

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Ranftl v. The Owners, Strata Plan VR 672 and Wennerstrom,***
2007 BCSC 482

Date: 20070410
Docket: L042930
Registry: Vancouver

07 102 033

Between:

Linda Margaret Ranftl

Petitioner

And:

The Owners, Strata Plan VR 672

Respondent

And:

Nils and Helena Wennerstrom

Respondents

Before: The Honourable Mr. Justice McEwan

Reasons for Judgment

Counsel for the Petitioner

M. Fischer

Counsel for the Administrator

G.S. Hamilton

Counsel for the Respondents, Nils and
Helena Wennerstrom

P.A. Williams

Counsel for the remaining owners

J. Bleay

Date and Place of Trial/Hearing:

October 27 and December 14, 2006
Vancouver, B.C.

I

[1] On December 19, 2005, I vested in Garth Cambrey, the Administrator of Strata Plan VR 672, all the powers and duties of the Strata Council (see ***Ranftl v. Strata Plan VR 672***, [2005] B.C.J. No. 672 (QL), 2005 BCSC 1760).

[2] This was an expansion of powers that had been conferred on the Administrator pursuant to a Consent Order entered before Brown J., on June 2, 2005. The five owners of this six-unit condominium had become incapable of managing the property owing to a series of paralysing disagreements about the condition of the building and what should be done about it.

[3] When I made the order, I directed that a review of the situation take place as soon after June 30, 2006 as the parties could set it down.

[4] In order to address the condition of the building, the Administrator engaged a consulting firm, RDH Building Engineering Ltd. ("RDH"), to prepare a building envelope condition assessment report. This was delivered on December 6, 2005. A second opinion from a firm called JRS Engineering Ltd. ("JRS") was delivered on June 30, 2006. It confirmed the RDH opinion.

[5] As a result of the recommendations of the engineers, the Administrator seeks a series of orders, that:

1. the Owners, Strata Plan VR 672 repair its buildings envelope in accordance with the recommendations in the building envelope condition assessment report prepared by RDH Building Engineering Ltd. ("RDH") dated December 6, 2005, or as may be modified after consultation with the Registered Owners and RDH,

- including repairs to areas of strata lots damaged by water ingress, mold investigation and remediation (the "Repairs");
2. the Administrator impose a special levy against the registered owners of Strata Plan VR672 (the "Registered Owners") without the requirement of a 3/4 vote of the Registered Owners in the sum of \$960,000.00 to fund the Repairs to be paid in accordance with unit entitlement as follows:
 - (i) the sum of \$99,000.00 payable immediately; and
 - (ii) the sum of \$861,000.00 payable on or before March 1, 2007, or such other date this Honourable Court deems reasonable;
 3. without limiting the generality of the powers conferred on the Administrator by the Order of McEwan J. pronounced December 19, 2006, the Administrator shall:
 - (i) retain RDH to provide engineering services, including preparation of design drawings and specifications, preparation of a tender package, quality assurance and the coordination of professionals to implement the Repairs;
 - (ii) approve the drawings and specifications prepared by RDH with reasonable consultation with the Registered Owners;
 - (iii) approve the tender package prepared by RDH with reasonable consultation with the Registered Owners;
 - (iv) enter into a construction contract for the Repairs following the tender process; and
 - (v) act as the Owners' Representative in relation to the construction contract;
 4. the Administrator imposed a special levy against the Registered Owners, without the requirement of a 3/4 vote resolution, in the sum of \$22,500.00 to be paid immediately in accordance with unit entitlement for the purpose of paying the expenses of the Administrator as of June 30, 2006;
 5. the Administrator impose a special levy against the Registered Owners, without the requirement of a 3/4 vote resolution, in the sum of \$21,000.00 to be paid immediately in accordance with unit entitlement for the purpose of paying future fees and disbursements of the Administrator, subject to the accounts of the

Administrator being approved by the Registrar, unless otherwise approved by a unanimous vote of the Registered Owners;

...

8. the Administrator report to the Court as soon as possible after May 31, 2007;

[6] The Petitioner, Linda Margaret Ranftl, generally supports the Administrator's application except that she seeks a specific direction respecting interior repairs to her own strata lot (Unit #4), and seeks to be excluded from any levy for a share of the fees of Owen Bird, solicitors for the Strata Corporation.

[7] The Respondents, Nils and Helena Wennerstrom, while generally not opposed to the relief sought by the Administrator, seek as well as to be exempted from payment of a share of the legal fees of Owen Bird.

[8] The Respondents John Morrison, Timothy Tam and Serge Collen (the remaining owners of Strata Plan VR 672) take the position that the building envelope is not in need of the repairs recommended by RDH, that a special levy of \$960,000 is not necessary, and that it is not necessary to further retain RDH. They consent to the levies payable to Owen Bird, as passed by the registrar.

II

[9] The Administrator has filed a report to the court dated August 4, 2006. This report attaches reports by the two engineering firms outlining what, in their opinion, is necessary in order to remedy the problems with the building. The Administrator also outlines a series of steps he took to notify the owners and to obtain some consensus as to what needed to be done. These culminated in a meeting July 25,

2006, which the Administrator summarizes in his report. He outlines the remaining issues in the following terms:

At the Information Meeting held July 25, 2006 all Owners were present in person and had the opportunity to ask questions of Joel Schwartz, the author of the JRS Report. As noted previously, JRS Engineering Limited agreed with the recommendations of RDH Engineering Ltd. The matters of demolition and reconstruction as well as phasing the repairs were also discussed. Mr. Schwartz was of the opinion that the costs of demolishing and reconstructing the building would exceed the cost of repairing the building and that phasing the repairs was simply a matter of spreading the financial impact over a period of time and not a technical matter. In Mr. Swartz's opinion, the cost of repairing the building in phases would be more expensive than a single-phase repair as there would be redundant costs involved in a phased repair.

It is evident to me that there are three outstanding issues of the Strata Corporation that are contentious among the Owners which I categorize generally as building repair; Strata Corporation finances and Strata Corporation governance.

With respect to the building repair, I believe the second opinion of JRS Engineering Ltd. confirms the opinions and recommendations contained in the RDH Report in that a full building remediation is required. The targeted repair approach previously taken by the Strata Corporation is not adequate to address necessary building repairs. The roof membrane located on the main roof and balconies is at the end of its service life and is in need of replacement. The face-sealed stucco walls located on the North and South elevations of the building leak and should be replaced. If it is possible to reduce repair costs by replacing balcony divider walls with glass and aluminum rather than retain the existing wood frame and wood siding, replace skylights with an alternate type of skylight, and replace select windows, the Strata Corporation should pursue this. Phasing the repair could also be considered but will very likely result in additional costs overall. The building needs to be repaired but the Owners cannot agree on the method or extent of repair and will require professional advice from a qualified engineer familiar with building envelope repairs.

I have received confirmation from the Homeowner Protection Office that this building, because of its age, does not require warranty nor does it meet the requirements for the Reconstruction Loan Program. As a result, the Owners may choose not to proceed with a warranty on the building repairs in an effort to save costs and all Owners will be responsible for raising funds from their own sources to cover their

proportionate costs of the repair. It may be possible for the Strata Corporation to borrow funds on behalf of some or all Owners through loan arrangements, however I have not pursued this possibility.

It is my recommendation that RDH Building Engineering Ltd. be retained by the Strata Corporation to proceed with design and specifications for a full building remediation based on consultation with the Owners with respect to design changes and possible cost saving and phasing measures.

With respect to interior repairs and particularly those repairs to suite #205, it is my recommendation that any mold concerns must be alleviated and should be investigated and eliminated as soon as possible in conjunction with the building repair.

[10] The Administrator also addresses two further issues of corporate governance.

The first is a question of accounting:

With respect to the Strata Corporation finances, I am not certain that an audit of the Strata Corporation books of account would be possible or productive. I believe R. Jang will have received most information required to produce a reasonably accurate financial statement for the Strata Corporation, provided the remaining information requested of Mr. Morrison and Dr. Tam is received.

It is therefore my recommendation that the Court order Mr. Morrison and Dr. Tam to produce all Strata Corporation documents and funds in their possession or control and that the Administrator have the continued authority to retain the services of an accountant or other professional to assist in recovering documents, if required, or to produce a reasonably accurate set of financial statements for the Strata Corporation should the documents required by R. Jang not be available.

I believe the matter of legal fees owed to Owen Bird is a matter requiring the assistance of the Courts. While I have not received confirmation from Mr. Morrison or Dr. Tam (Mr. Collen has submitted cancelled cheques to R. Jang) as to the monies raised for payment of legal fees, I believe the amounts that were suggested were raised and the apportionment of those amounts as submitted by Mr. Morrison is accurate. However, there are no records of the Strata Corporation to indicate that these fees are an expense of the Strata Corporation other than the initial \$10,000.00 raised in February 2005. Mrs. Ranftl is exempt from paying these legal fees as she is the Petitioner in this action pursuant to Section 167 of the *Strata Property Act*. It is

questionable whether the Wennerstroms are exempt from paying these legal fees as they have opposed the actions of the Strata Corporation since May 2005 and no documented evidence exists that the Strata Corporation passes the requisite $\frac{3}{4}$ Vote Resolutions required to raise Special Levies for payment of legal fees. In fact, it appears that the Wennerstroms were never asked to contribute after they advised they would not contribute further. If it is found that the Wennerstroms are not required to pay their proportionate share of the legal fees or that the Strata Corporation is not the client of Owen Bird the legal fees remaining outstanding to Owen Bird would be paid by the three individuals who provided instructions to Owen Bird. Namely, Mr. Morrison, Dr. Tam and Mr. Collen.

[11] He also addressed the matter of legal fees for Owen Bird:

There has not been cooperation of Owners, even in the simplest of matters. This has proved to be the case with various time delays in providing information, conducting General Meetings and the defeat of most of the $\frac{3}{4}$ Vote Resolution proposed. It is my opinion that with the current ownership, the Strata Corporation will not be able to govern its own affairs with respect to agreement on design or agreement on method of repair and will not be able to raise funds necessary to complete the needed repairs. As a result, it is my recommendation that an Administrator is required to continue with this Strata Corporation until the building envelope repair process is underway and the Strata Corporation finances have been adequately reported.

I recommend that the court impose a Special Levy in the aggregate amount of \$960,000.00 (\$160,000.00 per Strata Lot) for the purpose of funding interior repairs to individual Strata Lots that may be deemed necessary to RDH Building Engineering Ltd. and to fund a complete building envelope repair as contemplated by the RDH Report on the understanding that the Owners have input into design and cost decisions but that the Administrator has the authority to instruct RDH on behalf of the Strata Corporation without the need to convene a General Meeting of the Strata Corporation. I further recommend that this Special Levy be payable in two instalments; being \$99,000 (\$16,500 per Strata Lot) immediately to cover the anticipated costs of design and specification preparation (including legal review of contract and tender documents) plus mold investigation and repair; and \$861,000 (\$143,500 per Strata Lot) on or before March 1, 2007 to cover the anticipated cost of repair to the building envelope. If cost savings can be realized through a consultation process with the Owners and RDH Building Engineering Ltd., the Administrator should be given the authority to reduce the second instalment to an amount adequate to cover the estimated repair costs of RDH Building

Engineering Ltd. I believe that with some costs savings realized this total amount will be adequate to cover both interior and exterior repair costs.

I further recommend that the court impose a Special Levy in the aggregate amount of \$22,500.00 (\$3,750.00 per Strata Lot) payable immediately for the purpose of paying outstanding fees and disbursements of the Administrator subject to all accounts of the Administrator being passed by the Registrar.

I further recommend that the Court impose a Special Levy in the aggregate amount of \$21,000 (\$3,500.00 per Strata Lot) payable immediately for the purpose of paying future fees and disbursements of the Administrator subject to all accounts of the Administrator being passed by the Registrar or alternatively, unanimous approval of the Owners.

[12] He makes the following recommendation respecting a special levy and his fees:

Our recommendations are based on a combination of factors including a review of design drawings and other available documentation, information collected at 1024 West 7th Avenue through visual observations and exploratory openings, as well as experience and knowledge gained from investigations of many other buildings with similar assemblies and details.

The existing walls are generally not meeting performance requirements and deterioration is present in numerous locations. Rehabilitation of south elevation exterior stucco walls and north elevation cedar clad walls is recommended which shall include improved interface detailing and additional overhang protection. However, due to the stepped architecture of this building, the wall areas to be rehabilitated are relatively small compared to most buildings of this size.

The windows have reached the end of their expected service life and provide poor thermal protection, as they do not contain a thermal break. Additionally, many of the sealed glazing units are failing. The windows in the wall areas that are to be rehabilitated should be replaced at that time. However, consideration should be given to replacing all of the windows and sliding glass doors.

The roof, deck, and balcony membranes have reached the end of their service lives. Generally the interface detailing is poor and water ingress is occurring at some interface locations. With the exception of

those membranes that were replaced 9 years ago, renewals are recommended for the deck, balcony and roof membranes.

The finishes on the access walkways on the south elevation are deteriorating. At this time there is no deterioration associated with the walkways. Renewals of the walkway surfaces are recommended as part of maintenance requirements. The recessed wall at the walkways may be retained but partial removal may be required to facilitate membrane tie-in detailing.

Water ingress and condensation related damages are occurring below some of the T-bar skylights. Typically this type of skylight assembly is not recommended for use over living space and is more aptly used as a canopy to provide deflection. The existing T-bar skylight assemblies should be replaced with new higher performing pressure plate and cap skylight assemblies with additional overhang protection.

There is no evidence of moisture related problems at grade that relate to the integrity of the parkade membrane. Localized repairs should be budgeted for and performed as required.

[13] Serge Collen, one of the owners, deposed to the heavy burden the Administrator's recommendation would put on his finances and expressed dismay at the amount the engineers, engaged by the Administrator, have recommended be spent. He is of the view that the Strata Corporation should attempt to fix any pressing immediate problems and budget for future expenditures over a number of years.

[14] John Morrison, another of the owners, acknowledges that some repairs are needed but takes the view that the RDH and JRS recommendations exceed what is required. He, Mr. Collen and Timothy Tan (the owner of 2 units in the strata) engaged another consultant, MHP Building Consultants Ltd., to provide a report. This report takes a different view than those commissioned by the Administrator.

III

[15] The reports must be compared. The RHC report includes a number of photographs taken on site. Five aspects of the building were inspected: walls, windows and doors, roofs, balconies and decks and “at grade assemblies” (sidewalks and paving). Deficiencies were found throughout and were summarized as follows:

	RECOMMENDATION
1	Evaluate the ventilation and heating systems after implementation of building envelope rehabilitation, and if necessary develop a plan for modifications to accommodate changes in building envelope performance resulting from envelope rehabilitation.
2	Rehabilitate existing, south elevation, stucco-clad wall assembly as rainscreen assembly with improved cap flashing and walkway interface detailing. Retain innermost stucco clad walls within the suite access walkways.
3	Rehabilitate existing stucco-clad wall assembly at upper most roof decks as rainscreen assembly with improved interface detailing. Provide overhang protection at roof deck access swing doors.
4	Rehabilitate existing wood framed, stucco-clad wall portion at the east elevation as a rainscreen stucco assembly with improved interface detailing.
5	Review proposed rehabilitation documentation and interface detailing be performed to ensure a sound water management strategy is being implemented and interface detailing is in conformance with industry standards prior to the continuation of the work.
6	Perform localized painting and/or repairs at stained and blistered locations on the east, west and lower north elevation to promote exterior water shedding continuity in conjunction with adjacent renewals and rehabilitation recommendations.
7	Rehabilitate existing cedar clad partition walls with rainscreen assembly with improved interface detailing and sloped cap flashings.
8	Rehabilitate existing uppermost north facing cedar clad wall assemblies as a rainscreen assembly with improved interface detailing.
9	Consider replacing the remaining north facing cedar-clad walls with a rainscreen assembly in conjunction with adjoining partition wall and window recommendations.

[16] These result in the following estimates:

Table 3.2 Order of Magnitude Rehabilitation Costs

ITEM	
Order of Magnitude Construction Cost	\$700,000
Consultant Cost (allowance 15%)	\$105,000
Owner Contingency (allowance 10%)	\$70,000
Landscaping, security, legal (owners discretion)	\$10,000
Permit fees	\$0
Warranty Costs	\$9,000
Sub Total	\$900,000
GST	\$65,000
Total Project Costs	\$960,000

[17] JRS reviewed the RHD report and conducted site inspection. JRS reached the following conclusions:

1. The recommendations in the RDH report are generally justified given the findings during their investigation. Although additional investigation would be useful in further determining extent of damage, it is JRS's opinion that any additional information would not considerably alter the recommendations.

The overall recommendation should be considered a significant targeted repair that encompasses the majority of the building envelope components. The report addresses damaged areas that if not repaired in the short term will result in further structural damage. These areas would require to be repaired regardless. The report also addressed items that have, or are reaching the effective end of their service lives and require replacement now, or in the near future. It should be noted that if renewal items are not addressed, they will become repair items as they age further and can no longer perform their intended functions. These items are identified as "Renewal" items in the above table.

2. From a technical perspective, only items that are causing damage to the structure, or pose a life safety are required to be repaired immediately. The majority of the recommendations in the RDH Report fall into this category. These items are identified as "Repair" items in the above table.

3. From a non-technical perspective, the Strata should consider performing renewals items concurrently with the repair items for the following reasons:

1. This is the most cost effective solution. Infrastructure and overhead costs can be a large (up to 30%) cost of doing the work. By doing the repairs and renewals concurrently some of these infrastructure and overhead costs can be shared.
2. The work to perform renewals at the same time as performing the repairs is less than if the repairs are conducted and the renewals are conducted at a latter date. For example, it would be much easier to install new windows while the cladding is being replaced than to install new windows at a latter date into new wall claddings.
3. By delaying renewals the Strata will most likely pay more because of the localized high inflation rate for construction costs. Construction prices have been going up at a rate of approximately 1-2% per month (12%-24%) per year. At this rate it is difficult to justify delaying repairs or renewals.
4. The Strata should consider the aesthetics of the building once the repairs have been done. By omitting renewal elements, the building will not look as "new" as if the renewal items are completed at the same time.
5. The Strata should consider saleability. A fully rehabilitated unit can garnish considerably more on the market than a unit that has not been fully re-habilitated. It has been our experience that in the False Creek neighbourhood the increased saleability can greatly offset the repair and renewals costs.
6. By conducting repairs and renewals concurrently, the Strata can also implement more architectural changes to modernize the aesthetics of the building. This again can assist in saleability.

[18] The MHP report was prepared on the assumption that the observations and measurements taken and relied upon in support of the RDH and JRS conclusions were accurate. There was no on-site inspection. It concluded:

In my view, most moisture meter readings and conditions photographed at exploratory openings were not indicative of profound rain entry and conflict with recommendations for extensive remedial measures. The recommendations outlining comprehensive remedial measures appear to have been based on the perception that original walls and windows were inherently deficient and that all walls and windows were substantially exposed to wind-driven rain, requiring reconstruction as rain screen assemblies. I do not agree with these perceptions. The same researchers that originally developed rain screen enclosure technology suggested that since controlling rain entry by eliminating all holes at the outside "has been tried since time immemorial" there must have been "some degree of success". In my opinion, it is not reasonable to assume that cladding drainage provisions are the only, or even important in obtaining control over rain entry. The existence of rain screen-type walls with drainage provisions at wall cladding does not imply that any other wall type is necessarily deficient in comparison.

In my view, findings of the conditions assessment and reports of water entry by occupants suggest that limited and maintenance-related measures are needed to renew original waterproofing at the building, including attention to deck-demising walls, and to address possible rain entry at wall and skylight assemblies with east exposure on the roof of the building. In my opinion, little, if anything, more than routine maintenance addressing the leaking assemblies above the roof of the building, maintenance of original roof and deck waterproofing and of wood cladding and wood trim, where necessary, would suffice. This would also serve two purposes: 1) provide an opportunity to examine and investigate building envelope performance by exposing a much wider sampling of conditions than provided the basis for the report, and 2) address existing water entry by undertaking the necessary measures. The information gathered would determine whether wider measures are needed. I do not believe that the report indicates a need for the comprehensive building envelope remedial measures that are recommended by the report. In my view, building maintenance, which can be undertaken without a building permit and by a number of competent contactors, appears to be all that is necessary.

[19] This creates a somewhat difficult situation. The Administrator has taken advice from an engineering firm, confirmed by a second opinion. The question is as to what inferences can be drawn from the investigations RDH has undertaken. Ordinarily, this would not be a difficult call. RDH has conducted a thorough

inspection and indicated its recommendations. The problem is that these recommendations suggest a scale of remediation approaching a very significant percentage of the value of the units themselves. Anything short of such a dramatic a remedy should be carefully considered. The hardship the recommendations will entail, as outlined in the Collen affidavit, for example, is obvious.

[20] The report prepared by MHP, on the other hand, has the significant limitation of essentially saying no more than that, on a further inspection, things might be better than RDH suggests, based on RDH's descriptions of the problems it observed. There remains the strong possibility, inherent on the recommendation made by MHP, that upon further and more detailed inspection RDH might be shown, conclusively, to have been correct.

[21] I have before me, therefore, a series of observations and a professional recommendation based on those observations, confirmed by a second professional opinion, to set against the professional opinion of another firm that, based on the description provided by the first, it remains possible that less work is required.

[22] There is no evidence that other factors are at play such as any form of conscious or unconscious bias. The cost of remediation is so high that I doubt very much that two engineering firms would vouch for it, if the situation were not as serious as they suggest. I accept the view of the consultants engaged by the Administrator.

[23] It follows, therefore, that I grant the orders sought by the Administrator in paragraphs 1, 2 and 3 of the motion reproduced at paragraph [5] of these reasons.

Paragraph 2 is modified as to date. I fix June 30, 2007 instead of March 1, 2007 as appears in the motion.

[24] In a separate hearing a date has been fixed respecting the Administrator's remuneration. Consideration of the items in paragraphs 4 and 5 is deferred to that date.

[25] I direct that the Administrator report to the court as soon as possible after September 1, 2007.

IV

[26] A question arises in connection with the legal fees charged by Owen Bird to the Owners, Strata Plan VR 672. The protracted difficulties among the owners of this small strata development have been documented elsewhere, and are reflected in my earlier ruling approving and extending the appointment and authority of the Administrator.

[27] The division is reflected in the style of cause, in the manner required by rules, although the description of Nils and Helena Wennerstrom as Respondents rather imperfectly describes their alignment, which is closer to the position of the Petitioner than to that of the Respondent Owners.

[28] The Wennerstroms' position was communicated to the solicitors engaged by the majority of the Owners, Owen Bird, in May of 2005. Their letter set out the Wennerstroms' agreement with the position taken by Margaret Ranftl.

[29] Section 167(2) of the *Strata Property Act*, S.B.C. 1998, c. 43, provides:

167(2) The expense of defending a suit brought against the strata corporation is shared by the owners in the same manner as a judgment is shared under section 166, except that an owner who is suing the strata corporation is not required to contribute.

[30] The small scale of this strata corporation renders the abstractions of “democracy” and majority rule, to which one might ordinarily resort, rather strained. The dysfunctions of this strata corporation can only be appreciated in inter-personal terms. There simply are not the numbers to make notions like “75% of the owners” meaningful. In practise, such small corporations must operate more or less by consensus, or the sort of unhappy situation that has come about here would be inevitable. On the scale of this strata corporation, democracy equals either paralysis or oppression.

[31] I think the utmost respect ought to be accorded to the democratic aspects of governance described by Bauman J. in *Strata Plan LMS 1537 v. Alvaraz* (2003), 17 B.C.L.R. (4th) 63 at para. 35, 2003 BCSC 1085, in the terms “[w]ithin a strata corporation ‘you are all in it together’”. The exception to the operation of this principle is where it is possible to show significant injustice. In *Ernest & Twins Ventures (PP) Ltd. v. Strata Plan LMS 3259* (2004), 34 B.C.L.R. (4th) 229, 2004 BCCA 597, Lowry J.A. observed, at paras. 23-24:

It must be accepted that some actions of a strata corporation will be unfair to one or more strata lot owners in that the will of the majority may often served the interest of the majority of owners to the detriment of a minority. Thus, to obtain relief, an owner must establish significant unfairness.

What amounts to significant unfairness was address by this Court in *Reid v. Strata Plan LMS 2503* (2003), 12 B.C.L.R. (4th) 67, 2003

BCCA 126. There, at paras. 26-27, it was accepted that while it might relate to conduct that was less severe, at least for the purposes of that case, "significantly unfair" was equated with that which is oppressive and unfairly prejudicial.

[32] The Wennerstroms' point to conduct by the Owners that they suggest amounts to significant unfairness. It is put in their submission in the following terms:

The costs to the Wennerstroms since December 2004 have been significant. They continue to attempt to minimize their costs to the extent that they can be taking as minor a role as possible in these proceedings. To summarize, the Wennerstroms, together with Mr. Collen, are the only resident owners. The Wennerstroms just want the building fixed. They agree an administrator is necessary, due to the conflict in the Strata Corporation and the paralysis in governance. The administrator has spoken to engineers and provided reports. The Wennerstroms rely upon the expertise of Mr. Cambrey and the engineers and support Mr. Cambrey in his recommendations. They are concerned about the expense of an audit. They are concerned that the infighting and obstruction of Mr. Cambrey performing the duty required by Court order will substantially increase the expense of governance by the administrator. They do not want to contribute to the legal cost incurred by the Strata Corporation taking a position adverse to what the Wennerstroms believe should be a simple matter – namely, the Strata Corporation discharging its statutory duty to repair and maintain the building.

The Wennerstroms want the financial bleeding caused by these ongoing dispute to stop. They also wish the Strata Corporation to be governed in a manner that is in compliance with the Act and not significantly unfair to the Wennerstroms (sections 164 and 164 of SPA). For example, in September 2005 Mr. Morrison attempted to avoid Mr. Cambrey's recommendations by having a resolution passed to levy funds for localized repair. Mr. Wennerstrom voted against the resolution, which was declared defeated. The following day, Mr. Morrison, as president of Council reversed the result and held the resolution passed because the Wennerstroms were not entitled to vote. This was a blatant misapplication of the Act and conduct aimed at the Wennerstroms.

[33] The affidavits are replete with other examples of conduct that is similarly described. I do not think it necessary to exacerbate relations between the factions in

this dispute by making such findings. On the scale of this strata corporation there is no "common good" which can be ascertained by a majority vote. There are, rather, competing interest that will be *de facto* oppressive to the extent that one prevails over the other.

[34] In such an atmosphere, I am of the view that notice such as the Wennerstroms gave is sufficient to exempt them from the requirement set out in s. 167(2) of the ***Strata Property Act***, on the basis that the rule otherwise would result in significant unfairness to them. In doing so, I adopt the view of the court's discretion in the matter elaborated by Taylor J. in ***Chow v. Strata Plan LMS 1277*** (2006), 54 B.C.L.R. (4th) 380, 2006 BCSC 335.

[35] The Wennerstroms will accordingly be relieved of their obligation to pay a share of the Owen Bird account from the date they gave notice in May of 2005.

[36] It follows, if it is necessary to say so, that both the Petitioner and the Wennerstroms are exempt from that part of the administration fees taken up in dealing with Owen Bird.

[37] I am of the view that a financial audit for the years 2001-2005 may be beside the point given what the parties now face, in terms of expenditures for remediation. I adjourn that part of the Petitioner's application generally, with liberty to reapply.

[38] I am of the view that the specific repairs sought by the Petitioner with respect to Unit #4 should be dealt with as part of an integrated approach to remediation taken, as authorized by the Administrator, not by a specific or special order.

[39] I grant liberty to all parties to apply for further direction as required.

"T.M. McEwan, J."
The Honourable Mr. Justice T.M. McEwan

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