IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Trinden Enterprises Ltd. v. The Owners, Strata Plan NW2406,* 2024 BCSC 2297

Date: 20241206
Docket: L233121
Registry: New Westminster

Between:

Trinden Enterprises Ltd.

Applicant

And

The Owners, Strata Plan NW2406 and Section 2 of the Owners, Strata Plan NW 2406

Respondents

Before: The Honourable Justice Branch

Oral Reasons for Judgment on Contempt

Counsel for the Plaintiffs:	M. Carter
Counsel for the Respondent, Strata Plan NW2406:	K. Uppal
Doug Greenall, John Katnich, Bruce King, and Mike Logan, in Person	
Place and Date of Hearing:	Vancouver, B.C. November 20, 2024
Place and Date of Judgment:	Vancouver, B.C. December 6, 2024

INTRODUCTION

[1] THE COURT: The Applicant Trinden Enterprises Ltd. ("Trinden") seeks a finding of contempt against the respondent Strata Corp NW2406 (the "Strata") arising from the Strata's failure to repair an elevator (the "Elevator").

BACKGROUND

[2] The Strata is a mixed-use strata corporation located on the 3900 block of Hastings Street in Burnaby, British Columbia. The Strata is comprised of three sections under the *Strata Property Act*, SBC 1998, c. 43:

a) Section 1: The Apartment Section, which is comprised of strata lots 33 - 128.

b) Section 2: The Townhouse Section, being comprised of strata lots 1 - 25 and 27 - 31; and

c) Section 3: The Commercial Section, being comprised of strata lots 26 and 32.

[3] The individual respondents John Katnich, Bruce King, Mebah Mowlavi, Mike Logan, Doug Greenall and Chris McLuckie were (at various times) members of the Strata's council (the "Council").

[4] Trinden owns strata lots 26 and 32, being the only lots in the Commercial Section. The Elevator at issue is in the Strata's Tower C which contains Trinden's two commercial strata lots as well as ten townhouse units.

[5] Trinden's complaints about the condition of the Elevator eventually resulted in the issuance of an order by the Civil Resolution Tribunal ("CRT") on July 21, 2020 (the "Order"). The CRT found that the cost of repairing the Elevator was the responsibility of the Strata. The Order provided as follows:

> a. within 14 days of the date of this order, to pay Trinden $125 for fees it paid to the CRT,

> b. By November 1, 2020, to call a general meeting of its owners to consider any bylaw amendments or unanimous vote resolutions that might change the way the elevator expenses are shared,
>
> c. To retain Gunn, or an alternate elevator consultant agreeable to Trinden, to provide a scope of required work recommended in Gunn's March 2019 report (required work), and tender that scope of work to the same contractors as provided bids to Trinden,
>
> d. In conjunction with tendering the required work set out in paragraph b. above, obtain a separate bid for aesthetic elevator upgrades identified by the strata or Trinden (aesthetic work), if any,
>
> e. Based on the bids received and in consultation with Trinden, to choose a contractor to complete the required work and any aesthetic work,
>
> f. If bids have been obtained for aesthetic work, call a general meeting of its owners to approve the aesthetic work by December 1, 2020, and
>
> g. By January 1, 2021, proceed with the required work and approved aesthetic repairs, if any, using CRF funds or by way of a special levy, or a combination of both, without the need for a ¾ vote.

See *Trinden Enterprises Ltd. v. The Owners, Strata Plan NW 2406*, 2020 BCCRT 807 at para. 72.

[6] Trinden argued at the CRT hearing that the Elevator was a "major safety hazard". This concern stemmed from a 2020 letter from the Strata's elevator service company that described "a possible cylinder rupture which could potentially cause bodily harm to a person who was in the elevator cab at the time". The CRT noted that it was unclear whether Trinden requested the 2020 letter "in an attempt to put pressure on the strata and townhouse section". The CRT concluded that while there was nothing in the letter to suggest that any cylinder rupture was imminent, there was indeed "some urgency" in replacing the Elevator: paras. 56-64.

[7] The core dispute on this application concerns the Strata's failure to comply with Order (g), which requires the Strata to "proceed with the required [Elevator] work" by January 1, 2021.

[8] There is no issue regarding compliance with Order (a).

[9] In terms of Order (b), following the issuance of the Order, the three sections disagreed about how to distribute the cost of repairing the Elevator. At the CRT,

Trinden and the Strata had agreed that the repair cost should be shared between Sections 2 and 3 only, but disagreed as to the appropriate cost split between the two sections. The CRT held that according to the current legislation and bylaws, the repair cost must be shared by all strata owners, including those of Section 1, according to their unit entitlement, *Trinden Enterprises Ltd.* at para. 65. As noted, the CRT recognized that the Strata may wish to finance the repair by a different method than unit entitlement and included in the Order that the Strata could call a general meeting to consider that by November 1, 2020: *Trinden Enterprises Ltd.* at paras. 30-34, 69, 72. No such meeting was ever held. As such, there is no issue regarding compliance with Order (b).

[10] Trinden did make efforts to encourage the Strata to meet its January 1, 2021 deadline for the Elevator work to proceed under Order (g). On August 23, 2020, Trinden wrote to the Strata requesting a meeting with the Council to discuss the Order. The Council held a meeting on August 26, 2020, at which the Elevator was discussed. The meeting minutes suggest that the Council was "moving forward with compliance" and intended to present a resolution regarding the Elevator repair. On August 30, 2020, Trinden wrote to Council again requesting a meeting. There was finally a meeting on October 15, 2020, but Trinden says the Strata adopted no specific steps at that time that would move forward the implementation of the Order.

[11] In terms of the engagement of a consultant in Order (c), on October 20, 2020, Trinden prepared draft letters to Gunn Consultants Inc. ("Gunn") asking for a "complete Scope of Work Document" and sent these letters to Council member Gerardo Vega, so he could forward them along. This suggests that Order (c) was no longer an effective barrier to moving forward. Trinden was clearly comfortable with Gunn being the consultant on the project. Furthermore, Order (c) allowed the Strata to go forward with Gunn. It was only if they decided to go with another consultant that Trinden had to be consulted about the alternative. There is no evidence that the Strata ever proposed an alternative to Gunn. On November 16, 2020, Mr. Vega emailed Gunn requesting a scope of work. On November 24, 2020, the consultant Gunn submitted a proposal for the elevator project. As it came to pass, the parties

eventually decided to proceed with the project without any consultant. I find that this means that Order (c) was not a barrier to moving forward with the implementation of Order (g).

[12] In terms of Orders (d) and (f), no bids for aesthetic work were proposed to any Strata meeting by December 1, 2020. As such Orders (d) and (f) did not create an effective barrier to the satisfaction of Order (g) either.

[13] The Order was formally filed with the Supreme Court on November 13, 2020. Pursuant to s. 57 of the *Civil Resolution Tribunal Act*, SBC 2012, c. 25, a filed Order has the same effect as if it were an order of the British Columbia Supreme Court. Section 60 provides that a "person who fails or refuses to comply with an order of the tribunal is liable, on application to the Supreme Court, to be punished for contempt as if in breach of an order or judgment of the Supreme Court": see, *The Owners, Strata Plan NW 2395 v. Nikkel*, 2020 BCSC 282 at paras. 8-10.

[14] At this point, the process appears to have begun to fall off the rails. The Council held a meeting on December 3, 2020, but there was no mention of the Elevator improvement project, and no decisions were made regarding the selection of a contractor to perform the work as required by Order (e).

[15] The Strata wrote to Trinden's counsel on December 15, 2020 to discuss the Strata's planned timeline regarding compliance with the Order. The Strata wrote that they had originally scheduled a general meeting for November 16, 2020, but that this meeting had been postponed and a meeting would only now be held on January 11, 2021, after the January 1, 2021 deadline in Order (g). The Strata suggested that it was awaiting Trinden's response before selecting an elevator contractor:

> (c) Attached are emails that show Section 2 's willingness to work with Section 3 to retain an elevator consultant agreeable to both. GUNN seems to be the front runner; however, for some reason, Section 3 has not responded to the last email dated December 8, 2020.
>
> Given the lack of response from Section 3, it is difficult to move ahead with (d}, (e), and (f).

[16] The December 8, 2020 email referenced above appears to be an email sent from Council member (and Section 2 representative), Leslie Ikeda. Following Gunn's proposal, she asked Gunn for clarification regarding the installation timeline and contractor costs. On December 8, 2020, Ms. Ikeda forwarded Gunn's response to Trinden and asked, "how Section 3 would like to proceed". On December 21, 2020, Ms. Ikeda followed up with Trinden and asked Trinden's Christopher Cocco to be the main point of contact with Gunn. On January 7, 2021, Mr. Cocco agreed to do so.

[17] Although these emails demonstrate some delay on Trinden's end in responding to Council, there is no evidence of the Strata proposing a contractor to Trinden prior to January 1, 2021. Furthermore, there were no bids received by January 1, 2021. This leaves responsibility for the failure to satisfy the precondition set out in Order (e) with the Strata.

[18] Most importantly however, Strata did not proceed with the required work by January 1, 2021, as required by Order (g). Trinden accepts that all that would have been required to satisfy Order (g) was for the Strata to enter a binding contractual arrangement with a contractor to perform the required work on the Elevator. However, this step was not achieved by the deadline.

[19] On January 7, 2021, Mr. Cocco contacted Gunn. Mr. Cocco then sent an email to Ms. Ikeda asking whether they had their finances in place to proceed. Ms. Ikeda replied saying the Annual General Meeting ("AGM") on January 25, 2021, would include a resolution for Section 2 to release funds for the Elevator project.

[20] On January 25, 2021, the Strata held its 2020 AGM. Although Council had initially proposed a resolution regarding the Elevator project, it eventually decided to table the resolution, and it was not voted on.

[21] Tender documents were only sent out to potential contractors on April 15, 2021. By the end of May 2021, quotes were received.

[22] Further progress appears to have been hindered by disagreements within the Strata about how to allocate the repair costs. Section 1 did not want to contribute to

the repair at all, whereas Section 2 did not want to contribute 50% of the cost. It is true that throughout 2021, there were discussions and correspondence between Trinden and the Strata regarding the potential to modify the default cost allocation for the Elevator repairs. However, Trinden never waived its right to compliance with the Order.

[23] On July 5, 2021, Mr. Cocco sent an email to Council with an offer to resolve the cost allocation issue differently than the default approach directed by the CRT. In this email he stated that Sections 2 and 3 had previously agreed to split any repair of the Elevator 50/50 between them and that the Order was "unfair" to Section 1. He proposed a list of five conditions for Trinden to agree to a change to the default cost sharing: (1) that a previous agreement related to procedure be followed at the next general meeting; (2) that Section 3 be given a permanent seat on the Council; (3) that Section 3 be absolved from maintenance expenses for elevators located in the Section 1 tower; (4) that expense disputes be resolved by a third party; and (5) that a vote be taken at the next general meeting on a previously agreed to resolution regarding charging a fee for the usage of common property. If agreement could be reached on those five items, he proposed to "relieve Section 1 of this CRT supreme court registered decision", split the Elevator repair cost proportionally between Sections 2 and 3, and have Section 3 pay for any interior refurbishment of the Elevator.

[24] At their August 5, 2021 meeting, Council discussed the proposal from Gunn for the Elevator repairs. However, matters did not advance materially. The meeting notes simply state that "Council is reviewing quotes and assessments".

[25] On August 31, 2021, Mr. Cocco resigned as project coordinator. His resignation letter stated the following:

> Since the CRT rendered decision … Section 3 has made several attempts to meet with Council to find resolution to absolve Section 1 of their proportional share of the CRT ordered decision. Section 3 is the only Section of the three (3) who have made these several requests for resolution only to be stonewalled time after time for more than a year now. Council has breached several of the conditions of this decision and have offered no rebuttals to any

> of the proposed resolution put forth by Section 3. The committee has made little to no effort to respond to multiple requests made by Section 3 to review and respond to the analyzations of GUNN's scope of work and the quotes tendered by the contractors who some were not included in the CRT's order for revised quotations. These decisions were made without Trinden Ent Ltd. who has been given the role to oversee and have final say on all decisions made.

[26] On September 16, 2021, Council received a letter from Trinden titled "SECOND PROPOSAL TO ABSOLVE THE CRT DECISION" which (1) attached the prior July 5, 2021, cost sharing proposal from Mr. Cocco and (2) reiterated Trinden's offer to relieve Section 1 of its obligations to pay for its part of the Elevator repairs in exchange for the Strata agreeing to table certain resolutions at the next general meeting.

[27] On October 21, 2021, Council sent a letter to Mr. Cocco in response to his proposal. It stated it was "unfair" for Section 1 to be responsible for any portion of the repair cost given that Sections 2 and 3 had a previous agreement to split the repair cost between themselves, and Section 1 had previously been solely responsible for repairing its own elevators. Council also found it "unreasonable" for Trinden to have conflated the Elevator repairs with other unrelated issues. Council noted that Mr. Cocco had declined to attend two previously scheduled meetings regarding the repairs and requested that those meetings be rescheduled "as soon as possible".

[28] Notwithstanding the many discussions about the topic, the parties were never able to agree to share the repair costs differently than as directed by the CRT. Council never proposed a resolution to change the way the costs were to be allocated.

[29] In October 2021, the Strata distributed a newsletter which said the Elevator upgrade project was "on hold". However, Trinden had not agreed to the project being "on hold". The newsletter reads as follows:

> The Building C elevator upgrade is presently on hold. To refurbish this elevator a quote of $220,000 was obtained.
>
> Unfortunately, because this elevator is designated CP, the CRT based their decision that all sections have to contribute to its remediation based on unit

> entitlement – unless an agreement between the Townhouse and Commercial sections was made. There was an agreement between the Commercial section and the TH section to refurbish this Building C elevator between them based on unit entitlement 51% TH and 49% Commercial.
>
> However, the Commercial section has changed its stance on this issue. The Strata Council is currently in negotiation with the Commercial section, who has written and verbally stated to the council that they will absolve the Apartment section of the CRT ruling if the Strata Council responds to some issues of concern.

[30] On December 13, 2021, the Strata held its 2021 AGM. There was no discussion of the Elevator repair project.

[31] At the January 17, 2022 Council meeting, Council discussed the funds set aside by Section 2 for the Elevator repairs and that the Strata's property manager was instructed to send a letter to Trinden "confirming the 49% / 51% sharing of cost and will get confirmation of payment".

[32] The meeting notes from a January 24, 2022 Section 2 executive meeting, indicate that Council had requested quotes from five elevator companies, had forwarded the three replies to Trinden, and suggested that Trinden had the "final say" on what contractor and consultant should be used.

[33] At the February 17, 2022 Council meeting, Council noted that a letter had been sent to Trinden requesting that they confirm their agreement to pay 49% of the repair cost. At the March 28, 2022 Council meeting, Council discussed the Elevator repairs and noted that the repairs were pending due to negotiations with Trinden.

[34] On April 13, 2022, the Strata received a letter from Trinden's counsel in which they acknowledged that there were ongoing negotiations between the parties regarding a number of disputes. The letter includes details with respect to the prior offer made to the Strata by Trinden to relieve Section 1 of its responsibility for the Elevator repairs in exchange for the Strata agreeing with Trinden's request regarding a common property parking issue unrelated to the Order. The lawyer for Trinden noted that if the Strata Corporation proceeded to resume control over parking

spaces (that Trinden believed were for their exclusive use), then Trinden would seek to enforce the Order.

[35] On July 12, 2022, Trinden's counsel sent another letter to Strata's counsel. The letter alleged that the Strata had failed to follow the Order, in particular by: (1) not calling a general meeting by November 1, 2020; (2) not consulting Trinden in choosing a contractor; (3) not getting a quote or calling a general meeting to discuss aesthetic work on the Elevator; (4) not beginning work on repairing the Elevator by January 1, 2021; and (5) by taking money from Trinden's account for payment of 41% of Gunn's invoices as opposed to on a unit entitlement basis. Trinden notified the Council that it would be applying to have the Strata found in contempt of court for breaching the Order unless the Strata took a series of actions including: consulting with Trinden in selecting a contractor; beginning work by September 1, 2022, on the repair; and allocating the costs of the repair based on unit entitlement.

[36] On July 29, 2022, Strata's counsel responded. Counsel stated that since the Order was issued there had been efforts to resolve the dispute and that "this is the first demand that the Strata Corporation has received from your client to proceed with the elevator work". They agreed to consult with Trinden in selecting a contractor, but could not confirm that the work would begin by September 1, 2022.

[37] On September 6, 2022, the Council president, John Katnich, emailed Mr. Cocco, asking Mr. Cocco to attend a meeting to discuss the Elevator "impasse that is presently in place". In response to this request, Mr. Cocco indicated that they had already met regarding the Elevator upgrade many times, and that at the latest meeting Trinden had made a "generous proposal" that was rejected. He stated: "[i]f you have something to propose, forward it in writing."

[38] On September 23, 2022, Mike Logan, a member of Council, notified Council that he had asked for quotes from additional contractors for the Elevator repairs.

[39] In correspondence between October 13 and November 2, 2022, Mr. Greenall, Gabriele Cocco and Christopher Cocco discussed the updated repair quotes

received, scheduled a time for a meeting between Section 1 representatives and Trinden, and reviewed Trinden's offer to absolve Section 1 of the Elevator repair costs. The parties eventually met on October 28, but it appears that the meeting did not go well. In a follow-up email on November 1, Mr. Greenall wrote that he “didn’t expect to face such venom”, and that the meeting was counterproductive.

[40] On November 20, 2022, Council member Mike Logan sent copies of the Elevator repair quotes to Trinden, and asked them to provide the Strata with their preference regarding which contractor to choose. In follow up emails between December 3-5, Mr. Logan and Trinden discussed the quotes and who would run the project.

[41] On November 25, 2022, Trinden again referred to the potential for a contempt application in an email thread with Council.

[42] By December 2022, the Strata still had not retained a company to perform the elevator upgrades. However, at the December 15, 2022 AGM, the Strata approved an expenditure of $400,000 for a project to remediate the membrane in its plaza. There was no court order requiring this membrane work to be done at that time.

[43] On January 11, 2023, Trinden demanded that the Elevator project proceed without further delay.

[44] At a January 24, 2023 Council meeting, Council noted the delivery of the quotes to Trinden and indicated that the Council was waiting on a response from Trinden before moving forward with the Elevator repairs because it was understood that Trinden had the “final say on what contractor and consultant” be contracted.

[45] On March 8, 2023, the respondent John Katnich advised Trinden as follows:

> The CRT decision for this remediation stated that the "Strata Corporation" was responsible for the cost. The operating account and the contingency reserve fund are not in position to pay for this at present. At the December 2022 AGM the SL owners voted overwhelmingly to go with Option B for the plaza remediation where $150,000 would be removed from the CRF and transferred to CRF Plaza along with a special levy to be imposed on all the

> SL owners. The strata corporation CRF also needs funds in there for the insurance premium for 2023-2024.

[46] At the March 22, 2023 Council meeting, Council discussed its attempts to schedule a meeting with Trinden on March 16 regarding the Elevator repairs, which Trinden's representative was unable to attend.

[47] On March 24, 2023, Trinden reminded Council that the Order did not require a ¾ vote of the owners in order to spend from the reserve fund or to issue a special levy regarding the Elevator repairs.

[48] On April 4, 2023, Council member Mr. Mowlavi volunteered to lead negotiations with Trinden over the Elevator project. On April 19, 2023, Mr. Mowlavi sent Mr. Cocco a detailed email to consult about the project contractor, contract details, and budget. He stated that the Council supported selecting Richmond Elevator as the contractor. On April 20, 2023, Mr. Cocco agreed to the selection of Richmond Elevator.

[49] At the April 25, 2023 Council meeting, Council discussed the Elevator repairs. The meeting notes indicate that Richmond Elevator had been chosen as the contractor to complete the repairs in consultation with Trinden, that the next steps were to revise the contract and establish a timeline for holding a special general meeting (“SGM”) to discuss the project and its funding, and that Council had discussed holding a SGM in June but a final date was yet to be confirmed. As such, the precondition in Order (e) was largely satisfied by April 2023, although there was a small matter of the selection of an electrical subcontractor, which is discussed further below.

[50] That same month, the Strata’s nearly never-ending debate about cost allocation reared its head once again. The respondent Doug Greenall filed a dispute with the CRT regarding this issue. Mr. Greenall alleged, amongst other things, that it would be significantly unfair to make Section 1 contribute to the cost of replacing the Elevator in Building C. At the CRT hearing, the Strata agreed with Mr. Greenall that Section 1 should not be required to contribute. Mr. Greenall argued that in 2016

Section 1 had solely borne the cost of repairing the elevators in their building on the understanding that they would not be required to contribute to the cost of repairing the Elevator. The CRT found that there was no formal contract in evidence that documented any such agreement and no bylaws to that effect: *Greenall v. The Owners, Strata Plan NW 2406*, 2023 BCCRT 943 at para 30. The CRT dismissed the dispute on October 31, 2023 on the basis that it was a collateral attack on the original Order and an abuse of process: see paras. 36-43.

[51] On May 4, 2023, Mr. Mowlavi received an updated quote from Richmond Elevator after being informed that the Strata could not rely on the previous quote obtained from Richmond Elevator in 2022. The May 2023 estimate was $156,940, excluding a cab modernization.

[52] On May 11, 2023, Mr. Mowlavi responded to an email to Antonio Gallo, a representative of Fina Electric, to obtain an electrical quote on behalf of Council. Mr. Mowlavi met with Mr. Gallo to inspect the work site on May 18, 2023. On May 25, 2023, Mr. Mowlavi sent the details on the proposed plan of work to Mr. Cocco. He then followed up on June 7, 2023. On June 8, 2023, Mr. Cocco responded stating: “Everything looks good and agreeable except for the undetermined factor of the electrical costs. Have we received a quote from Fina Electric as of yet?” On June 15, 2023, Mr. Mowlavi advised that they were still waiting on a quote. On June 21, 2023, Mr. Mowlavi sent the electrical work quote and asked whether Mr. Cocco agreed that the matter could now proceed. On June 23, 2023, Mr. Cocco advised that he would “have a response to you tomorrow”. On July 6, 2023, Mr. Cocco raised concerns about two aspects of the quote and asked for further information. On July 14, 2023, Mr. Mowlavi agreed that further negotiation might be required before entering into the electrical contract but that since his concerns related to items constituting less than 2% of the budget, Council felt they should move forward with establishing a budget, organizing a SGM related to the project and collecting funds. On July 26, 2023, Mr. Cocco confirmed that he did not have any further concerns regarding moving forward with the project. To the extent that the Strata suggests that any

responsibility for delay rests with Trinden, there can be no realistic suggestion that this was an issue after July 26, 2023.

[53] Council had a meeting on July 25, 2023. In the minutes under the heading "Building C Elevator Remediation," it states that "Council is endeavoring to have a meeting with the Commercial Section on the next steps going forward." However, Trinden says that Council had in fact not asked for a meeting with Trinden about the project since early April 2023.

[54] On September 15, 2023, Trinden wrote to the Strata manager outlining its view that the Council was "simply delaying and refusing to comply with the CRT Ruling."

[55] On September 22, 2023, Mr. Cocco sent an email to Council member Mr. Mowlavi and asked whether the Council had a date for a proposed SGM. Mr. Mowlavi said he was not sure what the latest updates were and that he would bring it up at the next council meeting.

[56] On November 27, 2023, Trinden again warned Council that it would be commencing contempt proceedings.

[57] On November 28, 2023, the Strata held its 2023 Annual General Meeting. However, no resolution was proposed to address the Elevator replacement.

[58] On December 27, 2023, Trinden filed the present Notice of Application seeking to hold the Strata and the individual respondent council members in contempt. The first of the Council member respondents was served on January 4, 2024.

[59] On January 6, 2024, Mr. Mowlavi contacted Richmond Elevators for an updated estimate for the elevator remediation project. Richmond Elevators provided an estimate of $173,650, excluding any cab modernization. The cost had increased by over $30,000 between the quotes provided in 2019 and 2024.

[60] On January 12, 2024, Mr. Katnich signed a contract with Richmond Elevator.

[61] On January 19, 2024, the Strata's legal counsel delivered a letter to Trinden's current legal counsel, advising that the Strata had taken all reasonable and possible steps to comply with the Order. The Strata proposed that the contempt application be adjourned generally until the Elevator works are underway, and at that time, the application ought to be withdrawn.

[62] On February 2, 2024, the Strata delivered a notice confirming that it had assessed a special levy of $200,000 for the Elevator project assessed against all strata lots in proportion to their unit entitlement.

[63] On February 22, 2024, the Strata held a SGM where strata lot owners voted on several resolutions to provide the required financing for the Elevator repairs out of the contingency reserve funds of Sections 1-3 and to decide whether to also proceed with the aesthetic elevator work. The resolutions regarding financing of the Elevator repair all received enough votes to pass, but the resolution to approve aesthetic elevator work did not receive enough votes. As a result of the financing resolutions, the individual strata owners were no longer required to pay the assessed special levy in proportion to their unit entitlement.

[64] The scheduled start date of the work approved in the contract with Richmond Elevator was November 18, 2024. At the hearing, counsel advised that Richmond Elevator now estimates that the projected start date for the work will be February 17, 2025.

[65] The Elevator issue is not the only point of contention between Trinden and the Strata. Trinden has filed no less than 12 lawsuits against the Strata and Council members. It does appear that the level of dissension between the parties may have consciously or unconsciously undercut Strata and Council’s desire to complete the Elevator work for Trinden’s benefit.

[66] In terms of the remedy sought on this application, Trinden abandoned its original request for the imposition of prison terms for contempt. However, Trinden

continued to advance its request for a finding of contempt and the imposition of the following financial order:

a) A $1,000 fine; and

b) special costs to be assessed, or fixed at $22,000,

Trinden submitted that the responsibility for these financial amounts should be divided equally across each of the Strata and the individual Council member respondents.

ANALYSIS

[67] In civil contempt proceedings, the applicant must prove the following three elements beyond a reasonable doubt:

a) The order alleged to have been breached must state clearly and unequivocally what should and should not be done.

b) The party allegedly in breach of the order must have had actual knowledge of it; and

c) The party allegedly in breach of the order must have intentionally done the act that the order prohibits or intentionally failed to do the act the order compels:

See *Carey v. Laiken*, 2015 SCC 17, at paras 32-35**.**

[68] The Strata does not deny failing to meet the deadline set out in Order (g) but offers explanations. Specifically, it argues that the complicated history above makes it clear that Trinden did not insist on strict compliance with the Order and/or that Trinden itself also dragged its heels on granting its required agreement and consultative input.

[69] I conclude that a finding of contempt should be made against Strata, notwithstanding these explanations. Simply put, the deadline imposed by the CRT

was not met, and Trinden never formally waived its right to insist on compliance. The respondents were aware of the Order and intentionally failed to act in accordance with it. Even looking at the evidence in a manner most favourable to the Strata, Trinden had signalled unequivocally by July 26, 2023 at the very latest, that it was comfortable with the project moving forward. From that point onwards, there was clearly no barrier to implementing the Order. Yet, the Strata appears to have taken little further action until the contempt application was filed.

[70] Indeed, more accurately, there were problems with the Strata's efforts to comply with the Order as early as January 1, 2021, given that it had not yet proposed the selection of a contractor to Trinden by that time, making it impossible for it to comply with precondition in Order (e), let alone the commencement of the work required by Order (g).

[71] In contempt proceedings, the order alleged to have been breached must be clear and unequivocal. An order may "lack sufficient clarity for the purposes of a contempt motion if it is missing essential details about where, when or to whom it applies, if it uses overly broad language, or if external circumstances have developed that have obfuscated its meaning": *Antoine v. Antoine*, 2024 ONSC 1397 at para. 26.

[72] The respondents here challenge the clarity of the Order arguing that:

a) The requirement to retain Gunn "or an alternate elevator consultant agreeable to Trinden" fails to identify what happens if the parties cannot agree on the selection of an elevator consultant.

b) The requirement to choose a contractor "in consultation with Trinden" fails to identify the level of consultation required.

c) The requirement to call a general meeting to approve any aesthetic work fails to specify when this meeting should occur, the voting threshold required for approval at this meeting, and how the aesthetic work would be funded.

[73] The respondents submit that because of these problems, the Order incorporates "overly broad language and that external factors, such as obtaining agreement or engaging in consultation, obscure its meaning". Further, the respondents argue that external factors, such as the acrimonious relationship between the parties and the fact that the parties eventually decided to proceed without an Elevator consultant, complicated and obscured the Order's meaning.

[74] I find that these complaints are overstated:

a) I do not find that the requirement that Trinden be "agreeable" to the selection of a consultant other than Gunn to be uncertain. In fact, the term is crystal clear: Trinden's consent is required if Strata decides to retain an alternative consultant. But that never happened.

b) I do not find the requirement to choose a contractor "in consultation" with Trinden to be excessively uncertain. A duty to consult is often interpreted and applied in these Courts, most notably in the Aboriginal law context (see, for example, *Wii'litswx v. British Columbia (Minister of Forests)*, 2008 BCSC 1139 at para. 8). While the respondents argue that the content of the required "consultation" is not entirely clear, any ambiguity here is largely hypothetical since the real failure was failing to move forward with the work, not a failure to consult.

c) The Order clearly states that a general meeting to consider any aesthetic work must be held by December 1, 2020, and that funding for approved aesthetic repairs would be using contingency reserve funds or a special levy. While the Order does not expressly state what voting threshold is necessary for the approval of aesthetic works, it is reasonable to assume that this would be determined in accordance with the Strata bylaws.

d) Even if there is language in the Order that is subject to some degree of interpretation, the core Order (g) is clear and unequivocal. Specifically, at a minimum, following Trinden's final sign-off in July 2023, there could be

> no debate or confusion as to whether the preconditions were met to move forward (in an untimely fashion) with the implementation of Order (g).

[75] The Strata also argues that Trinden does not come to Court with clean hands and thus should be deprived of any contempt order: *Milne v. Milne*, 2014 BCSC 2423 at paras. 37, 64. *Milne* is distinguishable as it involved the applicant estate seeking to enforce an order that the deceased themselves had already violated. Here, the Order required that the core action items be moved forward by the Strata, not by Trinden. Trinden never waived its right to insist on full compliance, notwithstanding its openness to alternative solutions on the funding question. I do not see that Trinden did anything that could be described as giving it unclean hands. While they may have been non-responsive at various points, Trinden did not do anything improper. The fact that they made alternative proposals to resolve the matter cannot be held against them – parties are always free to try and structure the resolution of their dispute as they wish, so long as mandatory court orders are respected at the end of the day.

[76] Furthermore, the contempt cannot reasonably be described as "trifling" or as "technical non-compliance". The Order was not satisfied until years after the deadline.

[77] I decline to invoke the fact of the contempt having been purged as a basis to avoid a finding of contempt. I find that this happened far later than it should have.

[78] I do decline to make a finding of contempt against the individual respondent Council members. It is not entirely certain whether a contempt order against a strata corporation can or should also subject councillors to individual responsibility. The parties were unable to locate any British Columbia case authority where a contempt penalty was issued against strata councillors. The applicants in *Irvine v The Owners, Strata Plan K451*, 2023 BCSC 2195, named individual council members in their notice of application seeking orders for warrants of arrest and fines. The Court commented that "seeking such a remedy against individual strata council members in these circumstances was extremely unfortunate" (para. 26).

[79] That said, Rule 22-8(2) does provide for an imposition of a fine against directors or officers of a "corporation":

> (2) If a corporation wilfully disobeys an order against the corporation, the order may be enforced by one or more of the following:
>
> a) imposition of a fine on the corporation;
>
> b) committal of one or more directors or officers of the corporation;
>
> c) imposition of a fine on one or more directors or officers of the corporation.

[80] Trinden notes that once a strata plan is deposited in the land title office it becomes a strata corporation: *Strata Property Act*, s. 2. Pursuant to the provisions of the *Strata Property Act*, the strata corporation functions through its council in a similar fashion to the way a corporation functions through its directors and officers:

> 4 The powers and duties of the strata corporation must be exercised and performed by a council, unless this Act, the regulations or the bylaws provide otherwise
>
> …
>
> 25 At each annual general meeting the eligible voters who are present in person or by proxy at the meeting must elect a council.
>
> 26 Subject to this Act, the regulations and the bylaws, the council must exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules.

[81] Furthermore, looking outside BC does yield some authority for imposing individual council member responsibility. In *Boily v. Carleton Condominium Corporation* 145, 2014 ONCA 574, a condominium corporation and its directors were held in contempt for violating a court order. The directors were required to personally bear the costs of complying with the order. On appeal, the Court of Appeal upheld the finding of contempt against the individual directors although the court reduced the fine against them. The court stated as follows:

> [107] The individual appellants are volunteer board members of a not-for-profit corporation. It is clear that the penalty imposed in response to conduct that defies the authority of the court must be sufficient to deter those involved and other similarly situated individuals from like conduct. However, in the condominium context, the penalty should not be so onerous that it deters unit owners from serving on condominium boards. Owners who voluntarily

> assume the often onerous and thankless duties as directors of condominium corporations are essential to the functioning of a growing residential population -- those who live in condominiums.

[82] Even assuming I have the jurisdiction to make a finding of contempt and impose a penalty for the Strata's contempt against its individual council members, I would exercise my discretion not to do so. As discussed in the Ontario Court of Appeal, taking on the role of a strata councillor already imposes a heavy burden for which an individual generally receives little thanks or reward. Imposing individual fines would have an unduly chilling effect, both specifically in this case and generally. There is already evidence of substantial turnover on this council, which the respondent, Mr. Katnich suggests is largely due to the large volume of complaints made by Trinden. Furthermore, there is little evidence that any particular councillor being primarily responsible for the Strata's delays in relation to the Elevator repair.

[83] Moving to the issue of penalty for the Strata's contempt, the parties agreed that this contempt proceeding should not be bifurcated, i.e. that the Court should consider both the existence of contempt and any appropriate remedy in a single hearing.

[84] In terms of the appropriate penalty, Rule 22-8(1) says the punishment of contempt must be exercised by an order of committal or by imposition of a fine, or both. This Court has held that its inherent jurisdiction to punish contempt is not restricted by Rule 22-8(1): *Bea v. The Owners, Strata Plan LMS 2138*, 2015 BCCA 31 at para. 42. In particular, the range of possible penalties is broader than what is provided for in the Rules: *The Law Society of British Columbia v. Carlisle*, 2014 BCSC 2362 at para 70.

[85] When it comes to determining the most appropriate sanction, there are several factors to consider, including:

a) the gravity of the offence;

b) the need to deter the contemnor;

c) the past record and character of the respondent; in particular, whether the alleged contemnor has committed contempt previously;

d) the protection of the public;

e) the successful party's ability to realize the judgment; and

f) the extent to which the breach was flagrant, wilful, and intended to defy the court's authority.

Law Society of British Columbia v. Bryfogle, 2012 BCSC 59 at para 80.

[86] I find that the financial penalty should be quite constrained in this case for the following reasons:

a) During the early part of the delay after January 1, 2021, Trinden's engagement with the Strata about a potential modified cost-sharing arrangement provides some good faith explanation for the delay;

b) During the middle part of the delay period, Trinden's delays in signing off on the proposed contracting plan and the electrical subcontractor provide some additional good faith explanation for the Strata's delay; and

c) I would describe the gravity of the offence as moderate at worst.

[87] However, I find that, at the end of the day, the imposition of a penalty is justified given that:

a) At best, there was no longer any possible explanation for why the Strata did not move the project forward with dispatch from July 2023.

b) The tone of the correspondence suggests that the Strata and Council largely dragged their heels because they were not happy with the Order, and they thought they were potentially in a position to delay putting the Order into effect. As such, there is an element of intention, although the intention appears to have been more misguided than spiteful.

c) A penalty would provide some deterrent effect, which should help manage the conduct of all parties to this dispute, particularly given that they are also embroiled in a wide array of other litigation disputes. If both sides carefully respect any court orders, their other ongoing litigation should proceed more smoothly.

d) There is no suggestion that Strata could not satisfy the fine level proposed by Trinden.

e) Finally, looking at the issue more broadly, the Elevator failings left unresolved by the Strata could have caused possible safety concerns for the public.

[88] As such, I impose the controlled fine of $1,000 on the Strata, the amount proposed by Trinden.

[89] This brings me to the issue of special costs. As noted, Trinden seeks an all-inclusive fixed award of $22,000. Trinden notes that an order of special costs is typical in contempt proceedings. The principal purpose of a special costs award in a contempt proceeding is to indemnify the private party for the cost they were put to in enforcing the court order: *Telus v. Telecommunications Workers Union*, 2008 BCCA 144 at para. 30. In *Law Society of BC v. Yehia*, 2008 BCSC 1172, the Court stated:

> [59] Special costs are the usual order in a civil contempt proceeding. As Madam Justice Southin slated in *Everywoman's Health Centre Society (1988) v. Bridges* (1990), 54 B.C.L.R. (2d) 273 (B.C.C.A.), at 297:
>
> > It has long been the practice in the court below to award such costs to a successful applicant. The practice is sound. A person who obtains an order from the court is entitled to have it obeyed without further expense to himself.

[90] Special costs may be awarded even where the contempt has been purged: *Law Society of British Columbia v. Carlisle*, 2014 BCSC 2362 at paras. 73-77.

[91] On the other hand, the Court does have the discretion to not award special costs even where it has found contempt: *Telus Re: 11 Individuals found to be in Contempt*, 2006 BCSC 397 at para 44.

[92] In terms of making a fixed costs award rather than requiring an assessment by the Registrar, I do have the discretion to do this under Rule 14-1(15). However, this discretion must be sparingly exercised: *Gichuru v. Smith*, 2014 BCCA 414 at para. 154. Special costs are limited to those fees that are "proper or reasonably necessary to conduct the proceeding". As such, to assess special costs, there must be evidence of the actual legal fees incurred and an assessment of their reasonableness considering the factors in Rule 14-1(3)(b). Further, there must be an opportunity for the opposing party to test the reasonableness of the fees: *Gichuru* at paras. 99-110.

[93] I am sympathetic to the potential advantage of fixing costs there given that: (1) this contempt application has already been adjourned several times, and (2) there are presently no further hearings required in the process, absent a failure to satisfy the orders the Court has issued today. However, given the Court of Appeal's clear direction, the lack of evidence of legal fees, and the lack of submission from both parties as to the reasonableness of those fees, I find myself unable to justify making such a fixed cost award here.

[94] That said, I am still prepared to issue a special costs award, although I find that it is appropriate to limit it to a partial award. The court has the discretion to award partial special costs assessed at a percentage of special costs. This can be considered when the party being awarded special costs also contributed to litigation delay, caused issues in the litigation, or when it would be disproportionate to award special costs for an entire proceeding: *Chura v Batten Industries Inc*., 2023 BCSC 1708 at paras. 46-48. Partial special costs have also been awarded when special costs were warranted but there was divided success on the merits and the party adopted an "all or nothing approach": *British Columbia (Attorney General) v. Lee*, 2016 BCSC 974 at para. 17. In *College of Physicians and Surgeons of British*

Columbia v Ezzati, 2020 BCSC 339, Justice Gropper awarded the successful plaintiffs in a civil contempt proceeding only 50% of its special costs since they were only successful in proving three of their five allegations of contempt: see paras. 66-69.

[95] I find that a partial special costs award is appropriate here given the constraining factors noted above, particularly the fact that (1) Trinden did have some limited role in the delays, (2) the contempt was largely purged by February 2025, and (3) Trinden was ultimately unsuccessful in having the Court hold the individual Council members in contempt. I also consider Trinden's litigation conduct, namely that it initially (and excessively) sought prison terms against the individual members, thereby requiring a vigorous defence of the allegations.

[96] I would award the applicant costs to be assessed by the registrar limited to 50% of its proper special costs. This award is solely payable by the Strata.

"The Honourable Mr. Justice Branch"