Civil Resolution Tribunal

Date Issued: May 29, 2024

Files: ST-2023-000514 and
ST-CC-2023-010495

Type: Strata

Civil Resolution Tribunal

Indexed as: *Applewood Holdings Inc. v. The Owners, Strata Plan EPS104*, 2024 BCCRT 493

B E T W E E N :

APPLEWOOD HOLDINGS INC.

**APPLICANT**

A N D :

The Owners, Strata Plan EPS104

**RESPONDENT**

A N D :

APPLEWOOD HOLDINGS INC.

**RESPONDENT BY COUNTERCLAIM**

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**REASONS FOR DECISION**

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Tribunal Member: Megan Stewart

## INTRODUCTION

1. These two linked disputes are about short-term accommodations (STAs) in a strata corporation, and alleged bylaw and rule breaches. They consist of a claim and a counterclaim between the same parties, so I have issued one decision for both disputes.

2. Applewood Holdings Inc. owns two strata lots (SL 11 and SL 48) in the strata corporation, The Owners, Strata Plan EPS104 (strata). Applewood says the strata improperly fined it for using its strata lots as STAs, even though the strata does not have a bylaw prohibiting STAs. Applewood relies on the district's zoning bylaw that permits STAs "where supported by the strata". So, in ST-2023-000514, Applewood asks for orders that:
    a. STAs are not prohibited by the strata's bylaws.
    b. Applewood is entitled to operate STAs, subject to its compliance with the district's bylaws.
    c. The lack of a strata bylaw prohibiting STAs, and the recent defeat of bylaw proposals to prohibit or restrict STAs, constitute "support by the strata" for STAs.
    d. The strata reverse fines issued against Applewood for operating SL 11 and SL 48 as STAs.

3. Applewood also says a recently ratified parking rule conflicts with the strata's parking bylaw. It asks for an order declaring the parking rule unenforceable. It also asks for an order that the strata council and unnamed "third parties" stop interfering with Applewood and its guests' parking rights. Finally, Applewood asks that I reverse fines the strata issued against it for parking infractions.

4. In ST-2023-010495, the strata seeks payment of $2,800 for bylaw and rule fines it says Applewood owes but has refused to pay. The strata also says Applewood has allowed tradespeople and its strata lot occupants to drive in the parkade with studded tires, causing additional wear and tear to the parkade's ground membrane. It claims

$28,000 as a "penalty" for this additional wear and tear, or alternatively as disgorgement of profits Applewood made as a result of using its strata lots as STAs.

5. Sonya Mollema, a lawyer, represents Applewood. Thomas Boyd, a lawyer, represents the strata.

## JURISDICTION AND PROCEDURE

6. These are the Civil Resolution Tribunal's (CRT) formal written reasons. The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.

7. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find I am properly able to assess and weigh the substantial documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find an oral hearing is not necessary in the interests of justice and fairness.

8. CRTA section 42 says the CRT may accept as evidence information it considers relevant, necessary, and appropriate, even where the information would not be admissible in court.

9. 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.

## ISSUES

10. The issues in this dispute are:

a. Do the strata's bylaws prohibit STAs? If not, what are the appropriate remedies?

b. Does the strata's parking rule conflict with its parking bylaw? If so, what are the appropriate remedies?

c. Is the strata entitled to $2,800 or any other amount for bylaw fines it levied against Applewood?

d. Is the strata entitled to $28,000 as a "penalty" for additional wear and tear to its parkade membrane, or as disgorgement of Applewood's STA profits?

## EVIDENCE AND ANALYSIS

11. As the applicant in this civil proceeding, Applewood must prove its claims on a balance of probabilities (meaning more likely than not). The strata must prove its counterclaim to the same standard. I have read all the parties' submissions and evidence, but refer only to information I find necessary to explain my decision. In coming to my decision, I have considered the information submitted by the parties collectively in both disputes.

12. The strata was created in 2009 under the *Strata Property Act* (SPA). In August 2018, the strata repealed and replaced its bylaws. There have been several bylaw amendments since then, but none are relevant to this dispute.

13. The bylaws relevant to this dispute are bylaw 3 concerning property use, bylaw 10 concerning parking, and bylaw 26 concerning maximum fines. More on these below.

### *Background*

14. Effective January 23, 2023, the district changed its zoning bylaw. Before the change, the strata was zoned for medium to high-density multi-family developments. That zoning undisputedly did not permit STAs. However, the change meant the strata was rezoned to support mixed-use developments that serve primarily as multi-family residential sites, but may include second homes as seasonal accommodations, as

well as STAs. As noted above, under the zoning bylaw, STAs must be supported by the strata, and the owners are required to have business licences.

15. Over the past several years, the strata has discussed STAs at annual general meetings (AGMs) and special general meetings (SGMs). Strata lot owners both in favour of and opposed to STAs hold strong views about whether they are or should be allowed in the strata. At a March 28, 2023 SGM and at the June 10, 2023 AGM, proposed bylaws to restrict or prohibit STAs were defeated, and it is undisputed that at this time, the strata does not have a bylaw explicitly restricting or prohibiting STAs.

## *Do the strata's bylaws prohibit STAs?*

16. Bylaw 3 is a "use" bylaw. The strata's position is that bylaw 3.1 effectively prohibits STAs. The evidence shows the strata has warned or fined Applewood for using SL 11 and SL 48 as STAs in contravention of bylaw 3.1(d) (illegal use), 3.1(f) (single-family dwelling), and 3.1(g) (secondary business purposes). But, Applewood says neither bylaw 3.1, nor any other strata bylaw, prohibits STAs.

*Bylaw 3.1(d) – illegal use*

17. Bylaw 3.1(d) prohibits using a strata lot illegally. I find operating an STA in contravention of the district's zoning bylaw is an illegal use of a strata lot. It is undisputed Applewood does not hold business licences to operate SL 11 and SL 48 as STAs. So, I find Applewood is illegally using its strata lots. However, Applewood says this is because the strata refused to sign the strata consent form Applewood requires to apply for a business licence, which is significantly unfair.

18. The CRT has authority to make orders remedying a strata corporation's significantly unfair actions or decisions. Significantly unfair actions are those that are burdensome, harsh, wrongful, lacking in probity and fair dealing, done in bad faith, unjust, or inequitable. An owner's objectively reasonable expectations are a relevant factor, but are not determinative.[1]

[1] See *Dollan v. The Owners, Strata Plan 1589*, 2012 BCCA 44, *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342, and *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173.

19. I find Applewood's expectation is that in the absence of a strata bylaw expressly prohibiting STAs, the strata must sign the district's consent form so that Applewood can obtain a business license to operate SL 11 and SL 48 as STAs. In a recent non-binding but persuasive CRT decision, a tribunal member found simply because bylaws were silent on regulating STAs, that did not mean the strata had to approve and facilitate them.[2] She found it was unreasonable for the applicant to expect the strata to sign the consent form without considering the potential effects of that decision. I agree with this reasoning, particularly given the polarizing impact STAs have had on the strata.

20. The strata considered the potential effect of STAs on its insurance. It submitted opinion evidence dated January 10, 2024, from an insurance provider indicating the strata's current premium would likely increase between $80,000 and $100,000 to cover STAs. I exercise my authority to waive the expert evidence requirements of CRT rule 8.3. Applewood does not challenge this evidence, and I find the letter-writer's title of Associate Advisor implies a sufficient degree of knowledge, training, and experience to provide an expert opinion. So, I accept this evidence as expert evidence. I find the potential increase to the strata's insurance premium was a valid consideration in deciding whether to sign Applewood's consent form.

21. There is no evidence the strata previously signed consent forms for other owners to obtain business licences to operate STAs in their strata lots, or that it gave Applewood permission to operate STAs out of SL 11 and SL 48. However, Applewood argues the strata's past consent to STAs, including before the zoning bylaw change when STAs were illegal, led it to reasonably expect the strata would sign a consent form. The strata denies any history of consenting to STAs. The undisputed evidence is that before October 2022, there were no complaints about STAs. Given that bylaw enforcement is a complaint-driven process, it follows there was nothing for the strata to enforce, which I find is different to consenting to STAs. More recently, the strata has received complaints about STAs. Under SPA section 26, the strata council must exercise the strata's powers and duties, including enforcement of bylaws and rules,

[2] *Mudrie v. The Owners, Strata Plan KAS 1993*, 2023 BCCRT 18.

and consequently, deciding whether to support STAs. I find it was valid for the strata council to consider that at both the March 28, 2023 SGM and the June 10, 2023 AGM, votes for STA restriction bylaws obtained strong majorities, falling just short of the required ¾ support to amend the bylaws. I find this shows the strata was following the majority's will by not supporting STAs, and not signing Applewood's consent form.

22. Overall, I find bylaw 3.1(d) prohibits strata lot owners from using their strata lots as STAs where they have contravened the district's zoning bylaw because this is an illegal use. I find Applewood has done that here, by operating SL 11 and SL 48 as STAs without a business licence and the strata's support. For the reasons above, I find the strata did not act significantly unfairly by refusing to support Applewood's STA use and signing a consent form to allow Applewood to apply for a business licence.

*Bylaw 3.1(f) – single-family dwelling*

23. Bylaw 3.1(f) prohibits a strata lot's primary use other than as a single-family dwelling.

24. Other CRT decisions have considered similar terms in use bylaws. In *Honeybourne*, a tribunal member found a bylaw for "single family residential use only" meant an owner could not use their strata lot as an Airbnb accommodation because that was a commercial use.[3] Similarly, *O'Reilly* involved a bylaw requiring a strata lot be used exclusively as a private residential property for a single-family residential dwelling.[4] The tribunal member found using the strata lot as a bed and breakfast was an unpermitted commercial or professional use. In contrast, in *Bradley*, a tribunal member found a bylaw that said each strata lot had to be occupied only as a "single family residence" did not preclude STAs.[5] In making that finding, the tribunal member considered other strata bylaws in force, a previous bylaw prohibiting commercial use that had been removed, and the developer's disclosure statements. In particular, the tribunal member found a filed disclosure statement amendment showed the developer clearly intended the strata lots be used, in part, for STAs.

[3] *Honeybourne v. The Owners, Strata Plan VR 270*, 2023 BCCRT 514.
[4] *O'Reilly v. The Owners, Strata Plan BCS 3866*, 2023 BCCRT 251.
[5] *Bradley v. The Owners, Strata Plan KAS 2503*, 2021 BCCRT 91.

25. Here, I find bylaw 3.1(f) allows strata lots to be used other than as single-family dwellings, when these other uses are not the primary use. That is, a strata lot's primary use must be for a single-family dwelling. However, it is undisputed Applewood uses its strata lots primarily as STAs. So, the question is whether using a strata lot primarily as an STA is consistent with using it primarily as a single-family dwelling. For the following reasons, I find it is not.

26. Whereas single-family dwellings typically serve to provide non-transient, stable, and secure homes for their residents, primary-use STAs are occupied for relatively short periods, and generally have a high turnover, leading to less accountability between neighbours, and, potentially, less security. While bylaw 3.1(f) does not use the term "residential use", I find here, it is implied in a "single-family dwelling." The Oxford English Dictionary online defines dwelling as "a place of residence; a dwelling-place, habitation, house".[6] I find a residential use very different to the commercial nature of strata lots used primarily as STAs.[7] Also, reading the bylaws as a whole, I find there is no other wording to suggest a single-family dwelling includes a purely commercial use, such as a primary-use STA.

27. Unlike in *Bradley*, there are no disclosure statements in evidence here that show the developer intended strata lots to be used as primary-use STAs. Applewood says before purchasing SL 11 and SL 48, its owner was told he could rent out the strata lots in July and August. Applewood relies on a multiple listing service listing for SL 48 in support of its position, as well as the seller's property disclosure statement. I find neither of these bind the strata, but even if they did, they do not make any reference to using or being able to use SL 48 as a primary-use STA. Suggesting it could be rented for a few weeks in the summer is very different to saying it could be used primarily as an STA. Similarly, while the property disclosure statement says there are no rental restrictions, I find this is not the same as saying there are no STA restrictions, given the particular meaning attributed to rentals in the strata context.

[6] Oxford English Dictionary (oed.com)
[7] See, for example, *HighStreet Accommodations Ltd. v. The Owners, Strata Plan BCS2478,* 2019 BCCA 64, and *Nanaimo (Regional District) v. Saccomani,* 2018 BCSC 752.

28. To summarize, I find bylaw 3.1(f) prohibits the primary use of strata lots as STAs, including Applewood's primary use of SL 11 and SL 48 as STAs. To be clear, my finding is limited to circumstances where a strata lot's **primary use** is as an STA, and does not include any other type of STA-use, such as offering occasional licences to occupy in addition to using the strata lot primarily as a single-family dwelling.

*Bylaw 3.1(g) – secondary business purposes*

29. Bylaw 3.1(g) says strata lots may not be used for secondary business purposes that may be illegal, contrary to laws, regulations, or bylaws, or are "injurious" to the strata's or to the owners' reputation. Also, they may not be used for secondary business purposes that increase foot or vehicle traffic to the common property. I find this bylaw does not apply to Applewood's situation, as Applewood is undisputedly using SL 11 and SL 48 primarily as STAs, and not for a secondary business purpose. Even if Applewood were using its strata lots for a secondary business purpose, for the same reasons as above, I would find failing to comply with the zoning bylaw is illegal. However, without definitive evidence that STAs increase foot or vehicle traffic to the common property, I would find this bylaw does not prohibit STAs.

30. Given my conclusions above, I dismiss Applewood's request for an order that STAs are not prohibited by the strata's bylaws, as I find it is too general. As I have explained, using a strata lot primarily as an STA is prohibited by the bylaws, but occasional or secondary STA use may be allowed under bylaw 3.1(f) and 3.1(g). I also dismiss Applewood's request for an order that the strata supports STAs, as I have found it does not. Finally, I dismiss Applewood's request for an order that it is entitled to operate STAs subject to compliance with the district's bylaws. This is because while Applewood must not operate its strata lots illegally, meaning it must comply with the district's bylaws, this is not, on its own, sufficient. Applewood must also comply with the rest of strata's bylaw provisions governing strata lot use, including where it seeks to use its strata lots as STAs.

31. I address Applewood's claim that I reverse bylaw fines for operating SL 11 and SL 48 as STAs in the strata's counterclaim below.

### *Does the strata's parking rule conflict with its parking bylaw?*

32. At the strata's October 4, 2022 AGM, the following parking rule was ratified:

33. Only owners are permitted to access P2 or must accompany any guest (staying in owner's unit at the same time with the owner) when entering and exiting P2. The owner must be present for the duration of their guest utilizing their P2 parking spot. Please note P2 is restricted to short term rental access (short term rentals are defined as any duration less than 12 months)

34. Applewood says this rule conflicts with the strata's parking bylaws 10.12 and 10.13. SPA section 125(5) says that where a rule conflicts with a bylaw, the bylaw prevails. Bylaw 10.13 allows a visitor's vehicle to be parked in an owner's assigned parking space. Bylaw 10.12(b) defines "visitors" as "individuals visiting with owners or renters for the sole purpose of short-term visits (… defined as seven (7) consecutive days or less)."

35. Specifically, Applewood says that read together, bylaws 10.12 and 10.13 permit short-term visitors of 7 days or fewer, including people occupying STAs, to park in an owner's assigned parking space in compliance with the bylaws and rules. It says the restrictions in the parking rule conflict with these bylaws, making the rule unenforceable.

36. I disagree. I find the definition of "visitor" in bylaw 10.12 does not include a person occupying an STA. Applewood appears to have interpreted "for the sole purpose of short-term visits" as modifying "renters", meaning visitors can be STA occupants. Instead, I find that "for the sole purpose of short-term visits" modifies "individuals", meaning visitors are people visiting with an owner or a renter, for 7 days or fewer. I find if the strata intended the meaning Applewood suggests, it would have inserted a comma after "owners", or worded it differently altogether.

37. So, I find the parking rule, which restricts STA occupants from accessing P2, does not conflict with the strata's parking bylaws.

38. Applewood also says that because the strata's parking stalls are limited common property (LCP), they are part of the owners' strata lots, and so are not governed by strata rules. Again, I disagree. LCP is a form of common property, which is owned by all of a strata corporation's owners in proportion to their unit entitlement. Under SPA section 125(1), a strata corporation may make rules governing the use, safety, and condition of the common property and common assets. I am not aware of, and Applewood has not relied on, any caselaw that restricts a strata corporation's right to make rules about LCP parking stalls because the owners have excusive use.

39. The strata says owners store boats and other valuables on P2, and the parking rule was introduced in response to an increase in theft and break-ins. Applewood does not dispute this. I find the parking rule governs the use, safety, and condition of the strata's common property parkade, including its LCP parking stalls, which could be damaged because of theft or break-ins.

40. Given the above, I dismiss Applewood's requested orders declaring the parking rule unenforceable, and that council and other unnamed "third parties" stop interfering with Applewood and its renters' parking rights. I address Applewood's request that the strata reverse parking fines issued against it in the strata's counterclaim below.

### *Is the strata entitled to $2,800 or any other amount for fines it levied against Applewood?*

41. In ST-CC-2023-010495, the strata says Applewood owes $2,800 in unpaid bylaw and rule fines. Applewood says it did not breach any bylaws or rules, and in any case, the strata did not comply with the SPA before issuing the fines.

42. SPA section 135 sets out the procedural requirements a strata corporation must follow before enforcing its bylaws, including by imposing a fine. Section 135(1) says a strata corporation cannot fine an owner unless it has first received a complaint, given the owner written details of the complaint, and given the owner a reasonable opportunity to respond to the complaint, including by holding a hearing if the owner requests one. The SPA does not specify the form in which notice of the complaint must be given. However, in *Terry,* the court found notice that a strata is considering

imposing a fine must include an identified bylaw or rule and sufficient detail of the nature of the complaint.[8] Section 135(2) requires the strata corporation to notify the owner in writing of its decision to impose a fine, as soon as feasible. These procedural requirements are strict, with no leeway. If the strata corporation fails to comply with them, the bylaw fines can be found to be invalid.[9]

43. I pause here to note the strata initially issued Applewood with $500 fines for operating STAs. It later reduced the fines to $200, recognizing that bylaw 26.1(c) only allows a maximum fine of $500 for contravention of a rental restriction bylaw, which the strata does not have.

44. The evidence includes ledgers for SL 11 and SL 48 showing the unpaid fines at issue. I find for the following fines, there is no evidence the strata sent Applewood a warning or a decision letter:

    a. July 25, 2022 “shoes in hallway” $200, September 1, 2022 “marina walkway” $50, March 2, 2023 “illegally parked” $50, April 17, 2023 “boot release” $50, May 3, 2023 “noise” $200, August 16, 2023 “short term rental” $500 (all for SL 11), and

    b. July 12, 2022 “fluid leak” $200, and August 11, 2022 “parking” $50 (both for SL 48).

45. Based on a lack of evidence, I find the strata has not proven compliance with SPA section 135 for the alleged bylaw or rule contraventions described above. I dismiss this part of the strata’s claim.

46. Next, the strata fined Applewood for using SL 11 as an STA, by letter dated January 18, 2023. Applewood’s owner says they requested a hearing, but did not receive one. There is no evidence showing otherwise, so I find it unproven the strata met the SPA section 135 requirements for this fine, and I dismiss this part of the strata’s claim.

[8] *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449, at paragraph 28.
[9] See *Terry*, and *The Owners, Strata Plan NW 307 v. Desaulniers,* 2019 BCCA 343.

47. On November 25, 2022, the strata advised Applewood it was fining it for operating SL 48 as an STA under bylaw 3.1(d), (f) and (g), further to warning letters of November 9 and 14. The November 9 letter gave Applewood until November 23 to request a hearing, which it did not do. However, the November 14 letter gave Applewood until November 28 to request a hearing, and it did so. Despite this, on November 23, the strata decided to fine Applewood in connection with these alleged bylaw contraventions. As the strata's decision pre-dates the date by which Applewood could request a hearing in the November 14 letter, I find the strata failed to strictly comply with the SPA section 135 requirement to allow Applewood a reasonable opportunity to respond to the complaint. I find this is the case even though Applewood ultimately had a hearing on December 19, because there is no evidence the strata made a new decision and communicated it to Applewood after that. I dismiss this part of the strata's claim.

48. On May 3, 2023, the strata advised Applewood it had been fined $200 for SL 48's occupant having studs on their vehicle under bylaw 10.15, which says:

> Vehicle operation and parking is at the sole risk of the vehicle owner, and the Strata Corporation makes no representation with respect to safety of the vehicle, passengers or contents. The Strata Corporation shall not be liable for any theft or other injury, loss or damage related to the operation or parking of a vehicle within the bounds of the strata plan.

49. It is unclear to me how Applewood breached bylaw 10.15 as alleged, since that bylaw is about shielding the strata from liability for theft, injury, loss, or damage arising from use of a vehicle on the strata's property. Applewood did not attempt to hold the strata liable for any of these things. So, I find the strata did not provide sufficient detail of the complaint in relation to the alleged breach of bylaw 10.15, or misidentified the bylaw it sought to rely on. Whatever the case, I find the strata failed to meet the procedural requirements of section 135, and I dismiss this part of its claim.

50. I turn to fines the strata notified Applewood of on August 16, 2023. The first concerns towels SL 11 occupants hung on the balcony railing, contrary to bylaw 3.2(k), which

prohibits hanging laundry and washing, including beach towels, on the railing. I find the strata's July 10 warning letter and the August 16 decision letter met the SPA section 135 requirements, including by providing a photo of the hanging towels that Applewood does not challenge. I further find this is sufficient evidence of the contravention itself. So, I order Applewood to pay the $200 the strata claims for that fine.

51. The next four fines the strata notified Applewood of on August 16, 2023, relate to using SL 48 as an STA. The strata imposed those fines against Applewood on the basis that it had contravened bylaw 3.1(g) regarding using a strata lot for secondary business purposes. I find the strata complied with the SPA section 135 procedural requirements for each of these alleged contraventions, including by giving Applewood sufficient details of each complaint. However, as set out above, Applewood used SL 48 primarily as an STA, not for secondary business purposes. So, I find there was no basis for the strata to fine Applewood under bylaw 3.1(g) for STA use. I note that in other letters warning and fining Applewood for using its strata lots as STAs, the strata included allegations under bylaws 3.1(d) and (f), as well as under (g). I find the strata was aware these other provisions might apply, and could have included them here. However, it did not. So, I dismiss this part of the strata's claim.

52. Finally, the strata fined Applewood $200 on August 16, 2023, in connection with a door-slamming complaint. The strata did so under bylaws 3.1 (a), (b), and (c), which govern nuisance, unreasonable noise, and unreasonable interference with other people's use and enjoyment. I find the strata complied with the SPA section 135 procedural requirements, and there is no evidence Applewood responded or requested a hearing. So, I find it was reasonable for the strata to treat the allegation of repeated door-slamming as fact without further investigation, to conclude it breached the cited bylaws, and to fine Applewood as it did. I order Applewood to pay the $200 the strata claims for that fine.

53. In total, I order Applewood to pay the strata $400 for unpaid bylaw fines.

### *Is the strata entitled to a $28,000 "penalty" for additional wear and tear to its parkade membrane?*

54. The strata says Applewood has allowed tradespeople and its strata lot occupants to drive in its parkade with studded tires and damage the parkade membrane contrary to its bylaws. The strata relies on bylaw 3.2(a) in support of this part of its claim, which prohibits causing damage, other than reasonable wear and tear, to the common property, common assets, or those parts of a strata lot the strata is responsible to repair and maintain. The strata claims $28,000 as a "penalty" to offset damage the strata says this activity has caused.

55. I find that as framed, the strata seeks payment for the cost of remedying a bylaw contravention under SPA section 133. Again, the strata must comply with the SPA section 135 procedural requirements before requiring payment for such a cost. I find the strata has not done so here, as there is no evidence the strata provided Applewood with the necessary notice of the alleged bylaw contravention. Even if the strata had followed the section 135 requirements, I would have found it unproven Applewood's tradespeople and strata lot occupants caused the alleged damage, based on the evidence submitted.

56. In the alternative, the strata appears to claim the $28,000 as disgorgement of Applewood's STA profits. Disgorgement is an equitable remedy that involves giving up profits made as a result of illegal or wrongful conduct. In *Atlantic Lottery Corp. Inc.*, the Supreme Court of Canada found disgorgement refers to awards calculated exclusively by reference to a party's wrongful gain.[10] Here, there is no evidence the $28,000 bears any relation to Applewood's STA profits, so I find disgorgement does not apply.

57. I dismiss the strata's claim for a $28,000 "penalty" for additional wear and tear damage to its parkade membrane.

[10] *Atlantic Lottery Corp. Inc. v. Babstock,* 2020 SCC 19, at paragraph 23.

## CRT FEES AND EXPENSES

58. 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. As both parties were generally unsuccessful in their own claims, I decline to order any reimbursement of CRT fees. Neither party requested dispute-related expenses.

59. In the Dispute Notice for ST-CC-2023-010495, the strata waives interest, so I do not order any.

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

## ORDERS

61. I order that within 30 days of the date of this decision, Applewood must pay the strata $400 for bylaw fines.

62. The strata is entitled to post-judgment interest as applicable.

63. I dismiss Applewood's claims, the balance of the strata's counterclaim for unpaid bylaw fines, and the strata's counterclaim for a $28,000 penalty.

64. This is a validated decision and order. 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.

Megan Stewart, Tribunal Member