IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Tafti v. Davis,*
2024 BCSC 176

Date: 20240202
Docket: S175641
Registry: Vancouver

Between:

Mehdi Alaei Tafti

Plaintiff

And

Alan Davis, John Davies, and the Owners, Strata Plan LMS 1866

Defendants

Before: The Honourable Mr. Justice Crossin

Reasons for Judgment

The Plaintiff, appearing in person:	M. Tafti
Counsel for the Defendants:	J. Rees R. Fischer M. Li
Place and Dates of Trial:	Vancouver, B.C. February 22-24 & 28, 2022 March 1-4 & 7-11, 2022 July 4, 6-8 & 11-15, 2022 January 9-13 & 17-20, 2023 April 3-5, 2023 June 19-22, 2023 & September 11-14, 2023
Place and Date of Judgment:	Vancouver, B.C. February 2, 2024

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Introduction

[1] The trial in this matter is the culmination of protracted litigation dealing with a litany of grievances raised by the plaintiff over the course of many years, relating to his life in a condominium development located at 989 Nelson Street in Vancouver. The plaintiff owns and resides in a residential strata unit at 989 Nelson Street; unit 604.

[2] The complaints of the plaintiff are wide-ranging. They include an allegation of assault by one of the personal defendants; but largely the plaintiff's tribulation is directed at the conduct of various persons he interacts with in his daily life at 989 Nelson Street.

[3] In this regard the plaintiff alleges the governance structure of the strata is flawed and creates unfairness; and in addition he says he was treated unfairly by a variety of persons he interacted with in the building. The plaintiff seeks remedies pursuant to s. 164 of *Strata Property Act*, S.B.C. 1998, c. 43 ("*SPA*"), alleging he has suffered significant unfairness at the hands of the defendants.

[4] I conclude, for the reasons that follow, the plaintiff has failed to establish his claims in their entirety.

Overview

[5] The condominium development at 989 Nelson Street is known as The Electra Building. It is owned by the defendant, the Owners, Strata Plan LMS 1866 (the "Strata Corp."). The defendant, Mr. Alan Davis is an employee of the Strata Corp. He is the on-site manager of the building and has been in that role since 2009. The defendant, Mr. John Davies is the owner of certain commercial units in the building since 2004 and has, over the years, been elected to positions within the governance structure of the development.

[6] The affairs of the development are governed by the provisions of the *SPA*; and various bylaws adopted and passed from time to time.

[7] The *SPA* provides for the creation of separate sections in addition to the Strata Corp. In this regard, the Electra Building consists of a residential section (Section 1, Owners of Strata Plan LMS 1866); and a commercial section (Section 2, Owners of Strata Plan LMS 1866). The Electra Building has 21 floors. The residential section consists of floors 3-21, and the commercial section occupies floors two down to the basement of the building.

[8] The two sections are separate corporations in accordance with the provisions of the *SPA*; with their own bylaws, budgets, and governance structures. Each section is entrusted with duties and obligations relating to the owners in the respective sections; including matters pertaining to what is referred to as the limited common property designated for the exclusive use of the strata owners of each section.

[9] The Strata Corp. as well has its own governance structures and budgets. The Strata Corp. is responsible for managing the Strata Corp. common property. Strata Corp. common property is property in areas of the building not otherwise the responsibility of the respective sections. The sections operate independently and have the status to bring an action in the name of the section; enter into contracts in the name of the section; and enforce their own bylaws and rules.

[10] The particulars of the governance structures will be referenced in due course.

[11] The matters before the court have their genesis in a Small Claims action commenced by the plaintiff against Alan Davis and John Davies in May 2015. This claim alleged Mr. Davis assaulted the plaintiff and in so doing injured the foot, or feet, of the plaintiff. It is said this occurred some two years previously, on May 10, 2013. Briefly, it is alleged in the Small Claims action that Mr. Davis, in attempting to prevent the plaintiff from entering a certain office area, closed the door of the office at the same time the foot of the plaintiff had been placed between the door and the door frame. The plaintiff wanted access to the office, and it is alleged Mr. Davis prevented this. Two constables from the Vancouver Police Department soon arrived on the scene having been summoned by personnel inside the office area. The

plaintiff alleged in the Small Claims action that his foot was injured and sought damages for that personal injury.

[12] Ultimately the Small Claims proceeding was transferred to Supreme Court and a Notice of Civil Claim was filed by the plaintiff in August 2017. The allegation of assault, characterized as the tort of battery, remains extant in the pleadings currently before the court. In addition, the plaintiff alleges the Strata Corp. is vicariously liable for the alleged battery committed by Mr. Davis in this circumstance.

[13] The current pleadings significantly expand upon the Small Claims action to include more expansive allegations of wrongdoing against the named individuals, and various non-party individuals, and, as well, a claim alleging governance failings on the part of the Strata Corp. that the plaintiff says 'adversely impacted his interests'. Consequently these grievances are the foundation of an allegation of oppression pursuant to s. 164 of the *SPA*.

[14] Section 164 of the *SPA* reads as follows:

> 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
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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
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> (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.
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> (2) For the purposes of subsection (1), the court may
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> (a) direct or prohibit an act of the strata corporation, the council, 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.
>
> [Emphasis added.]

[15] In this regard the plaintiff seeks various forms of relief.

[16] The proceedings in Supreme Court were never commenced by petition. It is a petition that in my view is the proper mechanism for proceeding in these

circumstances; however the court and the parties, over the years leading to trial, have been content with the current process.

[17] Since August 2017 the parties have made numerous appearances in this court, and the Court of Appeal, regarding various issues. Primarily the time has been taken up by the defendants applying to have various pleadings of the plaintiff struck; and/or resisting the efforts of the plaintiff to add parties and pleadings. The submissions of the defendants generally concerning these pretrial applications took the form of alleging the pleadings of the plaintiff were prolix, confusing, meritless, and largely incomprehensible.

[18] The circumstances leading up to the trial in this matter are perhaps best, and most succinctly, described by Justice Newbury in *Tafti v. Davis*, 2020 BCCA 363 as follows:

> [1] This case began as a simple personal injury claim in Provincial Court in 2015, but since its transfer to the Supreme Court, it has become stalled in a morass of complex, confusing and repetitious chambers applications regarding amendments the plaintiff wishes to make to his pleadings. Numerous orders have been made, ignored in part or in whole, and remade by other judges. At this point, the underlying action consists of a claim for damages for injuries to one or both of Mr. Tafti's feet, allegedly caused by the individual defendants, for which Mr. Tafti says the defendant strata corporation is vicariously liable; and a statutory oppression action brought against the corporation under s. 164 of the [*SPA*]. …

[19] And further:

> [16] Most important in this case are the intertwined matters of prejudice to the defendants and the interests of justice. The defendants have already experienced an avalanche of chambers applications directed at expanding Mr. Tafti's causes of action to include every complaint that he has about the building in which he lives and its management by the defendant strata corporation. He has ignored orders striking out various aspects of proposed pleadings and he has then reintroduced them in another way before another judge hoping to get a different result. … It appears to me that judges have 'bent over backwards' to accommodate the fact that Mr. Tafti has been representing himself and suffers from some disabilities. It is time, however, for this long and expensive pleading process to come to an end and for the parties to turn their attention to the trial of the two basic causes of action brought against the defendants. …

[20] Nevertheless, notwithstanding this invitation from Justice Newbury, throughout the trial the plaintiff sought to introduce evidence that was often not relevant or, where admitted, marginally relevant at its highest. The plaintiff continued to have little regard for the many orders of the court that determined the parameters of the issues as defined by the pleadings.

[21] The claims that remain in the plaintiff's Further Amended Notice of Civil Claim ("FANOCC"), filed on June 7, 2019, still remain somewhat difficult to navigate.

[22] The plaintiff's claim continues to seek damages in battery regarding the alleged assault by Mr. Davis. The remaining claims, while a challenge to follow, were somewhat crystallized throughout the trial and during submissions.

[23] The plaintiff alleges the Strata Corp. "oppressed" the plaintiff through the conduct of its council members. The plaintiff has pleaded particulars in support of a remedy pursuant to s. 164 of the *SPA*.

[24] The particulars as contained in the FANOCC (paragraph 5) include:

- That Mr. Davies, while a member of the Strata Council, 'privately' informed the plaintiff, in 2009, that the plaintiff's objections to the hiring of Mr. Davis as an on-site manager, would be irrelevant; and that the plaintiff (as allegedly stated by Mr. Davies) was reminiscent of Mr. Davies' little dog, which made a lot of noise but was now dead.
- That, also in 2009, and also apparently in relation to the hiring of Mr. Davis, a Mr. Ray Cousineau said to the plaintiff that if he (the plaintiff) continued to question the process concerning the hiring of Mr. Davis, 'he' (the plaintiff) could end up in the hospital. Mr. Cousineau, at this time in 2009 was a member of the Strata Council. Mr. Cousineau had passed away by the time of trial.
- The plaintiff alleges that in July 2010, during a meeting of the residential executive, a Mr. Gordon Forrest, a member of the residential executive, but also a member of the Strata Council, grabbed the plaintiff by the neck to remove him from a meeting. Again, this allegation appears to also be in relation to the plaintiff complaining concerning the process of the hiring of Mr. Davis. It appears the police were notified and attended.
- The plaintiff alleges that in August 2010, Mr. Davis attempted to prevent the plaintiff and some guests from using the social club in the building. Consequently, the plaintiff phoned the police.

- The plaintiff says that in March 2011 Mr. Cousineau, unlocked the residential boardroom, allowed the plaintiff to step in, but then closed the door ‘and held it firmly in place’, again, on his foot.
- Some months later, in July 2011, the plaintiff alleges that Mr. Forrest said to the plaintiff that he (Forrest) would ‘flatten his ass'.
- In March 2012 Mr. Davies, it is alleged, suggested the plaintiff should be eliminated; and it is asserted by the plaintiff that Miss Tanya Paz agreed. Ms. Paz was a member of the residential executive at the time.
- In April 2012, at the Annual General Meeting of the residential section, a Mr. Trevor Boudreau, it is alleged, shoved the plaintiff from behind. Mr. Boudreau was at that point in time a member of the residential executive.

[25] In support of his claim the plaintiff also alleges at paragraph 13:

> The defendants have interfered with the use and enjoyment of his property, by neglecting to replace and repair his air conditioning unit, wash his outer windows, fix faulty washing machines, constrain short-term tenancy in the electorate; and do so in a timely and effective way … Mr. Davis failed to report and conduct repairs as required.

[26] The plaintiff also alleges the Strata Corp. or Mr. Davies personally, are liable to pay a certain sum of money to the plaintiff. The allegation of the plaintiff, in this regard, as contained in his pleadings at paragraph 4, is that:

> They have failed to recover monies owing from the commercial section to the residential section, including about $60,000 in strata fees owing since 2008, including the plaintiff's proportion of those fees.

[27] The evidence in the trial revealed that, as a matter of governance, the payment of various expenses by each section would sometimes require one section to reimburse the other. The above allegation appears to relate to a complaint that monies properly owing the residential section from the commercial section were not paid, through the fault of the defendants.

[28] The remaining allegations contained in the FANOCC are so general in nature as to be meaningless. They are set out in paragraphs 9, 11, and 14-15 in the FANOCC as follows:

> 9. The plaintiff claims that the conduct of directors of Strata Plan LMS 1866, including Mr. Davies in his representative capacity as a fiduciary, constitute bad faith. The plaintiff further alleges willful default, undue influence and/or misrepresentation, on the part of Mr. Davies, though the plaintiff does not have all the particulars at this time. The plaintiff similarly

> alleges misrepresentation on the part of Mr. Davis. Furthermore, knowledge of prior assaults and threats, at least in part, clearly demonstrates malice and fraudulent intention on the part of the defendants.
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> …
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> 11. The plaintiff has also experienced, and continues to have, a reasonable apprehension of bias.
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> …
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> 14. The plaintiff has also been denied mitigating remedies due to defendants' misrepresentation, malfeasance, violation of procedural fairness, failure to reform the bylaws of LMS 1866 in a timely manner, contravention of the *Strata Property Act, S.B.C. 1998, c. 43*, censure of the plaintiff, denial of services, and defamatory remarks.
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> 15. Unresolved structural problems and defects in governance of the Electra, whether ongoing or intermittent, have made the disposition of the plaintiff's residence impracticable.

[29] These allegations were not particularized in the FANOCC nor is the court aware that particulars were sought. Consequently, a good deal of the plaintiff's evidence, and the response of the defendants, related to complaints of the plaintiff not contained in the pleadings; and/or was evidence relating to pleadings that had been struck from the plaintiff's claim as alluded to by Justice Newberry.

[30] In the end, there was little or no persuasive evidence led in support of many of these broad allegations.

[31] The plaintiff was urged to focus in final submissions on areas of his primary concern relating to relief pursuant to s. 164 of the *SPA*. The plaintiff submitted, as best I could discern, the following:

> 1) A motion passed at an AGM of the Strata Council at some point, that restricted the interior blinds of the building to the colour of white, was based on a fraudulent misrepresentation made at the AGM by a Mr. Hesham Ibrahim, a member of the Strata Council. The plaintiff stated in argument that the fraudulent misrepresentation was that Mr. Ibrahim stated that at a meeting two years before, a vote on the same topic, that is the colour of the blinds, by the residential section, was a 50/50 vote; when in fact, says the plaintiff, there had only been a single vote at the residential meeting in favour of restricting the colour of the blinds.
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> 2) It appears at some point there was a fire in a room in the building; the room referenced as the craft room. The plaintiff says the craft room is now

being used (presumably after repairs) for purposes other than residential section purposes.

3) The plaintiff says the parking spaces connected to the outside of the building for guests and visitors were historically Strata Corp. common property. The plaintiff says that the Strata Council, during COVID, decided to have the spaces transformed to pay parking to earn income. It is submitted this has resulted, for instance, in the plaintiff's mother having to pay for parking. He says the change described was done unlawfully or improperly and “impacts relationships”. This, the plaintiff says, falls within his general allegations of ‘structural governance defects’. He says the emails produced by the defendants, describing the context and propriety of this decision to change the parking circumstances, are fabricated.

4) The plaintiff alleges the back door of the building represents a failing of the Strata Corp. as it is difficult for him to push the door open while carrying his bicycle. This issue, says the plaintiff, relates to another issue raised concerning his bicycle (a complaint that was in fact previously struck from his pleadings). It appears the residential section passed a bylaw preventing persons from taking their bicycles up and down the elevators. Storage lockers were provided. Although difficult to follow, the plaintiff says, generally, people were ‘out to get him’ and ‘torture him’; and, consequently he didn't trust that ‘they wouldn't damage his bicycle in the storage locker’.

5) The plaintiff says that he was unsuccessful in one of his many court applications because he was, on the day, upset and stressed and consequently ineffective in his submissions before the court. This in turn was a result of Mr. Davies ‘studying him’ upon the plaintiff exiting an elevator after being harassed in the elevator by someone named Jason.

6) The plaintiff complains that the delay in management ‘fixing’ the elevator resulted in longer waits for the elevator, consequently causing additional pain to his injured foot due to prolonged waiting times.

7) The plaintiff raised a complaint concerning what has been referred to as the AEBC litigation. This apparently is a lawsuit between an entity referenced as AEBC and the Strata Corp. The plaintiff complains that the litigation was conducted by the Strata Corp. without informing him of aspects of the litigation as the litigation unfolded. The plaintiff says he ought to have been informed and seeks proportionate indemnification for the costs incurred by the Strata Corp. associated with this dispute. The plaintiff submits that ‘s. 429 of the CCC is engaged’. As an adjunct to this the plaintiff says that Strata Corp. has violated s. 167 of the *SPA* by not disclosing legal fees expended in the lawsuit.

8) The plaintiff raises what he references as a structural defect concerning the makeup of the Strata Council and the respective contributions of the sections to the common expenses. Contribution to common expenses is approximately 60% attributable to the residential section and 40% to the commercial section.

   The Strata Council is made up of two elected persons from each section and the president of the council. The plaintiff says this makeup is

> ‘disproportionate’ and results in a representation on the Strata Council that is unfair; and the expenses are disproportionate i.e. for instance the salary and benefits of Mr. Davis are contributed by the residential section in a disproportionate way which the plaintiff alleges results in significant unfairness to the plaintiff.
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> 9) The plaintiff also submits Ms. Tanya Paz, when she was a member of the residential section (2009–2013), and in fact president of that section, defamed the plaintiff in comments she made concerning a number of persons, including, the plaintiff. The plaintiff says Ms. Paz, in the context of a motion to put cameras in the social club, stated that the people voting against the motion are “responsible for most of the damage to the building”.

Credibility and Reliability

[32] Issues of credibility and reliability of witnesses played a significant part in this trial.

[33] Credibility and reliability are different notions. Credibility concerns the veracity of a witness; to be blunt, an assessment of whether the witness is lying. Reliability is an analysis of the accuracy of the evidence of the witness. These two concepts may be, but are not necessarily, connected. It is unlikely a witness who is not credible is nevertheless found to be reliable, in the absence of independent corroborative evidence. It is not axiomatic however that a credible witness provides accurate evidence and is therefore a reliable witness. A credible witness may in fact not provide reliable evidence: *R. v. Morrissey* (1995), 22 O.R. (3d) 514 (C.A.) at 526.

[34] The determination of veracity and accuracy requires consideration of a number of factors and inquiries.

[35] It may be a witness did not have an optimum opportunity to hear or see matters unfold. Importantly, the condition of the witness at the time may be a relevant consideration. In addition, the memory of a witness may be faulty for one reason or another, including the passage of time. The trauma of an event can impact the ability of a witness to accurately recall. The stress and anxiety sometimes associated with providing evidence in a formal way in an unfamiliar environment, for instance a hearing, an examination for discovery, or a courtroom, can sometimes

inhibit the ability to say precisely what one wants to say, and in the way one wants to say it.

[36] There will be circumstances, like the case at bar, where a witness has given previous statements that are inconsistent with the current evidence. Certainly where a witness has provided inconsistent evidence on a previous occasion under oath, the Court will proceed with caution before accepting an invitation to find that person is a witness of truth.

[37] As well, an analysis of whether a witness has remained internally consistent in providing evidence is often a factor that is telling. Inconsistencies in the witness's own evidence at trial, or with other witnesses, calls for an assessment on the "totality of the evidence to assess the impact of the inconsistencies in that evidence on questions of credibility and reliability pertaining to the core issue in the case": *F.H. v. McDougall*, 2008 SCC 53 at para. 58.

[38] When presented with conflicting testimony, the Court should assess the evidence with a view to determining whether a particular version of events is the most consistent with the "preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions": *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.) at 357. The Court must bring experience to bear in assessing when that evidence of the witness accords with common sense and can live comfortably with the independent evidence that has been accepted by the Court: see also *Bradshaw v. Stenner*, 2010 BCSC 1398.

[39] The tone and manner of the witness in providing his or her evidence remains properly a factor to be considered in assessing credibility and reliability. Frankly, I found this aspect helpful in the overall consideration of matters, but care must be exercised concerning the weight to be afforded what is generally referred to as an assessment of the demeanour of the witness. `

The Allegation of the Tort of Battery

[40] The evidence and arguments of the plaintiff, in support of the tort of battery, throughout the trial, focused on the complaint that Mr. Davis closed the door of the office on the foot of the plaintiff thereby causing damage to the foot. This occurred on May 10, 2013.

[41] The detail of this particular event is set out with some precision in paragraphs 7 and 8 of the plaintiff's FANOCC. This is also the event described in the body of the initial complaint of the plaintiff filed in Provincial Court in May 2015.

[42] The theory of the plaintiff relating to the imposition of liability upon Mr. Davies and the Strata Corp., for the alleged battery committed by Mr. Davis, is also not particularly precise. It appears to be captured as follows in the pleadings:

> The assaults and batteries were committed jointly and in common enterprise, and the corporation took no steps to prevent their occurrence. In the alternative Mr. Davies led this campaign to injure, intimidate, discredit, defame, and torture the plaintiff.

[43] In my view the theory of liability concerning the alleged battery by Mr. Davis must rest on the legal principle of vicarious liability concerning the conduct of an employee. I will proceed on this basis notwithstanding the plaintiff did not make coherent submissions concerning any theory of liability on the part of the Strata Corp.

The Evidence Regarding Battery

Context

[44] The evidence and pleadings demonstrate the plaintiff interprets many things said or done, by various persons in the orbit of The Electra Building, through a prism of suspicion. He perceives the defendants, and many persons, as being motivated by unjustified ill-will directed towards him; and a desire to ‘harass’ and ‘torture’ him.

[45] Conversely, it is clear from the pleadings and evidence the plaintiff was viewed by certain persons in The Electra Building as someone that was, and is, so

irrationally confrontational, obsessive, and unpredictable he was to be physically avoided around the building if at all possible.

[46] The immediate circumstances giving rise to the events of May 10, 2013 are reflected in an e-mail exchange shortly before the event. The dates on the e-mails are inaccurate but there was little issue the e-mail exchanges occurred in and around May 8, 2013. The e-mails hint at the apparent difficult relationships between the plaintiff and certain management personnel.

[47] The system of navigating areas of the building by residential owners and/or tenants is by the use of individual registered fobs effectively acting as keys. It appears from the evidence the plaintiff had a tenant or tenants from time to time in his unit. There had been difficulties with his tenant and the tenant had been banished from the building. The residential section determined a fob audit of the plaintiff's fobs was appropriate in these circumstances to ensure that all was in order.

[48] In any event, a Mr. Ray Cousineau, then a member of the residential executive, arranged for a Mr. Luc Boulaine and/or Mr. Davis to advise the plaintiff of such and arrange for the audit. Mr. Boulaine was an assistant to Mr. Davis. Mr. Boulaine e-mailed the plaintiff indicating the fact that he was conducting a fob audit. The plaintiff was asked to bring his fobs to the office anytime – Monday through Friday – so they could be scanned to determine if any fobs were unaccounted for. The plaintiff apparently had four fobs.

[49] Mr. Cousineau also e-mailed Mr. Boulaine and Mr. Davies setting out a 'suggestion': that they meet the plaintiff in the hallway and take his fobs; have the plaintiff wait in the mezzanine while the fobs were checked, and then return the active fobs to the plaintiff. "Find a way to keep him out of the office; keep control of the situation from beginning to end". And further: "It is not necessary to actually let him in the office".

[50] Mr. Davis responded that the suggestion "sounded to him like a good idea".

[51] Notwithstanding this goal; it was to no avail; the situation was not kept in control.

Evidence Summary of the Plaintiff

[52] The plaintiff testified he received an e-mail from Mr. Boulaine on May 8, 2013 seeking to undertake an audit of the fobs in the possession the plaintiff. There is some evidence the plaintiff and one of his tenants had difficulties concerning a dispute. The plaintiff testified the tenant punched the plaintiff. The police were called. The tenant was escorted from the building. This occurred at some point prior to May 8, 2013.

[53] On or around May 8, 2013 the plaintiff had apparently arranged for another tenant. The fob audit was in aid of tracking and registering the fobs going forward; particularly in light of the previous tenant and that tenant's bad behaviour.

[54] In any event, to this end, the plaintiff arrived in the foyer area of the building referred to as the mezzanine. The mezzanine is a floor one floor up from the lobby of the building that is accessible by a staircase, from lobby to mezzanine. The manager's office is off the mezzanine on this floor. There is a seating area in the mezzanine area. The plaintiff testified there is a device for registering fobs (the “fob reader”) outside the manager's office.

[55] The plaintiff arrived for the meeting with the new tenant in tow. It appears at this time Mr. Boulaine was in the office but Mr. Davis was not. The plaintiff testified Mr. Boulaine engaged with the plaintiff in the mezzanine area and the fobs of the plaintiff were duly audited in the fob reader. The plaintiff requested a fob for his new tenant. The plaintiff testified that Mr. Boulaine returned to the office and closed the door and the plaintiff and tenant sat in the waiting area. After about 30 minutes the tenant left and the plaintiff remained in the mezzanine. He felt Mr. Boulaine was acting ‘cagey’.

[56] The plaintiff testified he then observed Mr. Davis arrive in the area coming up the staircase with a coffee. The plaintiff testified Mr. Davis did not acknowledge the presence of the plaintiff but simply walked past and entered the office.

[57] He felt he was being ignored by Mr. Davis. This made him ‘quite upset’. He testified he was in a ‘bad way’ emotionally even leading up to this event in question.

[58] The plaintiff gave evidence he observed a person (an employee of an outside cable company) arrive in the area. The plaintiff says he knew the employee would have to deal with the people in the office and so he followed the cable person towards the office. When the office door was opened to let the cable person into the office the plaintiff testified he attempted to enter the office as well. As he attempted to enter the door, the door was closed by Mr. Davis on the plaintiff's left foot. I gather from the evidence of the plaintiff that matters remained like this until the cable person was let out of the office. In so doing the door was opened, the person was let out, and then the plaintiff stepped in with his right foot.

[59] The plaintiff testified Mr. Davis then closed the door again, trapping his right foot. There matters stood (so to speak) for a short period until the Vancouver Police arrived on scene. He also testified it was his ‘perception’ that it was Mr. Davis that closed the door.

[60] The standoff ended when the police attended. The police stayed while Mr. Boulaine completed the fob registration for the tenant. The plaintiff recorded all or some of the interaction with the police on his phone during their attendance. He testified he had a ‘reasonable apprehension of bias regarding the VPD’.

[61] In any event, the plaintiff testified that the manager’s office was considered residential common property (this characterization was common ground). In this regard, the plaintiff quoted apparent comments by Justice Newbury, upon the appearance by the parties in the Court of Appeal, that residential common property is owned, in proportion to the unit entitlement of the residential owners. The plaintiff testified therefore that he had a legal right to be in the office.

[62] It was put to the plaintiff in cross-examination that his evidence at trial, that is, that his left foot and then his right foot was closed upon during the sequence, is inconsistent with his evidence provided at the examination for discovery. The plaintiff agreed he testified at his examination for discovery that his foot “went through the door twice” and closed on his right foot. The plaintiff also testified at his examination for discovery the door was closed twice on his right foot.

[63] It was also put to the plaintiff that he had told the police at the scene the door closed on his left foot. The plaintiff agreed he told this to the police. The plaintiff stated however when discussing these matters with the police and at his examination for discovery, he was also referencing another alleged incident with Mr. Cousineau.

[64] In addition, the plaintiff agreed that his evidence at the examination for discovery that the door had closed twice on his foot was not referenced in his pleadings, at any time, during the various iterations of the pleading. He agreed the first time he raised the fact that the door was closed twice on his foot, regardless of which foot, was six years after the event, in November 2019, at his examination for discovery.

[65] The plaintiff was granted leave to “recall himself” to provide further evidence upon the continuation of the trial in July 2022. He testified then that when he had his foot in the door he may have “twisted” and “leaned and turned when the police arrived”. He agreed this was the first time he had, either through pleadings or evidence, testified to the prospect of himself twisting or turning his body with his foot in the door.

[66] The plaintiff also agreed he was frustrated concerning the issues associated with the fob. He agreed he said to Mr. Boulaine, after the event, that “you” put the door on his foot, but later testified when he said that he must have meant “the plural” you, because he maintains it was Mr. Davis that closed the door on this foot.

[67] The plaintiff agreed he secretly recorded a discussion he had with Mr. Boulaine after the event where he stated to Mr. Boulaine that “you crushed my foot with the door”. The plaintiff again says however he meant “the plural”; that it was Mr. Davis; and that he was not trying to secretly record the discussion in hopes of obtaining some kind of admission.

[68] The plaintiff also offered evidence in this context that he had suffered a brain injury at one point in his life, and also testified he had a history of alcohol abuse and self-medication.

[69] He testified he reported the May 10, 2013 incident to his father. His father provided the plaintiff with medication that his father had obtained in Iran; specifically Tylenol 3.

[70] The evidence of the plaintiff is that he is uncertain when he reported the May incident and injury to any medical person. The plaintiff stated ankle pain caused him to lose his balance some weeks after the incident and that in turn caused him to drop a glass which in turn caused him to cut his toe. He testified he attended a clinic as a result and was seen by a Dr. Marshall. This occurred in July 2013. This is the first medical person he saw following the May incident.

[71] The plaintiff stated in treating the cut, Dr. Marshall at some point recommended a wobble board for his right ankle. He agreed, he never, at any time, reported any injury to his left foot or ankle.

[72] The plaintiff testified he suffered a right ankle sprain or inversion in March 2014. He testified he received a recommendation for a wobble board from Dr. Marshall prior to spraining his right ankle.

[73] The plaintiff was taken to the notes of a Dr. Faraday. Dr. Faraday was an expert witness called by the plaintiff. It was put to the plaintiff that the notes and report of Dr. Faraday indicated that Dr. Marshall had provided a prescription for a wobble board after the March 2014 inversion injury. The plaintiff testified he could not recall.

[74] The plaintiff said he could not recall when he reported the May incident to his family physician, Dr. Willaeys.

[75] He confirmed he sought treatment for his right ankle at Red Card Physiotherapy between February 2016 and August 2016.

Evidence Summary of Dr. Trent Faraday

[76] Dr. Faraday was called by the plaintiff and qualified as an expert in the area of treating musculoskeletal injuries and occupational medicine. The evidence of Dr. Faraday relevant to the issue of liability for battery was marginal, although Dr. Faraday did address the medical records the plaintiff had provided to him.

[77] Dr. Faraday testified that the medical records in the matter indicated that there was no medical record of any treatment for an ankle injury until March 2014, after the plaintiff had sustained an ankle inversion. The notes included Dr. Marshall seeing the plaintiff on March 24, 2014, and diagnosing a Grade 3 ankle sprain. This was following the plaintiff's initial attendance for his injury at St. Paul's emergency on March 19, 2014.

[78] Dr. Faraday confirmed the first reference, in any medical records, to a 'foot in door' incident was January 7, 2016, in the records of Dr. Willaeys.

Evidence Summary of Ms. Souvoursadot Mirebrahimi

[79] The mother of the plaintiff testified that the plaintiff had difficulty walking and complained of pain from time to time.

Evidence Summary of Mr. Luc Boulaine

[80] The plaintiff called Mr. Boulaine as an adverse witness. Mr. Boulaine, at the time of this event, was a part-time employee of the defendant. Mr. Boulaine would assist Mr. Davis with various matters. Mr. Boulaine habitually arrived at the building about 8:30 a.m. and opened the office, turned on the computers, checked e-mails and the like. He would from time to time perform certain administrative functions for instance the sale of fobs, rental of guest suites, and cleaning staff issues.

[81] Mr. Boulaine confirmed that following the incident with the plaintiff's tenant, the executive of the residential section asked Mr. Boulaine and Mr. Davis to contact the plaintiff and arrange to conduct the fob audit.

[82] Mr. Boulaine testified the plaintiff arrived approximately 10:30 a.m. that morning and knocked on the office door. Mr. Boulaine was on the phone. Mr. Davis had gone to Tim Hortons. Mr. Boulaine asked the plaintiff to have a seat outside in the mezzanine. The plaintiff obliged. Mr. Boulaine finished his call, confirmed the plaintiff’s fob numbers, and met with the plaintiff and another gentleman in the mezzanine area.

[83] The plaintiff had four fobs and the instructions from the residential executive was to confirm the state of affairs concerning the fobs and deactivate fobs where appropriate. This was accomplished on the fob reader outside the office.

[84] Mr. Boulaine testified the plaintiff then wanted to arrange for a fob for his new tenant. He testified he did not know the plaintiff wanted to make this arrangement until the plaintiff told him in the mezzanine.

[85] Initially Mr. Boulaine testified the plaintiff was calm and cordial. However, upon the plaintiff being told he would have to purchase a new fob, and that Mr. Boulaine would require his credit card information, the demeanour of the plaintiff significantly changed. Mr. Boulaine testified, for some reason, something sent the plaintiff into a tirade; yelling, screaming and insisting that the continuing business of the fobs be conducted inside the manager's office.

[86] Mr. Boulaine testified this unsettled him and he became fearful. Mr. Boulaine stepped away from the plaintiff and retreated to the office a few metres away. He closed the door. The plaintiff began banging on the door insisting he be let into the office. Mr. Boulaine testified he said nothing, not wanting to agitate the plaintiff further. Mr. Boulaine attempted to contact Mr. Davis by phone but could not reach him.

[87] In any event, as it happens, Mr. Davis arrived back in the building around this time. Mr. Boulaine testified that when Mr. Davis opened the door to enter the manager's office the plaintiff was behind Mr. Davis and attempted to force his way around Mr. Davis and into the office. Mr. Boulaine attempted to allow Mr. Davis in the office and then close the door. Mr. Davis did enter and Mr. Boulaine attempted to close the door several times to no avail. On the last attempt the door came to a stop, Mr. Boulaine looked and saw the plaintiff had stuck his foot in the door. Mr. Boulaine testified that at one point he observed the plaintiff stick his arm through the opening and then withdraw it. Mr. Boulaine testified he was concerned for his safety and asked Mr. Davis to phone the police, which Mr. Davis did.

[88] Mr. Boulaine could not say whether it was the plaintiff's left or right foot in the door but did testify he did not see the plaintiff remove his foot when Mr. Boulaine released the pressure several times to allow the plaintiff to extract himself. Mr. Boulaine also testified the door was against the sandal on the plaintiff's foot and at no time did Mr. Boulaine see the door actually come in contact with the plaintiff's foot.

[89] He stated he did not intend to close the door against the plaintiff's foot. He testified the plaintiff, and he, pushed back-and-forth with the door initially and then it was the plaintiff that stuck his foot between the door and the door frame.

[90] In this regard, in answer to the plaintiff, Mr. Boulaine testified “you stuck your foot in the door to prevent me from closing the door”.

[91] The plaintiff suggested to Mr. Boulaine whether it had occurred to Mr. Boulaine that the reason the plaintiff did not remove his foot was because the plaintiff really wanted a fob. Mr. Boulaine testified “no, you wanted access, I was concerned about my safety, that was the only thing on my mind”.

[92] Mr. Boulaine testified he did not observe the plaintiff have any physical difficulties for some months following the incident and then one day saw the plaintiff with a cane.

Evidence Summary of Constable Jason Doucette

[93] The plaintiff called Cst. Doucette. Cst. Doucette had little if any independent recollection of his attendance at The Electra Building the morning of the incident. He and Cst. Keith MacDonald, both members of the VPD, attended. Cst. Doucette confirmed it was Mr. Davis that called the police.

[94] The plaintiff played a recording he had made from his phone during the police attendance for the benefit of Cst. Doucette. Cst. Doucette confirmed that he told the plaintiff at the scene the plaintiff could be charged with assault or trespass.

Evidence Summary of Constable Keith MacDonald

[95] Cst. MacDonald confirmed he had been a member of the VPD for many years. Cst. MacDonald as well had little independent recollection of the incident in issue. Cst. MacDonald testified that had he received a report of any injury as a result of the incident he would have recorded that fact in the occurrence report and no such note is contained in the report.

Evidence Summary of Alan Davis

[96] Mr. Davis is the property manager of the building. Again, he was called by the plaintiff as an adverse witness.

[97] Mr. Davis confirmed that the residential executive had directed the plaintiff to present his fobs for audit. He agreed and carried out the directive contained in the e-mails, that is to keep the plaintiff in the mezzanine while conducting the audit.

[98] Mr. Davis testified that he was returning to his office the morning of May 10, 2013, having been at Tim Hortons, when Mr. Tafti passed him coming down the stairs as Mr. Davis was walking up the stairs.

[99] Mr. Davis testified that as he approached the office the plaintiff had turned and followed him to the office and indeed attempted to push past Mr. Davis into the office at the doorway. Mr. Davis testified he made his way into the office and went to

the other side of the office while Mr. Boulaine stayed at the door and attempted to close the door.

[100] He stated he could see that Mr. Boulaine could not close the door and confirmed that Mr. Boulaine asked him to call the police, which Mr. Davis did.

[101] Mr. Davis denied that any person, including a cable person, was in and around the office at this time.

[102] Mr. Davis conceded he could not see precisely what occurred to prevent the door from closing, as a desk in the office blocked that particular view from his perspective.

[103] Mr. Davis repeatedly denied the suggestions by the plaintiff that it was he, Mr. Davis, that attempted to close the door.

Evidence Summary of Trevor Boudreau

[104] Mr. Boudreau was a member of the residential executive and a member of the Strata Council at the time of this incident.

[105] He confirmed that the residential executive had asked the on-site office to conduct a fob audit for the plaintiff's unit. He testified that this request was motivated by an earlier incident where a tenant of the plaintiff had caused damage to property in the building and the concern was ensuring that all fobs were accounted for.

[106] Mr. Boudreau confirmed that Mr. Boulaine and Mr. Davis had raised security concerns in having to deal directly with the plaintiff. Consequently the executive directed that dealings with the plaintiff take place out of the office in the public mezzanine area.

The Law

[107] To establish battery a plaintiff must prove an intentional infliction of harm or offensive conduct. The issue of intention is addressed in *Non-Marine Underwriters, Lloyd's of London v. Scalera*, [2000] 1 S.C.R. 551 at para. 10:

> To base the law of battery purely on the principle of fault is to subordinate the plaintiff's right to protection from invasions of her physical integrity to the defendant's freedom to act: see *R. Sullivan*, "Trespass to the Person in Canada: A Defence of the Traditional Approach" (1987), 19 Ottawa L. Rev. 533, at p. 546. Although I do not necessarily accept all of Sullivan's contentions, I agree with her characterization, at p. 551, of trespass to the person as a "violation of the plaintiff's right to exclusive control of his person." This right is not absolute, because a defendant who violates this right can nevertheless exonerate himself by proving a lack of intention or negligence: *Cook*, *supra* [*Cook v. Lewis*, 1951 CanLII 26 (SCC), [1951] S.C.R. 830, [1952] 1 D.L.R. 1], at p. 839, per Cartwright J. Although liability in battery is based not on the defendant's fault, but on the violation of the plaintiff's right, the traditional approach will not impose liability without fault because the violation of another person's right can be considered a form of fault. …

Also see: *T.O. v. J.H.O.*, 2006 BCSC 560.

[108] The plaintiff need only prove a defendant voluntarily and deliberately caused direct physical interference with his body to establish a *prima facie* case of battery. He is not obliged to prove the defendant was also at fault. Once it is established there was a battery and injuries were caused, the defendant has the onus of establishing any defence that may arise in the circumstances.

[109] In the case at bar, the issue of self-defence arises on the evidence. A person will be permitted to use force where it is taken in defence of himself so long as no more force is used than is necessary for the purpose at hand. The force cannot be unreasonably disproportionate, but the assessment of the force will not be unduly critical (see: *Saether v. Irvine*, 2011 BCSC 1497).

Analysis

[110] It is abundantly clear on the evidence that at all times the person on the other side of the door during this event was Mr. Boulaine; not Mr. Davis. Mr. Boulaine and Mr. Davis I find to be straight-forward witnesses of truth. Why the plaintiff continues to insist it was Mr. Davis is unknown, but it clearly was not Mr. Davis. In this regard, the plaintiff, at least at one point in his evidence, testified he assumed it was Mr. Davis on the other side of the door; at another point, he testified to his perception in this regard.

[111] It was clear during the course of the trial the plaintiff holds feelings of personal animosity towards Mr. Davis. This was evident in the words, demeanour and tone of the plaintiff throughout the trial. Whether this plays a role in the plaintiff maintaining the allegation against Mr. Davis is not known; but, in any event, I find Mr. Davis committed no such act of battery as alleged by the plaintiff or at all.

[112] This finding alone is sufficient to dispose of the battery allegation. There were no submissions concerning the liability of Mr. Boulaine and/or how that might translate to a finding of liability on the part of the defendants.

[113] Nevertheless, I will add that I am not satisfied it has been established that Mr. Boulaine intentionally shut the door on either foot of the plaintiff. I accept the evidence of Mr. Boulaine in this regard. He testified in a forthright manner without regard to self-interest. I find that in the course of closing the door, the plaintiff placed his foot in a position that prevented the door from closing. I find that Mr. Boulaine, on more than one occasion, allowed the plaintiff the opportunity to remove his foot from the door, but the plaintiff chose not to.

[114] In addition, I reject the evidence of the plaintiff on this issue. I find the plaintiff's evidence inconsistent, self-serving and steeped in a palpable bias directed towards Mr. Davis, Mr. Boulaine, and many others.

[115] The plaintiff's evidence concerning how many times his foot was trapped by the door and how that occurred was inconsistent to the point of absurdity. His explanations for those inconsistencies was not persuasive. I am not convinced Mr. Boulaine acted intentionally or deliberately, much less inflicted harm upon the plaintiff.

[116] I also conclude Mr. Boulaine was justified in using force to prevent the plaintiff from entering the office; notwithstanding the plaintiff's assertion of his rights in this regard.

[117] Mr. Boulaine testified he feared for his safety due to the behavior of the plaintiff. I accept this evidence. This is supported by some evidence of expressed

concern on the part of Mr. Boulaine and Mr. Davis, prior to the plaintiff arriving on the scene that morning. Indeed, the plaintiff's own evidence is that he arrived on the scene in a 'bad way' emotionally; which emotional state apparently evolved into being 'quite upset' at being ignored by Mr. Davis.

[118] I conclude that any discomfort to the foot or feet of the plaintiff on this day, was a product of his own unreasonable behavior; and Mr. Boulaine was perfectly entitled, under the circumstances, to protect himself from the plaintiff on that particular morning. I conclude Mr. Boulaine did just that in a reasonable, lawful manner.

[119] Finally, in any event, I am, as well, not convinced the plaintiff suffered harm. The evidence of the plaintiff's complaint concerning his injury gives rise to a good deal of hesitation and skepticism. I find it more likely than not his complaints over the years concerning his foot were as a result of his ankle sprain in 2014; rather than a door against his footwear. In addition, the evidence does not support a finding that whatever occurred on May 10, 2013 was causally connected in any way to the circumstances of the ankle sprain in March 2014. The evidence as a whole, including the evidence of the plaintiff is simply too vague, uncertain and unreliable to conclude the plaintiff suffered any injury during the events of May 10, 2013.

[120] To repeat, for all of the above reasons, the claim in battery as against the defendants is dismissed. In the circumstances I need not, and do not, address the evidence of alleged damages.

Statutory Oppression: Section 164 of the *SPA*

[121] Section 164 of the *SPA* creates in an owner or tenant a statutory cause of action against a strata corporation, including its council. Its purpose is to provide an avenue of judicial oversight to prevent or remedy actions on the part of the strata corporation that is found to be significantly unfair in relation to that owner or tenant. It has, over the years, been variously described, but is now consistently referred to as an oppression remedy.

[122] The required assessment to be undertaken by the court has been well-settled. The central theme of the legislation is the requirement of fair treatment of owners or tenants on the part of strata corporations, including its council. An animating feature of the analysis is a consideration of what the owner or tenant is entitled to reasonably expect from the strata corporation in its oversight of the affairs of the strata.

[123] The reasonable expectation of an owner is not to be assessed only by the owners subjective notions of what is or is not fair treatment. The expectations are to be assessed objectively and contextually in light of all the circumstances. The expectations must be realistic and considered as a factor in determining the manner of fairness.

[124] The court must then determine whether the evidence establishes that the reasonable expectations of the owner or tenant were violated by conduct that was significantly unfair.

[125] The Court in *King Day Holdings Ltd. v. Strata Plan LMS3851*, 2020 BCCA 342 ("*King Day*") confirmed that the reasonable expectation of the petitioner is one relevant factor to be taken into account under a s. 164 analysis. The salutary concern under s. 164 was said to be one of achieving fairness in the resolution of conflicting interests between community stakeholders in the matter that is highly fact specific (*King Day* at paras. 88-89).

[126] In other words, the issue is whether the expectation is reasonable having regard to the circumstances of the specific case, the relationship at issue, and the entire context of the matter.

[127] The concept of what activity constitutes significant unfairness is, again, a contextual assessment. It appears our courts, both at the trial and appellate level, have for some years been guided by the decision in our Court of Appeal in *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126 ("*Reid*").

[128] In assessing what is necessarily a threshold degree of unfair conduct, the Court determined the activities of the Strata Council should not be interfered with unless the action results in something more than mere prejudice or trifling unfairness. *Reid*, cited with approval the analysis of Justice Masuhara in *Gentis v. Strata Plan VR 368*, 2003 BCSC 120 ("*Gentis*").

[129] The Court in *Gentis* recognized that decisions and actions of a strata corporation are often discretionary, having to take into account the overall interests of the owners; whose interests may not necessarily align with the personal interests of a particular individual owner or tenant.

[130] It was put this was by Masuhara J. in *Gentis* at para. 28:

> 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 […] or in a fashion that transcends beyond mere prejudice or trifling unfairness.

Again Some Context

[131] The defendants in this action are of course the Strata Corp. and the two individual defendants.

[132] The pleadings in this matter, at one point prior to trial, were comprised of a significant number of complaints by the plaintiff, stretching over the course of some years, directed at the conduct of a host of personnel; aside from Mr. Davis and Mr. Davies, that either resided at The Electra Building or attended The Electra Building from time to time to perform services. None of whom are defendants.

[133] In addition, a good deal of the umbrage taken by the plaintiff, relating to how he was allegedly treated and 'oppressed', relates to his interaction with the executive of the residential section of the building, and the alleged wrongful conduct of the residential executive.

[134] Indeed, in order to pursue these complaints the plaintiff ultimately brought an application some time prior to trial to add the residential section as a party. The application was dismissed. In addition the allegations contained in the FANOCC that were directed at the residential executive were struck.

[135] In spite of the decision of the court, the plaintiff largely continued to press many of the same complaints against the residential section throughout the trial, and sought to introduce evidence relevant to the struck pleadings. The objections of the defendants to this evidence were often upheld, however some of the evidence was allowed to be introduced on the basis that the evidence might nevertheless have some relevance relating to the plaintiff's apparent theory of liability against the named defendants. In the end the evidence largely proved to be irrelevant.

[136] The plaintiff also approached his claim, at least as far as I could discern, by submitting the complaints that appeared to be related to the actions of the residential section were in fact the responsibility of the defendant Strata Corp.; and not the residential section after all. The plaintiff took the position the operation of the separate entities within the governance model of The Electra Building is a fiction and in fact it was the Strata Corp. that had the oversight and responsibility of matters that have been historically referenced as the domain of the residential section.

[137] In pursuit of this theory the plaintiff submitted there is not three separate entities, but in fact only two. The plaintiff says the position of the defendants that there are three entities is a 'cover up' to hide the fact it was the Strata Corp. actually having responsibility for much of the conduct that formed the basis for the complaints of the plaintiff against the residential executive. Consequently, the broad issue of separate entities must be addressed. I address that issue now.

The Structure of the Strata Corp. and Governance Model (Two or Three Entities)

[138] The starting point is the *Act* itself. The *SPA* provides for the creation of separate entities.

[139] In this regard the *SPA* reads as follows:

> **Sections allowed**
>
> 191 (1) 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.
>
> …
>
> **Creation of sections by owner developer**
>
> 192 An owner developer may create sections for a strata corporation at the time the strata plan is deposited by filing in the land title office
>
> (a) bylaws that provide for the creation and administration of each section, and
>
> (b) any resolutions to designate limited common property, in accordance with section 74, for the exclusive use of all the strata lots in a section.
>
> **Creation or cancellation of sections by strata corporation**
>
> 193 (1)To create or cancel sections, the strata corporation must hold an annual or special general meeting to consider the creation or cancellation.
>
> (2) The notice of meeting must include
>
> (a) a resolution to amend the bylaws to provide for either the creation and administration of each section or the cancellation of the sections, and
>
> (b) any resolutions to designate limited common property, in accordance with section 74, for the exclusive use of all the strata lots in a section or to remove a designation in accordance with section 75.
>
> (3) The resolution referred to in subsection (2) (a) must be passed
>
> (a) by a 3/4 vote, and
>
> (b) by a sectional 3/4 vote.
>
> …
>
> (4) On the filing in the land title office of a bylaw amendment creating a section, a section is created bearing the name "Section [number of section] of [name of strata corporation]".
>
> (5) On the creation of a section the registrar may establish a general index for the section.

Powers and duties of section

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

(2) 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,

(b) to budget and require section owners to pay strata fees and special levies for expenditures the section authorizes,

(c) to sue or arbitrate in the name of the section,

(d) to enter into contracts in the name of the section,

(e) to acquire and dispose of land and other property in the name of or on behalf of the section, and

(f) to enforce bylaws and rules.

…

Bylaws and rules for section

197 (1)The strata corporation's bylaws apply to the section unless they have been amended by the section.

(2) The bylaws may only be amended by the section if the bylaw amendment is in respect of a matter that relates solely to the section.

…

(4) The executive of a section may make rules governing the use, safety and condition of

(a) land and other property acquired under section 194 (2) (e), and

(b) limited common property designated for the exclusive use of all the strata lots in the section.

…

Judgments against strata corporation relating to section

198 (1)If a judgment against the strata corporation relates solely to the strata lots in a section, the judgment is against only the owners of strata lots in the section.

[140] In addition, the strata's bylaws filed with the land title office on May 8, 2003, following an AGM, confirm and describe the two-section model that has been extant at The Electra Building for the past 20 years. It reads as follows (Exhibit 98):

1. Duties of Owner

> a) The owners of all the residential strata lots shall form a separate section within the Strata Corporation consisting of all the residential lots in the strata plan, being specifically strata lots 1 through 243 inclusive and bearing the name "Section 1 of The Owners, Strata Plan LMS 1866" (the "Residential Section").
>
> b) The owners of the non-residential lots shall form a separate section within the Strata Corporation consisting of all the non-residential strata lots, being specifically strata lots 245 through 449 inclusive, and bearing the name "Section 2 of The Owners, Strata Plan LMS 1866" (the "Commercial Section").

[141] The circumstances and ramifications of the two-section model; in conjunction with the separate responsibilities of the Strata Corp. was addressed in *Norenger Development (Canada) Inc. v. Strata Plan NW 3271*, 2018 BCSC 1690. Justice Iyer concluded as follows:

> [60] … Part 11 of the Act contains express provision for the creation of sections and establishes section autonomy over matters that relate solely to the section.
>
> [61] Section 190(1) states that the provisions of the Act apply to a strata corporation with sections. Section 194(2) states:
>
> > 194 (2) 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,
> >
> > (b) to budget and require section owners to pay strata fees and special levies for expenditures the section authorizes,
> >
> > (c) to sue or arbitrate in the name of the section,
> >
> > (d) to enter into contracts in the name of the section,
> >
> > (e) to acquire and dispose of land and other property in the name of or on behalf of the section, and
> >
> > (f) to enforce bylaws and rules.
>
> [62] The subsections of s. 194(2) do not expressly refer to the other sections of the Act that relate to the powers conferred by s. 194(2). For example, s. 194(2)(a) does not expressly refer to the sections governing operating and contingency reserve funds (ss. 95-98). It is clear from the language of ss. 190(1) and 194(2) that the other provisions of the Act relating to the matters listed in s. 194(2) are intended to govern a section's exercise of those powers in the same way that they would govern the strata corporation's exercise of those powers in a strata corporation that does not have sections. Otherwise, the sections of a strata corporation would effectively be exempt from

> limitations on their powers that the legislature deemed necessary for the strata corporation as a whole.
>
> [63] It follows from this that, when applied to a strata with sections, s. 72 does not prohibit allocation to a section of responsibility for the repair and maintenance of common property that relates solely to that section.

[142] It is quite clear the sections operate as autonomous entities. Indeed, this was the principle that underpinned the unsuccessful application before Justice Russell seeking to add the residential section as a party to the litigation.

[143] In addition, a number of witnesses provided *viva voce* evidence concerning the operations of the sections; the relationship of the sections to one another, and to the Strata Corp. This evidence also touched on how the affairs and responsibilities of the sections are governed within the respective sections and the overall operations of the building.

[144] The evidence of the plaintiff concerning this discrete issue concerning the governance model was somewhat sparse, and largely based on suspicion.

[145] The plaintiff testified, broadly, that in his view the Strata Corp. does not have a democratic process in place.

[146] The general position of the plaintiff was that notwithstanding the legislation and the day-to-day operation of the building over the years, the actual operation of the building integrating three sections was a charade. The plaintiff testified that there are only two sections; the residential section and the commercial section. The plaintiff says there is no entity known as the Strata Corp. with distinct and separate responsibilities.

[147] This belief appears to rest almost exclusively on certain minutes of the Strata Corp. AGM dated April 9, 2003. The minutes reference attendance by representatives of the commercial section and the residential section. The minutes also reflect various issues and responsibilities of those two sections. The minutes do not reference the Strata Corp. The minutes in this regard are silent.

[148] Upon my reading of the minutes one cannot infer there is not three entities in the governance model. In any event, the *SPA* and bylaws make clear that for years, three separate sections or entities have operated in the building.

[149] In addition, other witnesses gave evidence concerning this issue.

[150] Mr. Davies provided evidence. Mr. Davies' company has owned, for some years, a number of commercial units in the building. He has been president of the commercial section and has been both president and vice president of the joint Strata Council.

[151] Mr. David Van Doorn testified. Mr. Van Doorn as well was experienced in the governance of the building. He is, and has been for many years, a member of the joint Strata Council. He has also served on the residential executive.

[152] Mr. Trevor Boudreau gave evidence. He was on the residential executive from 2011 to 2013 and on the joint Strata Council for a short while. Mr. Boudreau sold his residential unit in 2014. He is currently a director of governmental affairs and relations at the Vancouver International Airport.

[153] The evidence of these witnesses was in my view straight forward and completely consistent with the *SPA* and bylaws governing these matters.

[154] The purport of the evidence of these witnesses is that the operation of The Electra Building is undertaken and shared by three entities; a joint Strata Council, the residential executive, and the commercial executive. These entities operate independently; and in particular the two sections operate independently. Mr. Davies, Mr. Van Doorn, Mr. Ibrahim and Mr. Boudreau all testified in this regard. Both sections are governed by respective elected executives. Both are governed and both apply bylaws that relate to their section and address concerns, complaints, and issues of and by the owners of residential units or commercial units. The joint Strata Council operates independently in matters that are of common interest to both sections; that is in relation to what is designated as, and referenced throughout the trial, as strata common property.

[155] The residential section and the commercial section each elects its own executive to manage the affairs of their own section. Of course, there is interaction in operations.

[156] The owners of residential units are entitled to attend the residential executive meetings. Similarly the owners of commercial units are entitled to attend the commercial executive meetings. All owners are entitled to attend Strata Corp. meetings.

[157] Protocols are in place for individual owners to arrange to have matters placed on the agenda and spoken to with regards to the three entities. For instance, Mr. Ibrahim testified in particular that in the event the joint Strata Council receives an inquiry or complaint of some nature, the Strata Council will investigate the matter and correspond with the owner. In the event consultation with the management company of the building is required, or perhaps legal advice is required, then the Strata Council will so consult.

[158] The joint Strata Council is made up of two members from each section. This has been the governing structure since inception although the process of election to the Strata Council has changed slightly over the years. For some years the executive of each section met and elected two representatives from each section to sit on the joint Strata Council. Currently the election of the joint Strata Council members occurs at the Annual General Meeting of the Strata Corp. The owners in attendance, or by proxy, elect the joint Strata Council at that meeting.

[159] Mr. Boudreau testified that the two-member make-up concerning the joint Strata Council worked well from his perspective over the years and in his view operated fairly, efficiently and professionally. Mr. Boudreau confirmed the plaintiff had, on many occasions, requested hearings before the residential executive concerning a host of personal grievances; including taking issue with fines that had been imposed against the plaintiff for his bylaw infractions.

[160] It is common ground each owner pays two sets of fees. One set of fees to the respective sections, and one set to the Strata Corp.

[161] The sections have a proportionate fee obligation concerning fees in support of the expenses of the Strata Corp. The commercial section is responsible for 40.85% of those expenses; the residential section 59.15%. At one time the commercial executive collected all strata fees and dealt directly with the Strata Corp. The reasons for this were unclear. As well, it was explained that in the event the Strata Corp. required additional funding for various expenses, the commercial section would fund those expenses and then seek reimbursement from the residential section in accordance with the percentage share.

[162] Currently the Strata Corp. deals directly with the owners. The joint Strata Council presents a budget at the Annual General Meeting; and receives funding from the owners that is deposited into accounts controlled by the Strata Corp. This change occurred, as I understand the evidence, in 2019.

[163] The strata plan, including the building design (sometimes referred to in the trial as the “blueprints”); and the disclosure statements filed by the developer, designate and allocate the common property of the residential section and the commercial section; as well as the common property of the Strata Corp.

[164] Mr. Davies took some time in evidence to identify the designations in this regard.

[165] “RES”, circled on the plan, indicates residential property for the use of the residential section, and the responsibility of the residential section. Similarly “COM” circled, indicates the commercial property. “c” circled on the plan designates joint strata corporation property and the requisite responsibilities.

[166] A good deal of evidence was heard relating to the designations and in particular relating to the plaintiff’s air conditioning unit and the HVAC system in the building generally. In addition, a piece of equipment referred to as a chiller played a

role in the focus of the plaintiff. This was relevant to the plaintiff's complaint concerning his air conditioning unit and related alleged difficulties.

[167] In this regard, Mr. Ibrahim testified concerning the residential designations, including the air conditioning unit, the HVAC systems, window washing, and bicycle bylaws. In particular Mr. Ibrahim testified that the air conditioners in the units are part of an overall HVAC central system with individual heat exchanges in each unit. In any event Mr. Ibrahim testified it all belongs to the residential section.

[168] Mr. Van Doorn provided similar evidence. The HVAC system and heat pumps are residential property.

[169] The evidence also disclosed, for instance, certain electrical and mechanical rooms were designated as residential property; as were various meeting rooms, storage rooms, bicycle storage areas, and laundry rooms.

[170] Finally, certain property or areas can be seen on the plan as for the use of both sections, for instance, the window washing equipment, vehicular and pedestrian access routes, loading areas, exterior landscaping, and plazas and terraces. This is the common property of the Strata Corp.

[171] I conclude the overwhelming weight of the evidence makes clear The Electra Building operates as envisioned by the *SPA* and bylaws; and as testified to by the witnesses intimately involved with the governance of the building over many years. It is a governance model made up of three entities with distinct duties and obligations.

The Allegations of the Plaintiff re: s. 164 of the *SPA*

[172] One of the challenges in addressing the claims of the plaintiff is that often it was unclear what aspects of his claims were being addressed by the plaintiff, at any given moment, in the course of providing his evidence. In addition, in the event the evidence could be linked to a particular complaint, it was often difficult to appreciate the connection between the complaint and a theory of liability connected to the defendants; as opposed to the residential section, or other individuals.

[173] As well, the plaintiff had a most difficult time articulating his complaints in a way that was comprehensible. The testimony was often rambling and disjointed, interspersed with vitriol, notwithstanding attempts by the court to focus the plaintiff in order to understand how his evidence related to a particular complaint he had made against the defendants.

[174] The final submissions of the plaintiff did not bring any clarity.

[175] As an overarching issue, the evidence of the plaintiff included attempting to address how Mr. Davis failed in his responsibilities when it came to dealing with a variety of issues within the building. The plaintiff testified concerning certain examples of this failure, including matters relating to the plaintiff's windows and washing machines. In addition an extraordinary amount of time was taken up with the evidence of the plaintiff concerning the circumstances of the replacement of his heat pump and water damage in his apartment.

[176] The overall attack included a somewhat ambiguous complaint about the process of hiring Mr. Davis in the first place.

[177] I will begin with the apparent position of the plaintiff concerning the hiring of Mr. Davis.

[178] I commence by observing the circumstances of the hiring of Mr. Davis was struck from the pleadings of the plaintiff. Certain evidence in the trial was admitted on the basis it might somehow, in due course, be linked to an issue that was still alive and well as an issue in the remaining pleadings. That said it was difficult to discern just what it was about the hiring of Mr. Davis that appeared to roil the plaintiff. In assessing this point, the testimony of the plaintiff, similar to the plaintiff's testimony generally, was more often than not repetitive. It was, as well, often interspersed with argument and opinion. Consequently it is a challenge crystallizing the admissible evidence of the plaintiff in relation to discreet issues, including this issue. This seriously impacted the overall reliability of his evidence.

[179] In any event, the plaintiff testified during the trial that at some point in the narrative of events, around early-December 2009, the plaintiff received a copy of a letter authored by a Mr. Peter Daubrey. The letter apparently raised concerns on the part of Mr. Daubrey relating to the process undertaken by the Strata Council and/or the sections in the hiring Mr. Davis. The plaintiff testified he received a copy of the Daubrey letter from a Dr. Howard Burton. It is my understanding Dr. Burton is, or at least at one point was, a resident of the building. The plaintiff testified the letter raised concerns in his own mind relating to the hiring of Mr. Davis.

[180] Mr. Davies provided evidence concerning the hiring of Mr. Davis. Mr. Davis was initially hired as the caretaker type person for the commercial section. In 2009 the residential section determined to replace their then caretaker, Mr. Macapinlac. Mr. Cousineau and Mr. Boulaine interviewed Mr. Davis. Mr. Davis was subsequently hired as the caretaker for the residential section as well. Mr. Davis then performed tasks on behalf of both sections. The two sections, as well as the Strata Council, could direct Mr. Davis.

[181] Mr. Davis provided evidence. Mr. Davis is 65 years of age and has been, what he referred to as the ‘operations manager’ at The Electra Building, for approximately 13 years. Mr. Davis provided evidence concerning his background and history leading to his being hired by, and his initial tasks with The Electra Building. Prior to his employment at The Electra Building, Mr. Davis had worked for a company controlled by Mr. Davies.

[182] In 2010 Mr. Davis entered into an employment contract with all three entities; the commercial and residential sections; and the Strata Council. The contract included various areas for which he had responsibility but conceded some tasks were in fact beyond his expertise to accomplish personally, and over the years outside contractors would be retained to perform those tasks.

[183] Generally his duties consisted of answering phone calls and programming the intra-phone systems; and responding to various inquiries and concerns from tenants and contractors from time to time.

[184] Mr. Davis testified he was responsible for the logistics of tenants moving in and out of the building. He was also responsible for hiring and overseeing outside contract work for various aspects of the building maintenance.

[185] He testified the residential section maintains and repairs heat pumps in the residential units. He stated the vast majority of commercial units (98%) do not have heat pumps. He testified as a matter of course he would not find it necessary in carrying out his duties to enter a suite. He provided an example of a circumstance where it might be required; for instance, when something might be causing a safety issue. The example Mr. Davis provided was a burst pipe. In that instance, he might find it necessary to enter the suite, turn off the water and then arrange for maintenance.

[186] Mr. Davis testified that except for the heat pumps within a unit, the usual circumstance of maintenance within a given unit was the responsibility of the owner to make those arrangements.

[187] Finally, in response to a question posed by the plaintiff, Mr. Davis confirmed he was expected to stay away from the plaintiff as much as possible and only interact with the plaintiff if it was absolutely necessary. He was not asked why that was so.

[188] In summary, I do not find the evidence as a whole supports a finding that there was anything untoward or unfair concerning the process relating to the hiring of Mr. Davis.

[189] The plaintiff also submitted throughout the trial that the fact he sought to raise the issue of the hiring of Mr. Davis with various persons, caused the personal defendants, and I assume, representatives of the Strata Corp., to deliberately harass and intimidate the plaintiff.

[190] I find there is no evidentiary basis to make this finding. In addition, although unfortunate Mr. Forrest and Mr. Cousineau are not now able to provide evidence

concerning certain instances as testified to by the plaintiff, the alleged conduct does not give rise to liability on the part of these defendants in any event.

Repairing and/or Replacing the Air Conditioning Unit

[191] One of the more recurring themes concerning the complaints of the plaintiff, was his dissatisfaction with his air conditioning unit. It will be recalled the plaintiff has alleged his use and enjoyment of his property was impacted by the defendants' failure to 'replace and repair his air conditioning unit'.

[192] In particular it is alleged Mr. Davis failed to report and conduct those repairs. This position appeared to be largely based on the plaintiff's evidence that his air conditioning unit was replaced with a refurbished unit rather than a new unit.

[193] It must be observed that particulars of this complaint were not plead. Whether or not particulars were sought, no particulars were before the court at the commencement of the proceedings. The particulars or nature of this complaint simply evolved and exponentially grew, on an *ad hoc* basis, during the course of the plaintiff testifying.

[194] The complaint also mutated into an allegation that mould and/or dust was, from time to time, present in his unit and the presence of mould further interfered with his enjoyment of the property by causing health concerns. It was submitted by the plaintiff the mould allegedly present in his apartment was present because of the functioning of the air conditioning unit. This, it was submitted, was a failure of the responsibilities of the defendants.

[195] The plaintiff also testified that in addition, or perhaps alternatively, the mould allegedly present was caused by water damage to his unit as a result of a water leak in the unit above the plaintiff, unit 704, in and around June 2016. This, somehow in combination with the air conditioning unit, had created mould in his carpet. This was the overall theory of the plaintiff concerning the allegation of his air conditioning unit contained in the FANOCC.

[196] The position of the defendants was that there were indeed issues with his air conditioning unit, however, replacement and repair was promptly and properly accomplished (not with a refurbished unit); any water damage to his apartment was likely as a result of his own shower cartridge leaking; and that he was advised to attend to that possibility and he ignored that advice. Any issues arsing, mould or otherwise, concerning water damage, is a product of his own inaction and not anything that occurred in unit 704, so submits the defendants. Finally the defendants say, in any event, any issues relating to this complaint were the responsibility of the residential section, not the defendants, and the plaintiff well knows this.

[197] In the course of the evidence the parties referred to the air conditioning unit as a heat pump and, as well, the HVAC unit. The parties appeared to use these descriptors interchangeably. I will attempt to use the particular descriptors the parties used in the course of giving evidence.

[198] In addition, notwithstanding the pleadings vacuum, expert reports of a Mr. Craig Fourie were introduced into evidence by the plaintiff relating to the issue of mould.[1] I will return to the reports in due course.

[199] The pleadings of the plaintiff, throughout all of their iterations in the matter, contain no allegations relating to his complaint of mould in his unit. The evidence concerning this issue generally was admitted over the objection of the defendants.

[1] The circumstances of the introduction of the reports of Mr. Fourie are as follows. In brief the plaintiff served the reports (an initial report and a supplementary report). The defendants ultimately advised that they required Mr. Fourie for cross-examination. Facilitating the attendance of Mr. Fourie for this purpose proved problematic. Both the plaintiff and defendants' counsel contacted Mr. Fourie to arrange his attendance. It was reported to the court that Mr. Fourie had health issues. Both the plaintiff and counsel on behalf of the defendants had communications with Mr. Fourie. Attempts to discuss with Mr. Fourie the nature of his difficulties and the prospect of his attendance for the purpose of cross-examination proved unsatisfactory. Soon, it was reported to the court that Mr. Fourie was either unwilling or unable to attend and eventually constructive communication ceased. The plaintiff ultimately served Mr. Fourie with a subpoena and conduct money. In due course the plaintiff brought an application pursuant to Rule 12-5(38) seeking to have Mr. Fourie apprehended and brought to court. The defendants opposed the application on the basis that the presence of Mr. Fourie was not material to the ends of justice. The application was dismissed.

The plaintiff sought to introduce the reports in any event. The defendants opposed the admission of the reports into evidence based upon alleged prejudice that flowed as a consequence of the defendants not being provided an opportunity to cross-examine Mr. Fourie. I admitted the reports.

The basis of the objections was largely based upon relevance for obvious reasons given the state of the pleadings. As previously referenced, the evidence was admitted on the basis that the alleged presence of mould was somehow linked, by way of particular, to the claim as found in paragraph 13 of the plaintiffs FANOCC; namely "… the defendants have interfered with the plaintiff's use and enjoyment of this property, by their neglect to replace and repair his air conditioning unit …"

[200] As I understood the issue, the plaintiff says the unit was replaced with a refurbished unit and not a new unit. The plaintiff says the installer of the unit and Mr. Davis, are lying when they testified it was a new unit. The plaintiff says further, if I follow the point, that the Strata Corp. allowed a commercial tenant to install a computer server, to conduct its business, that draws on a piece of equipment in the building referenced as a chiller. The plaintiff says he believes this draw of electricity caused his refurbished unit to work harder. This, according to the plaintiff, created certain difficulties that in turn contributed to the mould in his unit.

The Evidence on this Issue

[201] It may be more helpful to provide an overview of the evidence of the witnesses concerning this issue and conclude with the evidence of the plaintiff.

The Evidence of Ryan O'Connor

[202] The plaintiff called Mr. Ryan O'Connor. Mr. O'Connor is employed by Elafon Mechanical Ltd. and was so employed at the relevant time. Mr. O'Connor testified he was asked to attend the plaintiff's unit because of a noise complaint regarding the plaintiff's air conditioning unit. He testified that he, Mr. O'Connor, also at some other point attended the plaintiff's unit in response to a leaking shower faucet. It is plain from the evidence of Mr. O'Connor he also attended to replace the air conditioning unit of the plaintiff, however Mr. O'Connor did not have an independent recollection of that attendance.

[203] Mr. O'Connor denied he would have told the plaintiff, upon his attendance, that Elafon Mechanical Ltd. had replaced the unit with a refurbished unit. This is

because Elafon Mechanical Ltd. did not have refurbished units. Mr. O'Connor testified as well he had never installed a refurbished unit in the building and he had repaired or replaced more than 80 HVAC units at The Electra Building over the course of 11 years.

[204] In particular, concerning his visits, Mr. O'Connor testified that in June 2016 he was called to investigate a complaint of a water leak in unit 504. Unit 504 is below unit 604; the unit of the plaintiff. He removed the ceiling drywall, and determined a water leak was coming from unit 604. He then attended unit 604 and observed water leaking down the wall of the shower from the shower cartridge. He removed the trim plate and felt water inside the wall. He dismantled the apparatus and replaced the cartridge and then ran tests to ensure there was no further leakage.

[205] He testified, in answer to questioning from the plaintiff, he informed the plaintiff that water had leaked out of the plaintiff's shower cartridge and into the unit below. He testified he advised the plaintiff that there was then a possibility of mould and that the plaintiff should investigate matters and replace the drywall and tiles underneath the shower cartridge.

[206] Finally Mr. O'Connor identified the invoice submitted by Elafon Mechanical Ltd. replacing the air conditioning unit in the plaintiff's apartment. The invoice reflects that it was replaced with a new unit.

The Evidence of Hesham Ibrahim

[207] The plaintiff called Mr. Ibrahim as a witness on this issue. Mr. Ibrahim testified that the air conditioner HVAC system of the plaintiff is residential limited property, not Strata Corp. common property. In fact, testified Mr. Ibrahim, the HVAC servicing for the residential units is part of the residential section budget. Mr. Ibrahim confirmed that the chiller system in the building is for the commercial section and is not connected to the residential section. It is in fact the commercial section owners that take on the responsibility of the chiller system.

The Evidence of Mr. Evan Lanares

[208] Mr. Lanares is the owner of Elafon Mechanical Ltd. and as well owns two commercial units in the building.

[209] Mr. Lanares testified that his company provides services to both the commercial and residential sections of the building which includes maintenance and repair of the HVAC and mechanical systems in the building.

[210] He confirmed that the invoice produced in the trial for the heat pump unit that was replaced in the plaintiff's apartment was in fact a new unit and not a refurbished unit. Mr. Lanares testified that his company does not sell refurbished units. He testified that the unit is self-contained in the sense that only air within the particular suite is circulated through the heat pump. Finally Mr. Lanares testified there are two cooling towers at The Electra Building. The residential section has a fluid cooling tower; the commercial section an atmospheric tower. The two sections have separate systems.

The Evidence of Mr. Alan Davis

[211] Mr. Davis provided evidence concerning the plaintiff's complaints relating to the plaintiff's air conditioning unit.

[212] Mr. Davis, as well, testified that matters pertaining to the plaintiff's air conditioning system were residential section issues. The budget for the maintenance repair and replacement of residential heat pumps is part of the residential budget.

[213] The plaintiff asked Mr. Davis about the plaintiff's complaints that he had made concerning his heat pump.

[214] In February 2014 Mr. Davis testified the plaintiff complained his heat pump was emitting a foul smell. Mr. Davis testified he caused Elafon Mechanical Ltd. to investigate. In August 2015 the plaintiff complained his unit was not functioning properly. Again, Mr. Davis arranged for Elafon Mechanical Ltd. to investigate. Mr. Davis testified that as a result the control board of the unit was replaced.

[215] Mr. Davis testified the plaintiff complained again about the heat pump. Elefon Mechanical Ltd. determined it needed to be replaced and that was arranged.

[216] Mr. Davis, in June 2016, responded to a complaint from unit 504. He noted water damage to the ceiling in unit 504. He contacted Elefon Mechanical Ltd. to assess matters.

[217] Subsequently, Mr. O'Connor reported back to Mr. Davis what Mr. O'Connor had determined in units 504 and 604. Mr. Davis testified he did not investigate unit 704 at that time as he had no reason to do so. Mr. Davis did confirm that in September 2016 there was a reported plumbing issue in units 703 and 704. Again, Mr. Davis arranged for Elefon Mechanical Ltd. to deal with the plumbing issue and Pheonix Restoration to conduct some structural repair. Mr. Davis testified that the plaintiff did not report any water damage or leakage in his unit at this time. Mr. Davis was never advised that the plumbing issue in 703 or 704 impacted any other area or unit in the building.

[218] The plaintiff suggested to Mr. Davis what appeared to be the plaintiff's working theory concerning water damage. As I understand it, the water damage in unit 504, in the view of the plaintiff, was not caused by a leak in the plaintiff's unit, but was caused by a leak in unit 704. In this regard, in testifying as he had, the plaintiff stated Mr. Davis was attempting "to pin" the damage on the plaintiff in retaliation for the plaintiff's lawsuit against Mr. Davis for injuring his foot. Mr. Davis denied any such motive.

The Reports of Mr. Fourie

[219] The plaintiff commissioned two reports relating to this complaint. The reports contain somewhat superficial information concerning the expertise and qualifications of Mr. Fourie. The reports, in terms of qualifications and experience, are somewhat different. In any event, Mr. Fourie purports to have a Master's degree in either Microbiology or Mycology and his work experience appears to be focussed on identification of different types of moulds.

[220] The initial report of Mr. Fourie is dated January 15, 2020. It is a report entitled "Re: Fungal Investigation via ERMI and Opinion" (the "Initial Report").

[221] The purpose of the report is stated by Mr. Fourie as follows:

> We have been retained to investigate and test for moulds using ERMI PCR analysis to determine if toxigenic fungal species are present within the apartment, and further quantify and classify these fungal species. The occupant reports flu-like symptoms, headaches, seizures, coughing, and chest problems. He has also reported fungal infection for the past two years. The analytical data from the ERMI test may assist us in identifying one of or the cause of the symptoms.
>
> [Emphasis added.]

[222] It is immediately apparent from a reading of the report that it is not Mr. Fourie that purports to have expertise in testing whether toxigenic fungal species are present in the unit of the plaintiff. Mr. Fourie relies on the expert opinion, for this purpose, contained in a report appended to his report. In this regard, it is a report of a company entitled EMSL Analytical Inc., with an address in New Jersey. The company purports to undertake various analysis to determine the presence of mould in the unit; including the quantity of each mould species and the diversity of such species. The analysis is referenced as an ERMI analysis also known as an Environmental Relative Mouldiness Index. These tests are apparently based upon DNA analysis. The analysis and results of the ERMI analysis are approved by someone identified as Sergey Balashov, Ph.D.

[223] Mr. Fourie's report reveals that the only participation of Mr. Fourie concerning the report of EMSL appears to be commissioning the report and collecting dust samples from the plaintiff's unit to be sent to EMSL for analysis.

[224] The opinion of Mr. Fourie really only addresses the cause of the apparent presence of mould. In this regard he opines the most likely cause would be water damage. Mr. Fourie also opines that "air conditioning coils can provide an ideal environment for proliferation due to the available condensation at times".

[225] Mr. Fourie states “based on everything I have observed, I find that the environment has an amplified level of fungal contaminants that consist of health issues and symptoms”.

[226] Notwithstanding this view, Mr. Fourie concludes as follows:

> The scope of this report was to provide the occupants with an introduction to possible fungal related contaminants that may be impacting their health. Additional resources and data would be required to fully understanding (sic) the extent of the issues and exposure.

[227] Again, notwithstanding this view, Mr. Fourie further concludes:

> At this point I believe there is enough evidence to suggest that one if not all of your symptoms may be mould related. Typically, when a water leak happens the persons in charge of maintaining the building are slow to react and remediate the situation.

[228] The defendants submit the qualifications of Mr. Fourie do not support a conclusion he is qualified to provide the limited opinion he does provide. The defendants also submit the report is speculative, clearly adversarial in nature, cursory, and irrelevant. The defendants say it ought to be afforded no weight.

[229] I agree with the submissions in this regard, but, in my view, there is a more fundamental issue that is fatal to placing any weight on the evidence of Mr. Fourie.

[230] The critical starting point for the evidence of Mr. Fourie is his reliance on the expert report of EMSL. There is no basis to admit the EMSL report for the truth of its contents. There is no satisfactory evidence explaining the analysis; nor evidence sufficient to properly test its reliability. In my view this is fatal to the relevance of the evidence of Mr. Fourie. In addition, Mr. Fourie purports to offer an opinion well beyond the purported parameters of his retainer. But, in any event, it is ultimately an opinion of Mr. Fourie that is ambivalent to the point of being completely unhelpful; even if there was credible evidence in support of the ‘water damage theory’, which there is not.

[231] Finally, the EMSL report, regardless of how one properly interprets the data, plainly couches its conclusions with a good deal of caution concerning the inferences to be drawn from the report and the results.

[232] In this regard the report states as follows:

> EMSL Analytical Inc. is an independent laboratory providing unbiased and scientifically valid results. These data represent only a portion of an overall IAQ investigation. Visual information and environmental conditions measured during this site assessment (humidity, moisture readings, etc.) are crucial to any final interpretation of the results. Many factors impact the final result; therefore result interpretation should be conducted with caution.
>
> [Emphasis added.]

[233] There is no suggestion in the report these results were approached with the caution recommended nor approached armed with the additional recommended information.

The Supplemental Report of Mr. Fourie

[234] The supplemental report of Mr. Fourie, entitled “Opinion: Environmental Exposure”, is dated October 16, 2021 (the “Supplemental Report”).

[235] The Supplemental Report suffers from the same, and, indeed, additional flaws as does the Initial Report.

[236] The Supplemental Report again rests on the basis of the original report of EMSL dated January 13, 2020. The Supplemental Report also relies upon an additional report of EMSL relating to a sample of insulation “from around the original bathroom extraction”. The additional report of EMSL referenced in the Supplemental Report, is dated September 24, 2021.

[237] The additional report of EMSL contains cautions and caveats as did the Initial Report.

[238] In addition, the Supplemental Report of Mr. Fourie contains a conglomeration of information, opinion, speculation, and argument. It is a document that attempts to direct itself at answering certain questions posed by the plaintiff. It is also a

document that appears to set off on a path of free association concerning a number of theories.

[239] The report begins:

> As I started to understand the situation, I believe the client was left on his own to try and understand and hypothesize why he was experienced (sic) fungal issues and several seizures right around the time the HVAC unit was replaced. In retrospect and from viewing the timeline, the owners HVAC unit was replaced with what the installer noted was a refurbished HVAC unit; and this coincided with the owners increased seizures.

[240] The report continues:

> … according to Mr. Tafti, the HVAC unit was inefficient and unable to maintain a comfortable temperature and therefore the HVAC unit had to operate continuously.

[241] It will be observed I have found the HVAC unit was not a refurbished unit, but it was a new unit.

[242] Mr. Fourie as well, in his Supplemental Report, states as follows: “there was evidence of considerable prior water damage from suite 704 including above the subject air conditioner. After my earlier report, I was made aware of remedial work above the owners suite to address that in suite 704.”

[243] What evidence Mr. Fourie is referring to, and how and what he was ‘made aware of concerning remedial work’ is not apparent in the report.

[244] The court, once again, ‘bent over backwards’ given the plaintiff’s circumstances of self-representation and admitted the reports into evidence. The two reports however are frankly not worthy of consideration for the reasons I have articulated.

The Evidence of the Plaintiff

[245] In overview the plaintiff testified concerning the replacement of his air conditioning unit. The plaintiff testified Elafon Mechanical Ltd. was commissioned by Mr. Davis to replace his air conditioning unit. Mr. Ryan O’Connor, an employee of Elafon Mechanical Ltd., attended to accomplish this. The plaintiff testified that Mr.

O’Connor told him (the plaintiff) that Mr. Davis had instructed Mr. O’Connor to install a refurbished unit. The plaintiff testified it was after this installation that the plaintiff started having seizures in his sleep. The plaintiff also testified however that he had suffered from seizures prior to the installation of the unit.

[246] In any event, the plaintiff was shown certain documentation, including the invoice from Elafon Mechanical Ltd. concerning the installation of the unit, that reflected it was a new unit that was installed. The plaintiff however did not concede, nor has conceded, that it was a new unit that was installed.

[247] The plaintiff testified that after the installation of the unit, in February 2016, his unit or heat pump was not working properly and was creating undue noise.

[248] The plaintiff attended a residential council meeting where he complained about excessive noise from the heat pump. He not only complained about the noise but as well complained that in his view he had not received a new unit. Again, he agreed he made this complaint to the residential executive. He agreed it was the residential executive that determined his complaints.

[249] The plaintiff consistently denied that a new air conditioning unit was installed in his apartment. He consistently denied issues associated with his HVAC system was the responsibility of the residential section.

[250] The plaintiff also testified that the water issues in units above the unit of the plaintiff were not properly dealt with by management; and such failure the plaintiff says is linked to the alleged mould present in his unit.

[251] The plaintiff produced photos of water damage in unit 704. The water damage in unit 704 occurred in either September 2016 or sometime in 2018. It was, in my view, unclear on the evidence. In any event, the photos were taken, according to the plaintiff, in March 2021. The plaintiff testified that he only heard about the leak in unit 704 in 2021.

[252] The plaintiff agrees that Mr. O'Connor attended to address the plaintiff's complaint of his air conditioning unit. The plaintiff however denies his shower cartridge had failed.

[253] The plaintiff denied ever having a water leak in his own apartment. He denies being told by Mr. O'Connor, upon Mr. O'Connor attending to his unit, that his faulty shower cartridge was leaking. He testified that the evidence of Mr. O'Connor that the cartridge had failed and caused water leakage was "just made up". The plaintiff does confirm however that Mr. O'Connor did tell the plaintiff that "his walls would be soaked as a result" of the leaking cartridge.

[254] The plaintiff testified that he believes the water damage in his unit was caused by the water leakage from until 704. The plaintiff's testimony is that the evidence of Mr. O'Connor concerning the alleged shower cartridge failure and leakage is "just another way to put everything on me". He states Mr. O'Connor and Mr. Davis are lying concerning the installation of the air conditioning unit. The plaintiff further testifies that the invoice regarding the new unit is somehow fabricated.

[255] The plaintiff testified he secretly recorded the discussions upon the attendance of Mr. O'Connor. He testified the recordings confirmed Mr. O'Connor said that he (Mr. O'Connor) replaced the unit with a refurbished unit. This however was not confirmed by the recording.

[256] The plaintiff testified however that while he recognized his heat pump and air conditioning unit was replaced under the authority of the residential section bylaw; he was of the view that it ought not to be the responsibility of the residential section as the system, in the plaintiff's opinion, is the common property of the Strata Corp.

[257] In this context, the plaintiff conceded he has no education or practical experience in any of the areas relevant to an assessment of these matters.

[258] In addition, the plaintiff also says the cooling towers (or tower, as the plaintiff insists there is but one cooling tower) is on the roof and is atmospheric in the sense

that it draws on outside air. The plaintiff says the tower is the property and responsibility of the Strata Corp. He submits the tower draws on air polluted with rust and dust. The dust says the plaintiff, contains mould and is circulated through his air conditioning unit, thus causing mould to be in his residential unit.

Summary

[259] Suffice it to say, I give no weight to the reports. In addition, even if the evidence as a whole, including the reports were capable of supporting a finding that the unit of the plaintiff at some point contained mould; or produced mould; the evidence does not support a finding it was caused or contributed to by the operation of the air conditioning unit; nor the system as a whole; nor water damage to his unit emanating from anywhere other than his own unit.

[260] Even in the event this was so, I have concluded mechanical issues associated with the operation of the air conditioning unit of the plaintiff and any water damage are not the responsibility of the defendants. I find Mr. Davis proceeded responsibly at all times and did not shirk those responsibilities as alleged or at all.

[261] I find the plaintiff's air conditioning unit was replaced with a new air conditioning unit. I find the evidence as a whole insufficient to establish that any mould in the unit of the plaintiff was caused in any way, to any degree, in circumstances that were the responsibility of the defendants or anyone acting on behalf of the defendants.

[262] Certainly the issue raised by the plaintiff concerning mould in his air conditioning unit does not amount to conduct that could be characterized as conduct creating significant unfairness to the plaintiff; either alone or in combination of any other grievances found to have been made out.

[263] I conclude it is plain on all the evidence the chiller is not connected to the operation of the residential section. It is also clear on the evidence, despite the plaintiff's insistence otherwise, that there are two cooling towers, not one. Similarly it is clear on the evidence that the cooling towers serve the residential section and the

commercial section. The cooling towers are not in the domain of responsibility of the Strata Corp. Indeed, the issue of the cooling towers and the responsibility of the residential section was a pleading struck when the application to add the residential section as a party was dismissed.

[264] I am also of the view the evidence concerning this issue does not establish the plaintiff's claim. I find the evidence of Mr. O'Connor, Mr. Lanares, and Mr. Davis completely credible and reliable. I prefer this evidence over the evidence of the plaintiff. More importantly, the evidence, aside from the credibility of the plaintiff, simply does not support the allegations.

Complaints Regarding Certain Financial Matters

[265] A feature of the overall complaint of the plaintiff concerns an allegation that certain funds are owed from the commercial section to the residential section. The amount alleged is approximately $60,000. The plaintiff says this debt represents strata fees collected over the years, by the commercial section, that properly should be remitted to the benefit of the residential section. The plaintiff claims that the Strata Corp. and/or Mr. Davies are liable for these fees because they have failed to cause the debt to be repaid. The plaintiff says he has therefore been deprived of the benefit of his proportionate share of those fees, that he submits is "a few hundred dollars".

[266] As previously referenced, the allegation is set out in paragraph 4 of the FANOCC as follows:

> The corporation, or Mr. Davies in the alternative, are liable, in so much as they have failed to recover monies owing from the commercial section, including about $60,000 in strata fees owing since 2008, including the plaintiff's proportion.

[267] The plaintiff introduced certain financial information in support of this claim. The airing of this issue however took up a good deal of time as the evidence on this discreet issue spilled into a broad, albeit somewhat superficial, inquiry into the financial affairs of The Electra Building.

[268] Again, it is helpful to place this issue in context by referencing a summary of the evidence of Mr. Davies on this point.

The Evidence of Mr. Davies

[269] Mr. Davies testified that when he was first elected to the executive of the commercial section, the property manager working for The Electra Building was a management company referred to as Facilitec. Facilitec contracted with both sections, but not the Strata Corp., to provide property management services.

[270] At that time, Facilitec invoiced the commercial and residential section separately for service. It did not invoice the Strata Corp.

[271] In around 2008 the commercial section became disenchanted with the performance of Facilitec and terminated their services. Mr. Davies testified that the residential section continued on with those services although not without issues.

[272] In any event, Mr. Davies testified that in approximately 2007–08 the commercial and residential sections came to an agreement that the commercial section collect strata fees and pay invoices incurred by the joint strata, and then invoice the residential section for its share of approximately 60% (59.15%).

[273] A dispute arose between the sections concerning funds owing. An audit was undertaken and determined the residential section owed the commercial section approximately $22,000. The audit did not conclude the commercial section owed the residential section any monies.

[274] The plaintiff questioned Mr. Davies about various financial circumstances of The Electra Building. There was no particular pleading concerning any particular financial circumstances other than the alleged debt due to the residential section as previously referenced. Nevertheless various other areas were pursued by the plaintiff without objection.

[275] The plaintiff questioned Mr. Davies concerning the contract with BC Hydro, although there was no allegation that explained what it was, about this contract, the

plaintiff considered fell under the rubric of oppression. This apparently is a contract BC Hydro has entered into with The Electra Building that generates income to the Strata Corp.

[276] Mr. Davies testified that for the first 10 years of the life of the arrangement the residential section received 100% of the income from the BC Hydro contract. At a point in time when it came to renew the BC Hydro contract certain inquiries were made and as it turned out a portion of The Electra Building that BC Hydro was utilizing was on commercial property. Consequently, the commercial section and owners had not received any income where the residential owners had received all the income. In the result, when the BC Hydro contract was renewed, Mr. Davies testified the sections negotiated a fair and balanced sharing of that income. It was not clear to me what evidence the plaintiff relied upon to demonstrate there was anything untoward about this.

[277] Mr. Davies was asked about a particular aspect of the Nelson audit (see the evidence of Mr. Nelson below). This aspect was, as I understand it, a budget item of $120,000 for salary and wages of staff at The Electra Building. The report reflected that at some point the wages and salary were based upon an 18/82% split with the commercial section paying 18% and the residential section 82%. Mr. Davies confirmed this was subsequently changed to a 60/40% split upon the recommendation of Mr. Nelson.

[278] It was suggested to Mr. Davies by the plaintiff that the matters of the sharing of these wage and salary expenses was approved, but without a properly constituted annual general meeting. It was suggested to Mr. Davies that this was in violation of s. 41 of the *SPA*. This was denied by Mr. Davies.

The Evidence of Mr. John Nelson

[279] Mr. Nelson was called by the plaintiff. Mr. Nelson is a professional accountant. Mr. Nelson testified he was engaged by the Strata Corp. in 2018 to provide various services including an audit and he has done so since that time.

[280] In short, Mr. Nelson confirmed that the audit in question revealed the reconciliation as previously referenced and explained why he thought and concluded what had occurred to cause the commercial section to be inadvertently overcharged.

[281] Mr. Nelson testified that the Strata Council had sought his views and recommendations concerning their financial affairs and the council had, since those recommendations in 2018, followed those recommendations in organizing their financial affairs.

[282] Mr. Nelson testified that since 2018 council had requested audits, on an ongoing basis, and had been proactive in addressing any financial issues that might arise from time to time.

The Evidence of Mr. Ibrahim

[283] Mr. Ibrahim provided evidence on this point, as well as more general evidence concerning the financial affairs of the Strata Corp.

[284] Mr. Ibrahim, at the time of trial, was in fact Strata Council president.

[285] Mr. Ibrahim confirmed the Strata Council commissioned the audit as a result of the residential executive raising the issue of a mistake in dealing with fees. In addition, the report was to provide recommendations concerning a roadmap going forward.

[286] In relation to a discrete unrelated issue, raised by the plaintiff's questioning, Mr. Ibrahim confirmed strata lots 448 and 449 of The Electra Building are units where the fees are shared by the commercial and residential owners, although the commercial owners pay somewhat more than the residential owners.

[287] Mr. Ibrahim provided a good deal of evidence concerning the history and evolution of the sharing agreements between the residential and commercial sections, concerning expenses relating to various matters at The Electra Building, including the salary of Mr. Davis. I will not set that out in detail. It was evidence justifying the propriety of how these matters have unfolded in the face of criticism

from the plaintiff, and in fact, at the end of the day, there was no reliable evidence in contradiction to the evidence of Mr. Ibrahim.

The Evidence of Mr. David Van Doorn

[288] Mr. Van Doorn provided evidence concerning the financial operations of The Electra Building. Mr. Van Doorn was formally a member of both the residential section and the Strata Council. He had also held the position of treasurer in both the residential section and the Strata Council.

[289] Mr. Van Doorn answered a number of inquiries from the plaintiff relating to the salary of Mr. Davis. He was asked numerous questions concerning the report of Mr. Nelson, but, for the most part, was not in a position to add anything to the report although he did testify that, since 2008, he has not been aware of any funds owing from the commercial section to the residential section.

[290] Mr. Van Doorn confirmed that the recommendations of Mr. Nelson were implemented by council.

The Evidence of the Plaintiff

[291] The plaintiff testified that this issue as pled arose in 2008. He testified at that time there were issues on the Strata Council between Mr. Davies, also of the commercial executive; and Dr. Burton, of the residential section, concerning the notion the commercial section was withholding funds due to the residential section.

[292] The plaintiff conceded that the protocol at, and before 2008, was that the respective commercial and residential sections collected fees from the owners in the sections and that the respective sections would pay joint expenses and there would be a reconciliation to account ultimately for the proper proportionate share of those expenses. In the result the plaintiff testified, his understanding is that the commercial section has withheld, since 2008, approximately $60,000 owing to the residential section to account for a proper reconciliation of the proportionate share of joint expenses.

[293] It was suggested to the plaintiff in cross-examination that there had in fact been a reconciliation exercise agreed to and suggested to the plaintiff that the agreed reconciliation resulted in, not the commercial section owing $60,000 to the residential section, but the residential section owing approximately $22,000 to the commercial section. The plaintiff did not agree to those suggestions.

[294] The plaintiff also disagreed with the suggestion that the Strata Corp. had commissioned an audit to be conducted relating to the financial affairs of this Strata Corp. including this particular issue. While the plaintiff appeared to have some knowledge that the audit had been conducted by Mr. John Nelson, the plaintiff seemed to suggest the audit was a misrepresentation of the true state of affairs.

[295] Still later, the plaintiff conceded that Mr. Nelson had in fact conducted two audits that concluded Mr. Davies had not committed any financial irregularity and not found that there were monies owing to the residential section from the commercial section.

[296] The plaintiff however testified he took issue with the legitimacy or accuracy of the audits.

[297] In my view, the evidence simply does not support the allegations of the plaintiff concerning his views on financial mismanagement. In relation to the particular pleading, I am satisfied on the evidence the allegation of monies owing the residential section is without merit. The plaintiff's views on these matters are primarily based upon opinion, speculation, and suspicion. The cogent evidence supports the integrity of the evidence of Mr. Nelson.

Window Washing and Washing Machines

[298] This issue only arose in the evidence as a result of the cross-examination of the plaintiff.

[299] The plaintiff testified he complained that the contractors retained to clean exterior windows in the building have not adequately cleaned the windows of his

unit. The plaintiff complained to building management in November 2016. The plaintiff testified that within a few days the building management responded and indicated that they would forward his complaint to the contractors. As I understand the evidence of the plaintiff his grievance is that the contractors did not respond in a timely way. The plaintiff produced photos of what he described as dirty exterior windows of his unit but did not testify as to when the photos were taken. The plaintiff did testify however that the issue was not rectified by the contractor to his satisfaction.

[300] Mr. Davis provided evidence on this issue. He testified that he arranges for contractors to wash the exterior windows two to three times per year. He does not oversee the work but arranges, when required, access to the building. He communicates with the contractors to reattend if there are issues concerning deficient service. He testified the plaintiff had previously suggested, at some point, in some circumstance, that Mr. Davis had instructed the window washers to purposely miss portions of the plaintiff's exterior windows. Mr. Davis denied this suggestion.

[301] In my view, the evidence does not support a finding this issue is worthy of consideration, either on its own or in conjunction with other complaints, as conduct properly falling under the umbrella of s. 164. Even accepting the evidence of the plaintiff that the windows were not addressed in a timely or adequate way, poor service by the window washers is not, in my respectful view, conduct that attracts the application of s. 164 of the *SPA*.

[302] The plaintiff also complained the washer and dryer on the 6th floor was not working properly. Mr. Davis produced the records of the building reflecting complaints and repairs concerning maintenance and/or replacement of the washers and dryers in the building. These records reflected, without contradiction, appropriate responses to these complaints, including the complaint of the plaintiff. In my view there is no substance to this allegation.

The Treatment of the Plaintiff at Various Meetings of the Strata Council and the Meetings of the Residential Executive

[303] The evidence of the plaintiff in this regard appears to fall largely within the allegation at paragraph 14 of the FANOCC as follows:

> The plaintiff has also been denied mitigating remedies due to defendants' misrepresentation, malfeasance, violation of procedural fairness, failure to reform the bylaws of LMS 1866 in a timely manner, contravention of the *Strata Property Act, S.B.C. 1998, c. 43*, censure of the plaintiff, denial of services, and defamatory remarks.

[304] Mr. Boudreau provided evidence in this area.

[305] Mr. Boudreau confirmed that all residential owners are able to attend meetings and, in addition, request a hearing before the residential executive to air any concerns. Mr. Boudreau testified that there is a complaint process and that it is published online. The process includes the requirement that in the event an owner desires a hearing, the owner submit a request in writing. There is a deadline for requests in relation to the meeting. In this event, the owners are then given an opportunity to address the meeting at some point during the meeting. In the event the deadline is missed, the executive will attempt to accommodate, depending on the fullness of the agenda, or failing that, will refer the owner to the next meeting.

[306] In relation to the plaintiff in particular, Mr. Boudreau confirmed the plaintiff has requested many hearings before the residential section on a host of issues. Mr. Boudreau testified that while he, Mr. Boudreau, was on the residential executive, the plaintiff was never denied a hearing as so requested.

[307] That said, he also testified the plaintiff would attempt to relitigate a matter the executive had already heard and decided upon. The evidence was somewhat unclear but it appears on these occasions the plaintiff would be denied, effectively, a second hearing upon a matter that had already been heard and decided.

[308] Generally Mr. Boudreau testified the demeanour of the plaintiff at meetings was, in his view, mixed. There were occasions where matters would proceed civilly,

on other occasions the plaintiff was, and in the words of Mr. Boudreau, at least according to my note, “argumentative”.

[309] Mr. Van Doorn was called to provide some anecdotal evidence concerning the plaintiff’s treatment at meetings. He testified to a particular meeting to his recollection where the plaintiff was given even more than the usual five minutes allotted to air his grievances. Mr. Van Doorn testified, in response to questioning from the plaintiff, that he in fact responded to the complaints of the plaintiff and confirmed that it was in fact the residential executive meeting that entertained the complaints of the plaintiff concerning his air conditioning unit.

[310] Mr. Davies provided some evidence relating to this particular issue. Mr. Davies was at times a member of the Strata Council. He testified he only recalled one meeting of Strata Council attended by the plaintiff. Mr. Davies recalled the plaintiff reading from a document for some minutes but has no recollection of its subject matter.

[311] It was suggested to Mr. Davies by the plaintiff, that Mr. Davies, during various AGMs, maligned the character of the plaintiff. Mr. Davies denied the suggestion. Mr. Davies in fact testified that the observations of Mr. Davies is that the plaintiff attempts, and often succeeds, in dominating the meetings. Mr. Davies testified the plaintiff will often attempt to speak to many if not all issues and often attempts to do so more than once.

[312] In the context of the plaintiff alleging in this lawsuit that the makeup of the Strata Council is such that it ought to attract a finding of liability pursuant to s. 164 of the *SPA*; Mr. Davies spoke to the fairness of the makeup of the council and testified, over the last eight years, no owner has ever brought forward any resolution to change the makeup of the Strata Council.

[313] Mr. Ibrahim provided some evidence addressing the issue of the plaintiff and his relationship with various meetings over the years, and generally how meetings unfold.

[314] Generally Mr. Ibrahim confirmed that in the event an owner has an issue to bring to the Strata Council, the owner is requested to put it in writing to the manager. It will then be brought to the attention of the council and addressed by e-mail or in person. In the event the issue is one that is properly dealt with by either the commercial or residential section the owner will be directed to redirect his matter accordingly.

[315] Mr. Ibrahim can recall only one occasion where the plaintiff sought a hearing before the Strata Council regarding a particular grievance. In this regard Mr. Ibrahim denied the suggestion by the plaintiff that this attendance concerned a complaint by the plaintiff alleging harassment of the plaintiff by Mr. Davis and Mr. Davies. Mr. Ibrahim does however recall the plaintiff pursuing a number of hearings before the residential executive concerning the conduct of the residential executive relating to a variety of matters including his HVAC system.

[316] The evidence of the plaintiff in relation to this broad point somewhat overlapped with the evidence of the plaintiff concerning other circumstances. That said, the evidence was often so prolix that it is a challenge to try and crystallize the complaint and translate it into actionable conduct implicating the defendants. In addition, it tended to be largely, as previously referenced, complaints concerning the residential section. In addition, while the plaintiff raised various grievances, the plaintiff rarely developed the point to where it could be understood exactly why he considered the conduct inappropriate, from his perspective, much less falling within the ambit of s. 164 of the *SPA*.

[317] For instance, the plaintiff testified that his attendance at the residential executive meeting in December 2010, where he aired his grievance concerning the hiring of Mr. Davis, was met with silence.

[318] The plaintiff also testified to his attendance at a Strata Corp. meeting on October 22, 2012. The plaintiff testified he presented a list of grievances including his view that the notice requirements concerning meetings was inadequate.

[319] The plaintiff testified concerning his attendance at an AGM of the Strata Corp. on May 13, 2013. The plaintiff says he raised his complaints concerning the process of addressing the ramifications of the hasmet fire. He also raised concerns about utilizing common property of the Strata Corp. Primarily, it appeared, his main complaint concerned the decision of installing cameras in the building.

[320] It was the cross-examination of the plaintiff that clarified the nature, and extent of this broad allegation and just what conduct the plaintiff was alleging violated s. 164 of the *SPA*.

[321] The plaintiff was taken to a particular meeting, January 29, 2018. The plaintiff testified this was a residential executive meeting. He agreed he was given a hearing concerning his grievances pursuant to s. 34.1 of the *SPA*. He agreed he received responses from the executive to his complaints but added he thought the executive was ‘dodging’ some of the issues.

[322] The plaintiff testified that he pursues a good deal of hearings concerning his complaints before the residential executive. He could recall two hearings over the years before the Strata Council. Again, the plaintiff testified he receives responses to his complaints but that the responses contain, *inter alia*, what he characterized as ‘misrepresentations’. The plaintiff testified he attends the AGMs of the Strata Council. He states he votes, and can place matters on the agenda under new business. The plaintiff did testify however this was a rare occurrence.

[323] Under this complaint the plaintiff testified concerning a hearing he initiated concerning some of his grievances on June 6, 2013. It was unclear to me whether it was a Strata Corp. meeting or a residential executive meeting. In any event, he testified that matters unfolded that in his view amounted to harassment. Who was harassing and what that consisted of was unclear on the evidence.

[324] The plaintiff however did testify to a particular complaint concerning Mr. Davis. Again, whether this was linked to conduct at or about a meeting was not

pursued. The plaintiff took exception to Mr. Davis not assisting the plaintiff in the plaintiff's attempts to maneuver a bookcase into a storage area.

[325] In summary, the evidence of the plaintiff concerning this issue appears to relate to his dissatisfaction with the outcome and atmosphere concerning his attendances at various meetings.

[326] The plaintiff, while raising his discontent did not really address this issue in his submissions. That said, the plaintiff was often unwilling or unable to really gather his thoughts and focus in a manner that supported his position. In any event, but for one attendance at a Strata Council meeting, the majority of his complaints relate to the residential executive.

[327] In addition, the evidence does not support the notion that the plaintiff was not afforded procedural fairness at AGMs over the years. In my opinion, the evidence is more weighted to a finding that any frustration the plaintiff feels concerning the governance of the building is more a product of his own inability to process and contemplate a contrary point of view, rather than being caused by any improper or unfair treatment of him within the governance structure.

[328] In this regard, I find the evidence as a whole reveals the criticism by the plaintiff often is directed at what he terms the non-responses to his complaints (and again, mostly, if not exclusively, in relation to the residential executive).

[329] I conclude the plaintiff often will be unsatisfied with the response and seek to re-hear the matter. I also find the tone, attitude, and overall behaviour of the plaintiff has led some persons to react in perhaps an unseemly way towards him, but, it must be said, in perhaps an understandable way in the circumstances.

[330] In summary, the evidence does not support a finding the plaintiff has been treated unfairly or improperly within the context of the governance structure; and certainly the conduct does not trigger the operation of s. 164 of the *SPA*.

The General Harassment Allegation

[331] The particulars of this allegation have been previously referenced and are set out in paragraph 5 of the FANOCC.

[332] A good deal of the evidence in this regard has previously been referenced, and findings made, as it related to slightly different aspects of the plaintiff's complaints.

[333] The plaintiff provided evidence that around the time of the hiring of Mr. Davis he found himself in one of the elevators in the building in the company of Mr. Davis, Mr. Davies, and Mr. Cousineau. The plaintiff testified he raised concerns relating to the hiring of Mr. Davis but did not mention the letter provided to him by Dr. Burton. He testified that he and Mr. Cousineau agreed to meet at the Café de Paris to discuss the matter. The meeting apparently did not take place but the plaintiff stated that eventually Mr. Cousineau, at some point, subsequently said to the plaintiff that if the plaintiff continued to question the hiring of Mr. Davis, he (the plaintiff) could end up in the hospital. Mr. Cousineau, as previously referenced, is now deceased.

[334] The plaintiff testified at some point he sought to attend a meeting where the hiring of Mr. Davis was being discussed. It was unclear on the evidence, at least to me, whether the meeting was a residential executive meeting or strata council meeting. In any event, the plaintiff stated he wanted to attend the meeting because he was frustrated over the hiring of Mr. Davis as he had written a reference letter on behalf of the caretaker that Mr. Davis was replacing; one Mr. Macapinlac.

[335] The plaintiff said he was advised it was an in-camera meeting and he could not attend.

[336] The plaintiff testified he did however attend a residential executive meeting to air his grievance concerning Mr. Davis and was invited into the meeting and shown to a seat beside a Mr. Gordy Forrest. The plaintiff testified he felt this was orchestrated. The plaintiff stated that in the time allotted to him to speak he raised the fact he thought the process of hiring Mr. Davis was flawed. He was given five

minutes to speak and when being asked to leave the meeting after his time was up he objected. He testified that Mr. Forrest said ‘that’s enough’ and grabbed the plaintiff by the back of the neck with his (Mr. Forrest’s) right hand. The plaintiff stated Mr. Cousineau intervened. The police were summoned by someone at the meeting. There is no evidence anything came of this. Mr. Forrest is also now deceased.

[337] An additional area of evidence the plaintiff raised from time to time throughout the trial related to a fire that took place in The Electra Building in September 2010. It was referred to by the parties throughout the trial as a hasmet fire. The residents had to evacuate the building for a week as the consequences of the fire were attended to. Subsequently the plaintiff complained about how the repairs were being undertaken. It can be seen from the FANOCC that the complaints of the plaintiff concerning this issue, as well, no longer form part of the pleadings.

[338] Consequently, the plaintiff attempted to approach matters in a different way. As I understand the position of the plaintiff, it was his grievances relating to how the repairs were being undertaken that in turn caused the defendants to behave badly towards him and harass him.

[339] The plaintiff testified it was his theory, concerning the fire, that the Strata Corp. and the strata executive would ultimately be found liable to the owners of the units in the building concerning the consequences of the fire. As I understood the plaintiff’s evidence, it was his view that the prospect of this legal exposure, caused persons on behalf of the Strata Corp. to mistreat him when he raised concerns about the fire and indeed about the governance of the Strata Corp. generally. In particular, he testified this concern on the part of the Strata Corp. motivated Mr. Cousineau, again, to resort to violence. I will return to this momentarily.

[340] The plaintiff now complains that shortly after the fire, in November 2010 he attempted to attend the residential section meeting to try and obtain ‘documentation’ from the residential section relating to the fire. The plaintiff testified he was made to feel unwelcome and was offended and consequently refused to leave the area or the

meeting. The plaintiff recorded the goings on. Once again the police were called and attended.

[341] The second Cousineau incident, as referenced above, according to the plaintiff, occurred in March 2011. The plaintiff testified concerning a meeting that was being held in what he described as the residential social club. It was a meeting concerning the hiring of the new property manager for both the Strata Corp. and the commercial section. The plaintiff testified he believed it was a secret meeting and again had a right to enter the room. In attempting to insert himself into the meeting the plaintiff testified Mr. Cousineau shut the door on the foot of the plaintiff as the plaintiff was attempting to enter the boardroom. The plaintiff testified he felt this conduct on behalf of Mr. Cousineau was somehow related to the fire.

[342] The plaintiff testified to yet another incident during yet another residential executive meeting, in July 2011. It appears the plaintiff had in fact been elected to the residential section executive in April 2011.

[343] The plaintiff testified that he and Mr. Forrest, in the course of discussion, disagreed on something that had allegedly been said at a prior residential executive meeting. The plaintiff testified he called Mr. Forrest a liar. The plaintiff then testified Mr. Forrest said “don’t call me a liar or I will flatten your ass”. The meeting apparently then carried on.

[344] The plaintiff also testified as a general matter, that during his time on the residential executive he was not given a position of responsibility nor provided with meeting agendas in a timely way.

[345] The plaintiff testified to yet another incident in support of his claim occurring in the context of a residential executive meeting. The plaintiff testified he attended a residential section meeting in March 2012 when Mr. Davies commented during a discussion that certain things should be eliminated. The plaintiff testified that when Mr. Davies made these comments he (Mr. Davies) was looking at the plaintiff. The plaintiff took this as a threat.

[346] In addition, the plaintiff testified that at a residential executive meeting in April 2012 Mr. Boudreau pushed him as the plaintiff grabbed a pen and attempted to write his, the plaintiff's, name on the board as a nominee for the residential executive.

[347] The plaintiff testified to some sort of altercation the plaintiff had with an outside service employee while the employee was in attendance at the building. The plaintiff testified that Mr. Davis attended the scene of the altercation for the purpose of observing the fact that the plaintiff was upset.

[348] Generally, the plaintiff testified he reported the behaviour of Mr. Davis to the VPD on three occasions over the course of a few days in January 2018. This occurred after the filing of his NOCC.

[349] Mr. Davis testified in this area. The plaintiff had pled that "Mr. Davis repeatedly harassed the plaintiff". Mr. Davis denied pursuing any conduct regarding the plaintiff that would or could be considered harassment, threats, battery or false imprisonment. He testified he has little recollection of the incident concerning the plaintiff's brother and the social room. He gave evidence he was not motivated because of the fact the plaintiff complained and was unhappy about the fact that Mr. Davis was hired.

[350] Mr. Davies testified. Mr. Davies generally denied any remarks or conduct alleged giving rise to harassment or threats.

[351] In particular, Mr. Davies was asked in cross-examination if he grabbed the plaintiff on the street in front of The Electra Building. Mr. Davies denied the suggestion.

[352] The plaintiff had also testified that Mr. Davies attempted to run him over in his vehicle. The plaintiff also gave evidence of Mr. Davies 'chasing the plaintiff throughout a grocery store'. Mr. Davies adamantly and flatly denied these occurrences.

[353] Mr. Davies in fact testified that he first purchased a commercial unit in the building in an around 2004. Around this time he had a discussion with the plaintiff about that fact and testified the plaintiff immediately launched into a series of declarations about how ‘bad’ the commercial owners were. Mr. Davies testified this was in fact the last time he engaged in a conversation with the plaintiff. Mr. Davies testified he avoids contact with the plaintiff ‘as much as is humanly possible’.

[354] Mr. Ibrahim provided some evidence on this issue. He testified the plaintiff never brought a complaint of being harassed by anyone to the attention of the Strata Council.

[355] In summary I conclude generally I accept the evidence of Mr. Davies, Mr. Davis and Mr. Ibrahim on these issues for the reasons previously referenced. They are witnesses who gave their evidence in a straight-forward manner that accorded with common sense. Certainly their evidence was not undermined in the least as a result of cross-examination.

[356] I have previously found aspects of the evidence of the plaintiff not to be credible. I come to the same conclusion concerning this issue. The plaintiff appears incapable of admitting, conceding, or otherwise providing evidence that is in any way contrary to his self-interest no matter how trivial.

[357] That said, I am alive to the fact the evidence of the plaintiff concerning the conduct and remarks of Mr. Cousineau and Mr. Forrest are, for obvious reasons, uncontradicted. Indeed, for the same reason, the plaintiff could not really be pressed in cross-examination concerning these particular aspects.

[358] In my view however, on the plaintiff’s evidence alone, I am not satisfied he has established conduct that would allow a finding the defendants have participated in conduct giving rise to the required findings to found liability under s. 164 of the *SPA*. The evidence as a whole demonstrates beyond peradventure that the plaintiff’s consistent sense of victimhood is not the product of unreasonable or unfair

treatment. He is the sole author and cause of his perception of his life at The Electra Building.

The AEBC Issue

[359] This relates to an action commenced against the Strata Corp., and the commercial section, concerning allegations relating to the use of a cooling system that was traditionally used by the commercial section. The details of this lawsuit were not before the court. The plaintiff attempted from to time to provide a theory that the issue with the commercial cooling system relates somehow to his HVAC system and his overall complaint in this lawsuit.

[360] The plaintiff's theory in my view rests on speculation, suspicion and conjecture. In any event, it was a theory and allegation struck from his pleadings. I will say no more.

The Wages and Salary of Mr. Davis

[361] This issue relates to the theory of the plaintiff that is again, at least from my perspective, somewhat difficult to navigate.

[362] As I understand it, the plaintiff says that Mr. Davies benefits from fees paid to what the plaintiff calls a 'fictitious joint section'. This, in turn, allows Mr. Davies to cause Mr. Davis to be paid by the residential section out of proportion to what it otherwise would be obliged to pay compared to the contribution of the commercial section.

[363] This allegation of course not only raises the issue of governance, but as well is a direct attack on the integrity of Mr. Davis and Mr. Davies. The notion of implicit wrongdoing by Mr. Davis and Mr. Davies was not pled but in any event there is no evidence Mr. Davies or Mr. Davis or anyone is involved in any way in any improper or unreasonable behaviour concerning finances generally and certainly relating to the salary of Mr. Davis.

Other Complaints

[364] There are a myriad of *ad hoc* complaints made by the plaintiff throughout the trial. As previously indicated, often the complaint was left unconnected with any reasoning or logic as to how it supports the cause of action based upon s. 164 of the *SPA*.

[365] In addition, without confirmatory or some corroborative evidence, I do not accept the evidence of the plaintiff at face value. The plaintiff was, throughout the trial, demonstrably so unyielding in his conceit, it completely undermined his veracity.

[366] I also find that even accepting the plaintiff's evidence where his evidence remained essentially uncontradicted, I conclude none of these allegations rose above the trivial. In my view, triviality upon triviality does not form a solid foundation upon which a court can conclude that, as a whole, it renders the complaints of such substance as to support the finding of unfair treatment. Having reviewed all of the evidence and referred to some of the evidence, in my view, to coin a somewhat tired phrase, the plaintiff is completely and utterly the creator of his own perceived misfortune.

The Particular Issues Raised in Final Submissions

[367] The plaintiff raised an allegation of fraudulent misrepresentation concerning the alleged remarks of Mr. Ibrahim relating to the colour of the blinds in a previous vote. I am not satisfied this statement was a misrepresentation, much less fraudulent. In any event, it is in my view a paltry event.

[368] The plaintiff complained of a room being used for purposes other than for residential section purposes. There is not sufficient credible evidence to support this.

[369] The plaintiff gave certain evidence concerning his relationship with his bicycle. In my view this is a trifling matter and in any event not supported by credible evidence.

[370] The plaintiff alleges that Mr. Davies was responsible for the plaintiff being unsuccessful in one of his many court applications. This allegation is wholly frivolous.

[371] The plaintiff complains that a delay in fixing one of the elevators caused additional pain to his injured foot. This complaint is in the same category as above.

[372] The plaintiff made submissions concerning the plaintiff's allegation that the sharing of expenses as between the residential and commercial sections is "disproportionate" and as such creates significant unfairness to the plaintiff. I have already found the makeup of the expense sharing has not been shown to be inappropriate, improper, or unfair. I have also found, regardless of the potential impact to the plaintiff, it is not other than inconsequential.

[373] Finally, the plaintiff raises issues concerning a person named Ms. Tanya Paz. He alleges that she defamed him. This is wholly without merit and unsupported by the evidence.

[374] The pleadings of the plaintiff also declare he claims in a variety of apparent tort allegations, including misrepresentation, malfeasance, and defamatory remarks. I find these claims remain untethered to any cogent evidence.

Conclusion

[375] It has been previously referenced, or at least alluded to throughout these reasons, that the plaintiff struggled placing evidence before the court that supported his overall views that the defendants have been guilty of the alleged conduct supporting his claims.

[376] In addition the plaintiff revealed himself to be an unreliable historian of the events in issue. I also conclude in many respects the plaintiff was not credible. He views any slight, no matter how objectively trivial, as evidencing an unjustified intrusion into the operation of his free will; that in turn is perceived by him as a series of grave injustices perpetrated by the persons that interact with him in the building.

[377] Conversely, I find the credibility of the defendants, and other witnesses providing evidence in defence to be completely intact at the conclusion of proceedings.

[378] I also do not conclude the plaintiff's reasonable expectations were violated as that term is defined in the jurisprudence; in particular *Reid* and *King Day*. In any event, I do not find, in large part, the conduct as alleged in fact occurred, and regardless, the evidence does not support a finding of significant unfairness.

[379] The claims of the plaintiff are dismissed in their entirety. The parties did not have an opportunity to address the issue of costs. In this regard, if either party wishes to address the issue of costs, that party can so advise Supreme Court Scheduling within 14 days. Failing such advice, the defendants are entitled to their costs at Scale 3.

"Crossin J."