IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Clarke v. The Owners, Strata Plan VIS770,*** 2008 BCSC 347

Date: 20080320
Docket: 08-0064
Registry: Victoria

Between:

Peter Clarke, Connie Tisdall and Maria Tippett

Petitioners

And:

The Owners, Strata Plan VIS770

Respondents

Before: The Honourable Mr. Justice Macaulay

Reasons for Judgment

(In Chambers)

Counsel for the Petitioners:	P.R. Lawless
Agent for the Respondents: The Owners, Strata Plan VIS7700	Dr. Chorney
Counsel for the Respondents: Ingrid Kaufmann and Mathias Kaufmann	J. Hanson
Date and Place of Hearing:	20080312-20080313 Victoria, B.C.

[1] This petition relates to various disagreements amongst the owners of eight units in what the owners agree is a "troubled building". The owners of four units, including Ingrid Kaufmann and her son Mathias Kaufmann (the "Kaufmanns") who together own unit 8, support the petitioners who seek to invalidate a contested strata council election held in January 2007 and, pursuant to s. 174 of the *Strata Property Act,* S.B.C. 1998, c. 43 (the "Act"), an order appointing an administrator to manage the strata corporation (sometimes referred to as the "corporation"). Dr. Chorney, an owner who was elected to the strata council in the impugned election and continues to be a member of the council, opposes the petition on behalf of herself and three other owners, and on behalf of the council.

[2] Strata Plan VIS770 relates to a converted heritage building located at 1001 Terrace Avenue in Victoria, British Columbia (the "building"). In the late 1970s, a developer converted the building from a single family dwelling into eight strata lots. The quality of the conversion, including the developer's non-compliance with applicable building code and zoning regulations are at the root of many of the owners' disagreements.

[3] The petitioners say that the election of the council at the Annual General Meeting of the strata corporation held January 3, 2007 (the "2007 AGM") is invalid. They also ask the court to declare any subsequent actions of the council purportedly elected at the 2007 AGM to be void. The petitioners say that the election is invalid because the previous council, that ran the 2007 AGM and conducted the election, wrongly denied the proxy votes of two owners, Peter Clarke and Ingrid Kaufmann, respecting the election and budget.

[4] In addition, the Kaufmanns contend that the election is invalid because the January 2007 council subsequently acted contrary to the best interests of the corporation and finally, in any event, that the members of that council later effectively resigned by refusing to hold, and subsequently attend, a Special General Meeting in August 2007.

[5] The respondents concede that the proxy votes were wrongly disallowed at the 2007 AGM. They say, however, that this was due to a good faith mistake about the scope of the proxies based on earlier advice from a property manager, and that even if the proxies had been allowed, the outcome of the election would have been the same. They submit that it is now too late to challenge the election. In that respect, I note that the petition in this matter was not filed until January 8, 2008. Finally, they say that the petitioners and the Kaufmanns seek a declaration of invalidity in order to escape liability for fines levelled by the January 2007 council against them for various bylaw infractions.

[6] The declaration of invalidity is sought primarily on the basis that the decision to reject the proxies was significantly unfair. Section 164 of the Act reads, in part:

> 164 (1) On application of an owner or tenant, the Supreme Court may make any interim or final order it considers necessary to prevent or remedy a significantly unfair
>
> (a) action or threatened action by, or decision of, the strata corporation, including the council, in relation to the owner or tenant, ...

[7] Neither the petitioners nor the Kaufmanns presented any authority addressing a challenge to the election of the strata council under this section. I accept that the

section is broad enough to permit the present challenge and further to that, I accept that the court's remedial powers are very broad. As well, s. 165 of the Act permits the court, among other things, to order a strata corporation to perform a duty it is required to perform under the Act, the bylaws or the rules.

[8] The only provision in the Act that directly relates to a disputed election is s. 30 but it does not apply here. That provision states that contracts made by, and certificates issued by, a council member on behalf of the corporation are not rendered invalid by a defect in their election in certain situations.

[9] The Act does not contain a code detailing how council elections are to be conducted, or set out any procedure or legal standard for challenging the validity of an election. Nonetheless, it is obvious that the right to vote in a strata council election is of paramount importance as it is the means by which individual owners participate in the democratic governance of the affairs of the corporation. To ensure that absentee owners can vote, the Act provides for unlimited proxies in s. 56 which reads in part:

> 56 (1) A person who may vote under section 54 or 55 may vote in person or by proxy.
>
> ...
>
> (4) A proxy stands in the place of the person appointing the proxy, and can do anything that person can do, including vote, propose and second motions and participate in the discussion, unless limited in the appointment document.

Here, the previous council improperly issued a form of proxy that limited the right to vote and then refused the right to vote in the election and for the budget. In doing

so, the decisions and actions of the then council, on behalf of the corporation, were significantly unfair.

[10] That is not the end of the matter. In my view, before exercising my discretion to invalidate an election under the Act, I must consider what is just in all of the circumstances. Three factors deserve particular consideration; whether:

1. the misconduct was due to bad faith;

2. the misconduct materially affected the outcome of the election; and

3. there was unreasonable delay in bringing the application challenging the validity of the election.

[11] These factors figure prominently in other legislation and the authorities dealing with election issues. See: *Local Government Act*, R.S.B.C. 1996, c. 323, ss. 143(3) and 145(3); *Leonard v. Courtenay (City) Chief Election Officer*, 2003 BCSC 203, at para. 26; *Hidber v. Bulkley-Nechako (Regional District)*, 2006 BCSC 789, at paras. 29, 55; *Election Act*, R.S.B.C. 1996, c. 106, ss. 150(3) and 151(2); *Indian Band Election Regulations*, C.R.C., c. 952, s. 12(1); *Business Corporations Act*, S.B.C. 2002, c. 57, ss. 143 and 179(3); *Jock v. Canada (Minister of Indian & Northern Affairs)*, [1991] 2 F.C. 355 at 378d.

[12] Despite the various allegations of bad faith by the petitioners and the Kaufmanns, I am satisfied on the evidence that the disallowance of the proxies was a mistake by the outgoing council at the 2007 AGM who assumed that the proxies had limited scope and were not valid for voting in the election of council or for the

budget. Council subsequently corrected how it dealt with proxies after the issue was brought to their attention. In concluding that the outgoing council did not act in bad faith, I take into account that this is a small strata corporation and is less likely to have ongoing immediate access to legal and management advice. In my view, the size and sophistication of the strata corporation is one non-determinative factor to be taken into account in assessing whether the conduct complained of occurred in bad faith.

[13] Next, the uncontradicted evidence is that the result of the election would have been unchanged had the proxies been permitted. The minutes of the 2007 AGM, as clarified by the 2008 AGM minutes, state that the council was elected by all six votes cast. Even assuming that both proxies would have opposed the slate of candidates seeking office, the result of the election would accordingly have been unchanged. In my view, the rationale that underlies s. 145(3) of the *Local Government Act*, s. 151(2) of the *Election Act*, and their equivalents in other provinces, also applies here and weighs heavily against a declaration of invalidity in these circumstances. See for example *Elms v. West Cove (Summer Village)*, 2002 ABQB 353, at paras. 19-20; *Reaburn v. Lorje*, 2000 SKQB 81, at paras. 47-54.

[14] Finally, over one year passed between the date of the disputed election and the petition seeking a declaration of invalidity. No reasonable explanation was offered for the delay although the evidence demonstrates that the petitioners knew in February 2007 that the denial of the proxies was improper. To invalidate the election now would add significantly to the difficulties faced by the corporation and all the owners in sorting out their affairs. To declare the subsequent actions of the

January 2007 council void would, in light of the delay, significantly prejudice the corporation. For example, it would result in the nullification of certain fines levied during that time without any regard to whether they were justified.

[15] The granting of a remedy under s. 164 is permissive. For the reasons stated above, I decline to make either declaration sought by the petitioners respecting the election at the 2007 AGM.

[16] Any of the actions taken by the January 2007 council could, of course, have been impugned by a dissatisfied owner but the petitioners have not done so, having decided instead to rest their argument on the basis that the election itself ought to be declared invalid.

[17] This leaves one further issue. The Kaufmanns contends that the January 2007 council "effectively resigned by first refusing to hold, and then refusing to attend a Special General Meeting requisitioned by one half of the owners in August 2007". The evidence is clear that the January 2007 council continued to act throughout the 2007 calendar year until the Special General Meeting referred to below. In my view, the Kaufmanns' allegation, even if proven, would not establish that any member of the January 2007 council was "unwilling or unable to act for a period of 2 or more months" under s. 12(1) of the Act which would trigger the ability of the owners to elect a new council under s. 12(4).

[18] No party challenged any actions of the council elected at the 2007 AGM or those of a subsequent council elected at the Special General Meeting in August

2007. As a result, I express no opinion as to the validity of any of those actions or as to the election that occurred at the Special General Meeting.

[19] I turn next to whether I should appoint an administrator to manage the affairs of the corporation. Section 174(1) of the Act permits the appointment of an administrator "to exercise the powers and perform the duties of the strata corporation". Subsection (2) requires that the appointment be "in the best interests of the strata corporation". Under ss. (3), the court may set the term of the appointment, set the remuneration of the administrator, limit the powers of the administrator and finally, relieve the strata corporation of "some or all of its powers and duties".

[20] In *Lum v. Strata Plan VR519*, 2001 BCSC 493, at paras. 11 and 12, Harvey J. identified the following factors as relevant when considering whether the appointment of an administrator is in the best interests of the strata corporation:

> 11. ...
>
> (a) whether there has been established a demonstrated inability to manage the strata corporation,
>
> (b) whether there has been demonstrated substantial misconduct or mismanagement or both in relation to the affairs of the strata corporation,
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> (c) whether the appointment of an administrator is necessary to bring order to the affairs of the strata corporation,
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> (d) where there is a struggle within the strata corporation among competing groups such as to impede or prevent proper governance of the strata corporation,
>
> (e) where only the appointment of an administrator has any reasonable prospect of bringing to order the affairs of the strata corporation.

> In addition, there is always to be considered the problem presented by the costs of involvement of an administrator.
>
> 12 I also take into consideration the comments of Huddart, J. in *Cook* [*v. Strata Plan N-50*, [1995] B.C.J. No. 2882 (S.C.)], *supra*, that the democratic government of the strata community should not be overridden by the Court except where absolutely necessary.

This passage has frequently been quoted with approval in subsequent cases, including in *Ranftl v. Strata Plan VR 672*, 2005 BCSC 1760.

[21] As I will demonstrate, the conclusion of McEwan J. in *Ranftl* arises out of similar circumstances to the present case. He said:

> 13 There are several inches of materials before the court. At the hearing it was not possible to review all of the affidavits and documents submitted. I have now done so, and reviewed the written arguments of both parties ...
>
> 19 It would take a very long time and cost a great deal in legal fees to get to the bottom of the charges and counter-charges that have been exchanged or to determine the reasonableness or unreasonableness of the positions taken in this matter. There is no question that this Strata Corporation is dysfunctional within the test set out in *Lum* ... This, in the terms of the test set out in *Lum*, is a "struggle within the Strata Corporation among competing groups such as to impede or prevent proper governance of the Strata Corporation." I say so without suggesting that at least paragraphs 11(a), (c) and (e) have not been more than made out as well, notwithstanding the restraint respect for self-governance requires.

In my view, similar comments would describe the materials filed before me.

[22] In essence, the petitioners say that there is such a level of animosity between two equal groups of owners that proper governance of the corporation has been rendered impossible, and that the status quo is resulting in mismanagement. They say that the appointment of an administrator offers the only reasonable prospect of

bringing the affairs of the corporation into order and urge the granting of the widest possible powers to the administrator.

[23] The respondents conceded that the appointment of an administrator with limited powers is appropriate, particularly for bylaw enforcement and issuing certain forms. For example, the corporation is required to provide a Form B, upon request, so that an owner who is attempting to sell a unit can make the required disclosure to a potential purchaser.

[24] Otherwise, the respondents forcefully dispute the allegations of misconduct levelled at council and submit that it has effectively dealt with the issues facing the corporation in the best interests of the corporation. The respondents also say that the underlying problems result from the self-interest of the petitioners and their supporters and that giving an administrator broad powers will not resolve the root issues. They also express concern about the corporation incurring significant costs with no guarantee that the administrator will spend the corporation's money in ways that will result in better value for the corporation than the council currently achieves.

[25] While there is some merit in each of the points raised by the respondents, there is no doubt in my mind that the current division among the owners, coupled with the enormity of the problems associated with the building and, perhaps, the conduct of some individual owners, has created a highly dysfunctional state of affairs. The appointment of an administrator with broad powers to act in the stead of the corporation offers the only feasible way out in spite of the considerable cost.

I am also satisfied that the respondents' concerns will be adequately addressed by the terms of the order that I make.

[26] I do not intend to exhaustively review all the charges and counter-charges or to attempt to determine which party is in the right and which party is in the wrong in each instance. I observe that Dr. Chorney's affidavit contains 239 paragraphs and attaches over 350 pages of exhibits, mostly responding to the allegations of misconduct contained in the lengthy affidavits of the petitioners and their supporters. It is unnecessary to make those determinations under s. 174. Instead, I refer to them to illustrate that the council has been unable to manage effectively in some important respects and has veered dangerously close to substantial mismanagement. This is largely because of a paralyzing power struggle between the owners over the means to address the serious problems in the building. In my view, the appointment of an administrator with broad powers offers the most potential to break the deadlock if the owners remain unwilling to co-operate.

[27] The problem with proxies is an example of serious mismanagement on the part of the council. Although I refused to invalidate the election, it is entirely understandable that the owners who were denied the right to vote attribute the decision to bad faith. This does not augur well for future confidence in the decisions of the current council because it is aligned against them in much the same way.

[28] I referred earlier to Form Bs. Like the issuance of proxies, the current and past councils have mishandled the issuance of Form Bs. Past Form Bs went so far as to warn prospective purchasers that strata fees may increase by 400% to resolve

serious structural deficiencies in the building. Coupled with the discord evident in the minutes of council meetings, few prospective purchasers are likely to offer to buy the units of those owners, primarily on the petitioners' side, who wish to sell. In early 2006, one realtor advised discontinuing a listing until the discord was resolved. The petitioners emphasize that the predicted increase in strata fees has not, to this point, occurred.

[29] The respondents acknowledge the problem with the Form Bs but say again that they simply relied on outside advice that proved to be erroneous. Nonetheless, they still provide similar warnings in a cover letter accompanying Form Bs. An administrator will objectively re-evaluate these practices and make any necessary changes.

[30] Whatever the motivation, the result of the Form B issue has been to inhibit potential unit sales within the building. This has added to the acrimony as owners who would like to sell and leave feel trapped. This perpetuates the distrust and resentment.

[31] There is also a concern whether bylaw enforcement is being used as a means of harassing the petitioners and the Kaufmanns. The Kaufmanns, for example, were fined for removing carpeting from the common property; for replacing the glass in the atrium; and for installing hardwood flooring. They have not paid any of these fines. Other owners were fined for breaching the pet bylaw and the bylaw prohibiting replacing atrium glass.

[32] There is great value in having a neutral outside party take over the conduct of bylaw enforcement, including the conduct of any legal actions. Consistent and fair bylaw enforcement is a necessary part of governance.

[33] In addition to the above, the evidence satisfies me that the parties have quarrelled about other matters as well. These include:

1. allegations that council failed to fully consider and inform the owners of their options;

2. that council interfered with non-council members seeking information;

3. that council failed to make necessary repairs;

4. that council acted badly in the lead-up to the vote approving the lawsuit against the Kaufmanns;

5. that council attempted to impede certain non-council owners from participating in meetings of the corporation; and

6. that council failed to hold Special General Meetings when petitioned by 25% of the owners.

[34] As stated at the opening of these reasons, the most significant underlying challenges facing the corporation relate to the developer's improvident alterations to the building at the time of its conversion from a single family dwelling in the late 1970s. The developer departed from the strata plan by enclosing atriums; removing a wall between unit 8 and a previously vacant turret which was common property;

and by adding a room for unit 8 in that newly opened space. The developer also cut into dormers to create balconies and removed the gutter system.

[35] These changes are the suspected cause of water leaks into the building envelope that began shortly after the conversion, and are responsible for the breach of a firewall contrary to the Building Code or applicable City bylaws. Subsequently, three owners glassed in their respective balconies, and an owner of unit 8, not the Kaufmanns, in 1988, removed at least one further wall into common property attic space and put in two other rooms. That owner also installed a further walk-in closet in 1993. There are also leakage problems associated with the glassed in atriums.

[36] The City did not approve any of these changes and, with the encouragement of the current council, is now insisting on remediation of at least some of the alterations. Whatever the ultimate solutions may be, they will undoubtedly be expensive and perhaps, prohibitively so. None of the parties is personally responsible for the alterations but the remediation costs will be shared differently depending on the nature of the work required and whether the cost relates to individual units or common property. Much experience and skill are required to ensure that the outcomes meet the best interests of the corporation.

[37] Some time ago, the corporation commenced a proceeding against the Kaufmanns for the unauthorized occupation of common property resulting from the extensions to unit 8. Masuhara J. heard the matter on December 5, 2006 and found that the expansions encroached on common property but ordered the corporation to grant a 20 year lease of the space on the condition that a building permit and

occupancy permit be obtained within 18 months. The building permits were to be based on complying with the building codes in effect in 1979 and 1982, depending on the expansion in question.

[38] Unfortunately, the resulting application to the City revealed that the combination of the covered atriums, covered balconies, and extensions to unit 8 have resulted in the total inhabitable area of the building exceeding what is permitted under the current zoning. The City refuses to issue a permit authorizing the extensions while the building as a whole is in breach of the applicable zoning.

[39] The petitioners wish to proceed with a rezoning application. The respondents do not. Rezoning may or may not be a feasible solution.

[40] It is likely that the parties will have to seek further directions from Masuhara J. It is unfortunate that has not happened to date but it may now assist him if an administrator speaks for the corporation after an objective determination as to how to move forward in the overall best interests of the corporation. To a certain extent, issues arising from the City's remediation order may be tied to the outcome before Masuhara J. and will require sophisticated and objective guidance to resolve.

[41] Given the entrenched position of the owners and the obvious personal and financial concerns associated with the potential outcomes of the ongoing issues, maintaining the status quo is not a viable option. The corporation's governance to date gives me no confidence that it can advance the best interests of the corporation on these complex issues.

[42] It is true that council has managed to pass annual budgets, including at the 2008 AGM. Council has also commissioned engineers' reports regarding the leakage problems, among other things. These reports satisfy me that the structural problems with the building are very substantial in magnitude. Solutions will likely require a three-quarters supermajority vote, or possibly a unanimous vote in the event that rezoning is the appropriate way forward.

[43] There is substantial evidence that communications between council and non-council owners is, at best, highly strained and has sometimes been limited to communications between lawyers. On at least one occasion, council has refused to communicate by any means. None of this allows the corporation or the owners to move forward.

[44] At bottom, the council may have successfully dealt with day-to-day and year-to-year matters, but it has not succeeded in forging any consensus about the major and expensive decisions that must be made one way or the other if the corporation's best interest is to be served. Contrary to the submissions of the respondents, I find that this is, in part, because there is an "impasse" in the circumstances.

[45] The respondents also express concern that an administrator will make improvident and expensive decisions at the ultimate expense of the owners. In my view, that danger is largely removed by the limitation on the scope of the powers vested in the administrator. In *Aviawest Resort Club v. Strata Plan LMS 1863*, 2005 BCCA 267, the Court of Appeal reaffirmed the approach taken under the previous

Condominium Act, R.S.B.C. 1979, c. 61, which differentiated between powers of council, which can be vested in the administrator, and voting rights of the owners, which cannot. The trial judge in *Aviawest* had appointed an administrator to whom he gave all the powers of the strata corporation. He stated further that "the Administrator shall have the power to impose a special levy, to approve a special budget and to pass any other resolution normally requiring a majority of 75%" of the owners. A unanimous panel of the Court of Appeal set aside that aspect of the trial judge's order as follows:

> 33 ... As was explained in *Cook*, the right to vote is an individual right possessed by the owners and nothing in s. 174(3)(d) would support an order abrogating that right.
>
> 34 Section 174 of the Act authorizes the court to appoint an administrator to exercise the powers and perform the duties of the strata corporation. He can do no more than the strata corporation could do. In particular, if the strata corporation could not act without the authority of a resolution, the administrator is equally restrained. The owners are members of the strata corporation. It is the members who vote on and pass resolutions at meetings of the strata corporation. Allowing the administrator to act without resort to the owners at all, as the impugned orders do, abrogates the rights of the owners to vote on actions requiring their authorization by resolution. The Act does not authorize such a result. In my view, Pitfield J. was correct when he concluded in *Toth v. Strata Plan LMS1564* [(August 19, 2003), Doc. Vancouver L025502 (B.C. S.C.)] that the reasoning in *Cook* remains applicable under the current Act.
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> 35 It may be, as was suggested in *Toth v. Strata Plan LMS1564*, that the difficulties facing these parties may be resolved by applications to the court under s. 164 or s. 165 of the *Act*...
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> 36 The application below invoked these sections of the *Act*, as well as s. 174. However, since the chambers judge made no mention of these sections in making his order and made no findings of fact that would enable us to consider their applicability, I will say no more about them except that the relevant allegations remain to be proven.

> 37 Those are my reasons for allowing the appeal and setting aside the impugned provisions in the order appointing the administrator.

[46] In the result, the administrator that I appoint here will not be able to bind the owners to an expensive course of action without securing the agreement of at least a majority of the owners. In my view, this provides the protection sought by the respondents against the administrator making expensive and irreversible decisions that are unwise. While an administrator with full power under s. 174 can act unilaterally to perform any function that could be performed unilaterally by council, the administrator cannot act unilaterally when an action requires the approval of a majority, a three-quarters supermajority, or a unanimity of owners at an annual or special general meeting.

[47] Instead, the administrator must present any recommendations requiring a vote at a meeting of the owners. If his proposal secures the support of the required majority of owners, it will be implemented. In such a situation, a dissenting owner may apply under s. 164 if that owner believes that the decision warrants the court quashing or varying the resolution. Similarly, if the administrator's proposal fails to secure the necessary support of the required majority of owners, it will not be implemented. An aggrieved owner in that situation may seek a review under s. 164, or possibly under s. 165 in limited circumstances that I need not set out here.

[48] The respondents' written outline emphasizes that in light of *Aviawest*, the administrator, whose major proposals must be supported by the owners, will be unable to break the current deadlock. This submission strikes me as curious given the respondents' submission throughout the hearing that there is currently no

deadlock preventing the corporation from governing itself effectively. In any event, it is my view that an administrator has a better chance of breaking the deadlock by earning the confidence of all owners, making the appropriate inquiries, and attempting to build a consensus.

[49] It may be possible, although I confess to some doubt on the point in light of the reasoning in *Aviawest,* that the administrator may apply to the court for directions if the owners do not vote in favour of his recommendations. I am doubtful because that does not appear to me to be a power available to the corporation absent the requisite vote of the owners. Nonetheless, at least one judge of this court has varied an order to permit an administrator to return to the court in the event the owners did not approve a resolution requiring a three-quarters majority, although it does not appear to me that the point was argued in the case. See paras. 20-21 of *Strata Plan 1086 v. Coulter*, 2005 BCSC 1234. I am satisfied, however, that the administrator may appear, with or without counsel, on any application by an owner for relief.

[50] The respondents say that because two units are currently on the market, any appointment of an administrator should be for a limited time. I disagree. The problems to be addressed are long-term rather than short-term.

[51] The other concerns raised by the respondents relate to the need for competency and the monitoring and review of the associated costs. Those are adequately addressed by the terms of the order and ensuring the appointment of a qualified administrator.

[52] I appoint an administrator pursuant to s. 174 of the Act on the following terms:

a) An administrator shall be appointed to exercise all powers and perform all duties of the strata council for the corporation, such powers and duties to be held to the exclusion of the strata council;

b) The administrator shall be appointed for a term of one year with liberty to apply for renewal of this appointment;

c) The original administrator may be substituted by another administrator either by mutual agreement in writing by all of the owners of the corporation, or by further order;

d) The administrator shall prepare a written report on the affairs of the corporation, including his or her recommendations respecting the resolution of all outstanding issues identified by the administrator, including related costs, to be presented to the owners of the corporation, not less than six months following the date of appointment and continuing at six month intervals thereafter;

e) The administrator shall deliver any document or documents to the owners of the corporation by handing them to an adult occupant for each of the strata lots of the Strata Plan, or by mailing them by ordinary post to the strata lot, unless otherwise directed by the Court;

f) The administrator shall deliver detailed monthly statements of account to each owner of the strata corporation which accounts will be paid by the strata corporation immediately after 30 days, unless within that period any owner disputes his or her share of the account under paragraph (g) of this order;

g) At the request of any party, the administrator shall pass a disputed statement of account before the Registrar of the Supreme Court of British Columbia;

h) No person shall issue any process against the administrator or any employee or representative of his employer or partnership related to this appointment without leave of the Court;

i) The owners and council are ordered to provide access to all information, records and documents requested by the administrator, and to provide such authorizations as are requested by the administrator to obtain information, records and documents held by third parties which relate to the corporation.

j) The administrator may retain any necessary professionals and other assistance, including but not limited to independent legal counsel, building inspectors, engineers, and building contractors, for opinion, advice and services in respect of his duties pursuant to this appointment;

k) The administrator may appear on any proceeding relating to the corporation, and may be represented by counsel for that purpose; and

l) Subject to any rights of the owners under the Act, the administrator will set the agenda and conduct all meetings of the corporation, but will not vote at those meetings. Neither the administrator nor any member of council will have a tie-breaking vote at any meeting of the corporation during the administrator's tenure.

[53] That leaves the question of who should be appointed as the administrator. On the evidence before me, I am not satisfied that any particular individual put forward by the parties is suited to this role. Given the very significant challenges facing this corporation, I doubt that the cost estimates provided to this point are realistic. The administrator also needs to have a demonstrated ability to deal not only with property management issues, but also with the conduct of litigation, and mediation amongst the owners with a view to building an overall consensus.

[54] Failing agreement between the petitioners, the Kaufmanns and Dr. Chorney, I will appoint the administrator by choosing one of the persons nominated by any owner or group of owners. The parties may submit via the registry the names and addresses along with the resumes, proposed remuneration package and any other relevant information provided by the nominee within 30 days of the release of these reasons. At the end of the 30 day period, I will review the nominees and, unless I have questions, appoint the administrator. The parties are to ensure that any

potential nominee receives a copy of these reasons before that nominee agrees to have their name put forward for consideration.

[55] Success on the applications before me is divided. In the circumstances, I make no order as to costs.

[56] To summarize the results, the petition challenging the 2007 AGM election is dismissed. The petition seeking the appointment of an administrator is allowed on the terms set out above. The parties are to attempt to agree on the administrator, failing which they are to follow the procedure set out above.

[57] I will be seized of any further applications unless I direct otherwise.

"M.D. Macaulay, J."
The Honourable Mr. Justice Macaulay

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