IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Owners, Strata Plan 259 v. Doe,* 2024 BCSC 768

Date: 20240506
Docket: S232011
Registry: Victoria

Between:

The Owners, Strata Plan 259

Petitioner

And:

Jane Doe and/or John Doe

Respondent

Before: The Honourable Mr. Justice A. Saunders

Reasons for Judgment

Counsel for the Petitioner:	T. Morley
Strata Unit Owners Appearing in Person:	J. Gaudreau M. Todd J. Zimmerman
Place and Dates of Hearing:	Victoria, B.C. December 14 - 15, 2023
Place and Date of Judgment:	Victoria, B.C. May 6, 2024

[1] The petitioner, properly known as The Owners, Strata Plan VIS 259, is the strata corporation for a residential development known as Laurel Point Condominiums ("LPC"). LPC was constructed in or about 1976. More recently, dating back at least to 2008, window and glass sliding door assemblies have begun to fail through the normal process of aging. Some individual unit owners have initiated their own repairs. The current condition of the LPC's windows and sliding doors have been thoroughly investigated by consulting engineers, and repair proposals have been costed out.

[2] As a step towards remedying these deficiencies, the petitioner, at an annual general meeting held February 22, 2023, presented unit owners with two alternative repair proposals, to be funded by way of a special levy as authorized under s. 108 of the *Strata Property Act*, S.B.C. 1998, c. 43 [*SPA*]. The first of these alternatives—"Resolution 7"—would have permitted the petitioner to raise $9 million to undertake the removal and replacement of the existing aluminum and vinyl windows, including the installation of structural steel supports, and the removal and replacement of sliding patio doors. Resolution 7 however was not tabled, for want of a mover and seconder. The second alternative, "Resolution 8", was more limited in scope, calling for $2 million to be raised to fund replacement of the sliding doors only. That was put to a vote.

[3] Pursuant to s. 108 of the *SPA*, approval of the special levy under Resolution 8 required the resolution to pass by a ¾ vote. Resolution 8 did not obtain that super-majority; instead, it was affirmed by only a bare majority of 62%.

[4] There is evidence that this result reflects a deep, longstanding schism within the strata as to how this common property repair issue is to be addressed.

[5] Given this outcome, the LPC strata council now seeks a court order approving Resolution 8. Such jurisdiction is conferred on this Court by way of provisions of the *SPA*, s. 173:

> 173(2) If, under section 108(2)(a),
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> (a) a resolution is proposed to approve a special levy to raise money for the maintenance or repair of common property or common assets that is necessary to ensure safety or to prevent significant loss or damage, whether physical or otherwise, and
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> (b) the number of votes cast in favour of the resolution is more than 1/2 of the votes cast on the resolution but less than the 3/4 vote required under section 108(2)(a),
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> the strata corporation may apply to the Supreme Court, on such notice as the court may require, for an order under subsection (4) of this section.
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> …
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> (4) On an application under subsection (2), the court may make an order approving the resolution and, in that event, the strata corporation may proceed as if the resolution had been passed under section 108(2)(a).

[6] The scope of s. 173(2) was considered by the British Columbia Court of Appeal in *Thurlow & Alberni Project Ltd. v. The Owners, Strata Plan VR 2213*, 2022 BCCA 257, wherein it was described as a tool to enable strata corporations to discharge their statutory obligation to maintain the strata's common property (paras. 82–86, 92). Formulation of the resolution authorizing the special levy, and determination of the scope and timing of repairs, are matters for the strata council to decide, within its discretion; deference is owed by the Court to such decisions, when supported by a majority of owners (*Thurlow* at para. 87).

[7] Further, in *Thurlow* the Court of Appeal considered the requirement that the repair or maintenance be "necessary … to prevent significant loss or damage, whether physical or otherwise". It approved of the definition of "significant" formulated by Justice Pearlman in *The Owners, Strata Plan LMS 1383*, 2015 BCSC 1816: that the damage or loss be "extensive or important enough to merit attention" (paras. 88, 92). On the record before it, the Court implicitly accepted that expert reports which documented existing damage to the building's exterior insulation and finish system (the "EIFS"), and which concluded that the EIFS was obsolete, at the end of its anticipated lifespan, and required immediate replacement, served as sufficient proof that repairs were necessary to prevent significant physical damage (para. 112). Further, the Court accepted that the word "otherwise", in the phrase

"physical or otherwise", encompasses the necessity of acting to avoid economic loss through future increases in repair costs (paras. 114, 116).

[8] The Court of Appeal summed up its interpretation of s. 173(2) as follows:

> [92] … The provision in question is remedial. It should be read purposively with a view toward permitting strata corporations to discharge their statutory obligation to maintain and repair the strata property. It permits the court to authorize special levies to effect repairs that are necessary, but does not require that the repairs be immediately necessary or that the proposed repair be the minimum necessary to address the problem. It should be read in a manner that permits the Strata Corporation to determine the timing and method of repair. The *Act* requires the Strata Corporation to maintain and repair its common property. Section 173, seen in that context, is not intended to place the court in the position of overseeing or managing repairs but, rather, to afford a tool to break a deadlock and permit a simple majority to resolve to effect necessary repairs. It would be contrary to the remedial intention of the provisions to require the court to intensively analyse the scope of the work the strata corporation proposes to do. Doing so will only increase costs to owners and fail to address the deadlock the legislature clearly intended to resolve.

[9] In the present case, the need for replacement of both the windows and the sliding doors throughout LPC is thoroughly demonstrated in the reports of consultants hired by the petitioner (BC Building Science Ltd., Read Jones Christoffersen Ltd. ("RJC"), and Morrison Hershfield), and in the statutory depreciation reports for the years 2018 and 2022 (prepared by, respectively, Morrison Hershfield and RDH Building Science). Morrison Hershfield estimate that 85% of the sliding glass doors within LPC are original, dating back to construction in 1976. The assemblies are at the end of their life expectancy. The July 2021 report of BC Building Science Ltd. summarizes the then state of the subject building systems:

> The existing window systems and sliding doors are showing typical signs of weathering and breakdown common to their age, quality of construction, and high exposure. Concerns related to their performance and integration to the cladding systems are apparent, including signs of condensation on interior finishes, condensation in between the panes of glass (failed insulating glass units), reports of air leakage (drafts), difficulty in operation, broken latches/locks, failed exterior sealant, missing/damaged weather stripping, etc. More significant issues with their poor condition includes a high incidence of corroded fasteners that attach the frames to the building, as well as reports of window and door sill tracks filling with water during wind-driven rain events.
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> …

> Based on these observations, the overall function and performance of the original windows, sliding doors, and skylights is poor, and there are no significant means that will alter their current function and performance. … Postponing window renewals is likely to increase the costs of the renewal work that appears, based on current conditions, to be a more prudent and reasonable course of action. Also, as time goes on, the ongoing issues with the windows and doors will become more prevalent, and maintenance costs will continue to increase.

[10] The affidavit of James Fife, then president of the LPC strata council, made May 25, 2023, sets out the thinking of the strata council in seeking Court approval only of the more limited Resolution 8, rather than continuing to press unit owners for replacement of both sliding doors and windows at this time:

> 40. Council sees Resolution 8 as a balance of several considerations which supported its original passage. It addresses an essential element of the overall project using the same design and specifications as the larger project, but can be implemented quicker. It therefore holds out the same hope that the benefits of this partial project will create the goodwill needed to inspire a shift of the handful of positive votes needed to pass a resolution to complete the full replacement project. Replacement of the sliding doors is a necessary part of the renewal cited in repeated engineering and depreciation reports but, as a compromise measure, it may ameliorate some of the concerns associated with the larger project.

[11] There remain significant numbers of unit owners opposed to the resolution, some of whom filed responses to the petition, and some of whom spoke at the hearing of the petition. Much of the evidence filed in response addressed replacement of windows, which is not germane to Resolution 8. I address the concerns expressed relating to the proposed holistic replacement of the sliding doors.

[12] Some owners protest that they have already undertaken replacement of the sliding doors in their units at their own expense, and therefore ought to be exempt from contributing to the special levy. Sliding doors are, however, common property, and the cost of the repair or replacement of any common property must be borne by the unit owners as a whole. The *SPA*'s provisions for calculating each strata lot's share of a special levy are mandatory. This Court has no discretion to exempt individual unit owners from contributing to common property repair costs; all unit

owners must contribute to the levy, regardless of whether they have previously replaced their own doors.

[13] Some unit owners cite what is said to be a lengthy history of previous strata councils having failed in their statutory obligation to properly maintain the subject window and door assemblies. Whether that is or is not the case, it is clear from the engineering reports that maintenance would only extend the lifetime of these assemblies to a point, beyond which replacement costs would inevitably have to be incurred. In any event, any past failures of strata councils to undertake regular maintenance cannot relieve the strata corporation of its obligation to undertake necessary repairs.

[14] Another point of contention is whether the sliding doors have failed to the point that replacement is now a necessity, or whether a more limited program of repairing and replacing on an as-needed basis could now be undertaken instead. That approach however only delays the inevitable. It ignores the cost of ongoing monitoring. Further, it would expose the strata to the risk of cost escalations, not to mention the possibility of further latent damage due to undetected water ingress.

[15] Some unit owners complain as to limitations on the process of costing the proposed work. The evidence before me is only to the effect that the cost estimates have been used to determine the amount of the special levy. No bids have been solicited and no contracts have been signed.

[16] Lastly, one unit owner in particular voices suspicion as to whether the strata council has acted in good faith, based on a remark made by one RJC consultant at a September 2022 meeting. Asked whether all windows needed to be replaced, the consultant is said to have replied, “No. It is a political decision”. I find nothing nefarious in that remark. Whether to proceed with repairs now, or whether to kick the can further down the road, is a political decision. To repeat the Court of Appeal’s statement in *Thurlow*, s. 173(2) does not require the repairs to be immediately necessary. The decision has been put to a vote, through the process laid out in the *SPA*. The issue is whether the result of that political process—an affirmative vote by

a majority, entitling the strata corporation to seek the assistance of this Court—is to be given effect.

[17] I find the requirements of s. 173(2) are satisfied.

[18] The final issue is whether this Court should exercise its discretion to approve Resolution 8. As set out in *Thurlow* at para. 100, factors that go to the Court's exercise of discretion include whether the strata corporation has acted in good faith; whether there were procedural irregularities in the manner in which the resolution was proposed and passed by a majority of the votes cast; whether the strata corporation acted reasonably on the strength of professional advice in seeking to impose the special levy; and whether court approval of the resolution would unfairly prejudice the owners in the minority.

[19] I find no lack of good faith on the part of the strata corporation. To the contrary, the evidence discloses that the strata council has been entirely aboveboard in its communications with strata unit owners. It has been mindful of the views of those in favour of and those opposed to a holistic replacement program, while remaining focussed on its statutory responsibility for repair and maintenance of common property. There is no evidence of procedural irregularities. The strata corporation has sought professional advice and is acting on it, within the limitations of what it deems practicable given the strongly held opposing views of unit owners. Lastly, I find no unfair prejudice to the minority owners. Costs will be shared pro-rata. Everyone will receive a new sliding door.

[20] I find Resolution 8, limited as it is in its approach, presents a considered, pragmatic, and reasonable response to the concerns with LPC's sliding doors, both in the sense of the mechanical or engineering approach to the replacement, and the political issue of attempting to move towards a broader consensus in support of the larger contemplated project of replacing window assemblies. The Resolution was put forward, and this petition pursued, in good faith. The Resolution meets the requirements of s. 173(2) in all respects.

[21] The petition is granted.

[22] Costs are awarded to the petitioner, as sought, against those unit owners who put their names forward in opposition to the petition, those being the petition respondents named in the response to petition filed July 31, 2023.

"A. Saunders, J."
The Honourable Mr. Justice A. Saunders