Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VR 390 v. Harvey*, 2023 BCCRT 644

B E T W E E N :

The Owners, Strata Plan VR 390

APPLICANT

A N D :

WENDY HARVEY

RESPONDENT

A N D :

The Owners, Strata Plan VR 390

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: Kristin Gardner

INTRODUCTION

1. This strata property dispute is about bylaw fines.

2. The respondent (and counterclaim applicant), Wendy Harvey, owns strata lot 13 (SL13) in the applicant (and counterclaim respondent) strata corporation, The Owners, Strata Plan VR 390 (strata).

3. The strata says that between May 2009 and September 2017, Ms. Harvey and her spouse, Douglas Edgar, violated several bylaws related to unauthorized alterations, damage to common property (CP), and storing items on CP. The strata assessed numerous bylaw fines against SL13 for the alleged violations, including for continuing contraventions. The strata claims $53,400 for outstanding bylaw fines. Mr. Edgar is not a party to this dispute.

4. Ms. Harvey says the strata's claim is out of time under the *Limitation Act*. She also says the strata previously started proceedings against her in the BC Supreme Court (BCSC) and it requested, or could have requested, payment of the bylaw fines in those proceedings. Ms. Harvey says the strata's claim is barred by the doctrines of estoppel, want of prosecution, laches, and abuse of process.

5. Ms. Harvey also says the bylaw fines were unjustified and that the strata acted in bad faith to impose the fines as a tactic to force Ms. Harvey and Mr. Edgar to move out. Ms. Harvey counterclaims $413,800 in aggravated and punitive damages for the strata's alleged bad faith conduct, which the strata denies.

6. The strata is represented by a lawyer, Veronica Franco. Ms. Harvey is represented by Mr. Edgar, who is not a lawyer.

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). 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 the dispute's parties that will likely continue after the CRT process has ended.

8. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. 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.

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.

Evidence and submissions

11. The strata provided late evidence with its final reply submissions, consisting of a July 8, 2013 letter. Ms. Harvey was advised of the late evidence and made submissions about it in her own counterclaim final reply submissions. Ms. Harvey did not object to the late evidence, and I find it is marginally relevant. So, I have admitted it and considered it in my analysis below.

12. The strata objects to Ms. Harvey's counterclaim reply submissions. The strata says it has been prejudiced because Ms. Harvey was granted an extension of time to provide her final reply, so she had the opportunity to review the strata's final reply submissions on the main claim before she submitted her counterclaim reply. The strata argues that Ms. Harvey's reply is largely sur-reply to the strata's claim, rather than reply to

the strata's counterclaim response. The strata says Ms. Harvey should not be given a second opportunity to provide response arguments to the strata's claim after she failed to raise them in her initial response arguments.

13. I agree that Ms. Harvey's final reply includes arguments responding to the strata's claims. However, Ms. Harvey's counterclaim for aggravated and punitive damages is partly based on her position that the fines were unjustified. So, I find her reply submissions are likely relevant to the counterclaim. Further, the CRT's mandate includes flexibility, and parties are often granted leeway about what is considered appropriate reply submissions. I also note that in its objections to Ms. Harvey's reply submissions, the strata made submissions in response to some of Ms. Harvey's reply. For all these reasons, I have allowed and considered both Ms. Harvey's reply submissions and the strata's objection submissions.

14. While I acknowledge that the strata requested an opportunity to provide further sur-reply submissions, I find that it would be contrary to the CRT's mandate for speedy and economical dispute resolution to permit the parties to endlessly respond to each other's submissions. I am very mindful of the substantial delay already incurred in concluding this dispute, which was initially commenced over 2 years ago.

15. Therefore, I decline to permit the strata to make further sur-reply submissions. In making this decision, I have placed considerable weight on the fact that Ms. Harvey's reply submissions did not substantively address the issues on which I have found the strata unsuccessful below. Therefore, I find the strata was not prejudiced by Ms. Harvey's reply submissions, and it was unnecessary to obtain the strata's further response.

16. That said, Ms. Harvey raised a new allegation in her final reply submissions that the strata failed to repair and maintain the patio garden outside her strata lot. I find this is essentially a new claim that was not raised in the Dispute Notices. So, I find that allegation is not properly before me, and I have not considered it.

17. Ms. Harvey also alleged for the first time in her final reply submissions that the strata removed a portion of the barbeque gas supply bib outside SL13. She requests an

order that the strata restore the gas bib. She also requests an order declaring that a bylaw amendment was passed in bad faith and was significantly unfair, as well as orders that the bylaw be "expunged" and that she is entitled to have a barbeque on the patio. None of these claims and requested remedies were raised in the Dispute Notices, and so I find they are not properly before me, and it would be procedurally unfair to consider them. Therefore, I have not considered these new claims and remedies below.

Preliminary decision

18. In the initial Dispute Notice, the strata claimed $177,687.81 in damages for delay Ms. Harvey and Mr. Edgar allegedly caused to the strata's repair and maintenance work, and $95,274.80 in additional damages for alleged damage Mr. Edgar caused to CP. In a December 3, 2021 preliminary decision (*The Owners, Strata Plan VR 390 v. Harvey*, 2021 BCCRT 1269), a CRT tribunal member (now Vice Chair) refused to resolve those damages claims because they were part of an ongoing 2011 action the strata filed in the BCSC. Following the preliminary decision, the strata withdrew the damages claims from this CRT dispute. So, those claims are not before me.

19. The tribunal member also considered whether any of the strata's claims for outstanding bylaw fines were out of time. The tribunal member noted that the current *Limitation Act* came into force on June 1, 2013. It says that a claim must not be commenced more than 2 years after the day on which it is discovered, and it defines a claim as "a claim to remedy an injury, loss or damage that occurred as a result of an act or omission". The tribunal member agreed with the reasoning in previous non-binding CRT decisions that have consistently found the current *Limitation Act* does not apply to proceedings for payment of bylaw fines. This is because fines are considered penalties, and so such proceedings are not claims to "remedy injury, loss, or damage". See *The Owners, Strata Plan KAS 3549 v. 0738039 B.C. Ltd.*, 2015 BCSC 2273. Therefore, the tribunal member concluded that the strata's claim for payment of fines imposed after June 1, 2013 are not out of time. I agree with the tribunal member's preliminary decision on this issue, and I have considered the strata's claims for payment of fines imposed after June 1, 2013 below.

20. However, the tribunal member found he had insufficient evidence and submissions at that preliminary stage to decide whether the former *Limitation Act* precluded the strata's claim for payment of fines imposed before June 1, 2013. The tribunal member noted that the parties may wish to address this issue further in their submissions and evidence, which they have. I have considered this issue further below.

21. Finally, the tribunal member noted that the strata's 2011 BCSC action included a claim for payment of 5 fines imposed in 2009 totalling $1,000, which are also part of the strata's fines claim in this dispute. The tribunal member ordered the strata to either amend its Dispute Notice to remove any fines at issue in the 2011 BCSC action or confirm that it will not pursue claims for those fines in the BCSC action. The strata says it has now "abandoned" its claim for the 2009 fines in the BCSC action, though it did not provide any documentary evidence showing that it formally withdrew that claim in the BCSC. In any event, I am satisfied that the strata advised the CRT within the required time that it would not proceed with the claim for the 2009 fines in the BCSC action. So, I have also considered these fines below.

Equitable remedies and defences

22. In submissions, Ms. Harvey says that the *Law and Equity Act* provides authority to relieve against penalties, such as the strata's claim for payment of bylaw fines. I infer that she is referring to section 24 of the *Law and Equity Act*, which says a court may relieve against all penalties and forfeitures. However, the CRT is not a court, and so I find the CRT does not have jurisdiction to make such an order for relief under the *Law and Equity Act*.

23. As noted, Ms. Harvey also says the strata's claims are barred by the doctrine of laches. Laches is an equitable defence to an equitable claim. I find the strata's claim for payment of bylaw fines is not an equitable claim, and so the equitable defence of laches does not apply. In any event, the CRT has no authority to apply general rules of equity. See *Wong v The Owners, Strata Plan LMS 2461*, 2017 BCCRT 55. So, even if laches applied to this claim, I would find the CRT does not have jurisdiction to decide that issue.

24. I considered whether I should refuse to resolve this dispute because Ms. Harvey raised defences that only a court can consider, potentially hindering her ability to defend the claim at the CRT. However, I find that section 121 of the CRTA gives me the authority to cancel any bylaw fines that I determine are invalid, as I have done below. So, while I have not addressed Ms. Harvey's requested equitable relief, I decided that I could fairly adjudicate the claims in the CRT.

ISSUES

25. The remaining issues in this dispute are:

    a. Are the strata's claims for payment of bylaw fines imposed before June 1, 2013 out of time?

    b. To what extent, if any, does Ms. Harvey owe the strata $53,400 in unpaid bylaw fines?

    c. To what extent, if any, is Ms. Harvey entitled to aggravated or punitive damages?

BACKGROUND

26. In a civil proceeding like this one, the applicant strata must prove its claims on a balance of probabilities (meaning "more likely than not"). Ms. Harvey bears the same burden to prove her counterclaims. I have read all of the parties' evidence and submissions, but I refer only to what I find is necessary to explain my decision.

27. The strata was created in 1976 under the *Strata Titles Act*, a predecessor to the current *Strata Property Act* (SPA). The strata consists of 12 residential strata lots in a single 11-storey building. In 1984, strata lots 1 and 3 were subdivided, and most of strata lot 1 became SL13, which is Ms. Harvey's strata lot.

28. SL13 is a 2-storey townhouse-type unit located at the base of the tower building containing the remaining 11 apartment-type strata lots. The strata plan in evidence shows that a large patio wraps around the outside of SL13. The patio is designated

as CP. The strata plan also shows 2 roof decks located outside SL13 on the second floor, which are also designated as CP. The evidence refers to the larger roof deck as the "north deck" and the smaller roof deck as the "west deck", and I will do the same.

29. Ms. Harvey purchased SL13 in 2005, though she and Mr. Edgar did not move in until they completed extensive renovations in SL13 in 2013. Ms. Harvey's and Mr. Edgar's conflict with the strata began shortly after the purchase, and it largely related to the renovations to SL13. The parties have a long history of litigation in the BCSC, the BC Provincial Court (BCPC), and more recently, the CRT. I find it unnecessary to summarize all of the parties' previous litigation here. I will refer to relevant decisions and orders as required below.

30. The bylaws applicable to this dispute are the bylaw amendments filed at the Land Title Office (LTO) on May 31, 2001, plus several amendments filed in 2006 and 2015. Subsequent bylaw amendments filed June 25, 2018 and March 1, 2019 do not apply as the events relevant to this dispute occurred before those amendments were filed in the LTO. I will refer to the relevant bylaws as necessary below.

31. As noted, the strata says it levied $53,400 in bylaw fines against SL13 for various alleged bylaw infractions by Ms. Harvey and Mr. Edgar between January 2009 and September 2017. From the evidence and submissions before me, I summarize the imposed fines as follows:

    a. May 27, 2009: $200 for altering CP without the strata's approval by coring a concrete wall to run electrical wiring into the garage.

    b. September 2, 2009: $800 for altering CP without approval in 4 other ways, including by removing the concrete topping on the CP patio outside SL13, removing CP densglass panels on the building, replacing steel studs that were part of the building's structure, and removing or cutting back CP landscaping.

    c. August 18, 2011: $200 for altering CP without approval by removing filling material from a hole in a CP wall (east wall alteration).

d. August 18, 2011 and December 22, 2011 to October 31, 2013: $200 initial fine and $19,600 in weekly bylaw fines for continuing infractions related to installing metal studs, insulation, and wiring in the CP north deck (north deck alterations) without approval.

e. October 4, 2011: $200 for altering CP without approval by removing bamboo plants from the patio outside SL13.

f. May 14, 2012 to October 28, 2013: $15,400 in weekly bylaw fines for continuing infractions related to storing construction materials and personal items on the CP patio without the strata's approval.

g. April 30, 2012: $1,400 for damaging or altering CP in 7 ways, including installing a tarp over the roof decks, removing pavers from the CP patio, damaging the roof membrane on a roof deck, removing a CP drain, coring a hole in the membrane and concrete slab on a roof deck, coring a hole in the parapet wall on a roof deck, and removing CP plumbing for a roof deck.

h. April 13, 2016 to September 27, 2017: $15,400 in weekly bylaw fines for continuing infractions related to storing a barbeque and propane tank on the CP patio.

EVIDENCE AND ANALYSIS

Bylaw fines imposed before June 1, 2013

32. As noted above, the current *Limitation Act* came into force on June 1, 2013. Section 30 of the current *Limitation Act* says that its former version applies to a claim that is based on an act or omission that took place before June 1, 2013. So, I find that the strata's claims for payment of bylaw fines it imposed before June 1, 2013 are subject to the former *Limitation Act*.

33. Section 3 of the former *Limitation Act* sets out different limitation periods for different types of actions. An "action" is defined as "any proceeding in a court and any exercise of a self help remedy". Section 3(5) says that any action not specifically provided for

must be brought within 6 years of the date on which the right to do so arose. As actions related to strata bylaw fines and breaches are not specifically listed in section 3, I find they are subject to the 6-year limitation period in section 3(5).

34. This means that the strata must have started an action for payment of the bylaw fines it levied before June 1, 2013, within 6 years of it levying those fines. The strata did not file its application for CRT dispute resolution until March 29, 2021, which was more than 6 years after the strata imposed any of the pre-June 1, 2013 bylaw fines.

35. The strata makes several arguments about why its claim for payment of the fines it imposed between 2009 and June 1, 2013 is not out of time.

36. I start with the 5 $200 fines that the strata imposed against SL13 in 2009, which were initially included in the strata's June 30, 2011 BCSC action against Ms. Harvey. That 2011 action was undisputedly filed within the applicable 6-year limitation period under the former *Limitation Act*. The strata submits that the running of the limitation period was "suspended or stopped" as soon as it commenced the 2011 action, until it abandoned its claim for those fines in that action in 2021, so that it could pursue them in this CRT dispute.

37. In the December 3, 2021 preliminary decision on this dispute discussed above, the tribunal member found that this CRT dispute is not properly considered a continuation of the strata's 2011 BCSC action. Rather, the tribunal member found it is a separate legal proceeding. I agree with the tribunal member's reasoning and conclusion on that issue. So, even though the strata filed this CRT dispute before it abandoned the 2009 fines claim in the BCSC action, I find the limitation period for that claim does not carry over from the earlier BCSC proceeding. In other words, because this CRT dispute is a "fresh claim", I find the limitation period must be applied according to when the strata filed its application for CRT dispute resolution, and not when it filed the BCSC action.

38. This conclusion is consistent with the BCSC decision in *Allen v. Dennis P.A. Nimchuk Inc.*, 2016 BCSC 940. In *Allen*, the plaintiff filed a defamation claim in the BCPC in 2009, arguably within the applicable limitation period for such a claim, but later

discovered the BCPC did not have jurisdiction over claims for defamation. The plaintiff commenced a new action in the BCSC in 2012, before they terminated the BCPC action. The BCSC found the plaintiff's argument that the limitation period for the BCSC action flowed from the BCPC action was "without merit", and that the BCSC action had been brought outside the applicable limitation period.

39. Overall, I find the 2011 BCSC action does not assist the strata in establishing that its claim in this CRT dispute about the 2009 fines was brought within the applicable limitation period.

40. The strata also argues that the BCSC judgment in *The Owners, Strata Plan VR 390 v. Harvey*, 2013 BCSC 2293 (2013 decision) extended the limitation period for the 2009 fines. In that action, the strata had sought an order for the forced sale of SL13 due to Ms. Harvey's and Mr. Edgar's demonstrated "unwillingness or inability to honour the court orders, bylaws, and SPA". Alternatively, the strata sought a series of injunctions. In the 2013 decision, the court remarked that there was no evidence the strata had levied bylaw fines against SL13 for an improper purpose or in bad faith.

41. Essentially, the strata argues that those comments about the fines constitute a pronouncement akin to a local judgment. Section 3(3)(f) of the former *Limitation Act* says that a person may not bring an action on a local judgment for payment of money after expiration of 10 years after the date on which the right to do so arose. "Local judgment" is defined as a judgment, order, or award of the Supreme Court of Canada, the BC Court of Appeal (BCCA), the BSCS, the BCPC, or an arbitration.

42. I disagree that the court's comments in the 2013 decision amount to a "local judgment" on the fines. The court did not make any judgment, order, or award related to payment of the bylaw fines or their validity. The court's comments were made in response to Ms. Harvey's defence that the court should not order a forced sale of SL13 because the strata had acted in bad faith by, among other things, levying the bylaw fines. Further, I find this CRT dispute is not a proceeding brought to enforce the 2013 decision, though the CRT has no jurisdiction to enforce court orders in any event. Overall, I find the 2013 decision did not extend the limitation period for the

2009 fines, or any of the other bylaw fines the strata levied before the 2013 decision, under section 3(3)(f) of the former *Limitation Act*.

43. Next, the strata argues that there is no limitation period for the fines levied before June 1, 2013 because they were related to enforcing a 2009 injunction. Section 3(4) of the former *Limitation Act* says actions to enforce an injunction are not governed by a limitation period and may be brought at any time.

44. The injunction that the strata refers to was ordered on July 24, 2009, and it prohibited Ms. Harvey and Mr. Edgar from demolishing, altering, or removing any common property or any part of their strata lot that the strata was required to repair and maintain. However, I do not accept the strata's position that the fines it imposed for alleged CP alterations related to enforcing the injunction. Rather, I find the strata imposed the fines because it determined Ms. Harvey or Mr. Edgar had breached the strata's bylaws about altering CP, regardless of the injunction's existence. Further, I find this CRT dispute is not an action to enforce the 2009 injunction, which, again, the CRT has no jurisdiction to do in any event. So, I find section 3(4) of the former *Limitation Act* does not apply.

45. Finally, the strata argues that the definition of "action" under the former *Limitation Act* is quite broad, whereas the definition of "claim" under the current *Limitation Act* is narrower, which the strata says creates a "curious gap" in the legislation. In short, the strata says it is illogical to apply a 6-year limitation period to actions for payment of bylaw fines under the former Act, yet there is no limitation period for similar claims under the current Act (because the Act does not apply to such claims).

46. The modern approach to statutory interpretation requires the words of an Act to be read in their entire context and in their grammatical and ordinary sense, harmoniously with the Act's scheme and object, and the legislature's intention. See *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42.

47. The overarching purpose of enacting the current *Limitation Act* may have been to standardize limitation periods to provide more certainty to litigants, as the strata submits. However, contrary to the strata's submission, I find that does not necessarily

mean that all limitation periods under the former Act would either stay the same or be shortened under the current Act.

48. According to the *Hansard Debates (British Columbia)*, 39th Parl, 4th Sess, Vol 35, No 4 (24 April 2012) at 11078, the legislature acknowledged that the former *Limitation Act* definition of action was "very broad", and the new Act would represent "a different approach to the law of limitations" whereby limitation periods would only apply to govern time periods that people have to bring "a claim" in court. In other words, I find the legislature considered what types of proceedings would be subject to the current *Limitation Act*, and that it deliberately narrowed its application to "claims", as defined in that Act.

49. So, while there may be a gap in the legislation, such that some actions subject to a limitation period under the former *Limitation Act* are no longer considered claims that are subject to the current *Limitation Act*, I find that gap was intentional. Considering legislature's stated purpose, and the words used in the current Act, I find it is properly interpreted as applying only to proceedings that fall under the definition of "claim", even if that means it does not apply to proceedings that were subject to a limitation period under the former *Limitation Act*. Therefore, I find that the 6-year limitation period in the former Act applies to the strata's claims for payment of the bylaw fines it imposed before June 1, 2013, even though proceedings for fines imposed after June 1, 2013 have no limitation period.

50. For the above reasons, I find the strata's claims for payment of all bylaw fines levied against SL13 before June 1, 2013 are out of time under the former *Limitation Act*. Therefore, I dismiss the strata's claim as it relates to payment of all fines imposed before June 1, 2013.

51. Given this conclusion, I find I do not have to address Ms. Harvey's arguments that the strata's claim for payment of bylaw fines imposed before June 1, 2013 are barred by the doctrines of estoppel or want of prosecution.

To what extent does Ms. Harvey owe the strata in unpaid bylaw fines?

52. For the reasons set out above, I find the strata's claim for payment of bylaw fines is limited to the fines imposed after June 1, 2013. Those fines include the following:

    a. Weekly $200 bylaw fines imposed between June 6, 2013 and October 31, 2013 for the alleged north deck alterations ($4,400).

    b. Weekly $200 bylaw fines imposed between June 3, 2013 and October 28, 2013 for allegedly storing construction materials and personal items on the CP patio ($4,400).

    c. Weekly $200 bylaw fines imposed between April 13, 2016 and September 27, 2017 for allegedly storing a barbeque and propane tank on the CP patio ($15,400).

53. Bylaw 23 says the strata may fine an owner a maximum of $200 for each bylaw contravention. Bylaw 24 says that a fine may be imposed every 7 days for continuing contraventions.

54. I address whether the strata has proven the alleged bylaw contraventions and the validity of the imposed fines below.

North deck alterations

55. The strata says Ms. Harvey performed the north deck alterations without the strata's approval, contrary to bylaws 5 and 6.

56. Bylaw 5(2) says, in part, that an owner must obtain the strata's prior written approval to perform strata lot alterations or renovations that involve the structure of the building, balconies, or other things attached to the building's exterior.

57. Bylaw 6(1) says an owner must obtain the strata's approval before altering CP. Bylaw 6(2) says the strata may require as a condition of its approval that the owner agree, in writing, to take responsibility for any expenses relating to the alteration.

58. As background, Ms. Harvey and Mr. Edgar entered into a June 13, 2008 written agreement with the strata about alterations they intended to make to CP in or immediately adjacent to SL13 (alteration agreement). The alteration agreement stated the alterations were at the owners' request and full financial obligation and were subject to the strata's approval. The alterations specifically included renovation or build-out to repair or enclose the north and west decks. Paragraph 5 stated that renovation to repair and totally rebuild the "North Deck/Solarium" area, in its present configuration, did not require approval by a ¾ vote resolution at a general meeting before the owners could proceed, though it did require a municipal building permit.

59. I find from the evidence and submissions that someone had built an enclosed solarium on the north deck sometime before Ms. Harvey purchased SL13. The solarium undisputedly had a roof with drainage, windows, and sliding door access. It was framed, insulated, drywalled and painted, and it had electrical plugs and switches, heating, and finished flooring installed.

60. I find that the alleged north deck alterations related to installing metal studs, insulation, and wiring in the existing solarium. Ms. Harvey does not specifically dispute that she and Mr. Edgar made these alterations. Rather, her submissions mostly attempt to distinguish the CP north deck from the solarium. She argues the solarium is her "private property" that the strata has no jurisdiction over.

61. I do not accept that submission. As noted, the entire north deck is designated as CP on the strata plan, which I find includes the portion of the north deck on which the solarium was built. I find that an owner cannot incorporate CP into a strata lot simply by building a structure on it and connecting it to their strata lot. So, I find the solarium does not belong to Ms. Harvey, and it is not her "private property".

62. Further, the alteration agreement expressly provided that the CP alterations, including the north deck solarium renovations, were subject to the strata's approval. I find that just because the alteration agreement stated the solarium renovations did not require a ¾ vote resolution, so long as the solarium maintained its "current configuration", does not mean they did not require the strata's prior approval.

63. The evidence shows the strata sent the municipality a June 4, 2010 letter confirming that it authorized Ms. Harvey to apply for a building permit for her planned renovations and alterations. However, the letter also stated the authorization was conditional on Ms. Harvey getting complete design drawings and specifications for any renovations affecting CP approved by the municipality and providing them to the strata for review and approval before she started any demolition or construction.

64. In an August 22, 2011 letter, Ms. Harvey admitted that she had completed a "small amount of work" in the solarium area, including rough-in construction of contiguous metal framing, electrical, plumbing, and drywall assemblies. The letter also stated Ms. Harvey was in the process of amending her building permit, and she did the work in anticipation that the permit would be approved.

65. Given her admission, I find Ms. Harvey had not obtained a building permit or provided the strata with requested documentation for the solarium renovations for its review and approval before starting construction work. As Ms. Harvey did not have the strata's prior approval to perform the admitted alterations to the solarium on the CP north deck, I find that she breached bylaw 6(1).

66. Having found that Ms. Harvey's north deck alterations breached the bylaws, I turn to consider whether the strata complied with section 135 of the SPA in imposing the initial fine and the subsequent fines for a continuing infraction.

67. SPA section 135 sets out the procedural requirements a strata corporation must meet before imposing a fine against a person. Section 135(1) says a strata corporation may not impose a bylaw fine unless it has received a complaint and given the owner details of the complaint in writing and a reasonable opportunity to answer the complaint, including a hearing if requested. SPA section 135(2) says the strata must also give notice to the owner in writing of its decision to impose the fine "as soon as feasible". SPA section 135(3) says that once the strata has complied with these procedural steps, it may impose a fine for a continuing contravention of that bylaw without further compliance with section 135. In *Terry v. The Owners, Strata Plan NW 309,* 2016 BCCA 449, the court found that a strata corporation must strictly comply

with SPA section 135 before it can impose bylaw fines, and if the strata corporation does not follow the section's requirements, the fines are invalid.

68. I find the strata's April 1, 2011 letter to Ms. Harvey complied with SPA section 135(1) by giving particulars of the complaints about the north deck alterations and providing her with an opportunity to answer the complaint or request a hearing. Ms. Harvey does not dispute that she received this letter, and there is no evidence before me that she responded or requested a hearing at that time.

69. The strata council's July 21, 2011 meeting minutes state that a council member had inspected SL13 that morning and confirmed the unauthorized north deck alterations remained in place. The strata decided at that meeting to impose a fine. In an August 18, 2011 letter, the strata advised Ms. Harvey of its decision to impose a fine, and the strata lot account ledger for SL13 in evidence (SL13 ledger) shows the strata imposed the initial fine on August 18, 2011.

70. The July 21, 2011 council meeting minutes indicate the strata was dealing with numerous issues involving Ms. Harvey and Mr. Edgar at the time, including other bylaw infractions and court proceedings. Under the circumstances, I find the strata notified Ms. Harvey of its decision to impose the fine for the north deck alterations as soon as feasible under SPA section 135(2).

71. I note that Ms. Harvey submits she did not receive any of the strata's fine decision letters. I find that submission simply not credible. She does not suggest that she failed to receive any of the strata's other correspondence to her, and I find it disingenuous that she makes a blanket allegation that she only failed to receive the fine decision letters.

72. Further, I find the strata does not have to prove that Ms. Harvey received the letters. This is because SPA section 61 says an owner is deemed to have received a letter from a strata corporation 4 days after it is mailed, and I accept the strata's evidence that it mailed the decision notices to Ms. Harvey. In any event, I find Ms. Harvey clearly received the strata's August 18, 2011 decision letter, as her August 22, 2011 letter specifically referred to it.

73. In a separate August 18, 2011 letter, the strata also advised that if Ms. Harvey did not remove the unauthorized "improvements" made to the north deck by August 26, the strata would impose $200 each week under bylaw 24 until the improvements were removed.

74. I find the strata complied with SPA section 135, and that it validly imposed the initial August 18, 2011 bylaw fine for the north deck alterations. This means the strata was entitled to impose fines for continuing contraventions under SPA section 135(3).

75. The strata ultimately held a hearing with Ms. Harvey and Mr. Edgar on September 28, 2011. In an October 6, 2011 letter, the strata confirmed its decision to impose a $200 fine each week until the north deck alterations were removed. In an October 20, 2011 letter, Mr. Edgar asked the strata to reconsider the fines. At a December 7, 2011 council meeting, the strata decided to uphold the fine for the north deck alterations and proceed with fines for a continuing infraction. The strata advised Ms. Harvey of this decision in a December 8, 2011 letter.

76. As noted, the strata imposed weekly $200 fines for the north deck alterations from December 22, 2011 to October 31, 2013, though only the fines imposed after June 1, 2013 are at issue here. As there is no evidence to the contrary, I accept the strata's submission that it stopped imposing the fines only because they had been ineffective to get Ms. Harvey to reverse the alterations, and not because Ms. Harvey ever removed them. Noting that Ms. Harvey does not deny that she has left the alterations in place, I find that the fines for a continuing contravention were properly imposed.

77. In summary, I find the strata has proven Ms. Harvey breached bylaw 6(1) and that it validly levied fines against her for that infraction. Therefore, I order Ms. Harvey to pay the strata $4,400 in bylaw fines for the unapproved north deck alterations for the period of June 6, 2013 to October 31, 2013.

Construction materials stored on CP

78. In a March 3, 2012 email, the strata told Ms. Harvey that she could temporarily use the CP patio outside SL13 to store construction materials and personal items during

the ongoing SL13 renovations. The strata stated that its approval to store such items on CP would end on April 4, 2012.

79. In an April 19, 2012 letter, the strata noted that Ms. Harvey continued to store the construction materials on the CP patio, in breach of the bylaws. It asked her to remove the items by April 25, and advised that she could respond to the complaint in writing or request a hearing. Ms. Harvey asked to continue the temporary storage on CP until drywall work was completed. In an April 30, 2012 letter, the strata agreed to permit the storage until May 14, 2012, but advised that if the items were not removed by that date, the strata would impose fines under bylaws 23 and 24.

80. In a May 2, 2012 letter, Ms. Harvey and Mr. Edgar advised that the drywall work was incomplete and they needed to continue storing items on CP for several more weeks. They requested a hearing in both the May 2, 2012 letter and a May 11, 2012 email. The strata initially scheduled a May 24 hearing, which it rescheduled to May 31 at Ms. Harvey's request. Ms. Harvey and Mr. Edgar failed to attend the May 31 hearing. The strata then scheduled another hearing for June 14. In a June 11, 2012 email, Mr. Edgar advised that he and Ms. Harvey would not be attending a hearing, as they took the position that the strata's letters about improper storage had not complied with unspecified SPA provisions.

81. Again, Ms. Harvey does not dispute that she used the CP patio to store construction materials and other personal items. Rather, I find the evidence indicates she believed it was necessary and reasonable to use CP as storage space for several months given the state of her ongoing renovation project.

82. Part of the difficulty for the strata is that none of its letters refer to the specific bylaw that Mr. Edgar and Ms. Harvey allegedly breached by using CP for storage. Only after the strata started this dispute did it say the storage breached bylaw 3(2)(9), which says an owner must not allow the area around their premises to become untidy.

83. In *Terry*, the BCCA held that a strata corporation must give an owner notice that it is contemplating imposing a fine for an alleged contravention of "an identified bylaw or rule" (at paragraph 28). The CRT has interpreted this to mean that if the strata's notice

letter does not set out a specific bylaw or rule, the resulting bylaw fine is invalid. See for example *Nicholl v. The Owners, Strat Plan VR 101*, 2021 BCCRT 83. I agree with that reasoning, and I apply it here to find the strata did not strictly follow section 135(1) of the SPA to give Ms. Harvey proper notice of the alleged contravention.

84. Even if the strata had complied with SPA section 135, I find it has not proven Ms. Harvey breached bylaw 3(2)(9). The strata provided no photos or other evidence to establish that the construction materials and other items made the patio "untidy". The evidence before me suggests that Ms. Harvey was mainly storing drywall under a tarp at one end of the patio outside SL13. In the absence of any other evidence, I find that description is insufficient to find that Ms. Harvey breached bylaw 3(2)(9).

85. I note that the strata is responsible for managing and maintaining CP for the benefit of all owners under SPA section 3, and it is responsible for repairing and maintaining CP under section 72 of the SPA. Based on these SPA provisions, I find the strata was entitled to remove any personal items from CP, even without a bylaw that specifically prohibited storing personal items on CP. I acknowledge the strata's submission that because Ms. Harvey and Mr. Edgar are so litigious, the strata decided that levying fines would be simpler than removing the items and facing more litigation. However, I find the strata was not entitled to levy fines in the absence of an established breach of an identified bylaw.

86. As the strata failed to fulfil the procedural requirements under SPA section 135 and did not prove Ms. Harvey or Mr. Edgar breached the bylaws, I dismiss the strata's claim for bylaw fines related to unauthorized storage on common property.

Barbeque storage

87. At a June 24, 2015 special general meeting (SGM), the owners approved a resolution to amend the bylaws by adding, among others, bylaw 3(3)(12). Bylaw 3(3)(12) says an owner must not place or store anything on a deck, balcony, or patio other than patio furniture, a reasonable number of plants in a planter, outside seasonal lights, and a trellis (with the strata's prior approval). These bylaw amendments were filed in the LTO on September 4, 2015.

88. The strata says that Ms. Harvey had a barbeque and propane tank on the CP patio outside SL13 after the strata filed bylaw 3(3)(12) in the LTO, which Ms. Harvey does not dispute. The strata says these items are not included in any of the permitted items on patios under bylaw 3(3)(12), and so it says Ms. Harvey's barbeque and propane tank breached that bylaw.

89. Ms. Harvey argues that the definition of patio furniture in the context of strata bylaws can include a barbeque and tank. She does not further explain the basis for her argument, but she referred to my previous decision in *Emmerton v. The Owners, Strata Plan BCS 3407*, 2022 BCCRT 872. In *Emmerton*, I found that a portable inflatable hot tub was properly considered "patio furniture" under the applicable bylaw.

90. I find that a hot tub is distinguishable from a barbeque and propane tank when considering whether those items are patio furniture. While barbeques are items commonly found on patios, I find that does not make them furniture. Previous CRT decisions have applied the definition of "furniture" from the Merriam-Webster online dictionary (www.merriam-webster.com), which includes equipment that is necessary, useful, or desirable, such as movable articles used in readying an area (such as a room or patio) for occupancy or use. See for example, *Trent v. The Owners, Strata Plan EPS3454,* 2020 BCCRT 358, *Noriega v. The Owners, Strata Plan BCS 2331*, 2022 BCCRT 1232, and my decisions in *Emmerton* and *The Owners, Strata Plan EPS7397 v. Teschner*, 2023 BCCRT 545.

91. However, I find that a barbeque is not equipment used to ready a patio for occupancy or use, in the same way that a table, chairs, and an umbrella might. Rather, I find a barbeque has its own specific purpose to function as a cooking appliance. Just as a stove or an oven would not be considered indoor furniture, I find that a barbeque and propane tank are not patio furniture. I find further support for this conclusion in the strata context by noting that the relevant bylaws in *Trent*, *Emmerton*, *Noreiga*, and *Teschner*, each specifically permitted barbeques on patios, as a separate item in addition to patio furniture.

92. For these reasons, I find that barbeques and propane tanks were not items permitted to be placed or stored on patios under bylaw 3(3)(12). As Ms. Harvey does not dispute that she had a barbeque and propane tank on the patio outside SL13, I find she breached the bylaws by doing so.

93. In a November 30, 2015 letter, the strata advised Ms. Harvey and Mr. Edgar of a complaint that they had a barbeque and propane tank stored on the CP patio outside SL13. The strata referred to bylaw 3(3)(12) and requested that they remove the barbeque and tank by December 20, 2015. The letter advised that they may respond to the complaint or request a hearing. I find this letter complied with SPA section 135(1).

94. Mr. Edgar emailed the strata on December 20, 2015, that he would not remove the barbeque until the complaint process was concluded, and that he would not be able to provide a complete written response to the complaint until January 15, 2016 due to scheduling. On January 13, 2016, Mr. Edgar emailed the strata that his response would be further delayed due to computer problems, though he did not provide a specific timeline for his anticipated response.

95. The strata council's January 22, 2016 meeting minutes stated that the strata decided to impose a fine against SL13 for the barbeque and propane tank stored on CP. However, the SL13 ledger shows the strata did not impose a fine at that time. The strata then sent Ms. Harvey an April 13, 2016 letter, which stated the strata had determined the barbeque and propane tank breached the bylaws, and so it had levied a $200 fine. It requested she remove the barbeque and propane tank immediately to avoid further fines. However, the SL13 ledger shows the strata did not impose any fines at that time either.

96. The strata council's May 12, 2016 meeting minutes recorded that as the barbeque and tank had not yet been removed, the council decided to fine Ms. Harvey $200 per week until she removed them. In a June 10, 2016 letter, the strata advised Ms. Harvey of its decision to impose a weekly fine.

97. The strata council's August 8, 2016 meeting minutes noted that Ms. Harvey had still not removed the barbeque and propane tank, and so it would send a fine letter. The strata's August 15, 2016 letter to Ms. Harvey stated that it had decided to levy a $200 fine every 7 days until the barbeque and propane tank were removed.

98. The strata lot account ledger for SL13 shows that on August 15, 2016, the strata imposed 18 $200 fines, one for each week from April 13, 2016 to August 10, 2016. The strata then continued to impose a $200 fine each week from August 17, 2016 to September 27, 2017.

99. It is not entirely clear why the strata did not impose any fines after its April 13, 2016 letter, and then retroactively imposed them on August 15, 2016. While the SPA and *Terry* do not address retroactive bylaw fines, previous non-binding CRT decisions have found that SPA section 135 does not permit retroactive fines because that is the same as a strata corporation charging fines without notifying an owner of the particulars of the complaint: see for example *Shen v. The Owners, Strata Plan LMS 970*, 2020 BCCRT 953. I agree with this reasoning.

100. Nevertheless, I find the facts in this case are distinguishable from previous CRT decisions about retroactive fines. Here, the strata had already provided Ms. Harvey with particulars of the complaint, given her an opportunity to respond, and notified her of its decision to impose the initial fine by April 13, 2016, the date of the first retroactive fine. The April 13, 2016 letter also indicated that the strata would impose additional fines for a continuing contravention if she did not remove the items. I find from Ms. Harvey's submissions that she received the April 13, 2016 letter. So, I find the concern about retroactive fines being imposed before the owner has had notice and an opportunity to respond does not apply to invalidate the backdated fines.

101. I also considered whether the strata advised Ms. Harvey of its January 22, 2016 decision to impose a fine as soon as feasible under to SPA section 135(2). As noted, the strata advised Ms. Harvey of its decision on April 13, 2016, almost 3 months later. In *The Owners, Strata Plan VR 2213 (Re)*, 2021 BCSC 905, the BCSC noted that the

meaning of the phrase “as soon as feasible”, which is used in several SPA provisions, will vary from one set of circumstances to the next.

102. Here, Mr. Edgar advised the strata that he would respond to the complaint in a substantive way, but then he delayed doing so through no fault of the strata and ultimately it appears he never did respond. Given the parties’ history, I find the strata reasonably allowed extra time before deciding to fine Ms. Harvey and notifying her of its decision. Further, I find the evidence shows the parties were corresponding about issues related to the barbeque bylaw during the relevant period. Specifically, in an August 5, 2016 letter to strata, Mr. Edgar referred to a February 29, 2016 email and letter he says he sent to the strata about “significant concerns about the errant execution of the 2015 SGM” where the owners passed bylaw 3(3)(12). I find the strata reasonably took time to consider Mr. Edgar’s position on the validity of the bylaw before deciding to impose fines. In the circumstances of this case, I am satisfied that the strata provided notice to Ms. Harvey of its decision to impose fines as soon as feasible. Overall, I find the strata complied with the SPA section 135 procedural requirements in imposing the fines for keeping a barbeque on the CP patio.

103. While Ms. Harvey admits to having the barbeque and propane tank on the patio initially, she submits that she removed those items from the patio on November 6, 2016 and put them in a storage shed. She provided photos taken of a computer showing a cursor hovering over photos of what she says are the barbeque and tank in question with the date and time the photos were taken. She says these photos show the barbeque and tank on the CP patio at 4:45 pm on November 6, 2016, and those same items removed and stored in the shed by 5:00 pm that day.

104. All the photos are in black and white, and I find it difficult to determine what exactly is depicted in them, particularly those that appear to be taken of the patio. However, even if I accept that they show Ms. Harvey moved the barbeque and propane tank into the shed on November 6, 2016, I find that does not mean that she kept those items stored in the shed for any length of time. There is no evidence before me that Ms. Harvey ever advised the strata that she had removed the barbeque and propane

tank from the patio. I would have expected her to do so immediately, given she was being fined $200 per week.

105. In an April 13, 2017 email to the strata requesting to reschedule a hearing about the barbeque fine issue (which does not appear to have ever occurred), Ms. Harvey does not say that the barbeque is no longer on the patio. I find this suggests it was still on the patio. I also find that Ms. Harvey and Mr. Edgar's position about the validity of bylaw 3(3)(12) and the nature of their previous disputes with the strata suggests it is unlikely they would have removed their barbeque from the patio, as they submit.

106. As noted, it is the strata's burden to prove a continuing bylaw contravention. Even though the patio is CP, it is effectively used and accessed only by Ms. Harvey and Mr. Edgar. Given the parties' contentious relationship, I find the strata likely did not want to regularly antagonize SL13's residents by inspecting the patio, and that the strata reasonably relied on Ms. Harvey to confirm that she had removed the barbeque. Given there is no evidence that Ms. Harvey provided any such confirmation, I accept the strata's evidence that it was not until September 27, 2017 that it was satisfied Ms. Harvey had removed the barbeque and propane tank.

107. For all these reasons, I find the strata has shown it validly imposed the continuing fines from April 16, 2016 to September 27, 2017, totalling $15,400.

108. In summary, I order Ms. Harvey to pay the strata $4,400 in bylaw fines for the unapproved north deck alterations, and $15,400 in bylaw fines for having a barbeque and propane tank on the patio outside SL13.

Is Ms. Harvey entitled to aggravated or punitive damages?

109. As noted, Ms. Harvey seeks a significant sum in aggravated and punitive damages against the strata. She calculates the claimed amount based on the following:

a. $10,000 for each of the 5 2009 fines ($50,000 total).

b. $20,000 for each of 5 fines (or weekly fines), including the north deck alterations fines, east wall alteration fine, bamboo fine, storing construction materials on CP fines, and the April 13, 2016 barbeque fine ($100,000 total).

c. $5,000 for each of the 7 fines imposed on April 30, 2012 ($35,000 total).

d. $228,000 for bringing legal proceedings for payment of the 17 fines (or weekly fines) after more than 11 years, calculated at $400 per week for 11 years.

110. Aggravated damages are compensatory damages that may be awarded when a respondent's conduct causes intangible injuries, such as mental distress and anxiety. They are considered a form of non-pecuniary damages. Aggravated damages only arise when a respondent's behaviour has been "particularly poor", and they are rarely awarded. See *Gibson v. F.K. Developments Ltd.*, 2017 BCSC 2153.

111. Unlike aggravated damages, punitive damages are not intended as compensation for an applicant's losses. Rather, they are intended to punish respondents for malicious and outrageous conduct. See *Milly v. Kapelus*, 2022 BCSC 1730.

112. Ms. Harvey did not say how much of her claims are allocated to aggravated damages and how much are allocated to punitive damages. In any event, Ms. Harvey says she is entitled to the claimed damages for 3 reasons: 1) the majority of the strata's claims in this dispute are out of time, 2) the fines were not justified, and 3) the strata levied the fines in bad faith and with an ulterior motive to force Ms. Harvey and Mr. Edgar to sell SL13 and move out. I consider each of these arguments below.

113. As a preliminary matter, the strata says that Ms. Harvey's counterclaim is time-barred because all of the fines were issued between 2009 and 2017, and she did not file her counterclaim until June 8, 2022. Ms. Harvey did not specifically respond to this issue.

114. As Ms. Harvey's counterclaims for aggravated and punitive damages are directly connected to each of the fines the strata imposed, I find that the former *Limitation Act* applies to the claims relating to fines imposed before June 1, 2013. Section 3(2)(a) of the former *Limitation Act* says that actions for damages in respect of injury to

person, whether based on contract, tort, or statutory duty, are subject to a 2-year limitation period. I find Ms. Harvey's counterclaims for damages arising from the pre-June 1, 2013 fines is subject to the 2-year limitation period, and so I find they are out of time.

115. As noted, the fines imposed after June 1, 2013 are subject to the current *Limitation Act*. I find that each of Ms. Harvey counterclaims for aggravated and punitive damages about those fines is a "claim" as defined in that Act, as they are claims to remedy injury, loss, or damage. Therefore, I find the counterclaims relating to fines imposed after June 1, 2013 are subject to a 2-year limitation period. As the most recent fine at issue was levied in 2017, I find that Ms. Harvey brought her counterclaim after the limitation period had expired.

116. I considered whether section 22(1) of the current *Limitation Act* applies to the counterclaims. Under section 22(1), if a legal proceeding has been started in relation to a "claim" within the basic limitation period, the respondent in that legal proceeding may bring a related counterclaim even after the limitation period has expired. However, as explained above, the strata's proceeding for payment of bylaw fines is not a "claim" as defined under the current *Limitation Act* and so the Act does not apply. Further, this CRT proceeding was not started within the basic limitation period set out in the Act because that limitation period does not apply. For these reasons, I find section 22(1) of the current *Limitation Act* does not apply to Ms. Harvey's counterclaims.

117. Given I have found all of Ms. Harvey's counterclaims are statute-barred by the applicable versions of the *Limitation Act*, I find that I must dismiss them.

118. Even if I had found Ms. Harvey brought her counterclaims on time, for the following reasons, I would not have awarded the claimed damages.

The strata's claims are out of time

119. Ms. Harvey's first argument is that she is entitled to damages because the strata's proceeding for payment of the fines was brought out of time. As set out above, I have

found that many of the strata's claims for payment of outstanding bylaw fines were brought out of time under the former *Limitation Act*. Although Ms. Harvey was successful on that point, I find the strata put forward reasonable legal arguments about why I should find the claims were brought in time. I find Ms. Harvey has not shown the strata intentionally included claims for bylaw fines that it knew were out of time. I also find the strata's evidence that it was occupied with numerous other proceedings involving Ms. Harvey is a reasonable explanation for why the strata did not start a proceeding for payment of the outstanding bylaw fines sooner. Overall, I find the fact that the strata was unsuccessful in some of its arguments on the limitation period is insufficient to warrant aggravated or punitive damages.

The fines were not justified and were levied in bad faith

120. It is not entirely clear how Ms. Harvey's argument that the fines were unjustified is different from her argument that the strata levied the fines in bad faith. To the extent that she argues the strata made an innocent mistake in deciding she had breached the bylaws and imposing fines against her, I find that is insufficient to entitle her to aggravated or punitive damages. I note that I find this was the case when the strata imposed the fines for storing construction materials on CP that I have found invalid above.

121. So, I turn to Ms. Harvey's allegation that the strata levied the fines against her in bad faith and for an improper purpose. In short, Ms. Harvey says the fines were part of a campaign the strata council engaged in to try to force her and Mr. Edgar to move away. Without using these specific words, I find Ms. Harvey is essentially claiming that the strata treated her significantly unfairly.

122. In *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173, the court confirmed that significantly unfair actions are those that are burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust, or inequitable. In applying this test, the owner's objectively reasonable expectations are relevant, but not determinative. The use of the word "significant" means that the impugned conduct must go beyond mere prejudice or trifling unfairness.

123. Ms. Harvey provided a "victim impact statement" in which she alleges a strata council member has harassed, threatened, and bullied Mr. Edgar over the years. As noted, Mr. Edgar is not a party to this dispute. To the extent that Ms. Harvey argues these allegations constitute significantly unfair conduct or warrant aggravated and punitive damages, I find she does not have standing to bring claims on Mr. Edgar's behalf, and so I decline to consider those allegations.

124. Ms. Harvey argues that the strata failed to provide her with notice of an August 19, 2011 special general meeting (SGM). However, I find the evidence shows that meeting was called solely to discuss ongoing litigation between Ms. Harvey and the strata. Section 169(1) of the SPA says owners do not have the right to attend portions of any SGM at which a strata's suit against that owner is dealt with or discussed. So, I find the strata did not treat Ms. Harvey unfairly in excluding her from that meeting. I also find there is no evidence the strata discussed imposing fines against Ms. Harvey at that SGM.

125. I find Ms. Harvey's allegations that the strata has broken laws and routinely violated the SPA, the bylaws, and the parties' alteration agreement are vague and unsupported by the evidence before me. I also find there is no evidence to support Ms. Harvey's submission that the strata treated SL13 differently because it is the only townhouse in the strata. In reviewing the various strata council meeting minutes and volumes of letters and emails between the parties before me, I find the strata simply enforced its bylaws when it received complaints that Ms. Harvey or Mr. Edgar had breached them, as the strata is obligated to do under section 26 of the SPA.

126. The BCSC has previously found in the 2009 injunction and 2013 decision reasons referenced above that Ms. Harvey and Mr. Edgar breached the strata's bylaws and court orders not to alter CP without the strata's authorization. I am bound by those court findings, though I note that I find the evidence before me supports them. I have also found the strata properly imposed fines for continuing contraventions related to the north deck alterations and storing a barbeque on common property. In short, I agree with the strata's submission that it is Ms. Harvey and Mr. Edgar that have no regard for the strata's bylaws and act as if the bylaws do not apply to them.

127. Overall, I find there is no evidence of any conduct on the strata's part in imposing bylaw fines against Ms. Harvey that would warrant aggravated or punitive damages. I dismiss Ms. Harvey's counterclaims.

CRT FEES, EXPENSES AND INTEREST

128. 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 find the strata was partially successful in its claims, and so it is entitled to reimbursement of half its CRT fees, which equals $112.50.

129. As Ms. Harvey was unsuccessful on her counterclaim, I find she is not entitled to reimbursement of CRT fees. Neither party claimed any dispute-related expenses.

130. The *Court Order Interest Act* (COIA) applies to the CRT. The strata is entitled to prejudgment interest on the fines from the date they were each levied to the date of this decision. I calculate this interest as $542.34 for the north deck alterations and $1,432.06 for the barbeque storage fines. So, together the strata is entitled to $1,974.40 in prejudgment interest.

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

ORDERS

132. I order that within 30 days of this decision, Ms. Harvey must pay the strata a total of $21,886.90, broken down as follows:

a. $4,400 in fines related to unauthorized alterations to the CP north deck,

b. $15,400 in fines related to having a barbeque and propane tank on a patio,

c. $1,974.40 in prejudgment interest under the COIA, and

d. $112.50 in CRT fees.

133. I dismiss the balance of the strata's claims, and Ms. Harvey's counterclaims.

134. The strata is also entitled to post-judgment interest under the COIA, as applicable.

135. 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.

Kristin Gardner, Tribunal Member