

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Owners, Strata Plan KAS 1771 v.  
Flaman,*  
2024 BCSC 1242

Date: 20240711  
Docket: S133650  
Registry: Kelowna

Between:

**The Owners, Strata Plan KAS 1771**

Petitioner

And

**August Jerome Flaman, and Gloria Jean Flaman**

Respondents

Before: The Honourable Justice Hardwick

## Reasons for Judgment

Counsel for the Petitioner:

M.D. Fischer

Counsel for the Respondents:

A. Cathcart

Place and Dates of Trial/Hearing:

Kelowna, B.C.  
December 5, 2023 and  
January 25, 2024

Place and Date of Judgment:

Kelowna, B.C.  
July 11, 2024

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[1] Certain individuals are not entirely well suited for living in a stratified situation wherein there are restrictions placed upon them which would likely not otherwise be imposed if they lived in a residence wherein they hold freehold title. This is, in my conclusion, one of those situations.

[2] This situation is compounded when you have an individual (or individuals) who are inclined to take self-help and/or rogue measures to address issues of conflict in, what I describe as, a rouge manner. I recognize that it is expected that individuals that choose in a strata development may disagree at times. That is why the governing legislation requires meetings on proper notice, quorum at meetings and so forth. However, as I will address in due course, there needs to be a line drawn in the sand at some point.

[3] In this regard, with the exception of one incident involving a neighbour and a vehicle, the matters at issue in this proceeding would have been matters that the respondents could have simply dealt with in due course as property owners, but for the fact that their residence is the subject of a small strata corporation. That is not the case, however, and unfortunately the conflict between interested parties has clearly “runneth over” and the matter must be adjudicated upon by this Court accordingly.

[4] My conclusion about the conflict having “runneth over” is apparent by the seven binders submitted which, due to their size, cannot even be contained in a single banker’s box.

[5] With those broad opening comments, I will first outline the relief sought before returning to the factual matrix underpinning the issues as between the parties and then outline my legal analysis which merges all of the above.

**Relief Sought**

[6] The relief sought by the petitioner, the Owners, Strata Plan KAS 1771 (the “Strata Corporation”) is very detailed and so I have reproduced it verbatim as follows:

1. An Order that the Strata Corporations various findings that August Jerome Flaman and Gloria Jean Flaman breached the bylaws and assessed fines were valid and are upheld, and that the fines and chargebacks must be paid in full by the Respondents in the amount and on timing and terms imposed by the Court.
2. A Declaration that August Jerome Flaman contravened the bylaws of the Strata Corporation, in a manner which constitutes a repeated or continuing contravention of one or more reasonable and significant bylaws, in a manner which seriously interferes with another person's use and enjoyment of a strata lot and/or common property.
3. Declaration that August Jerome Flaman, by driving unreasonably close to the bumper of another vehicle of a strata lot owner, by charging his vehicle towards another vehicle in an aggressive and challenging manner, and by rudely gesturing at that same strata lot owner when they sat in their vehicle has contravened bylaws 3(1)(a) and 3(1)(c).
4. A Declaration that August Jerome Flaman, by improperly accosting a contractor and other owner on common property, demanding that they leave the area and otherwise interfering with use and enjoyment of common property has contravened bylaw 3(1)(c).
5. A Declaration that August Jerome Flaman, by sending an excessive amount of communication to Council and management characterized by a hostile tone, defamatory remarks, and unreasonable demands; has created a hostile environment which constitutes an unreasonable interference in the governance of the Strata Corporation which has adversely impacted the willingness of strata managers and prospective council members to serve the Strata Corporation.
6. A Declaration that the Respondents have contravened bylaws 3(1)(a), 3(1)(c), 3(2), 3(6)(a), 3(11), 3(14), 5(1)(a), 5(1)(b), 5(1)(d), 5(1)(e), 6(1) and 6(2) by:
  - a. Installing an externally vented Furnace without approval;
  - b. Installing a fresh air venting system without approval;
  - c. Installing an on demand hot water heater unit which exceeded the scope of work approved by the Strata Corporation;
  - d. Conducting unapproved alterations to the common property building exterior cladding and building envelope, including putting screws into exterior siding without approval; and
  - e. Not parking in the designated parking area for strata lot 6 by 'hanging' out of the garage and blocking the common property lane, causing a hazard.
7. An Order that August Jerome Flaman must comply with the *Strata Property Act* and bylaws generally, and be specifically restrained from:
  - a. Disturbing other residents, occupants and/or visitors;
  - b. Demanding that any person leave common property;

- c. Communicating with any residents, owners, agents, contractors or representatives of the Strata Corporation that have specifically asked August Jerome Flaman to refrain from having contact with them; and
  - d. Uttering any abusive, obscene or threatening comments or making obscene gestures to anyone within the bounds of the strata plan.
8. An Order that August Jerome Flaman must communicate with the Strata Corporation only through management by regular postal mail to the address of the Strata Corporation registered in the Land Title Office as contemplated in section 63 of the *Strata Property Act*, or between counsel for the parties in relation to this proceeding.
9. An Order that the Respondents must comply with the bylaws generally, and be specifically enjoined and restrained from:
  - a. Making alterations to common property or making alterations to a strata lot requiring approval without the prior express written approval of the Strata Corporation as and where required by bylaw.
  - b. Making alterations which are outside the scope of any approved alteration request.
  - c. Parking or driving in a manner which contravenes the bylaws and causes a hazard to residents, owners, agents, contractors or representatives of the Strata Corporation
10. An Order that unapproved alterations to the strata lot and to common property, which required approval, be reversed and the common property and limited common property be properly restored to pre-alteration condition.
11. In the Alternative to #10 an order that the Respondents seek remediation of the already completed alterations to repair known deficiencies to a satisfactory manner of the Strata Corporation and copies of all related permits be provided to the Strata Corporation and obtain retroactive approval of any alterations and/or scope of alterations which have not yet been approved, and sign binding alteration agreements for those items on terms which have the Respondents take responsibility for all costs, risks and liability, including ongoing annual inspections, repair and maintenance, as well as ultimate replacement of those items, and to pass those obligations on to subsequent owners on title to the Respondents strata lot.
12. An Order that the Respondents have an Engineer (chosen by the Strata Corporation) conduct a final assessment of all work that is completed as part of the deficiency remediation ordered by the Court to ensure all alteration deficiencies have been remediated appropriately.
13. An Order that the Respondents pay assessed fines to the Strata Corporation in an amount current to the date of this Order, and judgment against the Respondents jointly and severally in an amount

of valid fines in evidence as having been assessed to the date of severally in an amount of valid fines in evidence as having been assessed to the date of hearing.

14. An Order that the Respondent be restrained from incurring expenses with the intention of demanding reimbursement from common funds without prior strata authorization.
15. An Order that the Respondent August Jerome Flaman be ordered to vacate strata lot 6 and the bounds of the strata plan within 14 days and be specifically restrained from returning; except only in strict compliance with terms of any permission granted by the Strata Council of the Petitioner or further order of this Court.
16. In the Alternative to #15 above, an Order that absent strict compliance with the Orders made in this proceeding, that the Strata Corporation be at liberty to apply to have the Respondent August Jerome Flaman ordered to vacate the strata lot and the bounds of the strata plan within 14 days, and not return except in strict compliance with terms of any permission granted by the Strata Council of the Petitioner or further order of this Court.
17. An Order that the Petitioner be granted judgment against the Respondents for section 133(2) cost recovery, subject to a further accounting of amounts due and owing to the Petitioner as at the date of judgment.
18. In the Alternative to #17 An Order that the Respondents pay Special Costs or Party and Party Costs, as the Court considers just.

**Broad Overview of the Factual Background**

[7] As I addressed above, the petition filed March 21, 2022, (the “Petition”) concerns a strata dispute within a small 12-unit residential strata corporation located in Summerland, British Columbia which I hereinafter define. Having regard to its size, the strata council consists of a limited number of individuals who are available to put their name forward, on a volunteer basis. But for these volunteers, the alternative would be a much costlier professional form of management.

[8] The core issue concerns the assertion that the respondents (“the Flamans”), who are owners of strata lot 6 in this strata development, have made certain unapproved alterations to common property and to their strata lot—most notably the penetration of the common property building exterior. The fact that same was not formally approved through regular strata governance procedures is conceded. It is explained and sought to be justified by the Flamans, but ultimately conceded.

[9] The issues have escalated and it is asserted Mr. Flaman has conducted himself in a way which is alleged to be aggressive, intimidating and disruptive to the Strata Corporation's governance, to the strata's repair and maintenance program and disruptive to other use and enjoyment of property; as well as increasing common expenses.

**The Property**

[10] The Strata Corporation, as defined above, is informally referred to as "La Vista Ridge". The Strata property was developed in three phases, each comprising one four-residential unit building constructed into a slope.

[11] The relevant strata plan contemplates what I would acknowledge is a conventional arrangement whereby the building's exterior is common property from the midpoint of the wall forming an exterior boundary of each strata lot, with garages forming a non-habitable portion of each strata lot, and with exterior decks and patios being designated as limited common property for the exclusive use of the owner of the adjacent strata lot.

[12] The exterior building envelope and exterior cladding are common property defined under s. 1 of the *Strata Property Act*, S.B.C. 1998, c. 43. [SPA] and as shown on the strata plan. Consequently, the ownership and control of each strata lot's exterior lies with the Strata Corporation as a collective of the owners.

**Unauthorized Alterations**

[13] The respondents have contravened the bylaws by conducting unauthorized alterations to common property and limited common property which were unauthorized and which, I accept, require strata approval under Bylaws 5(1)(a), 5(1)(b), 5(1)(c), 5(1)(d), 5(1)(e), 6(1) and 6(2), as well as conducting alterations which went beyond the scope of approval—when approval had been sought.

[14] Control over common property alterations, particularly to the building envelope, are of importance to a strata corporation to help prevent water ingress and

damage to property, to limit liability, and to preserve insurability. There is, quite literally, a common interest with respect to these matters.

[15] In 2019 and 2020, the Flamans undertook a series of alterations involving exterior venting and other connections requiring penetration of the building exterior, none of which were fully approved in advance, and for some of which no approval was sought, despite clear communication that approval was required and expected.

[16] On or about February 1, 2021, GTA Architecture Limited conducted an assessment of the building envelope and perforations made as a result of the unauthorized alterations made by the respondents and found that all perforations to the building envelope required remediation.

[17] The February 1, 2021 GTA Architecture Building Envelope Review summarized the exterior wall perforations made by the Flamans:

New interior mechanical and radon mitigation upgrades to unit 63, including on demand hot water heater, high efficiency furnace, AC condenser, Radon mitigation system and crawlspace venting.

[18] As indicated above, each of these alterations required approval of the strata council pursuant to the Strata Corporation's Bylaws 5 and 6 because the alterations involved a change to common property building components, alteration of which an individual owner has no express right. The Flamans were, I accept, on notice of this.

[19] The Flamans, I further accept, prefer the approach of proceeding as they personally deem appropriate and seeking approval after the fact. Something which this Strata Corporation, unlike larger strata corporations, has been quite forgiving in allowing.

[20] The strata council has even gone so far as to reimburse the Flamans where a unilateral alteration would have been a repair or maintenance obligation of the Strata Corporation, and no additional cost or other prejudice resulted.

[21] Much like a parent who waffles in their otherwise appropriate disciplinary action of a child, prior waffling does not give cart blanche for further transgressions.



If there is a 10:00 curfew, failing to this once without consequences on one occasion does not mean that the curfew is now midnight.

[22] Specifically, I confirm for the benefit of the record that Bylaw 5(1) requires prior approval of any alteration to a strata lot which involves the exterior of a building and Bylaw 6(1) expressly requires that an owner obtain prior written approval of any alteration to common property, which also includes the building envelope and exterior cladding.

[23] Of the relief sought, paragraphs 6, 9, (10-12), 14 are alterations, I accept, which exceed the scope of required approval and constitute a breach of the bylaws. If the alteration cannot be retroactively approved with the correct scope, then the courts have ordered owners to reverse the alterations at their own expense: See *Sidhu (c.o.b. Pressed 4 Time Dry Cleaning) v. Strata Plan VR1886*, 2008 BCSC 92; *Barnes v. Strata Plan NW3160*, *Baker v. Strata Plan NW3304*, 2002 BCSC 1559.

[24] As I alluded to above, the Flamans do not argue that they had prior authorization to make the alterations, or that the bylaws do not require approval. Instead the focus of the submission is that there was a combination of an urgent need to do alterations quickly, combined with an alleged failure of the strata council to make decisions with sufficient diligence.

[25] The most contentious issue in this case is the Flamans' installation of a radon mitigation which involved a specific and identified building envelope perforation. I will now turn to that issue in more detail.

[26] In this regard, the Strata Corporation relies upon ss. 3, 26, 129-138 and 173 of the SPA.

[27] Specifically, approval of building envelope alterations and other alterations to common property by the strata council (where the bylaws permit) and/or by percentage vote of the ownership where required pursuant to s. 71 of the SPA for "significant changes to the use or appearance of common property" are an essential requirement to ensure that a strata corporation's structural and building envelope

integrity are not compromised, warranties are not voided, and resultant costly remediation or insurance deductibles or even more serious insurability issues are avoided.

[28] Specifically, s. 71 provides as follows:

**Change in use of common property**

71 Subject to the regulations, the strata corporation must not make a significant change in the use or appearance of common property or land that is a common asset unless

- (a) there are reasonable grounds to believe that immediate change is necessary to ensure safety or prevent significant loss or damage, or
- (b) the change is approved by a resolution passed at an annual or special general meeting
  - (i) by a majority vote, in the case of a change that is related to the installation of EV charging infrastructure or the management of electricity used by EV charging infrastructure, or
  - (ii) by a 3/4 vote, in the case of any other change.

**Radon Mitigation Issue**

[29] Radon is a radioactive gas which is naturally released from uranium decay and can accumulate in lower levels of residences, increasing the risk of lung cancer. This is conceded by the Strata Corporation. Consistent with this, the federal and provincial governments have guidelines which recommend ventilation or other mitigation measures if radon concentration exceeds specific thresholds.

[30] Since 2015, the Strata Corporation has been aware of the presence of radon within the relevant buildings, and has undertaken periodic testing. The Strata Corporation has further arranged for radon mitigation as a common expense where the radon concentrations warranted intervention.

[31] The Flamans decided to undertake their own unilateral testing for the presence of radon.

[32] There is considerable “back and forth” communication. I am not going to detail it as the most key piece of correspondence is the following email from the Flamans to the Strata Corporation:

Too little. Too late... As we have indicated we will consult with professionals of our choice. We will have the required studies completed. We will have the required mediation of the radon problem completed. The costs of all such action will be forwarded to you for the strata to reimburse immediately upon receipt.

[33] Specifically, on or about March 16, 2020, the respondents conducted their own radon testing and demanded reimbursement of those costs without prior approval. On or about April 16, 2020, the respondents sent an email to the petitioner requesting a refund of the amount spent for radon testing conducted and did provide a copy of the air quality report.

[34] On or about September 11, 2020, the Flamans conducted radon mitigation measures, as alluded to above, which included installing venting and perforating the building envelope without prior written approval of the Strata Corporation and without waiting their proverbial turn as part of the process the Strata Corporation had planned.

[35] The resulting March 19, 2020 report shows a result over two hundred. There is an issue with the report as it pertains to “crawlspaces” versus habitable areas. Other testing of neighbouring units tested below 100. There is no evidence that the Flamans reside in the crawlspace of their strata unit or have reason to access it on anything but an occasional basis.

[36] Mr. Flaman also acknowledges that his own testing with a handheld device was also in the crawlspace. My above comments as to the distinction between crawlspace and habitable space continues to apply.

[37] I further accept it was the strata council’s intention to conduct a comprehensive remediation plan with respect to radon gas issue and not have individual unit remediation efforts undertaken. In concluding this, I refer back to the fact that this is a small strata development. The appropriateness of a global

remediation plan has to be considered in light of the strata bylaws. The Flamans were advised in writing of this.

[38] The Flamans nonetheless engaged a contractor to proceed without approval and, on or about August 2, 2020, holes were cut into the building envelope.

[39] On or about August 28, 2020, the Flamans sent an email to the petitioner requesting approval for a permanent air exchange system.

[40] On or about September 18, 2020, the Flamans were advised that they should not move forward as no approval of the alteration had been granted by the Strata Corporation.

**Additional Alleged Unauthorized Alterations**

[41] Other unauthorized alterations include:

a) Furnace and Air Conditioner Replacement:

- i. On or about December 17, 2019, the Flamans elected to install a high-efficiency furnace without first submitting a compliant alteration request to the Strata Corporation for approval. This installation required utility connections as well as alterations to the building envelope and other common property, including cutting through the building exterior and the installation of an external unit on common property. Approval was sought by the Flamans after the fact.

b) Glass Door and Window Replacement:

- i. On or about March 9, 2020 the Flamans proceeded with their own contractor for the repair of a certain windows and door of strata lot 6 without the permission of the Strata Corporation and then advised that they would be seeking reimbursement from the Strata Corporation for the works completed. The total amount requested for reimbursement by the Flamans was some \$954.46.

[42] It is raised by the petitioner that although the cost claimed is not necessarily disproportionate to work completed, Mr. Flaman (on behalf of the Flamans collectively) only allowed the strata council from March 1 to March 9, 2020 to have a council meeting, arrange an inspection, obtain a quote, approve funding and move forward with repair and replacement (if necessary) of the window and door. That timeframe, it is asserted, did not afford the small volunteer strata council the time required to meet, assess, and decide on the issue at hand.

c) On Demand Hot Water Heater:

- i. On or about June 29, 2020, approval for the Flamans' "On Demand Hot Water Heater" was granted on a conditional basis only. The strata council requested that all licensing and permits be provided prior to the installation. This conditional approval was reiterated to the Flamans via email on or about June 29, 2020. The requested permits were not provided by the Flamans prior to work commencing.
- ii. Mr. Flaman admits that the on demand hot water heater was approved on the conditional basis that all permits were to be received prior to installation, however, does not adhere to this requirement and moved forward with the installation regardless.
- iii. The permits were provided quite long thereafter and in response to bylaw enforcement efforts.
- iv. On or about June 7, 2021, a completed certificate of inspection was ultimately issued for the on demand hot water heater.

d) Fresh Air Vent:

- v. On or about August 2, 2020, the respondents installed a fresh air venting system without prior written approval of the Strata Corporation and despite the express disapproval from the strata council.

vi. The installation included perforations to the building exterior which were done at approximately 9:30 p.m. at night. This, in my view, is consistent with a conclusion that the Flamans knew they did not have requisite approval and were trying to fly under the proverbial strata radar. This was not an emergent event such as a flood where immediate action may be required and one does not normally undertake home renovations in the dark.

vii. This, what I will describe as a clandestine instillation, was conducted without proper efforts to weatherproof the building penetrations; however, those since been remediated.

[43] In summary, with the exception of the conditional approval of the on demand hot water heater, Mr. Flaman proceeded with the alterations in defiance of the bylaws and the decisions that the strata council had made.

### **The Position of the Flamans**

[44] As I have noted above, the Flamans really do not contest the evidentiary record such that cross-examination would be required. Rather, Mr. Flaman has attempted to justify his unauthorized alterations in a variety of ways.

[45] The primary rationale relates to alleged or purported urgency. Mr. Flaman, on behalf of the Flamans' collectively, has complained when the strata council took too long to consider a request before proceeding with the alteration to common property without requisite approval.

[46] However, approval is not a mere procedural consideration. Any alteration which penetrates the common property building envelope is a serious matter requiring that the strata council consider whether the change is reasonably necessary, whether it is likely to cause other damage or facilitate water ingress or the potential for an insurance claim or uninsured loss below the deductible.

[47] In any instance where the strata council was taking longer than he wanted, Mr. Flaman (on behalf of the Flamans) had alternative, not rogue or self-help, relief if it could be proven that the strata council was not adhering to the SPA.

[48] I pause at this juncture to note that it does not appear from the record that either Mr. or Mrs. Flaman served on the strata council at the material times. I recognize it is possible they put their names forward, but that is not confirmed by anything in the evidentiary record.

[49] Again, the most critical of these efforts is the alleged urgency to justify the unauthorized alterations related to his concerns about radon within the Flamans' strata lot. Admittedly, the Strata Corporation was aware of a radon issue from in or about October 2014, but I accept was not merely ignoring or neglecting matters. There was professional testing of habitable spaces and a plan engaged for mitigation efforts on a priority basis against radon with professional assistance at considerable (common) expense, starting with the most significantly affected units.

[50] Mr. Flaman's position is that the Flamans were entitled to jump the queue on his own initiative and then seek reimbursement in due course because of his belief there had excessive delays and intentional foot dragging (the latter term is my terminology not Mr. Flaman's but I think they are apt in the circumstances).

[51] Once Mr. Flaman decided to make his own arrangements, he refused to allow access to the strata lot 6 for radon testing on behalf of the Strata Corporation. Correspondence then ensued—the end result of which was a demand from the Flamans requesting repayment of an invoice which totalled \$1,036.35 for an air quality report attaching a further estimate of \$2,500 for radon mitigation. I am not satisfied that the reluctance of Mr. Flaman to cooperate in this regard is related to COVID-19 concerns. There was a *bona fide* reason to have concerns at peak times of the pandemic and to seek clarity as to security precautions being employed. Mr. Flaman's approach, however, was not to seek such clarity before making an informed decision but rather simply proceed as he considered appropriate.

[52] As alluded to above, the issue of the location of the radon testing is very live. It is asserted, and not expressly contradicted, that the Flamans' testing occurred in crawl space and back storage areas of the strata lot 6 versus the habitable area of the strata lot 6.

[53] As also noted above, on or about September 11, 2020, the respondents conducted radon mitigation within the strata lot 6 which included installing venting and perforating the building envelope without prior written approval of the Strata Corporation. On or about September 15, 2020, the respondents sent an email to the Strata Corporation confirming that radon mitigation had taken place and requesting reimbursement for the work conducted in the total amount of \$3,286.35.

[54] The report and 1st affidavit of Dr. Anne-Marie Nicol relied upon does not specifically review or evaluate Mr. Flaman's testing methodology or, in particular, test locations. Although the underlying science is not in dispute, the report is rather, I accept, generic. Specifically, Dr. Nicol has the requisite qualifications to provide an expert opinion that radon is harmful and that testing and remediation should be conducted as per government guidelines. It fails, however, to meaningfully address the radon risk involving the strata lot 6 because the issue was acknowledged—the dispute lies in whether it was being dealt with sufficient priority.

[55] Ultimately, even if the test results reported by Mr. Flaman were accurate, based on sound methodology and a valid test location, the levels of radon presented to the strata council by Mr. Flaman were reported as ranging between 100 to 336, and did not exceed 600 Bq/m<sup>3</sup> and therefore did not require immediate action which could not await council approval for the alterations Mr. Flaman wished to make as asserted by the respondents.

### **Conduct of Mr. Flaman**

[56] Mr. Flaman also has a documented history of being difficult, to such an extent that it interfered with the Strata Corporation's operations and governance and breached the relevant Strata Corporation bylaws.



[57] This latter part is important as strata owners are entitled to their opinions and those opinions will not always align. However, there is a threshold beyond which conduct becomes a genuine interference to governance instead of a spirited debate.

[58] The crux of the complaints and resulting conduct from Mr. Flaman arise, I conclude, primarily from frustration over what he considers to be dilatory responses to his concerns and, where appropriate, addressing those concerns. Mr. Flaman, however, has a much more arduous standard of expectations than would the reasonable strata owner when considered on an objective standard versus his personally held subjective standard.

[59] Going a step further, on or about April 29, 2021, there were two contested reports of instances involving allegations that Mr. Flaman attempted to intimidate an individual with a vehicle. Mr. Flaman denies the characterization and description of the events—which presents a challenge when there is not the benefit of *viva voce* evidence and accompanying cross examination.

[60] However, the evidence on behalf of the involved parties is quite detailed and has an air of reality to it. The most significant being that of Mr. Simpson who deposed that the vehicle involved went into the garage of the Flamans' strata unit and that Mr. Flaman (whom Mr. Simpson is able to identify given the small number of residents in the strata) exited the vehicle and made a well recognized rude hand gesture. This evidence leads, I find, to the logical conclusion that it was Mr. Flaman behind the wheel of the subject vehicle and that Mr. Flaman had a subsequent hostile reaction. Had it been accidental or inadvertent on either parties' behalf the more typical response would have been to have exited the vehicle to confirm one's neighbour was alright and depending on the circumstances, possibly apologize—even just with nod and a friendly wave.

[61] I do not, however, place much weight on the complaints that Mr. Flaman has been seen taking pictures of different areas of the strata complex generally or, subject to the below, attending real estate showings for another unit in the strata complex.

[62] Whilst these actions might irritate the Flamans' neighbours, there is nothing objectively wrong with either of them from a legal perspective. In particular relating to the photographing, there is nothing that supports a conclusion that there was a specific privacy interest violated. It was rather, to use my terminology—irritating—as the most significant is taking images of another homeowner's garage while it was being investigated for mould by a contractor but those photographs were taken from common property and the garage door was open.

[63] As for attending a real estate showing, a listing realtor has the ability to obtain the consent of the listing owners to refuse a showing if there was reason to believe it was not a *bona fide* interested purchaser (either for themselves or for a friend/relative/acquaintance). However, "kicking tires" in viewing real estate is not uncommon and real estate agents generally, I conclude, accept this as simply part of the business.

[64] Where the viewing of the neighbouring strata unit takes a sharp turn is that Mr. Flaman made it quite obvious he was using access to this strata unit on a rouse to search for a radon testing device, including in a storage area. When his conduct caught the attention of the real estate agent, his permission to access the second floor of the unit was terminated.

[65] More broadly, I accept that the frequency and content of emails received from Mr. Flaman hindered the productivity of council and has had a detrimental emotional impact on their efforts to perform their duties effectively. These are, as identified, above volunteers. They cannot arbitrarily ignore their statutorily imposed governance obligations—that comes when one accepts a role on strata council. But they are also not paid to be at the Flamans' "beck and call".

[66] Even one strata manager who was paid resigned purportedly on basis that the burden being imposed by Mr. Flaman was disproportionate to the remuneration given the size of the strata. This conclusion is based on a more detailed evidentiary record but, in my view, accurately sums up the evidence in a single sentence.

[67] Much the same as the above, I accept there were issues relating to a third-party contractor who had been engaged. There is disputed evidence about who said what and who did what and where exactly the relevant parties were situated (namely on private or common property) at certain material times. But the end result is that this third-party contractor, Capstone Construction, stopped work on the Flamans' strata unit on the basis of interference from the Flamans, specifically Mr. Flaman. Correspondence ensued in this regard.

[68] Ultimately, Capstone Construction withdrew entirely and refused to complete the required work. The Strata Corporation had to seek alternative contractors which inevitably caused delay.

[69] The Strata Corporation was able to secure a second contractor, Prime Vinyl, to complete the certain required deck remediation work as approved at the December 2022 special general meeting.

[70] On or about August 15, 2023, Prime Vinyl began work to the deck area of another strata unit, namely strata unit 1. For reasons not entirely clear, Mr. Flaman put on a high visibility vest and started to either photograph or videotape the work using his cellular phone. Given Mr. Flaman was not an owner of unit 1 where the remediation was occurring, this created tension. Fortunately, on this occasion those tensions were sufficiently de-escalated and the contractor remained on the job.

### **Bylaw Enforcement Process**

[71] On January 6, 2021, counsel for the Strata Corporation sent a letter to the Flamans' then counsel noting multiple alleged bylaw contraventions and allowing the Flamans' a fresh opportunity to respond. Those alleged contraventions were as follows:

- a) Installation of furnace without approval (installed on December 2019).
- b) Installation of fresh air venting system (installed on August 2, 2020).
- c) Installation of on demand hot water heater (installed on August 26, 2020).

- d) Various unapproved alterations to the common property building exterior (various dates).
- e) Parking outside designated parking area (various dates in 2019 and 2020).
- f) Improperly accosting a contractor and owner on common property (March 24, 2020).

(the “Contravention Letter”).

[72] The Flamans’ promptly responded through counsel to the Contravention Letter within approximately 14 days. The Flamans requested a hearing pursuant to the SPA. Specifically, s. 34.1 of the SPA provides the following remedy:

**Request for council hearing**

- 34.1 (1) By application in writing stating the reason for the request, an owner or tenant may request a hearing at a council meeting.
- (2) If a hearing is requested under subsection (1), the council must hold a council meeting to hear the applicant within 4 weeks after the request.
- (3) If the purpose of the hearing is to seek a decision of the council, the council must give the applicant a written decision within one week after the hearing.

[73] The hearing was held February 25, 2021. Of importance, this is not the first hearing that the Flamans requested. There were various communications exchanged in June and early July 2020 about a strata hearing, the presence of counsel and costs associated.

[74] Ultimately, following the February 25, 2021 hearing, the strata council found on a balance of probabilities that:

- a) the Flamans were in breach of the strata bylaws;
- b) the Flamans must refrain from accosting or policing the attendance of visitors and/or contractors to the Strata Plan;

- c) the Flamans shall not continue parking outside of their allocated area;
- d) the Flamans shall promptly pay the fines assessed.

[75] Further, the strata council concluded that the Flamans must remedy the breaches of the strata bylaws. In particular, it was concluded that the Flamans shall to do the following, which is, in this instance, reproduced verbatim for the benefit of the record:

- a. Remediate the work done to the building envelope to a standard set out in the recommendations from the February 1, 2021 Building Envelope Field Review Report to an aesthetic and quality standard acceptable to strata council with all cooperation and requisite prior approval of that work.
- b. Obtain retroactive approval of any alterations and/or scope of alterations which had not yet been approved, and sign binding alteration agreements for those items in which they take responsibility for all costs, risks and liability, including ongoing inspection, repair and maintenance, as well as ultimate replacement of those items.
- c. Reimburse the significant legal, engineering and other expenses incurred as a result of the Flamans' breach of the bylaws.
- d. Possible further removal of unapproved alterations if these expectations were not satisfied.

[76] Fines were also assessed by the strata against the Flamans for the following unapproved alterations:

- a) furnace installation;
- b) temporary fresh air venting system;
- c) radon mitigation system;
- d) on demand hot water heater.

[77] Pursuant to s. 133 of the *SPA*, the Strata Corporation sought reimbursement of legal fees in the amount of \$9,325.42 accrued to that date.

[78] Specifically, s. 133 of the *SPA* provides that:

**Strata corporation may remedy a contravention**

- 133 (1) The strata corporation may do what is reasonably necessary to remedy a contravention of its bylaws or rules, including
  - (a) doing work on or to a strata lot, the common property or common assets, and,
  - (b) removing objects from the common property or common assets.
- (2) The strata corporation may require that the reasonable costs of remedying the contravention be paid by the person who may be fined for the contravention under section 130.

[79] The above was communicated in writing on March 4, 2021—a copy of which is included in the petition record.

[80] In correspondence exchanged on or about March 17, 2021 and April 14, 2021, the Flamans through their counsel purported to agree to some very limited portion of the above. This was subsequently responded to with a proposal sent by the strata council’s lawyer. In this instance, I am not going to repeat the proposal verbatim but it is found Affidavit #1 of Siobhan Rose, paragraph 25, Exhibit V (pg.134-135), which is Tab 3 of Volume 1 of the petition record (the “Proposal”).

[81] Further correspondence was received and sent between counsel and the Proposal, with the exception of payment of legal fees, was agreed to. The Flamans requested that fines from the Strata Corporation stop accruing at this time.

**Charge Back Scheme**

[82] The SPA contemplates that charges associated with remedying bylaw contraventions can be charged back to the strata unit owner with the same status as a fine under s. 133 (2) of the SPA.

[83] This right to reasonably charge back expenses in the discretion of the strata council is also confirmed in s. 115(4) of the SPA, which contemplates that a Form F certificate of payment can be withheld if s. 133(2) chargebacks remain payable.

[84] Section 115 differentiates between those items which can be charged back without prior judgment and those which cannot.

**Cost Recovery**

[85] In 2017, the Court of Appeal in *The Owners, Strata Plan KAS 2428 v. Baettig*, 2017 BCCA 337, compared the equivalent legislative intent of s. 118 and s. 133 of the SPA, namely to insulate innocent owners from the cost of bringing a defiant, dilatory or delinquent owner into compliance with their obligations to pay their contributions and conform to the bylaws (respectively). The Court stated that the legislative intent of s. 133 of the SPA is “that strata owners who comply with the bylaws and rules of the strata corporation should not have to shoulder the financial burden of remedying infractions committed by non-compliant owners” (see para. 68).

[86] *The Owners, Strata Plan NWS3075 v. Stevens*, 2018 BCSC 1784, applied that logic in a bylaw enforcement case and agreed that a claim for recovery of legal costs does not need to be separate to enforcement action, and can be awarded on a full indemnity basis as long as the reasonable costs are necessary for the proper presentation of the case, the costs are proportional, and the proceeding has an appropriate degree of success. Implicit in this conclusion is that the strata must successfully establish that a bylaw has been contravened to incur recoverable costs to remedy the contravention.

[87] Lastly, in *The Owners, Strata Plan VIS 1437 v. Abolins*, 2019 BCCA 172, the Court of Appeal noted that the imposition of full legal expense recovery pursuant to s. 133 of the SPA is available, but should only be ordered if the intention to recover costs on that basis was set out the relevant pleadings.

[88] I accept that in these cases, it is usually accepted that the chambers judge is to determine whether a full indemnity for costs is appropriate. If that conclusion is reached, the next step is to refer the matter to a registrar’s hearing in this Court to assess the appropriate scope and quantum of reasonable costs. Assessing the reasonableness and appropriateness of costs on a solicitor/client basis is not generally, absent extenuating circumstances, the purview of the chambers judge.

**Compelling Sale of a Strata Unit**

[89] Where there is truly outrageous or persistently defiant conduct by owners, the compelled sale of a strata unit is a possible remedy.

[90] On this issue, I was referred to, *inter alia*, *The Owners, Strata Plan VR 390 v. Harvey*, 2013 BCSC 2293, and *Bea v. The Owners, Strata Plan LMS 2138*, 2015 BCCA 31.

[91] Such relief, based upon a review of the caselaw, is appropriately acknowledged by the Strata Corporation to be a multiple-stage process.

[92] First, the court seeks to determine whether the objectionable conduct can be regulated by orders or injunctive relief imposed by the court.

[93] Second, if the objectionable conduct persists after the initial orders, then the court will consider enforcement steps as quasi contempt proceedings, including where necessary to bring the strata lot and its ownership into compliance with the SPA and the strata's bylaws, ordering that the Strata Corporation have conduct of sale of the strata lot, and the owners no longer be permitted to reside or visit within the bounds of the strata plan.

[94] Thirdly, is typically the registrar's hearing to assess cost recovery pursuant to s. 133(2) of the SPA, and/or the *Supreme Court Civil Rules*, B.C. Reg. 168/2009.

[95] In this instance and on this basis, the Strata Corporation is thus seeking an order whereby the behaviour of the Flamans is regulated as a first step, corollary to the order that the Strata Corporation be reimbursed, on a full indemnity basis, their reasonably incurred legal expenses as a result of the Flamans' ongoing conduct.

**Conclusion and Orders**

[96] On the basis of the findings articulated above, I accept that the Flamans have a clear and persistent history of making alterations to common property without authorization, have objectively unreasonable expectations when requests for approval are submitted to the Strata Corporation and most significantly, are



prepared to take unilateral self-help and/or rogue remedies and then seek approval after the fact. On this last point, the relevant strata council does have some responsibility for condoning the Flamans' conduct over an extended period of time.

[97] In making the above finding, I fully recognize it is a small strata corporation and these are volunteer council members. That is important context. However, I do think the strata council (as variously composed) has, over time, been overly avoidant of conflict with Mr. Flaman, in particular. This resulted in him further stepping beyond objectively appropriate boundaries and disregarding strata bylaws. This is not a good precedent to be set for other owners within the Strata Corporation. It is inconducive to and disruptive of necessary strata governance. Nor can the strata council credibly require strict compliance from other strata owners while, perhaps begrudgingly, tolerating non-compliance from the Flamans.

[98] On this basis, I grant the following relief based upon that which is sought in the Petition and clarified in the course of submissions:

- a) An order confirming that the Strata Corporation's findings that the Flamans breached the Strata Corporation bylaws and accordingly assessed fines were valid.
- b) In accordance with subparagraph (a), an order that corresponding fines and chargebacks must be paid in full by the Flamans, jointly and severally, within 120 days of this order. The cessation date for the imposition of fines for the basis of the Petition is confirmed to be April 14, 2021 (which corresponds with the Proposal). This order does not preclude the imposition of fines appropriately imposed under the SPA and Strata Corporation bylaws after the delivery of these reasons for judgment.
- c) A declaration that August Jerome Flaman (hereinabove defined as Mr. Flaman) contravened the bylaws of the Strata Corporation, in a manner which constitutes a repeated or continuing contravention of one or more reasonable and significant bylaws, in a manner which seriously

interferes with another person's use and enjoyment of a strata lot and/or common property.

- d) A declaration that the Flamans have contravened strata Bylaws 3(1)(a), 3(1)(c), 3(2), 3(6)(a), 3(11), 3(14), 5(l)(a), 5(1)(b), 5(1)(d), 5(1)(e), 6(1) and 6(2) by;
  - i. installing an externally vented furnace without approval;
  - ii. installing a fresh air venting system without approval;
  - iii. installing an on demand hot water heater unit which exceeded the scope of work approved by the Strata Corporation;
  - iv. conducting unapproved alterations to the common property building exterior-cladding and building envelope, including putting screws into exterior siding without approval; and
  - v. failing to park in the designated parking area for strata lot 6 thus, causing a hazard.
  
- e) An order that August Jerome Flaman must comply with the SPA and Strata Corporation bylaws and be specifically restrained from:
  - i. disturbing other residents, occupants and/or visitors within the strata;
  - ii. demanding that any person leave common property strata;
  - iii. communicating with any residents, owners, agents, contractors or representatives of the Strata Corporation that have specifically asked August Jerome Flaman to refrain from having contact with them;
  - iv. uttering any abusive, obscene or threatening comments or making obscene gestures to anyone within the bounds of the strata plan; and

- v. driving aggressively towards pedestrians or other vehicles within the bounds of the strata plan.
- f) An order that August Jerome Flaman must communicate with the Strata Corporation only through management by regular postal mail to the address of the Strata Corporation registered in the Land Title Office as contemplated in s. 63 of the *SPA*, or between counsel for the parties in relation to this proceeding.
- g) An order that the Flamans (as hereinabove defined) must comply with the bylaws generally, and be specifically enjoined and restrained from:
  - i. making alterations to common property or making alterations to the strata lot requiring approval without the prior express written approval of the Strata Corporation as and where required by bylaw;
  - ii. making alterations which are outside the scope of any approved alteration request;
  - iii. parking or driving in a manner which contravenes the bylaws and causes a hazard to residents, owners, agents, contractors or representatives of the Strata Corporation.
- h) An order that the Flamans be restrained from incurring expenses with the intention of demanding reimbursement from common funds from the Strata Corporation without prior strata authorization.
- i) An order that the petitioner be granted judgment for s. 133(2) cost recovery pursuant to s. 133(2) of the *SPA*, subject to a further accounting of amounts due and owing to the petitioner as at the date of judgment, such accounting to be conducted before a registrar of this Court unless agreed in writing by the parties.
- j) All other relief sought by the petitioner is dismissed with liberty to apply for further relief based upon compliance with the terms of this order and

compliance with the Strata Corporation bylaws following entry of this order.

“Hardwick J.”