IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Yang v. The Owners, Strata Plan LMS 4084***,
2010 BCSC 453

Date: 20100205
Docket: S095242
Registry: Vancouver

Between:

Caiming Yang

Petitioner

And

The Owners, Strata Plan LMS 4084 and 482258 BC Ltd., d/b/a/ Re/Max Commercial Realty Associates and Re/Max Property Management Services, a company incorporated under the laws of the Province of British Columbia

Respondents

Before: The Honourable Madam Justice Wedge

Oral Reasons for Judgment

Appearing on his own behalf:	C. Yang
Counsel for the Respondents:	V. P. Franco
Place and Date of Hearing:	Vancouver, B.C. January 21 and 22, 2010
Place and Date of Judgment:	Vancouver, B.C. February 5, 2010

[1] **THE COURT:** The petitioner, Mr. Yang, seeks a declaration that the respondent strata corporation has conducted itself in a manner that is significantly unfair to the petitioner, contrary to the *Strata Property Act,* S. B.C. 1998, c. 43. He seeks various orders consequent upon that declaration, and, further, he seeks other orders against the respondent Re/Max, which is the property manager retained by the strata corporation to manage the strata complex in question. In essence, Mr. Yang alleges that the manager misconducted himself in the course of his duties.

[2] The petitioner owns a townhouse located in the strata complex known as "The Palms" in Richmond, BC. The Palms is a large complex consisting of 346 strata units contained in four separate buildings. Two of the buildings, known as the Coronado and the MonteCarlo, consist entirely of apartment-style units. One building, the Sonterra, consists of 29 townhouse units. The petitioner's unit is contained in this section of the complex The fourth building, called the Monaco, contains 4 commercial strata units, 113 apartment-style units, and 3 townhouse units. The Monaco also contains all of the amenity rooms of the strata complex which are common property and available for the use and enjoyment of all unit owners in the complex.

[3] In 2002, the strata corporation was divided into three sections: the commercial section consisting of the 4 commercial strata units in the Monaco; the townhouse section consisting of 29 units in the Sonterra; and the apartment section consisting of the more than 300 apartment units in the MonteCarlo, Coronado and Monaco, as well as the 3 townhouse units in the Monaco.

[4] The *Strata Property Act* allows for the creation of sections within a strata corporation by the passage of bylaws. When sections are created, each section has the same types of powers and functions like a strata corporation. However, the strata corporation continues to exist and function with its own powers. It is the division of powers between the strata corporation and the section that underlies this dispute.

[5] The main issues raised by the petitioner can be summarized as follows: first, the allocation of common expenses between the strata corporation and each of the sections; second, the conduct of the elections for the strata council of the strata corporation and the townhouse executive; third, the conduct of Re/Max as property manager of the townhouse section and the strata corporation generally; and fourth, the conduct of the 2009 AGM by Re/Max and the strata corporation.

[6] In the course of the hearing into this matter, the petitioner filed with the court an amendment to the relief he sought in the petition. I will file that amendment as Appendix A to these oral reasons. When I finish delivering my reasons, I will summarize my conclusions by addressing each aspect of the relief sought in Appendix A.

[7] While there are many allegations of fact underlying the issues raised in the petition, and the issues themselves appear to be quite complex and numerous, the central issue concerns the allocation of expenses between the strata corporation and the sections. The petitioner alleges that when Re/Max assumed the management of the strata corporation in 2006, it altered the allocation of common property expenses such that it is incorrect and unfair.

[8] It is the respondent's position that Re/Max's allocation of expenses is correct. They say that neither the bylaws of the strata corporation nor the *Strata Property Act* allow for the allocation of common property expenses to any particular section.

[9] The dispute concerning the allocation of these expenses now appears to have permeated most aspects of the strata corporation and has significantly undermined the day-to-day functioning of the strata council. Resolution of this very contentious issue will likely resolve most of the other issues raised in the petition and will render other issues moot. For that reason I will address primarily the questions of law concerning the division of powers between the strata corporation and the sections and the proper allocation of common expenses between the strata

corporation and the sections. I will also provide at the end of those oral reasons a typewritten summary of my conclusions.

[10] By way of background, The Palms was developed by the company of Colliers Macaulay Nicolls, which managed the property on behalf of the owners until August of 2006. The respondent Re/Max took over the property management at that time. The property was developed in seven phases between the years 2000 and 2005. In 2005 the phases were amalgamated into one strata corporation. The annual general meeting of the strata corporation takes place each July. Accordingly, Colliers was the property manager of The Palms when the 2006 AGM took place. The individual from Re/Max who was to take over as property manager in August of 2006, Mr. Carlos Valoma, attended the July 2006 AGM as an observer only.

[11] Commencing in August 2006, Mr. Valoma began reviewing the strata corporation's bylaws and the allocation of expenses between the strata corporation and the sections. He formed the opinion, based on his review, that neither the bylaws nor the allocation of expenses complied with the *Strata Property Act*. The bylaws lacked provisions dealing with the administration of each section. They did not allow for the manner in which the expenses had historically been allocated. A number of the expenses that were allocated to specific sections were in fact common expenses. A complicating factor was that many of the common areas are located in the Monaco. Those include a lounge, a jacuzzi, a media room, a fitness centre, a steam room, the resident manager's office, the parking garage for the residents of the apartment units, and visitor parking for all residents of The Palms. As a result, all of the unit owners, including those owning apartments in the other apartment buildings and the townhouse owners, have access to the Monaco's common amenities and the hallways, lobbies, and entrances leading to those amenities.

[12] The cost of electricity, mechanical, maintenance, fire and alarm maintenance, landscaping services, garbage disposal and recycling, security services and cameras, and irrigation and fountains, all relating to the Monaco, were common

expenses but were not designated as such and were not contained in the common budget of the strata corporation. Percentages had been allocated to the sections. However, the bylaws of the sections dealt only with the allocation of expenses for limited common property, that is, expenses relating solely to property common only to that particular section.

[13] At the AGM held in July 2007, Mr. Valoma recommended that these expenses be moved to the common budget of the strata corporation. While there were many questions about the new allocation of expenses, there is no record of anyone objecting. The strata council agreed to the new allocation as did the apartment and townhouse sections.

[14] I have reviewed the strata plan for the strata corporation filed in the Land Title Office. That plan designates certain parts of the complex as "common property" and other parts as "limited common property". An example of limited common property is the patio areas of the townhouses. None of the individual buildings or the individual sections has its own common property. Each has only its own limited common property. The common property delineated by the strata plan is in reference to the entire strata corporation and not the specific sections.

[15] Mr. Valoma considered all of the expenses moved to the common budget to be common expenses of the entire corporation because they were incurred in relation to the common amenities and the common property.

[16] I will describe each of the expenses moved to the common budget by Mr. Valoma.

(1) Landscaping: All of the landscaping with the exception of any landscaping on the patio of the individual townhouse units is landscaping of common property designated for use by all unit owners of The Palms. There is a fountain, an architectural feature located in the common property of the strata corporation, which enhances the entire complex. The landscaped area surrounding the Monaco provides access to the common amenities. Accordingly, all

landscaping irrigation and fountain expenses were allocated as common expenses under the strata corporation's budget. Prior to this reallocation, payment of the landscaping invoice had been allocated among the various buildings and the expenses allocated to each section.

(2) Electricity: The Monaco contains all of the strata lots in the commercial section as well as the common amenity rooms. Electricity is used to light the parking located under the two apartment buildings and the Monaco. Each building receives its own electrical bill. As a result, the Monaco has its own electricity bill, but it includes electricity consumed by the apartment strata units, the commercial strata units, the common amenities and the parking. The former property manager allocated electricity on the basis of a percentage formula; the strata corporation and the various sections each paid a percentage of that electrical bill. The exterior lights on the Monaco are allocated among the various electrical bills. Those lights are located on common property and benefit all owners from both an aesthetic and a safety perspective, regardless of where the lighting is located.

(3) Fire Safety and Security: Annual fire inspections must be performed on all three apartment buildings, the heat and smoke detectors in the Monaco, where the common amenities are located, are connected to a single system which includes devices located in the common amenities and common property. With respect to expenses related to security, security guards patrol all of the exterior common property to which the townhouse owners have access, the underground parking, which provides visitor parking for all of the buildings, and the common amenity rooms in the Monaco.

[17] As a result of moving all of these expenses to the common budget of the strata corporation, the strata fees of the sections increased. The townhouse section was particularly affected by the reallocation of the landscaping costs, since under the previous allocation the townhouse owners paid a much smaller percentage.

[18] The petitioner purchased his townhouse located in the townhouse section in December of 2007, approximately six months after the expense reallocations. Mr. Yang began researching the history of expenses, expense allocations and the holding of meetings both for the strata corporation and the three sections. In particular, he was concerned that the townhouse section was being treated unfairly in the reallocation of expenses and that the elections for the executive of the townhouse section were irregular. He formed the view that Re/Max had misled the owners concerning common expense allocations, had refused to disclose documents and other information relevant to that issue, and had basically manipulated the annual general meetings and the elections of the townhouse executive. Again, however, I emphasize that the root of the petitioner's distrust and his allegations of wrongdoing against Re/Max is his view that Re/Max wrongly reallocated the expenses I described above.

[19] I will turn now to the legislative framework and the principles of law governing the division of powers between a strata corporation and sections created within the corporation. As noted earlier, the *Strata Property Act* permits the creation of sections which function like a strata corporation, but the strata corporation continues to function in accordance with its powers under the Act.

[20] The following are the sections of the Act relevant to this issue. Section 190(1) states:

> Subject to the regulations, the provisions of this Act apply to a strata corporation with sections.

(2) states:

> If there is a conflict between a provision of this Part and a provision of another Part, the provision of this Part prevails.

Section 191(1) provides:

> A strata corporation may have sections only for the purpose of representing the different interests of,

> (a) owners of residential strata lots and owners of nonresidential strata lots;
>
> (b) owners of nonresidential strata lots, if they use their strata lots for significantly different purposes, or
>
> (c) owners of different types of residential strata lots.

[21] The key legislative provision is section 194. Section 194(1) states:

> After the creation of sections, the strata corporation retains its powers and duties in matters of common interest to all the owners.

Subsection 2 of section 194 states:

> With respect to a matter that relates solely to the section, the section is a corporation and has the same powers and duties as the strata corporation
>
> > (a) to establish its own operating fund and contingency reserve fund for common expenses of the section, including expenses relating to limited common property designated for the exclusive use of all the strata lots in the section.

[22] Section 195 provides that: "expenses of the strata corporation that relate solely to the strata lots in a section are shared by the owners of the strata lots in the section" in accordance with the specific formula described in section 195.

[23] For purposes of this dispute, the importance of s. 195 is that it speaks of expenses of the strata corporation that relate solely to the strata lots in a section.

[24] As s. 194(2)(a) makes clear, a section is empowered to establish its own operating fund and contingency reserve fund for a common expense of the section, including expenses relating to limited common property designated for the exclusive use of the strata units in the section. The bylaws of a section and the strata corporation may clarify which expenses relate solely to a section and which do not; however, the underlying principle is that for a section to be responsible for an expense, that expense must relate solely to that section.

[25] The general rule is that all units within a strata corporation are "in it together": *Terry v. The Owners Strata Plan LMS 2153*, 2006 BCSC 950. There are exceptions

to that rule, but none apply here. Section 100, for example, allows for the owners to pass a unanimous vote resolution permitting an allocation different than the usual formula under the Act, which apportions expenses based on unit entitlement. As noted earlier, s. 194(2)(a) provides that a section is responsible for the common expenses of that section, including those related to limited common property. Limited common property is that property designated for the exclusive use of the units in the section. Section 1 of the Act defines “common expenses” as those expenses related to the common property and common assets of the strata corporation, or expenses required to meet any other purpose or obligation of the strata corporation.

[26] There is no reference in the Act to common property of a section, as I have noted earlier, only limited common property. Accordingly, sections cannot set up reserve funds for the purpose of maintaining or repairing common property. The Act does not refer to the obligation of a section to repair and maintain common property as distinct from limited common property. Reading the Act as a whole, it appears that common property of the strata corporation remains the responsibility of the strata corporation to maintain.

[27] Where the strata corporation is responsible for the repair and maintenance of common property, the expense is allocated among all strata units in accordance with the relative unit entitlement of each strata unit unless a unanimous resolution has been passed to the contrary. I will return to the issue of the allocation of common expenses when I turn to my discussion of s. 99 of the Act and evidence of significant unfairness arising from the formula.

[28] Sections may take on responsibility for common property repair and maintenance of common property appurtenant to or adjoining the strata units in section if the bylaws permit it. However, the bylaws of the sections in this case do not allocate responsibility to the sections for repair and maintenance of common property appurtenant to the sections, thus the strata corporation retains that responsibility.

[29] Bylaw 8 of The Palms bylaws states, in part, the following:

> Except to the extent that a separate section has assumed responsibility for same, the strata corporation must repair and maintain the following:
>
> a) common assets of the strata corporation; and
>
> b) common property that has not been designated as limited common property.

Subsection c) of bylaw 8 provides that:

> The strata corporation must also perform certain repair and maintenance of limited common property.

[30] Bylaws 34 and 43 deal with expenses of a section. Section 34(1) states as follows:

> With respect to a matter that relates solely to a section, that section has the powers and duties set out in section 194 of the Act, including, without limitation, the power to establish its own operating fund and contingency reserve fund for common expenses of the section to budget or require section owners to pay strata fees and special levies for expenditures that the section authorizes, and to create and enforce bylaws and rules in respect of matters relating solely to such section.

[31] Bylaw 43(1) states:

> Each section shall repair and maintain the limited common property that is exclusively for the use of the owners of that section to the extent that, but for this bylaw, same would have been maintained by the strata corporation under section 8(c).

[32] The bylaws make clear that a section, as distinct from the strata corporation, is responsible for those expenses relating to the limited common property allocated to that section. None of the bylaws expands the allocation of expenses beyond s. 194(2)(a) of the Act, which provides that the sections are also responsible for common expenses of the section if they relate solely to that section. As I have already noted, the result is that all common property remains the responsibility of the strata corporation. As I have also noted earlier, neither the Act nor the bylaws can be read to provide that the sections have their own individual common property.

[33] The changes to the allocation of expenses proposed by Re/Max in 2007 and adopted by the strata corporation at its July 2007 AGM, allocated the common expenses in accordance with the relative unit entitlement of each strata lot. Accordingly, the reallocation made in 2007 was made in accordance and in compliance with the Act and the bylaws of the strata corporation.

[34] The issue remaining, then, is whether such allocation is significantly unfair within the meaning of s. 164 of the Act. Section 164(1) provides as follows:

> (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
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> > (a) action or threatened action by, or decision of the strata corporation, including the council, in relation to the owner or tenant, or
> >
> > (b) exercise of voting rights by a person who holds 50% or more of the votes, including proxies, at an annual or special general meeting.
>
> (2) For purposes of subsection (1), the court may
>
> > (a) direct or prohibit an act of the strata corporation, the counsel, or the person who holds 50% or more of the votes,
> >
> > (b) vary a transaction or resolution, and
> >
> > (c) regulate the conduct of the strata corporation's future affairs.

[35] The phrase "significantly unfair" has been considered in a number of cases. One of the most recent is *Shaw v. The Owners of Strata LMS 3972*, 2008 BCSC 453, which summarizes much of the earlier case law concerning the meaning of "significant unfairness." At para. 40, *Shaw* cites *Chow v. Strata Plan LMS 1277*, 2006 BCSC 335, at paras. 74 and 75, the court said the following:

> The concept of unfairness was considered in *Ernest & Twins Ventures (PP) Ltd. v. Strata Plan LMS 3259* (2004), 34 B.C.L.R. (4th) 229, 2004 BCCA 597, where Lowry J.A. at paras. 23-24 observed:
>
> > 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 serve 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 addressed 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.

[36] At para.75 the court stated:

> In *Reid*, Ryan J.A. approved of Masuhara J.'s extended definition of "significant unfairness" in *Gentis v. Strata Plan VR 368* (2003), 8 R.P.R. (4th) 130, 2003 BCSC 120 at paras. 27-29:
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> > The scope of significant unfairness has been recently considered by this Court in *Strata Plan VR 1767 v. Seven Estate Ltd.* (2002), 49 R.P.R. (3d) 156 (B.C.S.C.), 2002 BCSC 381. In that case, Martinson J. stated (at para. 47):
> >
> > > The meaning of the words "significantly unfair" would at the very least encompass oppressive conduct and unfairly prejudicial conduct or resolutions. Oppressive conduct has been interpreted to mean conduct that is burdensome, harsh, wrongful, lacking in probity or fair dealing, or has been done in bad faith. "Unfairly prejudicial conduct" has been interpreted to mean conduct that is unjust and inequitable: *Reid v. Strata Plan LMS 2503*, [2002] B.C.J. No. 2377.
> >
> > I would add to this definition only by noting that I understand the use of the word 'significantly' to modify unfair in the following manner. Strata Corporations must often utilize discretion in making decisions which affect various owners or tenants. At times, the Corporation's duty to act in the best interests of all owners is in conflict with the interests of a particular owner, or group of owners. Consequently, the modifying term indicates that court should only interfere with the use of this discretion if it is exercised oppressively, as defined above, or in a fashion that transcends beyond mere prejudice or trifling unfairness.

[37] In *Shaw* the circumstances before the court were the following: the strata corporation was divided into two sections, commercial and residential. The commercial section consisted of well over 50% of the strata's votes, thus that section effectively controlled the conduct of the strata's business. For many years all of the common expenses relating solely to the commercial section were attributed to the shared budget. Historically, the shared budget included management fees, insurance, electricity, fire and safety, janitorial, window cleaning, landscaping, water and sewer, and repairs and maintenance. The residential section budget included air conditioning and heating, elevator maintenance, enterphone, garbage and natural

gas. The commercial section had businesses that likely used a significant portion of water. As a result, starting in 2006, the strata corporation allocated certain expenses between the sections. Water and sewer was allocated 72% to the commercial section, 28% to the residential section. Repair and maintenance was allocated 47% to the shared budget, 23% to the commercial section, and 30% to the residential section.

[38] The petitioners in *Shaw* (who were in the residential section) began to monitor and record the use of common property by the occupants and visitors to the commercial strata lots and found that the commercial strata lots derived an overwhelming benefit of common expenses relating to parking, storage, access areas within the common property, cleaning, electricity, landscaping and gardening. The court held that the allocation of the water and sewer expense was significantly unfair on the basis that according to the water meter readings, the residential section strata lots, indicated that the residential section used only I % of the water consumption.

[39] Notably, however, the court was not prepared to impose any other formula with respect to janitorial service, landscaping, repair and maintenance and other common expenses on the basis there was no evidence on which to base the conclusion that any disproportionate use of these expenses resulted in significant unfairness. At para. 47 the court concluded:

> However, while there is anecdotal evidence and common sense inferences to be drawn that janitorial service, landscaping, repair and maintenance and other common expenses are also disproportionately used by the Commercial Section - there is no evidence before this court which would allow the Court to conclude that any disproportionate used of these expenses results in significant unfairness.

[40] I will turn now to the circumstances of the present case. The petitioner, as an owner of one of 29 townhouses in a strata complex of 346 units, clearly believes he is not receiving any tangible benefit with respect to some of the common expenses. He is most concerned about the landscaping costs, which, prior to Re/Max assuming

the property management role, were allocated on the basis of actual cost of the landscaping for each building. The landscaping company rendered one invoice, but separated the labour and other costs actually attributable to each building. The townhouse section was required to bear very little of the cost as a result.

[41] The petitioner submitted it is unfair that he and other townhouse owners should be required to bear the cost of landscaping to common property and areas away from the townhouses. To use the words of the court in *Shaw*, there may be some anecdotal evidence or common sense inferences to be drawn that the townhouse owners receive a lesser benefit of some of the common expenses such as fire alarm inspection, landscaping, security and electricity consumption in the Monaco and the other common areas; however there is no evidence of any objective measurement or measure of consumption of these services by the townhouse section in relation to the consumption of those services by the remaining unit owners which would lead the court to conclude that there is any significant unfairness accruing to the petitioner.

[42] The petitioner argued he does not use many of the common areas and as a result it appears unfair to him that he has to contribute to many of them. While, again, this may not be fair, it is not significantly unfair. I am satisfied the allocation of expenses is not oppressive; it is simply a part of living in a large strata complex with numerous common areas and amenities. Accordingly, I concluded that the strata corporation has not conducted itself in a manner that is significantly unfair to the petitioner and that that aspect of his petition must therefore be dismissed.

[43] The petitioner made numerous allegations against Re/Max, but, as I have indicated at the outset of these reasons, many of them are based on Mr. Yang's perception that Re/Max was acting contrary to the *Strata Property Act* and bylaws of the strata corporation. I have reviewed all of the voluminous affidavit materials filed by the parties in this matter, and I am satisfied that Re/Max at no time failed to act on the instructions of the strata corporation concerning matters over which the strata corporation had authority.

[44] The petitioner made various other allegations against the strata corporation concerning the conduct of the annual general meetings of the strata corporation and the sections, and the adequacy of the notices provided to the unit members concerning the matters to be discussed at the meetings. While there may have been some technical breaches concerning these matters, I am satisfied none resulted in unfairness to any of the unit owners. What is abundantly clear is that the relationship among some of the unit owners is strained. That has led to an atmosphere that it is unfortunately quite toxic. Once again, this is largely due to a misunderstanding about the allocation of the expenses.

[45] Re/Max, as property manager, has followed certain historical practices of the strata corporation in the calling of annual general meetings, including the practice of holding the AGM of the strata corporation on the same day as the AGMs of the sections, and amalgamating certain aspects of the business of the strata corporation in the sections. There have been strong practical and financial reasons for doing so. However, counsel for the respondents has advised the court that it will now hold separate meetings if that is the wish of the sections. One difficulty is that many unit owners and, in particular, unit owners in the townhouse section, have historically been quite apathetic about the section's governance. It certainly cannot be said that the petitioner is apathetic, but it appears the majority of the owners in this section want little or nothing to do with their governance. That is something the townhouse section will have to address.

[46] The petitioner alleged that the voting procedures at the meetings of July 21, 2009, and September 24, 2009, were in breach of the Strata Property Act. In those meetings, votes were held concerning proposed bylaw amendments relating to the sections. The strata corporation acknowledged that the vote ought to have been conducted section by section rather than by the strata corporation as a whole. In any event, the contentious bylaw amendments that were objected to by the petitioner and some others were voted down. The issue is therefore moot, particularly as the

strata corporation has acknowledged that it will in future conduct the voting section by section where it relates primarily to the section bylaws.

[47] Finally, the petitioner alleged that the strata corporation refused to produce documentation to which he is entitled under the Act, He sought production, among other things, of journals, logs, reports of the resident caretaker and owners' voting proxies.

[48] Sections 35 and 36 of the *Strata Property Act* govern the question of access by unit owners to documents of the strata corporation. Section 35(1) lists the records that the strata corporation must prepare. Section 36(1) provides that on receiving requests, the strata corporation must make the records referred to in s. 35(1) available for inspection. Section 35(1) states:

> The strata corporation must prepare all of the following records:
>
> (a) minutes of annual and special general meetings and counsel meetings, including the results of any votes;
>
> (b) a list of council members;
>
> (c) a list of
>
> > (i) owners, with their strata lot addresses, mailing addresses if different, strata lot numbers as shown on the strata plan, parking stall numbers, if any, and unit entitlements,
> >
> > (ii) names and addresses of mortgagees who have filed a Mortgagee's Request for Notification under section 60,
> >
> > (iii) names of tenants, and
> >
> > (iv) assignments of voting or other rights by landlords to tenants under sections 147 and 148.
>
> (d) books of account showing money received and spent and the reason for the receipt or expenditure,
>
> (e) any other record required by the regulations.

[49] I am satisfied that the strata corporation made available to Mr. Yang all of the documentation to which he was entitled under s. 35(1) and has provided him additional documents not stipulated by that section.

[50] I am now going to provide the parties now, then, with the typewritten summary of my conclusions and orders, Madam Registrar, so that the parties can follow along. The following is a summary of my conclusions and orders which tracks by paragraph number the amended relief document filed by the petitioner in the course of the proceedings, which is Appendix A.

1. The application of the petitioner for a declaration that the strata corporation has conducted itself in a significantly unfair manner is dismissed.

   By way of summary, the bylaws of the strata corporation provide that each section is responsible only for expenses relating to the limited common property allocated to that section. The bylaws do not expand or alter the allocation of expenses described in section 194(2)(a) of the *Strata Property Act* which provides that sections are responsible for common expenses where they relate only to the section.

   The strata plan delineates common property, but that is common property of the entire strata corporation and not the individual sections. None of the sections has its own common property, only limited common property. As a result, the maintenance and repair of all common properties is the responsibility of the strata corporation.

   Accordingly, the allocation of expenses made by the strata corporation in July 2007 with respect to the common property is in accordance with the provisions of the *Strata Property Act;* further, the allocation is not significantly unfair to the petitioner.

2(a) Proposed bylaw amendments relating primarily to the sections require a three-quarter vote by each section. This is acknowledged by the strata corporation. However, the issue concerning the votes taken at the strata corporations annual general meetings of July 21 and

September 4, 2009, is moot because the proposed amendments to which the petitioner objected were not passed. Accordingly, no order respecting this issue will be made.

(b) The petitioner has not established that Carlos Valoma and Brendan Materi, representatives of the respondent Re/Max, misconducted themselves in the course of their duties as property managers for the strata corporation. The application seeking relief against these individuals is dismissed.

(c) The application for an order that the conduct of the strata corporation be regulated or an administrator appointed is dismissed.

(d) For the reasons stated in paragraph 1 above, the strata corporation did not violate part 2 of the *Strata Property Act* or overcharge the townhouse owners. Accordingly, the application seeking relief on this basis is dismissed.

(e) For the reasons stated in paragraph 1, the application for an order that the strata corporation adjust the townhouse section owner strata fees is dismissed,

(f) The application for an order that the respondent Re/Max pay certain costs relating to the conduct of annual general meetings is dismissed.

(g) The application for an order concerning the petitioners legal and court costs is dismissed.

(h) The application for an order pursuant to s. 167 of the *Strata Property Act* that the petitioner be exempted from contributing to the expense of defending the petitioner is granted. Once the cost of legal fees has been calculated, the petitioner's proportionate share shall be refunded to him by the strata corporation.

(i) The application for an order concerning 62 other strata unit owners is dismissed; and.

(j) Consequent upon on all of the above, the petitioner is not entitled to the relief sought in paragraph (j), which had to do with interest.

[51] Those are my reasons. Anything arising?

[Query re costs]

[52] THE COURT: Yes, as the successful party, the respondents are entitled to their costs of this proceeding at the usual scale, which is scale B.

The Honourable Madam Justice C. A. Wedge