Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

DANIELA DUGARO

APPLICANT

A N D :

The Owners, Strata Plan LMS 233

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Eric Regehr, Vice Chair

INTRODUCTION

1. Daniela Dugaro owns a strata lot in the strata corporation, The Owners, Strata Plan LMS 233 (strata). The strata has 4 strata lots. Ms. Dugaro filed 2 Civil Resolution Tribunal (CRT) disputes against the strata. I am issuing one decision for both disputes

because they involve the same parties. Ms. Dugaro is self-represented. The strata is represented by a council member.

2. In ST-2022-007767, Ms. Dugaro says that the strata has mismanaged its finances in numerous ways. She asks for 5 orders, some of which include several components. The orders are generally aimed at correcting what Ms. Dugaro says were errors in how the strata budgeted, held general meetings, and managed its contingency reserve fund (CRF) and a special levy refund. I address the specific orders below.

3. In ST-2022-008088, Ms. Dugaro says that the strata inappropriately distributed the proceeds of a class action settlement to the owners in 2010. The case was about the strata's radiant heating system's pipes. Ms. Dugaro says this money should have remained with the strata and asks for an order that the strata recover $95,000 from the other owners at the time. She also wants orders aimed at remediating the radiant heating system's pipes, as she believes they must be fixed immediately. Again, I discuss the specific orders below.

4. The strata says that before Ms. Dugaro bought her strata lot in December 2020, it managed itself informally. The strata says that it has worked to bring itself into compliance with the *Strata Property Act* (SPA) since then, and believes it now is. It denies any mismanagement or SPA breaches related to its governance or finances.

5. The also strata says it was permitted to distribute the class action proceeds to the owners. The strata denies that there is any immediate need to replace or repair the pipes, but says they are part of each individual strata lot and therefore not the strata's responsibility. The strata asks me to dismiss all Ms. Dugaro's claims.

JURISDICTION AND PROCEDURE

6. These are the CRT's formal written reasons. The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It

must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.

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

8. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

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

10. I note that Ms. Dugaro makes several arguments about the strata's governance, financial management, and other matters that I find are unrelated to any of her requested orders. I find it unnecessary to address any of her evidence or submissions that are not specifically related to her requested orders.

11. The strata requests that I seal the CRT's dispute records because the owners' names and contact information are in the evidence. As set out in the CRT's Access to Information and Privacy Policy, the public may access certain parts of the parties' evidence and submissions, subject to the CRT's review. This is consistent with the open court principle, which applies to administrative tribunals, and values transparency. The CRT's rule 12.1(3) sets out the factors the CRT will consider when reviewing a public request for records, including any potential privacy concerns. Here, I see nothing sufficiently sensitive or private that could not be addressed under CRT

rule 12.1(3) in any future records request. I note that an order sealing a dispute file is an extraordinary remedy. I decline to order this dispute's records be sealed.

12. The strata also requested that I not use any other owner's name in this decision. The CRT does not typically name non-parties in a dispute unless they are involved in their professional capacity, like expert witnesses or lawyers. I see no reason to depart from this standard practice here, so have not named any of the owners other than Ms. Dugaro.

ISSUES

13. The issues in this dispute are:

    a. Do I have jurisdiction to order the strata to replenish the CRF based on the Information Certificate it provided to Ms. Dugaro?

    b. Did the strata contribute the correct amount to the CRF after the 2022 annual general meeting (AGM)?

    c. Must the strata reallocate $1,000 from the CRF to the operating fund?

    d. Did the strata incorrectly refund a special levy to the owners?

    e. Should I order the strata to complete a window repair project based on a resolution from the 2022 AGM?

    f. Does Ms. Dugaro need to contribute to legal fees related to the strata's demand for access to her limited common property (LCP) patio?

    g. Must the strata seek reimbursement of "petty cash" expenditures?

    h. Did Ms. Dugaro overpay strata fees?

    i. Did the strata inappropriately provide settlement funds to the owners?

    j. Should I order the strata to raise funds to repair the radiant heating system's pipes?

k. Should I order the strata to obtain a depreciation report or otherwise investigate the state of the radiant heating system?

BACKGROUND AND EVIDENCE

14. In a civil claim such as this, Ms. Dugaro as the applicant must prove her claims on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision. I note that Ms. Dugaro did not provide reply submissions despite having the opportunity to do so.

15. The strata was created in 1991. Ms. Dugaro bought SL3 on December 22, 2020. The strata has filed bylaw amendments about pets and rentals in the Land Title Office. Other than those issues, which are not relevant here, I find the strata's bylaws are the Standard Bylaws under the SPA. I discuss the bylaws where relevant below.

ANALYSIS

Do I have jurisdiction to order the strata to replenish the CRF based on the Information Certificate it provided to Ms. Dugaro?

16. Before Ms. Dugaro bought SL3, the strata provided an Information Certificate (also called a Form B) dated December 3, 2020. The Form B said that there would be $5,664 left in the CRF after paying a $5,192.53 invoice.

17. Contrary to what was in the Form B, it is undisputed that the strata did not have a CRF at the time, as the strata had not to that point managed its finances in accordance with the SPA. The strata says that before Ms. Dugaro moved in, it funded major projects through special levies that it managed through the strata's sole bank account, and that it had never put money into a CRF. It therefore would have been accurate to say that the strata expected there to be $5,664 remaining in its operating fund after paying an outstanding invoice. It also would have been accurate to say that the balance of the strata's CRF was zero.

18. One of the orders Ms. Dugaro asks for is that the strata replenish the CRF by raising $5,664 from the owners to match the Form B. Section 59(6) of the SPA says that an

owner may apply to the BC Supreme Court for an order to give effect to an inaccurate Form B. The CRT has consistently held that it has no jurisdiction (or legal authority) to make orders covered by section 59(6). See, for example, my *Sasiadek v. The Owners, Strata Plan BCS2427*, 2022 BCCRT 149. Section 10 of the CRT says that the CRT must refuse to resolve a claim that is outside its jurisdiction. I find that Ms. Dugaro's claim about replenishing the CRF to reflect the inaccurate Form B is outside the CRT's jurisdiction, and I refuse to resolve it.

Did the strata contribute the correct amount to the CRF after the 2022 AGM?

19. In January 2022, the strata began to organize its first AGM. While the strata had no CRF, as of December 31, 2021, it had just under $16,000 in its bank account. I find this money represented several years of accumulated budget surpluses. I will refer to it as the operating surplus. On January 24, 2022, Ms. Dugaro circulated an agenda, which included proposed resolutions and a proposed budget. She proposed that the strata fund the CRF with $10,000 from its operating surplus. She also proposed that the strata contribute a further $2,400 to the CRF as part of its annual budget.

20. The 2022 AGM was held on February 17, 2022. The other owners rejected Ms. Dugaro's proposals about funding the CRF, but the parties dispute what the owners approved at the 2022 AGM.

21. On March 1, 2022, Ms. Dugaro emailed the other owners what she says are accurate minutes and the approved budget. In Ms. Dugaro's minutes, the owners approved moving $2,500 from the operating surplus to the CRF and contributing a further $1,200 as part of the annual budget. Also on March 1, the strata's secretary emailed their own draft minutes to the owners. This version of the minutes included a budget with a $1,000 contribution to the CRF, not $1,200.

22. Ms. Dugaro asks for an order that the CRT "reallocate $1,200 to CRF as voted". She argues that her version of the minutes is accurate, and that the secretary unilaterally changed the budget contrary to the owners' votes. The strata denies this. I find that the evidence supports the strata's account. It is undisputed that at a July 15, 2022 special general meeting (SGM), the owners voted to approve the secretary's version

of the minutes. I find this indicates that the secretary's minutes were consistent with what the majority of the owners remembered from the 2022 AGM. I find it more likely than not that the owners approved a $1,000 budget contribution to the CRF.

23. Ms. Dugaro also argues that the CRF contribution needed to be $1,200 to balance the budget. She argues that the strata's budgeted expenditures must equal its annual strata fees. I find that there is nothing in the SPA or SPR that prevents a strata corporation from approving a budget with a planned surplus. The owners were free to approve the budget as set out in the secretary's minutes. See *Townsend et al v. The Owners, Strata Plan NW2545*, 2018 BCCRT 209, which I agree with on that point.

24. I dismiss this claim.

Must the strata reallocate $1,000 from the CRF to the operating fund?

25. The next issue relates to a project to repair rotting siding and trim on common property. It is undisputed that at the 2022 AGM, the owners unanimously approved spending $1,000 from its operating surplus to complete this project.

26. Despite this resolution, the strata did not fund the project from the operating surplus. The strata says that in the summer of 2022, it learned about section 92 of the SPA. This provision restricts spending from the strata's operating fund to expenses that occur either once a year or more often than once a year. Because repairing siding and trim is not an annual expense, the strata believed that using operating surplus for the project was improper. The strata also realized that $1,000 would be insufficient to fund the project.

27. To correct this perceived error, the strata held an SGM on August 7, 2022. The strata proposed 2 related resolutions, one to take $1,000 from the CRF instead of the operating fund surplus and another to raise an additional $2,500 by special levy. Both resolutions passed with 3 owners in favour and Ms. Dugaro opposed.

28. Ms. Dugaro argues that the strata was entitled to use $1,000 from the operating surplus for the repair project. I agree. This is because section 105(2) of the SPA

allows the strata to use an operating surplus for essentially any purpose, as long as it is approved by a ¾ resolution. The resolution approving the initial $1,000 expenditure was unanimous. Section 51 of the SPA provides for a process to reconsider resolutions only in certain limited circumstances that do not apply here. I find that the strata should have acted on the initial 2022 AGM resolution and paid the $1,000 out of its operating fund surplus, not the CRF.

29. However, this does not mean that a remedy is warranted. In *Mitchell v. The Owners, Strata Plan KAS 1202*, 2015 BCSC 2153, the court said that because strata councils are comprised of lay volunteers, "mistakes will be made and missteps taken" and so "some latitude is justified when scrutinizing their conduct". While this does not make SPA compliance optional, it does mean that strata councils should be granted some grace when it makes technical errors with little to no consequence. I find this is especially true when a small, self-managed strata corporation is going through the challenging process of bringing itself into compliance with the SPA after years of non-compliance.

30. I recognize that the CRT has often ordered strata corporations to reallocate money between funds to correct breaches of the SPA's financial provisions. In the context here, I find that taking $1,000 from the CRF instead of the operating surplus was not a significant enough error to warrant the order Ms. Dugaro seeks. I rely, in part, on the strata's 2023 budget, which aggressively increased the CRF with an annual contribution of $7,000. Also, the error has had no real practical effects, such as delaying the project or increasing its cost.

31. I also note that it is unclear from the evidence how much remains of the strata's operating surplus from the 2021 fiscal year. There is a financial statement showing $8,482.62 remaining in the operating fund at the end of the 2022 fiscal year. There is a June 2023 bank statement that shows the operating account had just over $10,000 in it, but there is no way of telling how much remains from the operating surplus given it is halfway through a fiscal year. I therefore find that ordering the strata to repay the CRF from the past operating surplus would be impractical and potentially

administratively burdensome because the owners may need to impose a special levy to make up the deficit.

32. Finally, strata's approach enjoyed the support of 3 out of 4 owners, who I find were acting in good faith to attempt to fix what they believed was a governance error. I find that such efforts should not be discouraged even if this particular decision was misguided. For these reasons, I dismiss this claim.

Did the strata incorrectly refund a special levy?

33. According to the minutes of a July 5, 2022 SGM, Ms. Dugaro "raised questions about a special levy from March 2020". Ms. Dugaro says this relates to the outstanding $5,664 "CRF" amount in the Form B. She says that the strata refunded $3,392.53 of this to the other owners, which she only found out about by reviewing bank statements.

34. The strata says that the $3,392.53 was leftover from a special levy. It essentially admits that it did not initially handle the issue properly at first. It had assumed that since Ms. Dugaro did not contribute to the special levy, she was not entitled to a refund. It only refunded Ms. Dugaro her portion of the unused special levy funds after receiving legal advice. However, Ms. Dugaro undisputedly received her portion of the refund with a July 28, 2022 cheque, which she cashed on August 1. While Ms. Dugaro "questions" whether the amount was correct, she made no submissions about this.

35. Ms. Dugaro requests an order that the special levy be "reallocated" because it was "incorrectly refunded". However, section 108(5) of the SPA requires excess funds from a special levy to be refunded to the owners as long as the refund is at least $100 for at least one owner. In other words, the strata had no choice but to refund the leftover special levy funds. While the strata's delay in providing Ms. Dugaro with her share of the special levy refund is unfortunate, there is no longer anything to remedy. I dismiss this claim.

Should I order the strata to complete a window repair project based on a resolution from the 2022 AGM?

36. Although Ms. Dugaro's requested order about the window repair project is somewhat unclear, I infer she wants me to order the strata to proceed with window repairs using $3,000 from the operating surplus. This is based on a unanimous resolution from the 2022 AGM. Like the $1,000 siding repair project discussed above, the strata incorrectly determined that it was not allowed to spend the operating surplus in this way. However, instead of voting to use CRF funds as it did for the siding project, the strata passed a ¾ vote resolution raising a $3,500 special levy to fund the project at an August 7, 2022 SGM. Ms. Dugaro voted against it.

37. For the same reasons as outlined above, I find that the strata should have acted on the initial resolution. I find that a remedy is not warranted for the same reasons. Her remedy also ignores the fact that the estimated cost of the project has gone up, so reverting to the 2022 AGM resolution would leave a $500 shortfall. I therefore decline to order the strata to revert to the 2022 AGM resolution.

38. As for an order that the window project proceed, the strata says it did not start the project promptly because Ms. Dugaro refused to pay the special levy. The strata says she only paid in March 2023, and it needed to get new quotes. The strata says that once it has those quotes, it will hold another SGM to vote on the project, presumably because the estimated costs may increase. I find the strata's reason for failing to start the project was reasonable. I also find that there would be no purpose in ordering the strata to repair the windows since the strata has already committed to doing so. I dismiss Mrs. Dugaro's claim.

39. Ms. Dugaro also asks for a more general order to "repeal and amend special levies" to the resolutions from the 2022 AGM. She does not make any specific arguments about any special levies other than the siding one or explain this vague claim further. I dismiss it on that basis.

Does Ms. Dugaro need to contribute to legal fees related to the strata's demand for access to her LCP patio?

40. Ms. Dugaro asks for an order that she not be required to contribute to legal fees related to the strata's attempt to access her LCP deck. On September 15, 2022, the strata emailed a notice to all owners that it required access to all LCP decks to inspect and repair them. The notice said the work would begin on September 19. This followed an August 28 SGM where the owners passed a resolution authorizing the repairs and raising $4,000 via special levy.

41. Ms. Dugaro emailed the strata on August 18, 2022, asserting that it was contrary to the SPA to raise money by special levy between AGMs. I find this is incorrect. Section 108(2) of the SPA specifically provides that owners may authorize special levies at SGMs.

42. The same day, the strata's lawyer wrote Ms. Dugaro a letter reiterating the strata's right to access the LCP deck. The lawyer noted section 77 of the SPA, which requires owners to allow the strata reasonable access to LCP so that the strata can perform its duties. The lawyer also noted Standard Bylaw 7, which allows the strata to access LCP on 48 hours' written notice to inspect, repair, or maintain common property.

43. Ms. Dugaro emailed the other owners the next day. She asserted that the strata needed an engineering report, deck expert opinion, or depreciation report, and 3 quotes before starting any work. There is nothing in the SPA or the Standard Bylaws to support Ms. Dugaro's assertions. I find that the strata was entitled to proceed with the deck project based on the approved resolution.

44. Finally, Ms. Dugaro asserts that the strata did not provide adequate notice, without explaining how so. Based on section 77 of the SPA or Standard Bylaw 7, I find the strata's 4 days' notice was adequate. I find that the strata was entitled to hire a lawyer to attempt to persuade Ms. Dugaro to fulfill her obligations as an owner.

45. Section 171(6) of the SPA says that where a strata corporation sues an owner, that owner does not have to contribute to the expenses associated with the suit, including legal fees. I find this provision does not extend to a demand letter like the one the

strata's lawyer sent. Given the above, I find that the lawyer's letter was a valid use of strata funds, and Ms. Dugaro was required to contribute to its cost as a strata expense. I dismiss this claim.

Must the strata seek reimbursement of "petty cash" expenditures?

46. It is undisputed that the strata sometimes reimburses owners for strata expenses they have incurred, which Mrs. Dugaro refers to as "petty cash" expenditures. She argues that the strata did not receive adequate documentation to substantiate $117.28 in these expenditures to justify reimbursing an owner. She argues that the strata should seek reimbursement of this amount to "maintain financial integrity".

47. I note that Ms. Dugaro's Dispute Notice says that there were $102.28 in such expenditures. The evidence indicates that $117.28 is the correct amount, but nothing ultimately turns on this given my conclusion.

48. The first expense was for 4 small garden folding fences. The strata admits it no longer has the original fence receipt, but says this is because it returned 2 of the fences. The strata provided a Canadian Tire receipt showing a fence return for $24.62. This works out to $12.31 per fence, so I find the 4 fences the strata kept cost $49.24. The strata also provided a part of the owner's bank record showing a Canadian Tire charge of $73.86, which is the cost of 6 fences.

49. The second expense was for a City of Vancouver permit. The strata again provided a redacted bank record showing the $68.04 payment to the City of Vancouver and an email between that owner and city staff.

50. The SPA and the Standard Bylaws do not set out any specific requirements for when a strata corporation wants to reimburse an owner for a strata expense. In the absence of any clear guidance, I find that the strata must simply act reasonably and fairly to all owners. In the circumstances, and given the low value at issue, I find that the strata had sufficient documentation about these expenses to justify reimbursing the owners. While a receipt may have been ideal, I find it would have been unfair to those owners

to deny reimbursement given the other records clearly substantiated the expense claims. I dismiss Ms. Dugaro's claim.

Did Ms. Dugaro overpay strata fees?

51. Ms. Dugaro claims that she overpaid strata fees by $56.94. She says in general terms that the strata's calculation of some unspecified special levies and strata fees was not consistent with the strata plan but does not explain how she calculated a $56.94 overpayment. In the absence of a clear explanation of why she claims $56.94, I dismiss this claim.

Did the strata improperly provide settlement funds to the owners?

52. This claim relates to a class action lawsuit related to the pipes in the building's in-floor radiant heating system. The New Jersey District Court approved a final settlement in 2004, which included claims by property owners in Canada. The strata received several payments as part of that settlement, the last of which it deposited in July 2010. Ms. Dugaro says the payments totaled just under $95,000, which the strata does not dispute although it says it lacks records of the settlement because of how much time has passed. Given my conclusion, nothing turns on the exact amount.

53. The strata undisputedly distributed the settlement funds to the owners at the time by unit entitlement. The strata says this decision was unanimous. While there is no clear evidence of unanimity, the limited emails in evidence from the time do not suggest any disagreement, so I accept the strata's evidence on this point. It is undisputed that neither the strata nor any individual owner has replaced the pipes that were the subject of the class action suit.

54. Ms. Dugaro argues that the strata should not have distributed the settlement funds to the owners. She argues that they were strata funds that the strata needed to use to replace the pipes or save in its CRF for when that work was necessary. She asks for an order that the strata seek a return of the settlement funds from the owners who received them (only 2 of whom remain owners) and to use those funds to remediate the radiant system. The strata provides numerous arguments in response, including

that Ms. Dugaro brought it far too late given the 2-year limitation period in the *Limitation Act*.

55. I find it unnecessary to address most of the parties' arguments because I find that the strata was entitled to distribute the funds as it did. The SPA contains no provisions about how a strata must deal with the proceeds of a class action settlement. For example, there is no requirement that the strata use the funds for certain repairs or save the money by placing it in the CRF for future repairs. This is different from insurance proceeds received with respect to damaged property, where there are specific requirements in the SPA.

56. Rather, in the absence of anything specific, I find that the settlement funds simply led to a sizeable budget surplus in each of the fiscal years the strata received them. As mentioned above, section 105(1) of the SPA allows the strata to do essentially whatever it wants with surplus funds as long as it passes a ¾ vote resolution at a general meeting. I find this includes dividing the surplus between the owners. Here, there was undisputedly no ¾ vote resolution passed at a general meeting, because the strata at the time did not hold general meetings. Still, as noted, I accept the strata's evidence that the owners at the time unanimously agreed by email to distribute the proceeds by unit entitlement. Section 44(1) of the SPA says that a strata corporation does not need to hold an SGM to consider a resolution if all owners waive the holding of the meeting and consent to the resolution. While the strata did not intentionally follow this formal process or strictly comply with the SPA, I find the outcome was functionally the same. The owners unanimously agreed to distribute the money a certain way, in writing, without a general meeting.

57. Ms. Dugaro also argues that the strata had an obligation to disclose the settlement and the underlying pipe issue to her before she bought SL3. I find that the strata's disclosure obligations during a sale are limited to those set out in section 59 of the SPA. There is nothing in that provision requiring the strata to disclose latent defects or past settlements. To the extent that any obligation exists to disclose those matters, it is between the buyer and the seller.

58. In short, it was up to the owners at the time to decide how to deal with the settlement funds. I find that it did nothing wrong at the time and nothing wrong during Ms. Dugaro's purchase of SL3. I dismiss Ms. Dugaro's claim about the settlement funds.

Should I order the strata to raise funds to repair the radiant heating system's pipes?

59. Ms. Dugaro argues that the class action lawsuit indicates that there is a significant risk of a serious water leak. The pipes are original and so are now around 32 years old. She says the strata has a history of leaks. She asks for an order that the strata raise money to remediate the pipes.

60. The parties disagree about who is responsible for the radiant heating systems. Ms. Dugaro says that the hot water pipes are common property because they are connected to the strata's overall water system. The strata says they are each owner's responsibility because they operate independently, with their own boilers located within each strata lot. The strata provided an email from a plumber and gas bill to support these allegations.

61. Under the Standard Bylaws, the strata is responsible for repairing and maintaining common property and owners are responsible for repairing and maintaining strata lots, with certain exceptions that do not apply to the heating systems. I therefore find that responsibility for the radiant heating systems depends on whether they are common property or part of each strata lot.

62. Section (1) of the SPA defines common property. I find that the relevant part of that definition is that pipes and other facilities for the passage or provision of heating systems are common property if they are located within a floor between a strata lot and another strata lot or between a strata lot and common property.

63. Strata lots 1 and 2 are single-story, ground-floor strata lots. Their only floors are between it and the ground underneath the building, which I find is common property. So, I find that the radiant heating pipes in strata lots 1 and 2 are common property.

64. Strata lots 3 and 4 are each 2 stories. The first floor of strata lot 3 is over strata lot 1 and the first floor of strata lot 4 is over strata lot 2. So, I find that the radiant heating pipes on those first floors are common property.

65. The second-floor pipes in strata lots 3 and 4 are more complicated. Most of their second floors are directly above their first floors. So, the radiant heat pipes in those parts of the floor are entirely within their strata lots and are not common property under the definition in section 1(1) of the SPA. However, part of their second floors are above LCP decks. So, the pipes in those parts of the floor are common property.

66. In *Spiteri v. The Owners, Strata Plan K644*, 2022 BCCRT 1228, a tribunal member found that a window that straddled the boundary between common property and a strata lot could not be both common property and part of the strata lot. She found that would be "unreasonable and illogical" and concluded that the entire window was common property. I applied that reasoning in *Tang v. The Owners, Strata Plan VR656*, 2023 BCCRT 699, to insulation within a roof cavity. There, I noted that the SPA does not contemplate shared responsibility for repair and maintenance.

67. I adopt that reasoning here. I find that it would be similarly illogical and practically unworkable if some of the piping on the second floors of strata lots 3 and 4 were the strata's responsibility and some of the piping was the owners' responsibility, given the nature of radiant heating. I find that the radiant heat piping on the second floors of strata lots 3 and 4 is all common property. That means that all the radiant heat piping in the floors of all 4 strata lots is common property. It is the strata's responsibility to repair and maintain.

68. Are any repairs currently needed? I agree with Ms. Dugaro that the class action settlement is cause for concern. It has been almost 20 years since that lawsuit was started. However, I find this alone is insufficient to prove that the strata's pipes are at imminent risk of leaking such that an order to conduct repairs immediately is warranted. There is no evidence of any issues to date with the pipes. I acknowledge Ms. Dugaro's evidence that there have been numerous water leaks over the years,

but I find that none of them relate to the pipes at issue failing. I dismiss Ms. Dugaro's claim for an order that the strata raise funds to repair the pipes.

Should I order the strata to obtain a depreciation report or otherwise investigate the state of the radiant heating system?

69. Ms. Dugaro also wants an order that the strata obtain a depreciation report or water leak investigation report to plan pipe repairs.

70. I dismiss Ms. Dugaro's claim that the strata obtain a depreciation report. As the strata points out, section 6.1(8) of the SPR exempts strata corporations with fewer than 5 strata lots from the requirement to obtain periodic depreciation reports. While it may be prudent to do so given the strata's age and the lawsuite, it is ultimately up to the owners to decide whether to obtain a depreciation report.

71. However, I agree with Ms. Dugaro that a targeted investigation is necessary for the strata to meet its repair and maintenance obligations in relation to the radiant heating system. It is well-established that a strata corporation must act reasonably in fulfilling its repair and maintenance obligations. That includes a duty to investigate the need for future repairs. Whether a strata corporation must reasonably investigate a potential common property issue depends, in part, on the likelihood of the need for repair, the cost of the investigation, and the gravity of harm to be avoided. See *Guenther v. Owners, Strata Plan KAS431*, 2011 BCSC 119, at paragraph 40.

72. As mentioned above, the strata has allowed at least 15 years to pass after the class action should have raised questioned about the pipes' longevity. Even without that context, the strata acknowledges in submissions that the pipes are at or near the end of their service life. Based on that, I find they likely need repair or replacement relatively soon. There is no evidence of how much an investigation might cost, but the gravity of harm to be avoided is potentially considerable. I order the strata to obtain a written report from a qualified person about the state of the radiant heat system's piping, which must include recommendations about when the pipes should be replaced. I order the strata to hire a qualified person to perform this investigation within 30 days of this decision.

TRIBUNAL FEES AND EXPENSES

73. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Ms. Dugaro raised many issues and was only partially successful on one of them. I find that she was substantially unsuccessful, and I dismiss her claim for CRT fees and dispute-related expenses.

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

DECISION AND ORDERS

75. I refuse to resolve Ms. Dugaro's claim about the inaccurate Form B under section 10 of the CRTA.

76. I order the strata to obtain a written report from a qualified person about the state of the radiant heat system's piping, which must include recommendations about when the pipes should be replaced. I order the strata to hire a qualified person to perform this investigation within 30 days of this decision.

77. I dismiss Ms. Dugaro's remaining claims in both disputes.

78. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Once filed, a CRT order has the same force and effect as an order of the court.

Eric Regehr, Vice Chair