IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Owners of Strata Plan KAS 1886 v. Lemon,* 2025 BCSC 1166

Date: 20250623
Docket: S58060
Registry: Vernon

Between:

The Owners, Strata Plan KAS 1886

Petitioner

And

Gord Lemon, 1125003 BC Ltd., SWS Marketing Inc., René Gauthier

Respondents

Before: The Honourable Madam Justice Burke

Reasons for Judgment re: Strata Fees

Agent for the Petitioner:	R. Gauthier
Counsel for the Respondents Gord Lemon, 1125003 BC Ltd.:	A. Grewal
Counsel for the Respondent SWS Marketing Inc.:	D. Palaschuk
No other appearances	
Place and Date of Hearing:	Vancouver, B.C. February 11–12, April 23 and 24, 2025
Place and Date of Judgment:	Vancouver, B.C. June 23, 2025

Introduction

[1] These parties continue to be involved, as they acknowledge, in a complex, convoluted, and lengthy legal battle resulting in a number of different actions. I briefly reiterate what I have set out in other decisions to provide some context. The legal battle has taken place over 12 years, centred around two buildings in Vernon, BC, containing 14 residential strata lots (the "Vernon Project"). The factual background was set out in detail by Justice Adair in *SWS Marketing Inc. v. Zavier,* 2022 BCSC 743 (the "2022 Decision") at paras. 45–138, following a 17-day trial before her in the spring of 2022.

[2] Litigation between these parties has ensued beyond that trial, the latest summary of which was set out in this Court's judgement in *SWS Marketing Inc. v. Zavier*, 2024 BCSC 2178 (the "2024 Decision") at para. 1, citing *SWS Marketing Inc. v. 1125003 B.C. Ltd.*, 2023 BCCA 225.

[3] Following Justice Adair's retirement, the Chief Justice appointed this Court to deal with the remaining issues arising from the 2022 Decision. That order notes: "Pursuant to Supreme Court Civil Rule 23-1(10) Justice Burke is appointed to determine the remaining issues in this case in lieu of the Honourable Justice Adair, who retired on December 31, 2022".

Further Applications and Petitions

[4] In the 2024 Decision, I dealt with a number of issues arising out of Justice Adair's judgement, including the sale of the Vernon Project. However, the parties have filed further petitions and cross applications in this legal battle.

[5] The Owners Strata Plan KAS 1886 (the "Strata") filed a number of petitions seeking collection of unpaid strata fees, as referenced in earlier judgments. Ultimately the Strata continued with two of those petitions—S58060 and S58065—against the respondents Odin Zavier and Gordon Lemon, respectively. These are the petitions before me that I will address in this judgment.

[6] In these petitions, the Strata seeks a number of orders through its agent and president, René Gauthier, including

- declarations that the named respondents are owners of certain lands and premises;
- a declaration that the owners of these premises are in default of their obligations to pay strata fees, as provided for in s. 99 of the *Strata Property Act*, S.B.C. 1998, c. 43, and the bylaws of the Strata;
- a declaration that the certificate of lien dated February 3, 2023 charges the property and ranks in priority to the interests therein or claims of the respondents;
- a declaration that the named respondents have made default in payment of their share of common expenses and that all monies secured by the lien are due and owing;
- a declaration as to certain amount of strata fees owing;
- and an order setting the last day for payment of the amount owing at 30 days from the date of the order; and
- numerous other declarations, including fines for failure to pay strata fees and other such remedies.

Position of the Parties

[7] The respondents, Mr. Zavier and Mr. Lemon, oppose the relief sought by the Strata primarily on the basis that the petitioner is statue-barred from collecting strata fees under the *Limitation Act*, S.B.C. 2012, c. 13 [*Limitation Act*]. Essentially, the respondents maintain that Mr. Gauthier and the Strata, which he controls, have known since at least 2015 that they were due strata fees from the respondents, but took no steps to enforce the payment of these fees. The respondents submit the petitioner cannot now attempt to sue and collect these strata. As a result, the

respondents say that the petitioner is now statute-barred from collecting strata fees owing prior to the two-year limitation period preceding the filing of the current petition—that is, fees that were owing anytime prior to February 10, 2021 (as Mr. Gauthier filed the current petition on February 10, 2023).

[8] The respondents point to various decisions in this legal battle to support their argument. For example, they point to the Court of Appeal's judgment in in *SWS Marketing Inc. v. Zavier*, 2021 BCCA 201 (the "2021 Appeal"), where the Court found that the petitioner delayed in taking any steps whatsoever to remedy strata fees owed to it form 2013–2021. Additionally, they point to para. 24 of Justice Branch's decision in *SWS Marketing Inc. v. Zavier*, 2021 BCSC 312 (the "2021 Decision"), where Justice Branch notes that the Strata levied strata fees against each owner and collected fees owing to itself by way of placing liens on the properties—and therefore must have been aware of such fees owing prior to the judgment.

[9] The respondents also say they paid strata fees throughout the time alleged not to have paid strata fees, which have intentionally not been taken into account by the Strata.

[10] The petitioner, on the other hand, argues that the limitation period only started in June 2021, after Justice Branch's order the 2021 Decision (the "Branch Order"), which ordered, *inter alia,* the following:

> To assist in the preparation of the Consolidated Financial Statements, by a date designated by the New Council, the defendants and plaintiffs will submit to the New Council all strata-related accounting information (including but not limited to general ledgers, cheques, bank statements, invoices, receipts or other proof of payment of any Strata Corporation expenses and financial statements) from January 1, 2013 to February 28, 2021 (the "Transactions").

[11] The petitioners say they could only "discover" the exact amount of strata fees owing following this accounting exercise, as the Strata needed to recalculate all the strata fees charged for the years 2013 to 2021. As a result, they say that the Strata only discovered and was able to calculate the correct amount of the unpaid strata fees of Mr. Zavier and Mr. Lemon sometime after June 2021.

[12] The petitioner also relies on the 2021 Appeal, saying the Court of Appeal confirmed that the Strata could only properly calculate strata fees after an accounting was done pursuant to Justice Branch's order:

> [30] In declining to make a declaration condemning all actions of the Zavier Council, the judge recognized that the Zavier Council never had had a sliver of legitimacy because it derived from a council that carried what he termed the "original sin" of never having been properly elected. Apart from the identity of the current council, the judge explained that he understood that the only governance matters still in dispute relate to accounting issues that are resolvable by a newly elected council, and he was available to hear the parties on contested matters arising from those issues. Further, the judge said striking the actions of the Zavier Council, which had purported to exist for over seven years and had held itself out to third parties as the true strata council, could cause "unintended consequences".
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> …
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> [33] As to the accounting issues, it seems to me that all the financial information relating to the strata corporation should be in the possession of the recognized strata council and if this does not occur, the appellants of course may ask for court assistance even without the sweeping declaration of invalidity they seek. In any case, I see no reason why financial statements cannot be prepared on the best information available to the council, with appropriate reservations noted.

[13] On this point, the respondents submit that the Branch Order was meant to consolidate the accounting of the two dueling strata councils and move forward fresh, and was therefore a future-focused remedy—rather than a necessary prerequisite to determine historically owed strata fees.

Analysis

Use of affidavit evidence

[14] As set out above, the respondents say that the Strata was aware of the late strata fees at issue in this petition earlier than 2021. They support this by submitting that from 2013 to 2021, Mr. Gauthier took the position that he was the president of the Strata and was owed strata fees, which is evidenced in "various affidavits" filed in the proceedings before Justice Adair in 2022. They say that these affidavits show that Mr. Gauthier and his strata council "took the position strata units were not paying strata fees to it, tracked those non-payments, yet filed no petition, action,

notice of civil claim to have any of the strata fees paid". Mr. Gauthier objected to the admission of these affidavits.

[15] After considering the parties' submissions on this issue, I issued on oral ruling on April 23, 2025 that the use of these affidavits is not precluded by absolute privilege, as set out in *Oei v. Hui*, 2020 BCCA 214. Absolute privilege applies in the context of a participant being sued as a result of what was said in court, which is not the case here. Rather, as set out in *Chellappa v. Kumar,* 2016 BCCA 2 at para. 35, the affidavits are part of evidence used in open court proceedings between the parties, and as such an implied undertaking of confidentiality is not applicable (see also *H.M.B. Holdings Limited v. Replay Resorts Inc.*, 2020 BCSC 309 at para. 35).

[16] I also noted that these affidavits were filed as part of the material in this matter in November 2024, according to Rule 16-1 of the *Supreme Court Civil Rules* and without objection at that time. In all these circumstances, I concluded the use of these affidavits should be allowed in this matter. I will discuss the contents of these affidavits as they relate to the limitation issue below.

Limitation issue

[17] I have reviewed the material and the cases cited between the parties, and conclude the *Limitation Act* applies in this matter and the petitioner is indeed statute-barred from recovering late strata fees from these respondents incurred before February 1, 2021. There is ample evidence that the petitioner knew that these respondents owed strata fees prior to February 1, 2021. This knowledge makes clear the petitioner effectively "discovered" these claims more than two years before the petition was filed in February 2023 and are, as a result, precluded from recovery as per the limitation period set out in the *Limitation Act.*

[18] The petitioner has argued the limitation period for these claims only started in June 2021, after the Branch Order, as this was when the petitioner "discovered" the amount of strata fees owing. Mr. Gauthier, on behalf of the Strata, indicates he did not know the amount of strata fees owing due to the dueling strata councils, each of

whom had separately imposed strata fees on the owners, and needed to complete the accounting exercise ordered by Justice Branch for the limitation period to begin.

[19] The relevant authorities however, do not support the petitioner's argument. The Supreme Court of Canada concluded in *Grant Thornton LLP v. New Brunswick,* 2021 SCC 31 [*Grant Thornton*] at para. 46, that the requisite degree of knowledge for a claim to be "discovered" is not this precise. As the SCC held, "a plaintiff does not need to know the exact extent or type of harm it has suffered, or the precise cause of its injury, in order for a limitation period to run": at para. 46, emphasis added.

[20] In *Grant Thornton*, the Court dealt with the question of whether a plaintiff had the requisite degree of knowledge to discover a claim under the New Brunswick *Limitation of Actions Act.* The relevant provisions of that act are almost identical to those of BC's *Limitation Act.*

[21] The pertinent provisions of *BC's Limitation Act* read:

> **Basic limitation period**
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> 6 (1) Subject to this *Act*, a court proceeding in respect of a claim must not be commenced more than 2 years after the day on which the claim is discovered.
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> (2) The 2-year limitation period established under subsection (1) of this section does not apply to a court proceeding referred to in section 7.
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> …
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> **General discovery rules**
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> 8 Except for those special situations referred to in sections 9 to 11, a claim is discovered by a person on the first day on which the person knew or reasonably ought to have known all of the following:
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> (a) that injury, loss or damage had occurred;
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> (b) that the injury, loss or damage was caused by or contributed to by an act or omission;
>
> (c) that the act or omission was that of the person against whom the claim is or may be made;
>
> (d) that, having regard to the nature of the injury, loss or damage, a court proceeding would be an appropriate means to seek to remedy the injury, loss or damage.

[22] With respect to the degree of knowledge required for a plaintiff to have "discovered" a claim, the SCC in *Grant Thornton* held the following:

> [42] …I propose the following approach instead: a claim is discovered when a plaintiff has knowledge, actual or constructive, of the material facts upon which a plausible inference of liability on the defendant's part can be drawn. This approach, in my view, remains faithful to the common law rule of discoverability set out in Rafuse and accords with s. 5 of the *LAA.*
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> [43] By way of explanation, the material facts that must be actually or constructively known are generally set out in the limitation statute. Here, they are listed in s. 5(2)(a) to (c). Pursuant to s. 5(2), a claim is discovered when the plaintiff has actual or constructive knowledge that: (a) the injury, loss or damage occurred; (b) the injury loss or damage was caused by or contributed to by an act or omission; and (c) the act or omission was that of the defendant. This list is cumulative, not disjunctive. For instance, knowledge of a loss, without more, is insufficient to trigger the limitation period.
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> [44] In assessing the plaintiff's state of knowledge, both direct and circumstantial evidence can be used. Moreover, a plaintiff will have constructive knowledge when the evidence shows that the plaintiff ought to have discovered the material facts by exercising reasonable diligence. Suspicion may trigger that exercise (*Crombie Property Holdings Ltd. v. McColl-Frontenac Inc.*, 2017 ONCA 16, 406 D.L.R. (4th) 252, at para. 42).
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> …
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> [46] The plausible inference of liability requirement ensures that the degree of knowledge needed to discover a claim is more than mere suspicion or speculation. This accords with the principles underlying the discoverability rule, which recognize that it is unfair to deprive a plaintiff from bringing a claim before it can reasonably be expected to know the claim exists. At the same time, requiring a plausible inference of liability ensures the standard does not rise so high as to require certainty of liability (*Kowal v. Shyiak*, 2012 ONCA 512, 296 O.A.C. 352) or "perfect knowledge" (*De Shazo*, at para. 31; see also the concept of "perfect certainty" in *Hill v. South Alberta Land Registration District* (1993), 1993 ABCA 75 (CanLII), 8 Alta. L.R. (3d) 379, at para. 8). Indeed, it is well established that a plaintiff does not need to know the exact extent or type of harm it has suffered, or the precise cause of its injury, in order for a limitation period to run (*HOOPP Realty Inc. v. Emery Jamieson LLP*, 2018 ABQB 276, 27 C.P.C. (8th) 83, at para. 213, citing *Peixeiro*, at para. 18).
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> [Emphasis added.]

[23] The above proposition from *Grant Thornton* was reiterated in *Chandos Construction Ltd v. Deloitte Restructuring Inc*, 2024 ABCA 403, where the Alberta Court of Appeal specifically held that the exact quantum of a claim does not need to be finalized before the limitation period starts:

> [16] Deloitte further argues that the exact amount owed by Chandos to Capital Steel was not known until later, likely some time after the decision of the Supreme Court of Canada. It points out that completion costs, deficiency costs, warranty costs, and other possible setoffs were not yet known.[2] However, it is not necessary for the quantum of the claim to be crystallized before the limitation period starts to run: *Grant Thornton LLP v New Brunswick*, 2021 SCC 31 at para. 46, [2021] 2 SCR 704; *Peixeiro v Haberman*, 1997 CanLII 325 (SCC), [1997] 3 SCR 549 at para. 18; *Hamilton (City) v Metcalfe & Mansfield Capital Corp*, 2012 ONCA 156 at paras. 59-69, 347 DLR (4th) 657. Again, the only thing that is required is that the potential claim, assuming liability on the part of the defendant, "warrants bringing a proceeding". On that issue the proof is in the pudding: the fact that the parties litigated the validity of clause Q(d) all the way to the Supreme Court of Canada discloses that the potential claim of approximately $150,000 warranted proceedings. The exact quantum of the claim may have been contingent and uncertain, but it was still worth pursuing, assuming liability on the part of Chandos.
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> [Emphasis added.]

[24] The BC Civil Resolution Tribunal jurisprudence similarly supports this conclusion. For example, in *The Owners, Strata Plan VR245 v. Jiwa,* 2021 BCCRT 1171**,** the strata claimed that the respondents owed many outstanding strata bylaw fines and move fees related to occupancy of their strata lots from June 2014 to March 2020. The respondents claimed that the strata was statute-barred from recovering many of these fees, as the two-year limitation period had run out. The Tribunal agreed with the respondents, relying on *Grant Thornton* in its analysis. Relevant to the case at hand is the finding in para. 24—that the strata did not need to know the exact number of moves or move dates (and presumably, corresponding move fees) for the limitation period to begin running:

> 24. As noted, the strata knew the respondents were allowing occupancies before that date, and that move fees were not being paid. Following the binding precedent in *Grant Thornton*, I find that the strata did not need to know the exact number of moves or move dates to for the limitation period to run. I find the strata was aware that it had, or might have, claims for unpaid move fees. I find that nothing prevented the strata from observing occupants arriving and departing from the respondents' strata lots. Although these observations might have been inconvenient to make with the strata's chosen systems and staffing, I find they would not require unreasonable diligence in the circumstances.
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> [Emphasis added.]

[25] In *Sandhu v. The Owners, Strata Plan VIS 3901*, 2022 BCCRT 301, the strata argued that Mr. Sandhu owed outstanding strata fees and utility bills and that Mr. Sandhu must pay his share of the strata's legal fees incurred defending a lawsuit about an easement. Mr. Sandhu argued that strata was barred from recovering litigation expenses incurred over two years prior to the current claim. In response, the strata argued that it only became aware of the exact legal expenses in November 2019, and that this was the proper start of the limitation period—similar to the petitioner's claim in the matter before me. The Tribunal rejected the strata's argument:

> 51. Mr. Sandhu says the strata is barred from recovering some of its litigation expenses based on the *Limitation Act.* I find the same analysis set out above for strata fees applies here. Based on that, I find the strata cannot recover litigation expenses incurred before March 12, 2019.
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> 52. The strata says the owners were provided with copies of the pretrial legal expense invoice for the first time at the June 21, 2019 meeting. It says the strata only became aware of the exact trial damages and expenses in November 2019. I disagree. Discoverability of a claim is not dependent on knowledge of the exact extent of the loss. It is sufficient to know that some loss has occurred: see *Peixeiro v. Haberman*, 1997 CanLII 325 (SCC). I find the strata generally paid the pre-trial and trial expenses as they came due, which were all before September 2016. I find the strata discovered its claims related to these expenses either when it incurred them or when it first asked Mr. Sandhu to contribute his share. I also find the strata was aware of what it owed for damages on February 24, 2017, when the 2017 BCSC decision was issued, and no later than July 30, 2018, when the BCCA decision confirmed the damages award. So, based on the *Limitation Act,* I dismiss the strata's claim for contributions to the easement pre-trial and trial costs related to the 2016 and 2017 BCSC decisions, and the damages award.
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> [Emphasis added.]

[26] These authorities support the conclusion that unlike the petitioner's argument in this case, it was not necessary to wait for the accounting exercise ordered by Justice Branch to be completed for the limitation period to start running. While the Strata argues it needed to recalculate all the fees charged for the years 2013 to 2021 and was therefore only able to "discover" their claim after the Branch Order, the jurisprudence on discovery of a claim is not limited to such precision. It was enough for the Petitioner to know, as outlined by the respondents:

- that it had suffered loss by non-payment of monthly strata fees (section 8(a) of *Limitation Act*);
- that this loss was contributed by the omission of the respondent not paying the monthly strata fees (sections 8(b)–(c) of *Limitation Act*); and
- that the Court was the appropriate means to remedy the non payment of strata fees (section 8(d) of *Limitation Act*).

[27] In this case, I find that the Strata had the requisite knowledge to understand that it had suffered loss by non-payment of monthly strata fees, that this loss was occasioned by or contributed by the omission of the respective respondents in these two petitions, and that the court was the appropriate means to remedy the non-payment of the strata fees.

[28] In reaching this conclusion, I have also considered the fact that Justice Adair in the 2022 Decision noted the existence and knowledge of outstanding strata fees alleged to be owing to Mr. Gauthier and the Strata:

> [25] …Among other things, both councils imposed strata fees on all units. The Defendants paid their strata fees as directed by the Zavier Council. The other units paid their fees as directed by the Gauthier Council. Each council claimed arrears were owing by the units not paying them fees.
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> …
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> [100] Each of the Gauthier Council and the Zavier Council levied separate strata fees on the units, creating more confusion.
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> …
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> [351] On the evidence, since February 2021, s. 27(7) has not been invoked to deprive a unit from voting at a Strata Corporation meeting. Rather, the problem has been that strata fees are outstanding. …

[29] Despite Mr. Gauthier and the Strata being aware of these outstanding fees, recompense for these outstanding fees was not sought, which supports the position that seeking these amounts at this time runs afoul of s. 6 of the *Limitation Act*.

[30] While the Strata and Mr. Gauthier argue that the limitation argument fails because “the Gauthier Strata was only formally confirmed after February 21, 2021 when Mr. Justice Branch determined the Gauthier Council was the proper strata

Council and after June 2021 when Mr. Justice Branch ordered the defendant owners to provide Zavier Council strata accounting records", this in essence means a limitation period would not start until there is legal certainty about certain matters. This is inconsistent with the jurisprudence and would result in inefficient cycles of litigation. Rather, as noted in *Grant Thornton* ,"the governing standard requires the plaintiff to be able to draw a plausible inference of liability on the part of the defendant from the material facts that are actually or constructively known": at para. 45. Indeed, that was the position consistently taken by Mr. Gauthier over the years.

[31] Further, and as noted in the above section, numerous affidavits filed by Mr. Gauthier and included in the responsive petition material in this matter also support this conclusion.

[32] As an example, the respondents have pointed to Affidavit #13 in the action before Justice Adair (S138229), affirmed April 3, 2019, wherein Mr. Gauthier affirms at para. 10 that "there is extreme concern that the Defendants are not paying their portion of the strata expenses". Additionally, they point to Affidavit #35, affirmed November 18, 2020**,** in which Mr. Gauthier allegedly affirmed the following:

- at para. 49, that certain units had unpaid strata fees; and
- at para. 50, that Gauthier strata approved demand letters for strata fees to certain units.

[33] The respondents also point to Affidavit #1 of Mr. Gauthier, Exhibit "B" in the current petition, which is a demand letter sent by Mr. Gauthier's counsel to the respondents in December 2022. Attached to the letter is a "statement of account" in the form of a table, which sets out the strata fees allegedly owing by Mr. Lemon. It shows that the "opening balance", dated February 1, 2021, is $12,950.55, while each month thereafter shows strata fees owed in the range of $170–$300. It appears that similar letters were sent to the other owners.

[34] Additionally, while neither party pointed to this excerpt, I note para. 10 in the 2021 BCCA Appeal case , which further suggests that the Strata and Mr. Gauthier imposed and sought to collect the strata fees in issue prior to 2021:

> [10] Over the next several years, until the judge's order on February 8, 2021, these two competing councils purported to hold meetings and to carry out business as the true strata council. For example, they both imposed and sought to collect strata fees and incurred and paid various expenses. In 2015, at a meeting called by the Gauthier Council, the quorum provision of the bylaws was amended. The amended bylaws were filed in the Kamloops Land Registry.
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> [Emphasis added.]

[35] I reiterate and emphasize the comments in the 2021 Appeal with respect to delay in this matter. Clearly, the Court of Appeal was concerned about the delay in a resolution to these dueling strata councils, which resulted in burgeoning difficulties and confusion:

> [35] Last, I consider that the appellants' delay in seeking relief by way of their application weighs against a sweeping declaration. Although the initial notice of civil claim sought an injunction, the confusion caused by two councils was allowed to burgeon until these applications finally were filed and heard. The delay in seeking to bring an end to the Zavier Council's assumed authority weighs against the order they now seek. In my view, the appellants cannot now complain that the judge failed to give a discretionary remedy relating to actions that occurred over many years when they took no effective steps to arrest the continuing actions which they now contest, or to clarify the authority of the competing councils. I would not interfere with the order on this basis.
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> [Emphasis added.]

[36] The above evidence establishes that the petitioner Strata knew strata fees were owing by certain respondent owners for some significant period of time. While the affidavit material certainly establishes this, the 2022 Decision also specifically notes that each council (including the Strata) "claimed arrears were owing by the units not paying them fees". However, recompense for outstanding strata fees which the Strata clearly knew about was not sought until this petition was filed in February 10, 2021.

[37] The Strata also says that the respondents did not raise a limitation argument in either the 2021 decision of Justice Branch or the 2022 Decision by Justice Adair. However, as the remedy for outstanding strata fees was not sought in either of these cases, it was not necessary to raise this defence. I therefore cannot draw an adverse conclusion from that omission.

[38] I also agree with the respondents' argument that the Branch Order with respect to accounting of strata fees was a future-focused remedy. Before Justice Branch, the defendants, (the respondents in that case) raised a concern about the potential of unintended consequences if the historical conduct of either duelling alleged strata council was declared void or invalid. Justice Branch noted there was no real dispute between the parties as to the validity of any acts done by the other strata council, save for the need for an accounting of the monies spent and strata fees collected by each. The defendants therefore argued for a future-focused remedy.

[39] In the 2021 Decision, Justice Branch specifically agreed with this submission by the defendants and said any remedy should be narrowly and carefully crafted to address solely those questions presently at issue between the parties. He noted the Court could not be compelled to issue unnecessary declarations given that such relief is discretionary:

> [32] First, the defendants raise a concern about the potential for unintended consequences if the historical conduct of either Council is simply declared void or invalid. They note that there is no real dispute between the parties as to the validity of any acts done by the other Council, save for the need for an accounting of the monies spent by each Council, and of the strata fees collected by each Council. Given that both sides accept that these issues should be resolved through an accounting exercise, the defendants suggest that any remedy should be future-focussed.
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> [33] I agree with the defendants' submission. I am concerned about the potential consequences of simply striking down either Council's conduct given that each held themselves out as the proper council to various third parties. Although s.30 of the *SPA* provides that contracts are not invalidated by a defect in appointment, it is not clear to me that this section is necessarily broad enough to cover all the issues raised by the parties. Hence, I find that any remedy should be narrowly and carefully crafted to address solely those questions presently at issue between the parties. The court cannot be

> compelled to issue unnecessary declarations, given that such relief is discretionary: *Tsuu T'ina Nation v. Alberta (Environment),* 2010 ABCA 137 at paras. 140-141; *Campbell v. The Owners, Strata Plan NW1018*, 2014 BCSC 2058 at para. 35.
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> …
>
> [41] I conclude that it would be best if the new council controls the preparation of the information required for a proper accounting, rather than starting this process with one council group and then changing course to another.

[40] This makes clear that Justice Branch provided a future-focused remedy, due in large part to the burgeoning confusion that took place as a result of the delay in sorting out the legitimacy of the dueling strata councils, as also noted in the 2021 Appeal.

[41] I conclude, for all these reasons, the petition with respect to the collection of strata fees owing from 2013 until February 2021 is statute-barred under the *Limitation Act*.

Remaining claim for strata fees

[42] With respect to the remaining claim for strata fees that is not statute-barred (i.e. the strata fees owing after February 2021), there is insufficient evidence to establish the actual amounts owing. At the outset, I noted the filing of a lien under s. 116 of the *Strata Property Act* does not constitute evidence that there is a debt owing. As per *The Owners, Strata Plan NW499 v, Kirk*, 2018 BCSC 1249 at para. 54, "Section 117(3) of the SPA requires the court to try the debt issue and order judgment in favour of the Strata Corporation 'for an amount that the court, as a result of the trial, finds owing…'".

[43] The Strata has provided a spreadsheet created by Mr. Gauthier of what it says are non-payments of strata fees over particular periods. However, I agree with the respondents that none of the underlying documents used by the Strata to create the chart have been provided. There is no evidence of the strata fees set for each year at the AGM, nor any AGM minutes that reference this and show the breakdown of the strata fees payable by each strata unit.

[44] While Mr. Gauthier points to the demand letters his counsel sent to Mr. Zavier and other defendant owners, these are dated July 10, 2019, and would be part of the statute-barred claim. A further affidavit of November 14, 2024 refers to AGM minutes approving the budget and strata fees on strata entitlement for the year 2024. However, the current petition was filed in February 2023, and these minutes are therefore not an evidentiary basis for fees owing from 2021 to 2023.

[45] Mr. Gauthier also relies on the following comments from Justice Adair in the 2022 Decision:

> [335] …The evidence is undisputed that the Defendants are not current in terms of payment of strata fees, and Mr. Saxvik was quite candid that he is not paying them for units where 112 has Lease-Option Agreements. The Defendants did not present evidence that would have permitted me to assess whether the anticipated costs of the appointment of an administrator could be justified by the anticipated benefits. As the request for the appointment of an administrator was almost certain to fail, the Defendants and counsel made the appropriate decision to abandon the request.
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> …
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> [351] On the evidence, since February 2021, s. 27(7) has not been invoked to deprive a unit from voting at a Strata Corporation meeting. Rather, the problem has been that strata fees are outstanding. That is the reason units represented by Mr. Saxvik have not been allowed to vote. Such a provision, depriving units who had unpaid strata fees of a right to vote, was a feature of s. 31(7) of the Zavier Bylaws. It cannot be the subject of a legitimate complaint of significantly unfair conduct. Apart from expressing his distrust for Mr. Gauthier, Mr. Saxvik had nothing concrete to offer in terms of errors or omissions in the statements of strata fees prepared and marked as Exhibit 61. The suggestion put to Mr. Gauthier on cross-examination that he might have made an error somewhere in calculating the outstanding strata fees owed by the Defendants was nothing more than speculation. As I have noted above, no Defendant produced evidence of his or her own calculation of strata fees paid, showing the statements produced by Mr. Gauthier to be in error and by how much.

[46] He relies in particular on the reference to Exhibit 61. The difficulty with this however, is that while Justice Adair noted the defendants were not current in terms of payment of strata fees, it is not clear what time frame that refers to and the amounts at issue. Further complicating matters, and as noted above, the remedy of outstanding strata fees was not sought at the time of the case before Justice Adair.

[47] While Mr. Gauthier, on behalf of the Strata, set out the details of what it says is owing in a “Statement of Account”, the foundational documents of that document are not apparent and not in evidence.

[48] Accordingly, for all these reasons, the petition is dismissed.

[49] Given the potential complexity of the issues, each party should bear their own costs in this petition.

“Burke J.”