



Civil Resolution Tribunal

Date Issued: December 19, 2022

File: ST-2021-003592 and
ST-2021-006206

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 2333 v. 1016711 B.C. Ltd., 2022 BCCRT
1352*

BETWEEN:

The Owners, Strata Plan LMS 2333

APPLICANT

AND:

1016711 B.C. LTD. and 1186783 B.C. LTD. DBA YALETOWN
CANNABIS

RESPONDENTS

AND BETWEEN:

1016711 B.C. LTD. and 1186783 B.C. LTD. DBA YALETOWN
CANNABIS

APPLICANTS BY COUNTERCLAIM

AND:

The Owners Strata Plan LMS 2333

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about a strata corporation bylaw. This decision relates to 2 linked disputes that I find collectively consist of 1 claim and 2 counterclaims. So, I have issued 1 decision for both disputes.
2. The applicant and respondent by counterclaim in ST-2021-003592, and the respondent by counterclaim in ST-2021-006206, is a strata corporation, The Owners, Strata plan LMS 2333 (strata). ST-2021-006206 was started as a separate dispute due to technical difficulties. However, it is a counterclaim to ST-2021-003592.
3. The respondent and applicant by counterclaim, 1016711 B.C. Ltd. (711), owns strata lot 1 (SL1) in the strata.
4. The respondent and applicant by counterclaim, 1186783 B.C. Ltd. dba Yaletown Cannabis (YC), is 711's tenant in SL1.
5. The strata says YC and 711 are operating a marijuana dispensary in SL1 contrary to bylaw 7.3(r), which prohibits the use of a strata lot to sell marijuana, among other prohibited uses. The strata seeks the following remedies:
 - a. An order that SL1's current use as a marijuana dispensary is contrary to bylaw 7.3(r).
 - b. An order that YC and 711 immediately cease operating a marijuana dispensary from SL1.

- c. An order that YC or 711 pay fines of \$200 per week until they are compliant with the strata's bylaws, totalling \$4,400 at the time the strata filed its application for dispute resolution.
 - d. An order that YC or 711 pay the strata's legal costs to enforce its bylaws pursuant to bylaw 5.7, including the costs of dispute ST-2021-003592.
6. 711 disputes the strata's claims. 711 says YC is not in breach of bylaw 7.3(r) and neither 711 nor YC are responsible to pay the strata for the bylaw fines or the strata's legal fees. 711 also says it did not receive notice of the 2016 annual general meeting (AGM), including the proposed bylaw amendments to be voted on at the AGM, including bylaw 7.3(r).
7. In its counterclaim, 711 says the strata misled YC and has allowed SL1 to be used as a retail cannabis store for over 6 years. 711 asks for an order that the strata stop its "vexatious claims" against "the premises".
8. YC also disputes the strata's claims. YC says bylaw 7.3(r) is not enforceable against it because YC is a provincially and municipally licenced retail cannabis store. YC says bylaw 7.3(r) was only meant to prohibit illegal "marijuana" stores operating without a provincial licence. YC also says it should be retroactively exempted because bylaw 7.3(r) did not come into force until 2016 and YC has been in operation since 2015.
9. In its counterclaim, YC says bylaw 7.3(r) is contrary to section 7 of the *Canadian Charter of Rights and Freedoms* (Charter) and therefore does not apply to YC. YC asks for an order that the strata stop harassing YC over a bylaw that does not apply to it.
10. The strata is represented by a lawyer, Ben Scheidegger. 711 is represented by a lawyer, Peter Senkpiel. YC is represented by a lawyer, Jack Lloyd.
11. For the reasons that follow, I find the strata is partially successful in its claims. I find 711 and YC are subject to bylaw 7.3(r), and I order YC to stop operating its retail cannabis store in SL1. I find the bylaw fines invalid and I order the strata to reverse them. I dismiss 711 and YC's counterclaims.

JURISDICTION AND PROCEDURE

12. 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.
13. 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.
14. 711 requested an oral hearing of this dispute. I asked 711 to explain what evidence it would provide in an oral hearing that has not already been provided online. In response, 711 said its request for an oral hearing was to provide oral submissions given the various issues and seeming complexity of the dispute. 711 did not further detail why it says this dispute is complex, or explain why oral submissions would be required to address the issues in this dispute.
15. I find this dispute is primarily about the applicability and enforceability of a strata bylaw, and related issues. Although this dispute involves several parties, I find the dispute itself is not particularly complex. In their submissions, 711 and YC also both said the strata council member who drafted the 2016 bylaws and provided a statement, SH, should be cross-examined on a statement they provided. However, I find credibility is not at issue and, even if it were, an oral hearing would not necessarily be required. See *Yas v. Pope*, 2018 BCSC 282. I find that all the parties had a full opportunity to provide their submissions in written form. The written submissions of the parties were provided in PDF format, and total 67 pages. I find that I am properly able to assess and weigh the documentary evidence and written submissions before me in order to decide the issues in this dispute. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.

16. 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.
17. 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.

Declaratory relief

18. The strata asks for a declaratory order that SL1's current use as a marijuana dispensary is contrary to bylaw 7.3(r). I find this is a declaratory order that the CRT does not have jurisdiction to grant. See *Fisher v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379. I therefore refuse to resolve this aspect of the strata's claim under CRTA section 10(1).

ISSUES

19. The issues in this dispute are:
 - a. Does the Charter apply to strata bylaws?
 - b. Is bylaw 7.3(r) valid and enforceable?
 - c. Did YC contravene strata bylaw 7.3(r) by operating a retail cannabis store in SL1?
 - d. Did the strata treat 711 or YC in a significantly unfair manner by enforcing bylaw 7.3(r) against YC?
 - e. Should I order the strata to stop its allegedly vexatious claims against "the premises"?
 - f. Are 711 or YC responsible to pay the strata \$4,400, or another amount, in bylaw contravention fines?

- g. Should I order YC to stop using SL1 to operate its retail cannabis store?
- h. Is 711 or YC responsible to reimburse the strata for its legal fees pursuant to bylaw 5.7, and if so, what amount?

EVIDENCE AND ANALYSIS

20. In a civil proceeding such as this one, as the applicant the strata must prove its claims on a balance of probabilities (meaning more likely than not). 771 and YC each bear the same burden for their respective counterclaims. I have reviewed all the parties' submissions and evidence, but I only refer to what I find relevant to provide context for my decision. YC did not provide documentary evidence in this dispute, despite being provided the opportunity to do so.
21. The strata is a 5-storey building in Vancouver that consists of 96 commercial strata lots.
22. The strata repealed and replaced its bylaws in the Land Title Office (LTO) on March 18, 2016. There have been subsequent bylaw amendments, but none are relevant to this dispute. The following bylaws are relevant to this dispute:
- a. Bylaw 7.3(r) says an owner, tenant or occupant, or their visitors, guests, employees, agents and contractors, must not use a strata lot for any purpose in connection with production, storage, purveyance and sale of marijuana or illegal substances.
 - b. Bylaw 53 says that a bylaw fine may be imposed every 7 days when a bylaw contravention continues without interruption for longer than 7 days until the contravention no longer continues.

Background and Chronology

23. On February 20, 2015, 711 entered in a lease agreement with RWS to lease SL1 for a 3-year term from March 1, 2015 to March 28, 2018 (2015 lease). The 2015 lease

included the option to renew for an additional term. The evidence does not show any subsequent lease agreement with RWS. RWS is not a party to this dispute.

24. On February 24, 2015, 711's realtor emailed the strata and the email's subject line indicated that a "naturopath clinic" would be operating in SL1.
25. Shortly after RWS leased SL1, and contrary to the February 24, 2015 email from 711's realtor, the strata learned that RWS would be operating a medical marijuana dispensary from SL1.
26. In May 2015, the strata wrote to 711 and RWS to advise of various alleged bylaw breaches related to RWS selling marijuana from SL1. Those alleged bylaw contraventions are not at issue in this dispute.
27. On February 29, 2016, the strata held an AGM where the owners passed a $\frac{3}{4}$ vote resolution to repeal and replace strata's bylaws. This included adding bylaw 7.3(r), amongst numerous other new bylaws.
28. Shortly after bylaw 7.3(r) was filed in the LTO, the strata received legal advice that it might be significantly unfair to enforce the bylaw against SL1's existing tenant, RWS. The strata did not enforce bylaw 7.3(r) against RWS during the term of the 2015 lease. The 2015 lease expired on March 28, 2018.
29. On February 15, 2019, 711 entered into a lease agreement with YC to lease SL1 for a 5-year term starting March 1, 2019 (2019 lease). The evidence does not show that there was any SL1 lease between March 28, 2018 and February 15, 2019.
30. On December 2, 2019, the strata wrote to 711 and advised that 711's tenant, YC, had applied for a provincial cannabis retail store license. The letter advised that this use of SL1 was contrary to bylaw 7.3(r), and gave 711 2 weeks to respond to the bylaw complaint. \
31. On January 30, 2020, 711 requested a hearing before the strata council to discuss bylaw 7.3(r) and its tenant using SL1 to "sell marijuana".

32. On February 26, 2020, the strata council held a hearing for 711 after it asked for an exemption from bylaw 7.3(r). A guest was present on behalf of 711, who I infer was likely 711's lawyer.
33. In multiple letters exchanged between 711 and the strata between December 2019 and June 2020, the strata maintained its position that bylaw 7.3(r) applied to YC, and that operating a retail cannabis store in SL1 was contrary to bylaw 7.3(r).
34. Based on the correspondence in evidence, I find YC likely began operating its retail cannabis store at some point after June 2020, although the documentary evidence does not establish precisely when.
35. On October 30, 2020, the strata wrote the presumed lawyer for both 711 and YC, and asked the recipient to advise the strata's lawyer immediately if they did not act for either 711 or YC. The letter advised that the strata had received a complaint about YC operating a cannabis store, which was contrary to bylaw 7.3(r). The letter gave 711 and YC 14 days to respond to the complaint or request a hearing. The letter said that if the strata concluded the bylaw had been breached after considering any responses from 711 and YC, the strata might fine YC \$200 every 7 days. It also advised that the fines could be collected from either 711 or YC.
36. On November 11, 2020, YC wrote to 711 and disputed the alleged bylaw contravention on various grounds, including that the cannabis store did not contravene bylaw 7.3(r), that YC should be retroactively exempted in any event, and that enforcing the bylaw against YC was significantly unfair. The letter also requested a hearing.
37. On November 16, 2020, the strata wrote to YC in response to the November 11, 2020 letter, to advise a hearing would be scheduled for November 24, 2020.
38. On November 24, 2020, the strata held a hearing for "a representative of a strata lot", whom I infer is YC's lawyer.
39. On November 30, 2020, the strata wrote to YC and advised that after the hearing, the strata council had decided that YC had contravened bylaw 7.3(r). The letter advised

the strata had imposed a \$200 fine, and said that under bylaw 53.1, the strata may impose fines every 7 days where a bylaw breach is continuing. The letter advised that the strata council intended to fine YC \$200 every 7 days until the breach was remedied. The letter also warned the strata might proceed to the CRT if the breach was not remedied, and would seek payment of legal fees incurred to enforce the bylaw as permitted by bylaw 5.7.

40. On March 15, 2021 the strata demanded payment of \$2,600 in fines and \$4,334.01 in legal costs accrued from November 30, 2020 from YC, which totals \$6,934.01. The letter also demanded that YC cease operating in SL1 as a retail cannabis outlet.
41. On about April 1, 2021, YC paid \$6,934.01 bylaw fines and legal fees. The strata inquired as to whether YC had stopped operating the cannabis store. The same day, YC's lawyer advised that YC was paying the fines and legal fees under protest, and advised they were not aware whether YC was still operating its retail cannabis store.
42. The strata submitted its application for dispute resolution on May 4, 2021.
43. Between May 3 and December 13, 2021, the strata wrote to 711 on a weekly basis to advise that \$200 weekly fines were being imposed for the continuing contravention of bylaw 7.3(r), pursuant to bylaw 53.

Does the Charter apply to strata bylaws?

44. I will first address YC's counterclaim. As noted, in its counterclaim YC alleges that strata bylaw 7.3(r) is unconstitutional and therefore does not apply. YC says the bylaw is contrary to section 7 of the Charter because it imposes an arbitrary barrier for people to access cannabis medicine within the vicinity of SL1.
45. In *Ferreira v. The Owners, Strata Plan EPS867*, 2020 BCCRT 239, a CRT vice chair found that the Charter applies to government and does not apply to a strata corporation. Although CRT decisions are not binding on me, I find the vice chair's reasoning persuasive and adopt it here. I find strata bylaw 7.3(r) is not contrary to the Charter.

46. Given the above, I find it unnecessary to consider YC's only requested remedy for an order that the strata stop harassing it over the allegedly inapplicable bylaw. I dismiss YC's counterclaim.

Is bylaw 7.3(r) valid and enforceable?

2016 bylaw amendments

47. A strata corporation is free to amend its bylaws by following the requirements set out in the *Strata Property Act* (SPA). SPA section 128 says for entirely non-residential stratas, bylaw amendments must be passed by a $\frac{3}{4}$ vote of the strata's owners or as otherwise provided in the bylaws, and filed at the LTO. The parties do not dispute that the owners passed a $\frac{3}{4}$ vote resolution to repeal and replace the strata's bylaws, which included adding bylaw 7.3(r), at the February 29, 2016 AGM (2016 bylaws). As noted, the strata filed the 2016 bylaws in the LTO on March 18, 2016. So, I find the strata's 2016 bylaws complied with SPA section 128.

48. However, 711 says that it did not receive notice of the 2016 AGM as required by the SPA. SPA section 45 requires the strata to give at least 2 weeks' written notice of an AGM to every owner, among other people, and subject to exceptions that I find do not apply here.

49. 711 provided a statement from AC, who identified themselves as 711's owner. Although AC's name does match precisely with the name of 711's sole director, KC, in 711's BC corporate registry summary, I find AC is likely 711's sole director. In their statement, AC said they did not "recall" receiving the 2016 AGM notice and could not locate the AGM notice in 711's records. The strata says the notice was not challenged at the meeting and proper quorum attended. It says this is evidence that 2016 AGM notice was given.

50. The 2016 AGM notice package included a copy of the proposed bylaw amendments to be voted on at the 2016 AGM, among other things. Further, the 2016 AGM meeting minutes noted that an AGM notice was circulated "as required by the SPA". The evidence does not show that 711 raised any concerns with the 2016 AGM notice or the subsequent 2016 AGM at any time prior to this dispute. Given the lengthy dispute

between 711 and the strata, I would have expected 711 to raise this issue earlier if it had not received proper notice of the 2016 AGM. 711 bears the burden of proving this allegation. Based on the evidence, I find it has not done so.

51. In any event, SPA section 47 says failure to give proper notice to a person entitled to notice under section 45 does not invalidate a vote taken at the meeting as long as the strata made a reasonable attempt to give notice in accordance with SPA section 45. I find AC's evidence that they did not recall receiving notice of the 2016 AGM unpersuasive, and I place little weight on it. I find the AGM notice and AGM meeting minutes show the strata likely made reasonable efforts to give notice as required by SPA section 45. Therefore, I find the $\frac{3}{4}$ vote resolution to repeal and replace the strata's bylaws at the 2016 AGM is valid.

Retroactive exemption

52. YC says SL1 was used to sell marijuana for some time before bylaw 7(3)(r) was effective. On that basis, YC says it should therefore be retroactively exempted, and bylaw 7.3(r) should not apply to it.
53. It is undisputed that before March 18, 2016, the strata had no bylaw specifically prohibiting the use of a strata lot for any purpose in connection with production, storage, purveyance and sale of marijuana.
54. However, the 2016 bylaws were approved by a $\frac{3}{4}$ vote at an AGM. SPA section 128(2) says approved bylaw amendments become effective when they are filed in the LTO. As noted, the 2016 bylaws were filed in the LTO on March 18, 2016. Therefore, I find the 2016 bylaws, including bylaw 7.3(r), were effective from that date.
55. The SPA includes provisions that say certain bylaws do not apply in very specific circumstances (including age and pet bylaws) that are not applicable here. However, other than the specific exemptions listed above, bylaws become enforceable on the date filed in the LTO, with no retroactive exemptions unless specifically stated in the bylaw.

56. In the absence of an exemption in either the SPA or the bylaws themselves, I find bylaw 7.3(r) applies to both 711 and YC. I address the issue of significant unfairness below.

Did YC contravene bylaw 7.3(r) by operating a retail cannabis store in SL1?

57. In its dispute application, the strata seeks orders against both 711 and YC for the alleged bylaw contraventions. However, based on the strata's submissions and the evidence, I find the strata only alleges YC, as 711's tenant in SL1, is using SL1 contrary to bylaw 7.3(r). The strata has not specifically alleged that 711 itself contravened bylaw 7.3(r) by leasing SL1 to YC, and I find that it has not.

58. As noted, bylaw 7.3(r) prohibits the use of a strata lot for any purpose in connection with production, storage, purveyance and sale of marijuana or illegal substances.

59. YC and 711 do not dispute that YC is operating a retail cannabis store in SL1. However, YC and 711 say that doing so does not contravene bylaw 7.3(r). YC and 711 say bylaw 7.3(r) prohibits marijuana sales, and was meant to prohibit illegal marijuana stores operating without a provincial licence. YC and 711 say bylaw 7.3(r) does not apply to legal cannabis stores. YC and 711 say that YC sells "legal cannabis" and does not sell "illegal marijuana".

60. In *Semmler v. The Owners, Strata Plan NES3039*, 2018 BCSC 2064 at paragraph 18, the court found that the basic rules of statutory interpretation should be used when interpreting strata bylaws. So, I find that when interpreting the strata's bylaws, I must apply the plain meaning rule of statutory interpretation. The rule requires me to reasonably interpret the plain and ordinary meaning of the words in an individual bylaw within the context of the entire bylaws. If the bylaw is ambiguous or vague, I may resort to rules and techniques of statutory interpretation.

61. The BC Court of Appeal warned against highly technical and literal interpretations of strata bylaws. See *Strata Plan VIS4663 v. Little*, 2001 BCCA 337 at paragraph 22. Instead, the court stated that strata bylaws should be interpreted purposively, so that they accomplish the community's goals.

62. First, applying statutory interpretation principles, I do not accept 711 or YC's submissions that the bylaw only restricts the sale of "illegal" marijuana. The bylaw prohibits the use of a strata lot for any purpose in connection with production, storage, purveyance and sale of marijuana **or** illegal substances (my bold emphasis added). If the bylaw intended to only restrict "illegal marijuana", the use of the word marijuana in the bylaw itself becomes redundant. I find the bylaw restricts both marijuana and illegal substances.
63. Second, I do not accept 711 or YC's submissions that the bylaw does not apply to cannabis because it only refers to marijuana. The Oxford Canadian Dictionary defines marijuana as "1 the dried leaves, flowering tops, and stems of the hemp, used as an intoxicating drug usu. smoked in cigarettes; cannabis. 2 the plant yielding these [compare HEMP]" (reproduced as written). The Oxford Canadian Dictionary defines cannabis as "1 a hemp plant. 2 a preparation of parts of this used as an intoxicant or hallucinogen" (reproduced as written).
64. The Merriam-Webster dictionary defines marijuana as "1: the psychoactive dried resinous flower buds and leaves of the female hemp or cannabis plant (*Cannabis sativa* or *C. Indica*) that contain high levels of THC and are smoked, vaped, or ingested (as in based goods) especially for their intoxicating effect: CANNABIS. 2: HEMP sense 1a, CANNABIS sense 1" (reproduced as written).
65. Both of the above definitions of marijuana include cannabis. Therefore, I find that the 2 words are synonymous. This means both marijuana and cannabis have the same meaning and can be used interchangeably. Although 711 disputes this, in submissions 711 itself referred to marijuana as a "slang term" for cannabis.
66. YC and 711 both advanced various arguments to distinguish "marijuana" from "cannabis", and argue that cannabis is not synonymous with marijuana. As an example, 711 says marijuana is not mentioned in the federal *Cannabis Act*. However, as the strata noted, "marihuana" is included in the definition of cannabis in the transitional provisions of the *Cannabis Act*. I find it is unnecessary to detail 711 and YC's various arguments in this decision because I find they attempt to draw an overly

technical distinction between marijuana and cannabis, and I find the arguments unpersuasive given the plain and ordinary meaning of the word marijuana.

67. I note that YC also says that it is a licenced cannabis store in the City of Vancouver, and says the city did not require strata approval prior to issuing a licence. I find that whether YC holds a licence to operate a retail cannabis store in Vancouver is not relevant. Stratas are free to prohibit otherwise legal businesses. Finally, YC also argued that the strata was a “local government” subject to the *Local Government Act* (LGA) and its principles for governmental relations. However, the LGA does not apply to strata corporations, so I find YC’s submissions about the LGA irrelevant.
68. 711 says the strata is estopped (meaning “barred”) from asserting the bylaw applies to legal cannabis because the strata made representations that a legal business would be permitted to operate if it had a valid business license. I find the evidence shows that in 2015, and prior the enactment of bylaw 7.3.(r), the strata required RWS, who is not a party to this dispute, to show that it had a licence to operate a medical marijuana dispensary. However, I find the evidence does not show the strata ever represented that any legal business would be permitted to operate as long as it had a valid business licence, even if it was otherwise contrary to the strata’s bylaws. So, I find this allegation unproven.
69. Given all the above, I find that YC’s retail cannabis store uses SL1 for a purpose in connection with the purveyance and sale of marijuana. Therefore, I find that YC is using SL1 contrary to bylaw 7.3(r).

Did the strata treat 711 or YC in a significantly unfair manner?

70. Both 711 and YC argue that the strata enforcing bylaw 7.3(r) is significantly unfair.
71. SPA section 164 sets out the BC Supreme Court’s authority to remedy significantly unfair actions. The CRT has jurisdiction over significantly actions by strata corporations under CRTA section 123(2), which has the same language as SPA section 164. See *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164.

72. The courts and the CRT have considered the meaning of “significant unfairness” by a strata corporation, and have equated it to oppressive or unfairly prejudicial conduct. In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, the Court of Appeal said a significantly unfair action is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable. See also *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173.
73. In *Kunzler*, the Court of Appeal confirmed that an owner’s (or a tenant’s) expectations could be considered a relevant factor in assessing significant unfairness. In considering an owner or tenant’s reasonable expectations, the following test from *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164 applies:
- a. What is or was the expectation of the affected owner?
 - b. Was the owner’s expectation objectively reasonable?
 - c. If so, was that expectation violated by an action that was significantly unfair?
74. 711 says that at the time it purchased SL1, it wanted to take advantage of the emerging medical marijuana market and expected that the sale of retail cannabis would be legalized in the future. It also says it spent significant sums of money to alter the strata lot to lease it for that purpose. 711 says it reasonably expected to be able to lease SL1 to a tenant for any purpose that was not illegal and that was not one of the prohibited uses. 711 submitted 1 invoice that shows 711 incurred costs to remove kitchen equipment and conduct other repairs and maintenance to SL1 in February 2015, including painting and patching holes, cleaning, and garbage disposal. However, the evidence does not show that 711 incurred any costs that were specifically required to alter the strata lot to lease it for the sale of marijuana.
75. In *Kunzler*, the court found that the passage of new bylaws by the majority of owners that restricted a minority owner’s use of their strata lot for a commercial cannabis operation was not significantly unfair. As discussed in *Kunzler* at paragraphs 104 and 105, the strata has the authority to make bylaw amendments pursuant to SPA section 128. This is precisely what the strata did here with the 2016 bylaws when it restricted the use of strata lots for the sale of marijuana, among several other restrictions. I find

it was not objectively reasonable for 711 to expect at the time of purchase that SL1 would be exempt from any bylaw amendments. Notably, the strata's bylaws prior to 2016 also contained various restrictions on the use of strata lots. These included using a strata lot as a pet store, pawn business, or amusement arcade, among several other restricted uses.

76. Further, and similar to the facts in *Kunzler*, here the evidence shows that the prospect of a medical marijuana dispensary in SL1 was immediately contentious within the strata. After it discovered that SL1 would be used as a medical marijuana dispensary, the strata expressed its concerns with the use of SL1 for such a purpose to 711 in 2015. A short time later, in 2016, the strata amended the bylaws to restrict the use of strata lots for the sale of marijuana, among several other restrictions. Given all the above, I find it was not reasonable for 711 to expect that the strata would never impose additional use restrictions. I find 711 had no reasonable expectation of using SL1 for marijuana sales.
77. 711 and YC also say they reasonably expected that the strata would allow YC to operate a legal cannabis store in SL1, and would not enforce bylaw 7.3(r) against them because the strata did not enforce the bylaw against RWS.
78. 711 and YC say that RWS had to incorporate in order to transition from a medical marijuana dispensary to a legal cannabis store. They say that although 711's former tenant, RWS, and 711's current tenant, YC, are different legal entities, the directing mind of both was LM. On that basis, they argue that the strata enforcing bylaw 7.3(r) solely on the basis that YC is a new corporate entity is significantly unfair to both 711 and YC. Neither 711 nor YC referred me to any legal authority that a corporate expectation can transfer to a new corporate entity because some of the same individuals may be involved with both.
79. The strata says it obtained legal advice that enforcing bylaw 7.3.(r) against RWS in 2016 might have been significantly unfair, because RWS was already operating a medical marijuana dispensary when the bylaw became effective. Based on this legal advice, the strata said it decided not to enforce the bylaw against RWS. The strata

says it received this advice in 2016 after the 2016 bylaw amendments, but well before the BC Court of Appeal's 2021 decision in *Kunzler*, discussed above. As noted, RWS is not a party to this dispute.

80. Contrary to 711 and YC's allegations, the evidence does not show that the strata's conduct in enforcing bylaw 7.3(r) was done in bad faith, or was oppressive, or unfairly prejudicial, or that the strata was biased against 711 or YC.
81. The 2019 lease includes several provisions that shows that both 711 and YC contemplated that the strata might enforce bylaw 7.3(r) against YC, including a provision that allows 711 to terminate the 2019 lease at its sole option if the strata enforced bylaw 7.3(r) in any way. Despite this, the evidence does not show that 711 or YC made any inquiries with the strata as to whether it would enforce the bylaws against YC when 711 and YC agreed to the 2019 lease.
82. The evidence shows that when the strata discovered that YC had applied for a retail cannabis store licence in December 2019, it wrote to 711 to advise that such use of SL1 would be contrary to bylaw 7.3(r) and put 711 on notice that it intended to enforce bylaw 7.3(r). I find this occurred before YC opened its retail cannabis store. As detailed further above, between December 2019 and June 2020, the parties' lawyers exchanged several letters about bylaw 7.3(r). I find this correspondence shows the strata clearly communicated that bylaw 7.3(r) would apply to YC and 711.
83. I find the correspondence shows that 711 and YC knew that the strata would enforce the bylaw by June 2020 at the latest, and before YC opened its retail cannabis store. Despite this, YC proceeded to open its retail cannabis store. I find 711 and YC's expectation that the strata would not enforce its bylaws against YC was not objectively reasonable.
84. I find the strata enforcing bylaw 7.3(r) against YC was not significantly unfair to either 711 or YC.

Should I order the strata to stop its allegedly vexatious claims against “the premises”?

85. In its counterclaim 711 says the strata misled YC about the use of SL1. 711 requests an order that the strata stop its “vexatious claims” against “the premises”. I find “the premises” refers to SL1, and therefore to 711 as SL1’s owner.

86. I have found that YC is operating its retail cannabis store contrary to bylaw 7.3(r), and it was not significantly unfair of the strata to enforce bylaw 7.3(r). So, I dismiss 711’s counterclaim.

Are 711 or YC responsible to pay the strata \$4,400, or another amount, in bylaw fines?

87. The strata asks for an order that 711 or YC pay fines of \$200 per week until compliant with the bylaws.

88. SPA section 131(1) says if the strata fines a tenant, the strata may collect the fine from the tenant, the landlord, or the owner of the strata lot.

89. At the time the strata filed its application for dispute resolution, the strata claimed \$4,400 in bylaw fines, but said that fines continued to accrue as long as SL1 was used contrary to bylaw 7.3(r). In submissions, the strata asked for payment of \$15,800 in fines, based on 79 weeks from the first bylaw fine on November 30, 2020 to what I infer is the date of the strata’s submissions. The evidence indicates that YC has paid some bylaw fines under protest.

90. I find it unnecessary to consider the appropriate scope of the strata’s claim for bylaw fines, because I find the strata failed to comply with SPA section 135 before it imposed the November 30, 2020 fine against YC. Therefore, I find the November 30, 2020 bylaw fines and any further fines imposed for YC’s continuing contravention of bylaw 7.3(r) after November 30, 2020 are invalid. My further reasons follow.

91. SPA section 135(1) states that a strata corporation may not impose a bylaw fine unless it has received a complaint, given the owner or tenant written particulars of the complaint and a reasonable opportunity to answer the complaint, including a hearing

if requested. SPA section 135(2) says the strata must also give notice in writing of its decision to impose the fine to the owner as soon as feasible.

92. The BC Court of Appeal has found that strict compliance with SPA section 135 is required before a strata corporation can impose bylaw fines, and fines may be found to be invalid if the procedural requirements of section 135 are not followed. See *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449.
93. SPA section 135(1)(e) and (f) require that if a tenant has breached a bylaw, both the owner and the tenant must receive written notice of the breach and of any fine. The evidence shows the strata provided written notice of the alleged bylaw contravention to both 711 and YC on October 30, 2020, following which YC requested a hearing. As noted, the strata held a hearing on November 24, 2020. On November 30, 2020, the strata provided YC written notice of its decision to impose a bylaw fine. However, there is no evidence that the strata provided 711, as the owner, with written notice of its decision to impose the November 30, 2020 fine. I find this does not meet the requirements of SPA section 135(2).
94. The evidence shows that the strata provided 711 with written notice of several fines for the continuing contravention of bylaw 7.3(r) between May and December 2021. SPA section 135(3) says that once a strata corporation has complied with section 135 in respect of a bylaw contravention, it may impose a fine or other penalty for a continuing contravention of that bylaw without further compliance with section 135. I have found the strata failed to comply with SPA section 135 when it imposed the first bylaw fine on November 30, 2020. Therefore, it was not entitled to issue any continuing contravention fines. I find the November 30, 2020 fine and any fines imposed for YC's continuing contravention of bylaw 7.3(r) after November 30, 2020 are invalid. I dismiss the strata's claim for payment of bylaw fines from YC and 711.
95. The evidence shows the strata imposed at least some of the bylaw fines on 711's strata lot account. As I have found the fines invalid, I order the strata to reverse the November 30, 2020 fine and any subsequent fines for YC's continuing contravention

of bylaw 7.3(r) imposed on 711's strata lot account between November 30, 2020 and the date of this decision.

96. The parties' submissions and evidence also show that around March 15, 2021, YC paid the strata \$2,600 in fines and \$4,334.01 in legal costs, and then indicated it did so under protest. However, YC did not claim reimbursement of any fines or other charges in its counterclaim, so I make no orders about that.

Should I order YC to stop using SL1 to operate its cannabis store?

97. It is undisputed that that YC continues to use SL1 to operate its cannabis store, which I have found contravenes bylaw 7.3(r). The strata asks for an order that YC stop using SL1 to operate its cannabis store.
98. YC is already required to comply with the bylaws. Typically, it is unnecessary to order a party to do something it already is required to do, as it has little practical effect. However, given the bylaw contravention correspondence summarized above, I find it appropriate to order YC to immediately stop operating its retail cannabis store in SL1.

Is 711 or YC required to reimburse the strata for its legal fees pursuant to bylaw 5.7, and if so, what amount?

99. The strata asks for an order that 711 or YC pay for the strata's legal cost of enforcing its bylaws pursuant to bylaw 5.7, which it estimated at \$6,500 at the time it filed its application for dispute resolution.
100. Bylaw 5.7 says additional assessments, fines authorized by the bylaws, banking charges, filing costs, legal expenses, interest charges and any other expenses incurred by the strata corporation to enforce the bylaws will become part of the assessment "the owner responsible" and will become due and payable on the first day of the month next following except that any amount owing in respect of a fine or the cost of remedying the contravention of a bylaw will be calculated as a separate component of such assessment and the strata corporation may not register a lien against such separate component.

101. In this dispute, bylaw 5.7 allows the strata to charge “the owner responsible” for costs, including legal fees, incurred by the strata to enforce its bylaws. Under CRTA sections 123(1)(c) and 121(1)(d), the CRT has authority to order payment of money owed under a strata bylaw.
102. I have found that YC, as 711’s tenant in SL1, contravened bylaw 7.3(r). Therefore, YC would be the party responsible for any costs the strata incurred to enforce its bylaws, including legal fees. However, bylaw 5.7 does not say the strata can charge a tenant for the costs incurred by the strata to enforce its bylaws. Rather, bylaw 5.7 only says such expenses “will become part of the assessment of the owner responsible”. Therefore, I find YC is not responsible to reimburse the strata for its legal fees pursuant to bylaw 5.7.
103. The strata is entitled to recover any valid bylaw fines imposed on YC from 711 under to SPA section 131(1). However, since 711 itself did not contravene the bylaws, I find 711 is not “the owner responsible” under bylaw 5.7. Therefore, I find 711 is not responsible to reimburse the strata for its legal fees pursuant to bylaw 5.7.
104. So, I find 711 and YC are not responsible to reimburse the strata for its legal fees pursuant to bylaw 5.7.
105. Even if 711 or YC were responsible for the strata’s legal fees under bylaw 5.7, I have found that the bylaw fines were not validly imposed. I find the strata is not entitled to recover any legal fees related to the invalid bylaw fines under bylaw 5.7 in any event.
106. I find the strata also claims reimbursement of legal fees in this dispute under the CRT rules. CRT rule 9.5(3) says the CRT will not order one party to pay another party any legal fees except in extraordinary circumstances.
107. The strata referred to *Owen v. The Owners, Strata Plan LMS 1495*, 2021 BCCRT 1299, where another tribunal member found that the presence of bylaw allowing a strata corporation to charge an owner for legal fees incurred by the strata corporation in correcting or curing a bylaw infraction was an extraordinary circumstance that

permitted the CRT to award the successful strata corporation its legal costs under CRT rule 9.5(4). The strata says bylaw 5.7 therefore permits the CRT to order 711 and YC to pay the strata's legal costs.

108. I agree that bylaw 5.7 generally allows the strata to recover legal costs and other expenses incurred in enforcing its bylaws from "the responsible owner". As noted above, the CRT has authority to order reimbursement of legal fees as money owed under a strata bylaw. However, for the reasons set out above, I find that neither 711 nor YC are responsible to pay the strata's legal fees under bylaw 5.7. While I acknowledge the strata's argument based on *Owen*, in that dispute the tribunal member found that the bylaw itself was applicable in the circumstances. In this dispute, I have found bylaw 5.7 does not apply in the circumstances. Therefore, I find bylaw 5.7 is not an extraordinary circumstance that justifies the reimbursement of legal fees under CRT rule 9.5(3) in this dispute.

109. To the extent that the strata claims reimbursement of dispute-related legal fees regardless of the applicability of bylaw 5.7, I find it is not appropriate to order reimbursement. First, the strata was only partially successful in this dispute. Second, although all parties were represented by lawyers in this dispute, I find the dispute itself was not particularly complex and primarily involved the interpretation and enforceability of one bylaw. I find there are no extraordinary circumstances here that make it appropriate to order either YC or 711 to pay the strata's dispute-related legal fees.

110. For all these reasons, I dismiss the strata's claim for reimbursement of legal fees.

111. In submissions, 711 asked to be awarded "indemnity costs" (which means full reimbursement of 711's legal fees) to be assessed following the release of this decision so as not to waive privilege. I have found there are no extraordinary circumstances to justify such an award in this dispute. I have also found the strata was partially successful in its claims, and I have dismissed 711's counterclaim. Therefore, I find it is unnecessary to consider whether it would be appropriate to invite

further submissions on 711's claim for legal fees. I dismiss 711's claim for reimbursement of its legal fees.

CRT FEES AND EXPENSES

112. Under CRTA section 49, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses.

113. The strata was partially successful in its claims against YC, but was unsuccessful in its claims against 711. I therefore order YC to reimburse the strata \$112.50 for half its paid CRT fees. YC and 711 were both unsuccessful in their respective counterclaims. Therefore, I dismiss YC and 711's fee claims.

114. I have already dealt with the strata and 711's claims for legal costs above. The strata, 711 and YC did not claim other dispute-related expenses, so I award none.

115. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against 711.

ORDERS

116. I order YC to immediately stop operating its retail cannabis store in SL1.

117. I order the strata to immediately reverse the November 30, 2020 bylaw fine and any subsequent fines for YC's continuing contravention of bylaw 7.3(r) imposed on either 711's strata lot account or on YC between November 30, 2020 and the date of this decision.

118. Within 30 days of the date of this order, I order YC to pay the strata \$112.50 in CRT fees.

119. The strata is entitled to postjudgment interest under the *Court Order Interest Act*.

120. I refuse to resolve the strata's claim for a declaratory order under CRTA section 10(1).

121. I dismiss 711's counterclaims and YC's counterclaims.

122. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under CRTA section 58, 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.

Leah Volkens, Tribunal Member