will be responsible for bringing the strata lot back to its original condition upon purchase." 102 did not sell SL6 but eventually leased it. So, I find Mr. Dosen and KD moved out of SL6.

34. On September 23, 2021, the strata manager sent another letter. I find it contained both 1) notice of new allegations of bylaw breaches and 2) a decision. The strata said that it had received a complaint that 102 had breached bylaw 5(1)(a) through (d) and (g). It cited the newest version of bylaw 5(1). It said the complaints were about 102's alterations, described above, and listed them. The strata advised that it had received the complaint some time ago, on February 18, 2021.
35. The strata manager wrote that the council had decided that 102 had to remove 102's alterations and return SL6 back to its original condition within 3 weeks of the date of the letter. The strata provided 102 an opportunity to respond either in writing or by requesting a hearing. It warned that a failure to respond could result in a fine, including multiple fines for continuing contraventions, or other actions.
36. 102 says it never received the September 2021 letter or saw it until the strata provided it as evidence in this dispute. I find this was likely the case for reasons stated later in this decision.
37. On December 9, 2021, the strata manager sent another letter to 102. It referred to the letters dated February 3 and September 23, 2021. The letter said the council had decided to levy fines for the period of February 18, 2021 to October 22, 2021, for a total of \$7,000. The attached statement of account shows the strata added the fines to SL6's account on November 1, 2021. The strata warned that if 102 failed to pay the sum within 21 days, the strata might bring a claim for the amount in the CRT under SPA section 112. The strata subsequently applied for dispute resolution on February 22, 2022.

Issue #1. Did 102 breach the bylaws by altering SL6 without the strata's authorization?

38. As noted above, both old and new versions of bylaw 5(1) require an owner like 102 to obtain the strata's written approval for certain types of strata lot alterations. 102 says it had such permission and the strata disagrees.
39. There is no dispute that 102's alterations breach the bylaws in the absence of such permission. However, for clarity, I find that in the absence of the strata's written permission, 102's alterations would breach the current version of bylaw 5(1). This is because they affect the building structure under 5(1)(a), the building exterior under 5(1)(b), attachments to the building exterior under 5(1)(c), doors under 5(1)(d), and parts that the strata must insure under 5(1)(g). Similarly, I find that without permission, 102's alterations would breach the old version of bylaw 5(1). This is because the wording of sections 5(1)(a) through (d) and (g) is essentially the same.
40. The strata says that 102 also breached the bylaws by failing to sign an assumption of liability form prior to making the alterations and failing to provide the strata proof of third-party liability insurance. However, both versions of the bylaws do not require this. The newest version of 5(1) only says that the strata may require an owner to sign or provide such documents as a condition for written approval.
41. For the reasons that follow, I find the evidence clearly shows 102 did not have permission or authorization for 102's alterations.
42. In November 2020, the strata asked owners to provide copies of their assumptions of liability for alterations made in their strata lots. Mr. Dosen replied in a November 23, 2020 email that both Bertram Owen-Jones and someone named "Gerry" provided authorization. The August 25, 2015 AGM minutes show that Mr. Owen-Jones was elected a strata council member at the time.
43. Mr. Dosen never provided the requested document. He submits that he signed it on 102's behalf but cannot locate it. So, I find it unproven that he ever signed such a form.

44. On February 18, 2021, Mr. Dosen emailed a September 22, 2015 letter to the strata manager as proof that he had permission for 102's alterations under the bylaws. Mr. Dosen submits that he drafted the letter, and that Mr. Owen-Jones signed it. In her statement, KS says she saw Mr. Owen-Jones sign it as well.
45. The September 2015 letter said, in part, "We the Strata Council do not object to having a caretaker suite built within Unit 6". It is addressed to someone named GK. Mr. Dosen submits that he sent the September 2015 letter to the City of Surrey. I infer he did so for the purpose of obtaining necessary permits, and GK is a city worker. Notably, the letter is signed by someone named "Bertram Openshaw", and not "Bertram Owen-Jones".
46. 102 relies on the September 2015 letter but I place no weight on it for several reasons. First, the letter did not have Mr. Owen-Jones' name. I find the last name does not contain mere typographical errors and is different. I find it unlikely that Mr. Owen-Jones would sign a document that essentially lacks his name.
47. Second, Mr. Owen-Jones denied signing the letter. In 2 written statements dated July 11, 2022, he said he owned strata lot 7 since July 2009 to present. He served as a strata council member for the years of 2015 to 2016, 2016 to 2017, 2017 to 2018, and 2020 to 2021. Mr. Owen-Jones says he knew in 2015 that Mr. Dosen was renovating SL6, but he assumed Mr. Dosen and 102 had permission to do so from the previous strata council. Mr. Owen-Jones expressly denied signing the letter.
48. Third, I find Mr. Owen-Jones' statements consistent with the other evidence. Aside from the September 2015 letter, there is no indication that the strata council gave permission for 102's alterations. For example, of the many strata council minutes in evidence, none state the strata provided 102 permission for 102's alterations. 102 did not provide any evidence that it asked for such permission, or any response by the strata to such a request.
49. Fourth, the August 25, 2015 AGM minutes show another individual, Bob Sawtell, was elected as the third council member at the time. Mr. Sawtell also provided a July 11,

2022 written statement. He said he sold his strata lot in 2018. He said 102's alterations were "non approved structural changes".

50. Fifth, the strata provided a July 7, 2022 statement from Robert Olsen. Mr. Olsen served as the strata council president up to June 30, 2015. Mr. Olsen specifically says that the strata council did not have meetings or conversations about permission for suites or strata lot modifications. So, I find this also strengthens my conclusion that the strata did not authorize 102's alterations.
51. Mr. Owen-Jones also says the signature on the September 2015 letter differs from his own. He provided a sample of his signature. I agree there are some differences, though in the absence of expert handwriting evidence I have not put any significance on this. I reach my conclusion instead for the multiple reasons stated above.
52. Mr. Dosen made numerous submissions about why Mr. Owen-Jones is not trustworthy. I find them unpersuasive and find it unnecessary to reiterate them here. I prefer Mr. Owen-Jones' version of events over that of Mr. Dosen and KD because it is in harmony with the evidence before me. This includes the statements of Mr. Sawtell and Mr. Olsen, referred to above.
53. For all those reasons, I find Mr. Owen-Jones did not sign the September 2015 letter. I find 102 breached bylaw 5(1) by installing 102's alterations without permission.

Issue #2. Must 102 pay any fines?

54. The strata claims payment of fines for the period of February 18, 2021 onwards. SPA section 135 says a strata corporation may not impose a bylaw fine or require a person to pay the costs of remedying a bylaw contravention, unless, among other things, the strata has given that person the particulars of the complaint in writing and a reasonable opportunity to answer the complaint. SPA section 135(2) says that a strata corporation must, as soon as feasible, give notice in writing of a decision imposing the bylaw fine. Bylaw fines are not valid if a strata corporation does not strictly comply with SPA section 135. See *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449.

55. 102 says it did not receive the September 23, 2021 letter about the February 18, 2021 complaint. The strata did not directly comment on this. I find it likely that 102 did not receive the letter for the following reasons.
56. 102 filled out a change of service address form on August 1, 2021. The evidence shows this led to the strata mailing some correspondence to the wrong address. For example, in an October 4, 2021 email, 102 advised the strata manager that it had not received the AGM minutes. Similarly, the strata sent 102 reimbursement of a special levy at around this time. However, a copy of the cheque shows the strata typed in the wrong postal code. A picture of the envelope shows the cheque's incorrect address was displayed through the envelope window and used for delivery.
57. I acknowledge that the September 23, 2021 letter stated the correct postal code for 102's new address. However, I am not satisfied the envelope for the September 2021 letter had the correct postal code, given the history of problems discussed above. Further, the strata did not provide any additional evidence to rebut 102's evidence on this issue. So, I find 102 did not receive the September 23, 2021 letter. Given that, I find the strata did not strictly comply with SPA section 135. I find the fines levied from February 18, 2021 to date are invalid. I dismiss the strata's claim for payment of these fines.

Issue #3. Are any other remedies appropriate?

58. Having dismissed the fines, this still leaves the question of whether I should order any of the strata's other requested remedies. This includes ordering 102 to 1) reverse the unauthorized alterations at 102's cost and within 30 days of this decision, and 2) if 102 fails to do so within 30 days, to allow the strata to reverse the alterations and charge back the cost to SL6. The strata specifically requests as part of the order that 102 to reverse 102's alterations. So, I find that the strata's request need not comply with the procedural requirements of SPA section 135.
59. 102 breached bylaw 5(1) so I find the strata is entitled to a remedy unless 102 can show otherwise. 102 says the requested orders would be significantly unfair, so I have considered the law of significant unfairness.

60. SPA section 164 sets out the BC Supreme Court's authority to remedy significantly unfair actions. The CRT has jurisdiction over significantly unfair actions under CRTA section 123(2), which has the same legal test as cases under SPA section 164. See *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164. Significantly unfair conduct is conduct that is 1) oppressive in that it is burdensome, harsh, wrongful, lacking in probity or fair dealing, or done in bad faith, or 2) conduct that is unfairly prejudicial in that it is unjust or inequitable. See *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173 at paragraph 88.
61. In *Kunzler*, the Court of Appeal confirmed that an owner's expectations should be considered as a relevant factor. I therefore use the test from *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, as restated in *Watson*, to consider the following factors:
- a. What is or was the expectation of the affected owner?
 - b. Was that expectation on the part of the owner objectively reasonable?
 - c. If so, was the expectation violated by an action that was significantly unfair?
62. I find that 102 expected the strata to allow it to keep 102's alterations. I find this expectation was unreasonable as the alterations clearly breached the bylaws. I also note that 102's principal, Mr. Dosen, became a strata council member shortly after 102 assumed ownership of SL6. He also became the strata council president as noted in the September 5, 2019 minutes. So, I find he likely had some familiarity with the bylaws and shared responsibility to enforce them. I therefore find it unlikely that in these circumstances, the strata misled him or caused him to be confused about the strata's bylaws.
63. 102 says its expectations were reasonable because the strata led it to believe 102's alterations were permitted. I disagree. The strata says the strata manager first became aware of potential issues in 2017. I find this was likely the case for the following reasons.

64. As noted earlier, Mr. Owen-Jones said he incorrectly assumed that 102 had permission from the previous strata council for 102's alterations. He noted that the strata manager asked Mr. Dosen in early 2017 why there was no assumption of liability on file for SL6. Mr. Dosen replied that he had a permit for the work from the City of Surrey.
65. While this was true, Mr. Dosen omitted that he had never obtained the strata's permission. When asked about the issues again in November 2020, Mr. Dosen said he had permission and later produced the September 22, 2015 letter. I find this pattern of behaviour shows that 102 misled the strata about 102's alterations, and not the other way around. These events show that this was not a situation where the parties had an innocent misunderstanding.
66. 102 also says it had to proceed in this manner because the strata did not have a properly constituted council when renovations began. It said the strata's previous strata manager, Mr. T, advised it to complete the renovations and apply for permission afterwards. I find this unpersuasive. There is no indication that 102 asked the strata to approve 102's alterations after the strata held the August 2015 AGM elections. So, even if Mr. T provided this advice, 102 did not follow it.
67. 102 also relies on the doctrines of estoppel and waiver or acquiescence. In estoppel, 102 must show that the strata made a promise or assurance that was intended to affect the parties' legal relationship, and that the respondent acted on it or in some way changed their position in reliance of the promise. See *Maracle v. Travellers Indemnity Co. of Canada*, 1991 CanLII 58 (SCC). The doctrine of waiver applies when a person's words or conduct show they are waiving a right, and the other person relies on that waiver by committing a breach of contract on the understanding that the other party will not consider it such. See John McCamus, *The Law of Contracts*, 3rd ed (Toronto: Irwin Law, 2020), at 306).
68. For much the same reasons as discussed in my analysis of significant unfairness, I find it unproven that the doctrines of estoppel or waiver should apply. The evidence shows the strata proceeded under a misapprehension that 102 had permission for

102's alterations. There is no evidence that it provided any promises, assurances, or waivers of rights about them.

69. 102 also cited the doctrine of laches, which are an equitable defence to an equitable claim. I find laches do not apply here to the strata's claim about enforcement of its bylaws, because that is not a claim under the law of equity.
70. 102 also says the strata is unfairly targeting it or proceeding in bad faith. I disagree, as the council meeting and annual general meeting minutes in evidence generally show that the strata makes reasonable efforts to enforce its bylaws. The strata also previously pursued the cost of repairing unauthorized strata lot alterations at the CRT against other owners. See *The Owners, Strata Plan LMS 1083 v. Mann*, 2020 BCCRT 301 (*Mann*). The total award in *Mann* was significant. So, I find the fact that the strata's requested orders may result in significant cost or work for 102 does not, by itself, show any indication of bad faith.
71. 102 also says that the strata should be restricted to pursuing repair costs, such as those in *Mann*, but I find the circumstances differ. For example, the alterations in *Mann* did not involve creating a residential suite.
72. Further, the strata says that it has concerns that 102's alterations affect a firewall between SL6 and a neighbouring strata lot. There is no expert evidence on this matter to prove 102's alterations compromise safety. However, I find that on its face the strata's concern is reasonable. Further, in 2017 an owner expressed some concerns to the strata council about SL6's residential suite. I find the suite would be of reasonable concern to the strata and other owners, since Mr. Dosen and KS have moved out and new, unknown tenants may be living in the suite. I find these factors support my conclusion that the strata is likely proceeding in good faith.
73. Given my conclusions, I find it appropriate to order 102 to reverse 102's alterations by restoring them to the condition they were in before 102's alterations occurred in 2015, at 102's cost and within 120 days of this decision, and 2) that if 102 fails to do so within 120 days, to allow the strata to reverse 102's alterations and charge back the cost of doing to the SL6's strata lot account. I use the figure of 120 days since the

renovations took place over a similar timeframe, from September 2015 to the end of December 2015.

74. I also decline 102's request to order the strata to provide 102 written permission for the alterations. I find it would be inappropriate to do so given that 102 did not file a counterclaim. Further, I see no reason in fact or law to make this order.
75. The strata also seeks a series of orders about what happens after 102's alterations are reversed. It seeks orders that, once the reversals are complete, 1) for 102 to provide the strata at 102's cost the strata a letter from a licensed structural engineer confirming compliance with building codes and noting all issues, 2) for 102 to provide the strata at 102's cost a letter from a licensed fire code consultant confirming compliance with building codes and noting all issues, 3) for 102 to permit at 102's cost the strata's home inspector to access SL6 and inspect the reversals, and 4) for 102 to take steps to rectify all issues identified by the inspector within 30 days at and 102's cost. The strata also seeks orders for 102 to 5) promptly notify the strata of any damage caused to or risk posed to SL6, neighbouring units, and common property caused by the reversals, and 6) for 102 to immediately take steps to rectify any damage or risk caused by the reversals at 102's cost. 102 did not object to any of these orders in particular, so I order them as well, with a minor exception. I decline to order that the letters from the licensed professionals "note all issues", as I find this term likely to be too vague to be enforceable.
76. Finally, the strata seeks an order for 102 to refrain from making any further alterations to SL6. I decline to make this order as the bylaws already address the procedure for 102 to properly request alterations and for the strata to approve or reject them.

CRT FEES AND EXPENSES

77. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. The strata succeeded on some claims and not others. I therefore order 102 to partially

reimburse the strata \$112.50 in CRT fees. The parties did not claim for any specific dispute related expenses.

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

ORDERS

79. I order 102 to, within 120 days of the date of this order, and at 102's cost, reverse the following alterations to SL6 by restoring them to the condition they were in before the alterations occurred in 2015:

- a. cutting holes in the front and back walls of SL6 and installing an exhaust fan and vents,
- b. changing the height of the roll up bay door of SL6 which is located on the exterior of the building, from full height to half height,
- c. installing a gate across the roll up bay door of SL6, which is located on the exterior of the building,
- d. installing cameras on the exterior wall of SL6,
- e. constructing a mezzanine level (second floor) inside SL6,
- f. constructing a caretaker suite inside SL6, and
- g. installing an HVAC unit on the roof above SL6.

(collectively, 102's alterations)

80. If 102 fails to do so, I order 102 to allow the strata to reverse 102's alterations and charge back the cost of doing to the SL6's strata lot account.

81. Once 102's alterations are reversed, I order 102 to, at its cost.

- a. provide the strata a letter from a licensed structural engineer confirming compliance with building codes,

- b. provide the strata at 102's cost a letter from a licensed fire code consultant confirming compliance with building codes,
 - c. permit the strata's home inspector to access SL6 and inspect the reversals,
 - d. take steps to rectify all issues identified by the home inspector within 30 days,
 - e. promptly notify the strata of any damage caused to or risk posed to SL6, neighbouring strata lots, and common property caused by the reversals, and
 - f. immediately take steps to rectify any damage or risk caused by the reversals.
82. Within 30 days of the date of this order, I order 102 to pay the strata a total of \$112.50 for CRT fees.
83. I dismiss the strata's remaining claims, including its claims for payment of fines.
84. 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.

David Jiang, Tribunal Member