

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Beach v. The Owners, Strata Plan VR840
Seastrand,*
2025 BCSC 1382

Date: 20250718
Docket: S244722
Registry: Vancouver

Between:

Colin A. Beach

Petitioner

And

**The Owners, Strata Plan VR840 Seastrand,
the Strata Council and the Wynford Group**

Respondents

Before: The Honourable Mr. Justice Veenstra

Reasons for Judgment

The Petitioner, appearing in person:

C.A. Beach

Counsel for the Respondents:

S. Hamilton

Place and Dates of Hearing:

Vancouver, B.C.
February 13-14, 2025

Place and Date of Judgment:

Vancouver, B.C.
July 18, 2025

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Introduction

[1] Mr. Beach asserts that a decision made by The Owners, Strata Plan VR840 (the “Strata Corporation”) is significantly unfair to him. The decision was to remove and replace railings along balconies of the building, at an overall cost of \$3 million. The resolution authorized a special levy of \$2 million, as well as the expenditure of up to a further \$1 million from the Strata Corporation’s contingency reserve fund.

[2] Mr. Beach, who owns a strata lot in the Strata Corporation, has been required to contribute \$16,600 to a special levy. He has raised numerous objections to the resolutions giving rise to this special levy, and seeks an order that they be set aside, as well as various other relief.

[3] Although the petition initially sought relief against the District of West Vancouver (“DWV”), Mr. Beach filed a Notice of Discontinuance of his claims against the DWV after objections were raised that those claims could only be brought by way of a judicial review proceeding.

Facts

[4] The Strata Corporation relates to a 16-storey concrete high-rise building that was constructed in 1963, and is known as the Seastrand. It is located at the south end of 24th Street in West Vancouver, next to the seawall. It is located within the Ambleside Apartment Development Permit Area. Planning guidelines of the DWV for that Development Permit Area have as their objective ensuring a high quality of design, in keeping with surrounding developments. With respect to building design, they encourage a high standard of construction, the use of high-quality materials, and designs that are in keeping with the character of the building.

[5] Most if not all units of the Strata Corporation have balconies. When originally constructed in 1963, they had aluminum picket guardrails that were affixed to the concrete and generally had a brace at the midpoint of the balcony to provide stability. The original guardrails do not meet requirements of the 2018 BC Building

Code, including with respect to railing heights, but were obviously accepted at the time of construction.

[6] Over the years, a number of owners installed glass walls to enclose their balconies. Typically, when that was done the owner would also raise and level the balcony floor and remove the mid-balcony brace. The result of that was that the deficiency in railing height was exacerbated by the changes.

[7] Most if not all of the guardrails initially had what were described as transite asbestos panels within the area of vertical rails. Those panels provided shade, privacy and some protection from winds. However, over the years, a number of the owners removed these panels – particularly those who were installing glass enclosures.

Initial Identification of Guardrail Issues

[8] In 2015, the Strata Corporation retained an engineering firm – Sense Engineering – to prepare a report with respect to the condition of its various building components. Following that, Sense Engineering was commissioned in 2016 to prepare a further report, titled “Prioritizing Upcoming Capital Projects for Seastrand”. One of two “priority 1” items was to modify or replace the building’s guardrails. Rationales cited for this include the removal of braces as well as a concern that many of the railings would readily deflect under light hand pressure.

[9] In 2017, Sense Engineering provided a written report titled “Balcony Guard Evaluation / Design Brief”, and later that year, the strata council directed Sense Engineering to prepare specifications. The intention at the time was to consider replacing the existing railings with new aluminum picket fence-style railings.

[10] Over the next two years, Sense Engineering prepared bid documents and oversaw a tendering process. The bids it received included both aluminum picket and glass infill designs. A construction budget was developed based on tenders received to replace the existing railings with new aluminum picket railings at a cost of just over \$2 million.

[11] At the annual general meeting on April 28, 2021, a resolution to approve a special levy to raise funds for the project was defeated, with 30 in favour and 35 against. As is not uncommon, there appear to have been a variety of different reasons why people voted against the resolution. According to the current strata council president, Ms. Hardisty, many owners did not like the idea of picket fence-style railings, wanting something with better sightlines and a more modern appeal. Mr. Beach, however, has been of the view since at least that time that the whole project is largely unnecessary.

[12] After the unsuccessful vote at the AGM, the strata council established a railing remediation committee, comprised of eight owners who were not on the strata council, to work with Sense Engineering and the DWV to explore available options.

[13] Mr. Beach's position at the time can be seen from his exchanges of emails at the time with a Ms. Mills of the DWV, who at the time was Manager, Permits and Inspections. In an email of May 18, 2021, Mr. Beach suggested that "many owners" did not agree that there was a need to replace guardrails, to which Ms. Mills responded on May 21:

It is necessary for a Professional Structural Engineer to determine the condition of the guardrails. Should you disagree with Sense Engineering's review of the original installations, you might consult with another Professional Structural Engineer to get a second opinion. Our office will review the assessment of any consultants who have reviewed the guardrails and provide comment on process and next steps.

[14] Mr. Beach also put forward his understanding that the building's railings were "grandfathered", to which Ms. Mills responded:

Buildings and their supporting installations and components are constructed and accepted under the codes, bylaws and regulations at the time of permit application. The Seastrand, I assume, was constructed in compliance with the regulations of the day, and, after final inspection, upgrade work is not required specifically to keep up to date with current codes. Having said this, unauthorized changes to the building may void the original accepted design or original engineer's acceptance of the work. Certain unauthorized changes may also void the non-conforming or "grandfathered" status of an installation. If the installation is rendered unsafe through lack of maintenance and/or unauthorized alterations, this would certainly require an upgrade in some form.

[15] A further inquiry (not in the record before me) prompted the following email of May 31, 2021, from Ms. Mills:

Should you wish to pursue other Engineering opinions or assessments, your Strata Council may obtain a second opinion.

The DWV does not inspect properties to assess maintenance issues or direct whether and how repair issues are to be resolved.

We do however, work with Strata Corporations, Consultants and Management Companies to facilitate the permit and inspection process.

Events Leading up to the November 2021 Design Review Committee Meeting

[16] In June 2021, Sense Engineering was commissioned to do a detailed survey of balcony railing safety. It provided a report dated July 7, 2021, regarding “Outstanding Balcony Railing Safety Issues”, setting out various concerns.

[17] A letter of August 4, 2021, from the DWV was signed by Ms. Mills as well as a Deputy Chief of the Fire Department – presumably indicating that life safety issues were seen to arise. The letter acknowledged receipt of the July 7, 2021 report from Sense Engineering, asserted that it is “imperative” that the Strata Corporation “take action to ensure that the balcony guardrails are maintained, repaired and replaced as necessary”, and required that by August 20, 2021, the Strata Corporation:

Submit a formal letter to the undersigned listing the Strata’s *intention, steps and associated timeline* to replace the balcony guardrails throughout the building.

[Emphasis in original.]

The letter also advised that:

Required Action – Immediate Attention

Notwithstanding the above, it is our expectation that you will take immediate action to ensure that the interim safety measures as directed in the attached report are implemented such that the safety of occupants of the building is maintained until a permanent guardrail replacement strategy has been implemented.

[18] The strata council obtained legal advice advising that it was necessary for the Strata Corporation to comply with the requirements of the DWV, which advice was

shared with owners. As a result, a “Balcony Railing Hazard Notice” was circulated through the building, warning residents of risk in using their balconies.

[19] Later in August 2021, it was decided to bring in a different structural engineering firm, Latera Engineering, in place of Sense Engineering. Latera’s first task was to evaluate various parts of the balcony guardrails – in effect, providing a second opinion as to their condition. Mr. Robinson, the principal of Latera, confirmed in his evidence that after several site visits, his firm agreed with the findings and recommendations of Sense Engineering. In particular, Latera found:

- a) Evidence of corrosion to the existing guardrail members and attachments;
- b) The height of the existing guardrails was less than the required 42 inches specified in the 2018 BC Building Code;
- c) Vertical pickets were spaced too far apart;
- d) Horizontal members had an excessive gap at the bottom;
- e) Existing anchorages of the post feet to the concrete were corroded or underdesigned; and
- f) It would be impractical to attempt to remediate the existing guardrails for compliance with the 2018 BC Building Code.

[20] On September 14, 2021, Latera was retained specifically to design a guardrail replacement. Based on research done to that point by the railing remediation committee, Latera was given specific instructions to consider a stainless steel cable system as well.

[21] An October 20, 2021, memo to owners from the property manager advised that Latera had investigated “the proposed stainless-steel cable and webnet railing design in broad detail”, and further noted that:

... the Railing Remediation Committee/Strata Council will present a thorough overview of each of the three options that are “on-the-table” at the Information Meeting to include pricing for all three options, a prototype of the stainless-

steel cabling/webnet design, a physical sample of picket railings that meet the current code requirements, and a fulsome discussion of the pros and cons of each option that will prove the case for us to proceed with the vertical cabling and webnet installation.

[22] This is the first mention in the documents of a “webnet” feature, which was an optional part of a stainless steel cabling system that would provide opaque fillers between cables. It remained under consideration for the next 18 months.

[23] On November 4, 2021, Latera presented its proposed stainless steel cable railing design to the DWV’s Design Review Committee (“DRC”). Mr. Robinson’s presentation was preceded by a presentation by a DWV staff member about the Ambleside Apartment Development Permit Area guidelines. With respect to the webnet feature, the meeting minutes record Mr. Robinson as suggesting that:

Webnet will be used as a feature only in the corners to add character and contrast to the view. Primary interest for owners is visual; creates a clean, modern look with varied graduated coverage from bottom to top of panel in random pattern.

[24] The design was not approved. The DRC recommended that the Strata Corporation engage with an architect to provide further information on the rationale and design in the context of the overall building look.

Events Leading Up to the Town Hall Meeting

[25] The Strata Corporation retained ATA Architectural Design Ltd. to work with Latera. Latera was also asked to arrange for samples of each of the different balcony systems to be prepared for owner review.

[26] A September 7, 2022 email from Mr. Robinson to the strata manager, Mr. Agnew, noted that the samples were almost ready, and reported on the then-cost estimates: in particular, that aluminum pickets and glass systems would range from \$1 million to \$1.5 million, while a cable guardrail system would cost approximately \$2.2 million. It was clear from at least this point in time that a cable guardrail system would cost significantly more.

[27] On January 31, 2023, Mr. Agnew emailed strata council members advising that he had spoken with Latera about council's frustrations in attempting to finalize costs to take to the owners. He attached the most recent spreadsheet from Latera, then continued to explain:

The above spreadsheet (prepared by Latera) includes budget costs only. What isn't clear is that each of the three parties listed (i.e. Architek, Railcraft and Lindahl) are suppliers and are not considered General Contractors. In completing a typical large project, the consulting engineer will prepare formal documents and specifications, meet with a select number of general contractors, receive their tenders (including use of any suppliers or sub-contractors), review these and present their recommendations to the strata council. This information is then used as part of formalizing a funding resolution presented to the owners.

This is not your typical situation. What you have currently is unusual in the Architek is the sole supplier of the rope / cable style for railings. Drawings and measurements have been done and provided to each of the suppliers to provide their budget costs, but additional costs (i.e. asbestos abatement, concrete repairs, etc.) are not included. You will see those marked off separately. I questioned the 20% mark-up included on the spreadsheet and this appears to be a duplication of these costs.

From what we spoke about, the time line and recommended course of action is as follows:

1. Once the mock-up's are completed; convene a Townhall meeting with the owners and representation from both Architek and Latera in order to present details on the proposed options for the each of the different railing styles being considered. Latera is provided me with their costs to attend this meeting.
2. From the information provided at the Townhall meeting, convene a Special General Meeting providing owners with optional resolutions to choose the preferred change of appearance (i.e. rope / cable, picket, glass?).
3. Once the owners approve the preferred change in appearance, forward this information to Latera and the Design Review Committee (DRC) at the District of West Vancouver for their approval. They will consult with ATA (the architects working on behalf of the Strata) to have this approved.
4. Once the DRC approved the preferred design (as approved by the ownership at the SGM), proceed with completing formal documents and tendering with different general contractors to complete the job. The cost for completing the bid package is \$2,950 (plus taxes) and for completion of the project tender phase is \$6,300.00 (plus taxes).
5. When the formal tenders are received, convene another SGM for owners to approve the funding resolution based on fixed costs and specific to the railing design approved by the owners and the WV DRC.

For the townhall meeting, Bryan at Latera is contacting the suppliers to obtain updated budget costs and provide a revised spreadsheet (similar to the one above).

[Emphasis added.]

It is clear that from at least January 2023, it was contemplated that only one supplier of the stainless steel cable railing system was being considered. However, it was not clear until later who would be doing other work that would be required, including asbestos abatement and concrete repairs.

[28] Models with respect to each of the three design concepts (aluminum picket, glass and stainless steel cable) were placed on display for a period of time in the spring of 2023. Mr. Beach says that the stainless steel cable model that was on display included the webnet feature, and he says he took from this that webnet was going to be part of the design going forward.

[29] On March 14, 2023, a notice was circulated to all Strata Corporation owners advising:

The Strata Council wish to invite all owners to attend an information meeting as of 6:00 pm on Tuesday, March 21, 2023 in the lounge to present additional information obtained as part of researching the different styles and design options for installing new balcony railings.

During this meeting, representatives from Latera Engineering and one of the suppliers, Architek will both be in attendance to provide an overview plus technical details on the three railing styles (i.e. picket, glass and cable guardrail). Mock-ups of the railing styles are currently available to be seen on-site.

The Strata Council has also been provided with a budget range for each type of design, but final costs can only be obtained following the owner's agreement on the preferred style, completion of formal specifications and tendering packages.

The notice then set out a timeline, which indicated that it was contemplated that there would be two special general meetings: one to approve one of the railing choices, the other to approve a funding resolution, between which the Strata Corporation would "complete formal documents and tender to contractors to complete the job".

The Town Hall Meeting

[30] The Town Hall meeting of March 21, 2023, was described by Ms. Lundy, one of the then-strata council members, in her affidavit. She deposed that the lounge was full for the Town Hall meeting on March 21, 2023, with all available seats taken and a few owners standing at the back of the room. She estimated that there were at least 55 people in attendance. Mr. Beach did not attend.

[31] Mr. Robinson of Latera had prepared a PowerPoint for his presentation, and his PowerPoint was in evidence. In a section titled “Guardrail Replacement Rationale”, Mr. Robinson had slides dealing with:

- a) Current guardrail non-compliance with the 2018 BC Building Code;
- b) Existing guardrail deterioration, including corroded and missing top rail fasteners and corroded anchors into the concrete;
- c) Increased balcony floor levels on the approximately 60% of units in which an enclosure had been constructed, which reduced the existing guardrail height; and
- d) Inconsistent panel placement, giving rise to an inconsistent look to the building.

[32] A section titled “Guardrail Replacement Options” contained analysis of option 1 (Glass Guardrail System), option 2 (Aluminum Picket System) and option 3 (Stainless Steel Cable Guardrail). With respect to option 3, the slide notes:

Pros:

- Provides clean lines and clear views
- Easily maintained
- Combined with a Webnet, this will provide character features that DRC is looking for

Cons:

- Higher cost

[33] The PowerPoint included the following price comparison (based on budget pricing):

- Stainless Steel Cable System: 2.8 M
- Aluminum Picket System: 1.5 M
- Glass Guardrail System: 1.6 M

These budget prices included not only the supply and installation of the new railing system, but also estimates of other necessary costs such as removal of the old railings, asbestos abatement and concrete repairs.

[34] The PowerPoint identified stainless steel cable guardrails as the preferred option of Latera, with the following set out as the “Rationale”:

- High visibility compared with clouding glass
- Minimal maintenance
- Classic modern look
- Addresses architectural and visual aspects outlined by DRC
- In character with building and location

[35] The PowerPoint listed the following on a slide titled “Benefits to Owners”:

- Code compliant guard
- Additional safety to owners and children
- Designed to accommodate future enclosure installations
- Thin profile for minimal obstruction to views

[36] Finally, on a slide titled “Next Steps”, the following is listed:

Owners to affirm selection of type of Railing system

Architek, ATA, to finalize the renderings and present to West Vancouver DRC

Submit for Building Permit

As the Building Permit process is proceeding, the project will be put to tender to obtain a fixed fee

Owners meet to determine funding of guardrail replacement project

Construction proceeds

[37] With respect to his presentation, Mr. Robinson deposed that:

It was my understanding that the focus of the 2023 Town Hall Meeting was for owners to reach a consensus on their choice of guardrail design. I described the benefits of the stainless steel cable system over others, but I also made it clear that the stainless steel cable system was significantly more costly than the other options. I was under the impression that there was a general interest in the stainless steel cable system among owners because they asked many questions about the details of the design.

[38] With respect to choice of contractor, he deposed:

Prior to the 2023 Town Hall Meeting, I conducted research on the suppliers of stainless steel cable systems. I found that only a limited number of suppliers could provide products similar to those of Architek in the residential market, but they were for projects of smaller scales than the one at Seastrand. The guardrails also had to be customized based on the design of Seastrand's building. As a result, Architek's member company, Rope & Cable Canada, the exclusive distributor for the Jakob Rope Systems in Canada, appeared to be the only qualified supplier for the stainless steel cable system designed for Seastrand. Latera had worked with Rope & Cable on other projects before, so Latera was familiar with the quality of Rope & Cable's products and work. I personally did not know of any other contractors that had experience with installing similar products. Therefore, I communicated to owners at the 2023 Town Hall Meeting that Architek was the only qualified contractor/supplier if owners chose the stainless steel cable system.

[39] With respect to the latter point, Ms. Lundy deposed that at the Town Hall meeting:

... Mr. Robinson explained that, if owners agreed to proceed with the stainless steel vertical cable system, multiple tenders would not be sought because the contractor/supplier for the stainless steel vertical cable system (i.e. Architek) was the leading local contractor/supplier. Relying on Latera's professional opinion, the Strata Council did not perceive there to be other reasonable or qualified local contractors/suppliers to bid on the work. This led to a discussion about whether Architek would be fair in providing prices, given they would be the only contractor/supplier. I recall the owners were advised by a representative of Architek that this would be an important project for Architek, and that Architek intended to use this project for potential future marketing. Although owners discussed a single supplier for the stainless steel vertical cable system, I do not recall owners discussing whether or not the Strata Corporation should seek competitive bids from general contractors for work that was incidental to the railing fabrication and installation work, such as demolition, scaffolding or miscellaneous repairs.

[40] A straw poll was taken, which showed that a majority supported the stainless steel vertical cable design system. Ms. Hardisty – who became strata council president the next year – said that most owners who were there expressed a dislike

of the webnet concept, commenting that it was both too busy and also added to the cost. As well, she said there was discussion of eliminating a third horizontal railing just below the top of the guardrail. She said that the view of the majority was that just having two horizontal rails was more aesthetically pleasing, would save money, and would weigh less.

[41] Ms. Hardisty also said that it was made clear at this meeting that the existing transite asbestos panels would not be part of the stainless steel vertical cable system.

Events Leading Up to the First SGM

[42] At some point after the Town Hall meeting, Mr. Beach circulated information about interest from a company he was familiar with, Riverside Ironworks, wanting to bid on railing replacement. On April 5, 2023, Mr. Agnew sent him an email, noting the information that Mr. Beach had been circulating, and commenting that:

... we also understand you were unable to attend the March 21, 2023, townhall – information meeting. As outlined in the attached notice, please note that there are multiple stages that must be completed prior to seeking tenders.

In short, and upon the owners providing their direction and approval on a particular railing design through a convened Special General Meeting, the District of West Vancouver Design Review Committee will be requested to endorse the owner approved design. Upon receiving their support of the chosen design, the engineers on record will proceed to complete the required specifications and documents and compile a formal bid package.

As part of completing the formal bid package, a list of contractors / suppliers will be compiled in order to solicit tenders as part of the formal RFP procedure. Your suggested reference to Riverside Ironworks can be included at that time

[43] On April 6, 2023, the strata council wrote to owners (including Mr. Beach), summarizing the Town Hall meeting, attaching the PowerPoint presentation from Latera, and noting the upcoming steps as set out in the presentation.

[44] Notice was given of a special general meeting scheduled for 7:00 p.m. on May 30, 2023.

[45] On April 21, 2023, Mr. Agnew wrote again to Mr. Beach, responding to further communications that:

All costs obtained to date are estimated on a specific design. Upon the owners approving the design and the DWV providing their approval on the proposed design, specification for the approved style and tender documents will be completed and these will be forwarded to those contractors capable of addressing this job. At that point, the final budget resolution can be prepared for owner approval.

A formal tendering process cannot be implemented until these steps have been completed. The contractors being suggested can be included on the tender proposal list at that time.

[46] On the evening of May 22, 2023, Mr. Beach wrote to Mr. Agnew, noting that he had provided 12 pages of handwritten questions and comments in a notebook in the lounge, and asking for answers to them. Mr. Agnew responded on May 30 that he had just returned from holiday and that the questions and comments could be dealt with at the special general meeting that evening.

The 2023 SGM

[47] The notice of meeting provided for three resolutions: one to approve the stainless steel cable design, the second to approve the aluminum picket design, and the third to approve a further expenditure on finalizing and seeking approval of the design. Mr. Agnew said that he drafted the third resolution in a generic way with the view that it could be voted on regardless of whether the first or the second resolution was successful.

[48] The minutes of the meeting record a “question and answer” discussion whereby various aspects of the project and each design were reviewed. The summary of those discussions includes the following:

- a) In response to an owner query regarding the requirement to replace all of the baseplates / fasteners and concrete repairs, the engineer advised that for reasons of age and liability, it was critical to replace all of the railing post baseplates. In addition, it was understood that owners will be impacted by noise due to concrete repairs, the engineer advised that from the survey completed, balcony concrete appeared to be in good condition.

- b) In response to the possibility of simplifying the railing design, discussion ensued regarding the changes made to the “stainless steel” cable railing to reduce the thickness of the railing directly below the handrail to make it a square section with the top and bottom railing being the same width.
- c) Owners were provided information on the height of the railing and requirement to ensure continuity horizontally and ensure code requirements were met for height.
- ...
- g) Council confirmed the stainless-steel vertical cable system would not include the “web net” feature.
- h) In response to tendering each job, it was confirmed that based on final authorization of the approved design being provided by the District of West Vancouver, specifications would be completed along with tendering of the job. Discussion ensued on references for the “Rope and Cable Canada” products. Owners were referred to one property in downtown Vancouver plus their web site “ropeandcable.com” for gallery photos.

[49] With respect to item (g), Mr. Beach says that this shows a “unilateral decision by the Strata Council” to eliminate the webnet. He says that he was not consulted about it and did not consent to it. He says that this is something that should have been specifically reflected in the wording of the resolution, not just a part of the discussion. As noted above, Ms. Hardisty’s evidence was that Latera removed the webnet feature in response to owner feedback at the Town Hall meeting.

[50] With respect to item (h), Mr. Beach points to this as reflecting a common understanding that every aspect of the project would be tendered and multiple bids obtained. Ms. Lundy, who was the strata council member responsible for the balcony project at the time, deposed that:

It was my understanding that although the Strata Corporation was not seeking multiple tenders for the stainless steel vertical cable system, which was explained at the 2023 Town Hall Meeting, a tender package was still required because the Strata Council had not yet decided whether to hire a general contractor for work outside the supply and installation of the railings by Architek, such as asbestos abatement, concrete repairs and scaffolding. Moreover, according to Latera, it was necessary or convenient to prepare a tender package with design specifications regardless of the Strata Corporation’s decision to tender the project to more than one general contractor, or to simply hire Architek for all the work.

[51] The minutes note that after the question and answer session, the guests were excused. With respect to the first resolution, the minutes record that:

8. APPROVAL OF 3/4 VOTE RESOLUTIONS #1-#3

RATIONALE:

WHEREAS pursuant to section 72 of the Strata Property Act, the Owners, Strata Plan VR 840, Seastrand, are obligated to “repair and maintain common property and common assets”; and as such, the strata corporation have sought assistance from independent engineering services, completed a “Balcony Guard Evaluation / Design Brief and Caulking Review Report in August 2017” which confirmed an increasing concern related to the building liability exposure due to balcony railings which do not meet requirements of the BC Building Code and require attention to correct safety risks due to balconies with openings between the pickets in excess of 3.9 inches, a guard height less than 42 inches, flexible railings due to removal of braces and / or rusted base plate fasteners; and

WHEREAS following a review of the report with the consulting engineers, and subsequent to the owners defeating the proposed funding resolution at the Annual General Meeting convened on April 28, 2021, the District of West Vancouver was approached by an owner with respect to the balcony evaluation report and subsequently requested information related to the condition of the railing; and

WHEREAS the Strata Council and the Railing Replacement Committee received directions from the District of West Vancouver Permits and Inspections along with instructions which restricted residents on using their balconies due to known liability exposure; and

WHEREAS research has been ongoing obtaining design options for owners’ consideration together with estimated construction costs required for preparing a detailed funding resolution for installing a stainless-steel vertical cable system or optionally a picket design railing system; and

WHEREAS a detailed funding resolution, which will include construction costs, project management engineering costs, administration costs, permits, contingencies, etc., cannot be finalized until owners approve a specific railing design; followed by a review and endorsement by the West Vancouver Design Railing Committee and completion of a formal bid package and receipt of tenders; and

WHEREAS upon preparation of a final funding resolution, including funds allocated from the Contingency Reserve Fund, present this to the ownership for approval.

3/4 VOTE RESOLUTION #1 – SIGNIFICANT CHANGE IN USE OR APPEARANCE OF COMMON PROPERTY

WHEREAS Section 71 of the Strata Property Act states that a strata corporation must not make a significant change in the use or appearance of common property or land that is a common asset unless the change is approved by a resolution passed by a 3/4 vote at an Annual or Special General Meeting; and

WHEREAS the Owners, Strata Plan VR 840, Seastrand, wish to remove the existing balcony railings and install new railings based on installation of the stainless-steel vertical cable system.

It was MOVED / SECONDED (#906 / #708) to approve 3/4 vote resolution #1, as presented.

BE IT THEREFORE RESOLVED as a 3/4 Vote Resolution of the Owners, Strata Plan VR 840, Seastrand (the “Strata Corporation”), to remove the existing railing design and install new railings based on use of the stainless-steel vertical cable system.

...

Following an owner request for voting by “secret” ballot, unit owner #906 and #602 volunteered as ballot scrutineers. Further to collection and count of all voting ballots, the motion was CARRIED (77 in favour, 7 opposed, 1 abstention)

[52] The second resolution – to approve the aluminum picket railings – became moot as a result of the approval of the first resolution. The meeting moved on to the third resolution, with respect to which the minutes record:

**3/4 VOTE RESOLUTION #3 – CONTINGENCY RESERVE FUND EXPENSE
– DWV DESIGN APPROVAL AND TENDERING**

WHEREAS further to the Owners, Strata Plan VR 840, Seastrand, approving a specific railing design; and

WHEREAS details related to the preferred design will be forwarded to the District of West Vancouver Design Review Committee for acceptance; and

WHEREAS assistance will be required from consultants to submit the required documentation to the Design Review Committee, prepare required specifications, complete a formal tender package and seek tenders for inclusion and preparation of the final funding resolution;

It was MOVED / SECONDED (#1402 / #505) to approve 3/4 vote resolution #3, as presented.

BE IT THEREFORE RESOLVED as a 3/4 vote resolution of the Owners, Strata Plan VR 840, Seastrand (the “Strata Corporation”), that a sum of money not exceeding \$25,000.00 (including tax and all related expenses), be spent for retaining professional services to liaison with the District of West Vancouver Design Review Committee, prepare tender specifications and obtain tenders for completion of the railing replacement project based on the owner approved design selection.

Following a brief discussion, the question was then called. CARRIED (82 in favour, 3 opposed, 0 abstention).

After the 2023 SGM

[53] Mr. Beach continued to exchange emails with Mr. Agnew. On June 12, 2023, he posed a number of questions about how much of the money would come from the contingency reserve fund. Mr. Agnew responded that it would not be known until later:

Regarding the funding model that will be used for raising the required capital to complete the railing job, the Strata Council will be reviewing the formal tenders further to the DWV approving the owner approved design, completion of the specifications and receipt of the tenders. At that time, it is anticipate at the funding model will seek owner approval to use funds from the CRF plus raise the balance by levy. The final amounts of each cannot be determined until receipt of the finalized tenders and determining the total funding requirement.

[54] Mr. Beach characterizes this as a representation that multiple bids would be sought and obtained even with respect to the work that it had been previously anticipated that Architek / Rope & Cable would do. Mr. Agnew disagreed, saying that he was referring to the tenders the strata council may potentially receive from general contractors, with Architek as the sole supplier and installer of the vertical stainless steel cable system.

[55] That same day, Latera submitted its proposal for contract management services for the tender phase of the project. In the section dealing with Tender, it stated:

Tender:

a) Latera, in coordination with the Client, would select a minimum of 3 contractors to bid on the proposed repairs. We would conduct a site visit with the bidders so that they are familiar with the work to be performed when assembling their bids. A CCDC-2 contract would apply.

b) Latera would collect and summarize the contractor bids for the Client to review.

i. Note: It is assumed that all bid documents would be distributed electronically.

Note: It is our understanding that the Client has selected the vertical stainless steel cable design of Rope and Cable Canada for their guardrails. The tender package will detail that supply and installation of the guardrail will be by Rope and Cable Canada; this supply/installation will be included within the General Contractor's Schedule of Values.

[56] Mr. Robinson explained that:

At the time when Latera prepared the Tender Proposal, I had not developed a final opinion on whether it would be necessary to tender the project to multiple general contractors for incidental work outside installation, so I left that option open for the Strata Corporation. Regardless of the number of bidders Latera and the Strata Council ended up selecting, a complete tender package was necessary because Latera must still provide sufficient details and instructions to the contractor that the Strata Corporation eventually decided to retain to carry out the work, including instructions to Rope & Cable for installation.

[57] Latera's proposal was approved by the strata council at its June 19, 2023 meeting.

[58] A revised design proposal was presented to the DRC on November 16, 2023, and approved. On December 6, 2023, the DWV's Planning Department approved the proposal for new guardrails, subject to the Strata Corporation obtaining a building permit. The building permit application was submitted in January 2024.

[59] Mr. Robinson deposed that:

14. Shortly after the DRC's approval, I had a discussion with the Strata Corporation's strata manager, Mr. Tom Agnew, about the lack of benefit to the Strata Corporation for tendering to multiple general contractors. Latera was of the opinion that tendering to multiple general contractors was unlikely to result in better pricing for the Strata Corporation. Based on Latera's experience with the construction industry, general contractors typically mark up the costs of their sub-trades. Since Rope & Cable had been selected to supply and install the guardrails, which is the primary cost of the project, it would not benefit the Strata Corporation to have a third party general contractor to mark up the costs of incidental work, such as providing site safety and access. Furthermore, Latera had assessed the concrete remediation required for the project, and was of the opinion that concrete remediation was insignificant in this case, so it would not benefit the Strata Corporation to hire a third party general contractor to coordinate additional sub-trades for the project.

15. Therefore, Latera suggested to the Strata Corporation that the Council could review an all-inclusive proposal from Architek first and then decide whether additional general contractors should be selected to bid on the project. If the total fee in Architek's proposal was close to Latera's budget estimate for the stainless steel cable system presented to owners at the 2023 Town Hall Meeting, then it would be unlikely to benefit the Strata Corporation to proceed with tendering any of the incidental work to other contractors.

[60] Mr. Agnew's recollection is that:

Sometime in late 2023 or early 2024, the Strata Council started leaning towards choosing Architek as the general contractor for the railing replacement project because using Architek would provide cost savings for the Strata Corporation, amongst other reasons. Architek eventually provided a final proposal to the Strata Corporation to complete the railing replacement project, and the Strata Corporation did not seek proposals from other general contractors.

[61] On February 2, 2024, a Mr. Reilly from Latera emailed Mr. Agnew with a proposal from Architek that included it acting as prime contractor, with it being responsible for its own work of supplying and installing the new guardrail system, as well as the following additional work:

- a) Project & subtrade management
- b) Existing guardrail removal & disposal
- c) Access, site preparation & mobilization
- d) Concrete repairs & slab preparation
- e) Hazardous materials abatement

[62] Architek's proposal included alternative prices depending on method of access (i.e. whether the work was to be done with scaffolding or with rope access and swing stage). As Mr. Robinson noted in his affidavit:

Depending on the method of access chosen by the Strata Corporation, the final budget estimate was approximately \$2.7 million or \$3 million, which turned out to be close to the \$2.8 million estimate Latera provided to owners at the 2023 Town Hall Meeting.

[63] On Saturday, March 30, 2024, Mr. Beach and another owner, Mr. Alldridge, sent a six-page letter to the strata council raising a number of concerns about the railing replacement project based on comments that had been made at the annual general meeting, earlier in March 2024. The letter raised concerns about a comment in the minutes that "pricing for installation of the 'rope & cable' railing system had been finalized", and asked what bidding process had taken place to allow the pricing

to be finalized. The letter went on to ask that the strata council take steps to rescind the selection of the stainless steel railing design option approved in 2023, and instead that the Strata Corporation seek competitive bids from prospective suppliers and contractors for various alternative designs. The letter requested a meeting with the strata council. Mr. Beach says that the strata council did not arrange a meeting with him in response to this request, but rather suggested he could raise his concerns at the upcoming special general meeting.

[64] Mr. Agnew responded to this letter by way of an email sent at 9:43 a.m. on April 2, 2024, saying:

To clarify, at the May 30, 2023 Special General Meeting of the owners, two design options were presented for owners to approve the change in common property appearance. Based on the ownership approving the “stainless-steel vertical cable system”, a vote was not taken on approving the picket design. As the cable system is designed, supplied and installed by one contractor who specializes in this system, the typical tender process will not occur. The engineer has finalized specifications along with the architect and the contractor has finalized their costs for removing the old railing system and installing the new system. This information is currently being reviewed by the strata council and this will form part of the required funding resolution which will be presented for owner approval at an upcoming Special General Meeting as outlined at the March 7, 2024 Annual General Meeting (minutes attached).

[65] Mr. Beach now clearly understood that it was not intended for the Strata Corporation to obtain multiple bids for any part of the work. He deposed that:

I was unable to comprehend how Mr. Agnew could have reasonably advised me that the typical tender process (of soliciting tenders and considering them) would not occur (i.e. – was being abandoned), in view of the prior representations in Strata documents cited herein, and in his emails to me as aforesaid, reflecting that it would occur. I was also most perplexed as to how abandonment of the typical tender process could possibly be justified on the basis that “the cable system is designed, supplied and installed by one contractor who specializes in this system”, when there was nothing particularly special about the system that meant that other contractors could not provide it equally well.

[66] Mr. Beach sent an email to Mr. Agnew the next morning (April 3) attaching a four-page letter that raised concerns about competitive bidding, as well as concerns

about corrosion from sea air and the lack of anything to replace the asbestos panels, which he describes as “privacy panels”. His letter sought a written response.

[67] On the afternoon of April 3, 2024, Mr. Agnew emailed Mr. Robinson, noting that traditionally a design package would be submitted to selected capable service providers, and seeking Mr. Robinson’s confirmation of his advice with respect to whether other tenders should be sought. Mr. Robinson replied at 5:25 p.m. that day that:

It is my opinion that there are no other firms that could be able to provide comparable tenders to supply and install the stainless steel vertical cable railings for this project.

There are no other guardrail manufacturing firms in the lower mainland that have a comparable product that would supply and install in the same manner as Architek / Rope and Cable.

If we go the general contractor (GC) approach and put the project to tender, the GC would have to search for a supplier or use the Architek / Rope and Cable system for supply only and then would be installed by the GC. The GC would typically mark-up the price that they would get from the supplier only increasing the cost to the Strata.

Alternatively, the GC would have to go to a custom fabrication shop to produce the guardrail system at custom fabrication rates and then, in turn, mark up those materials. There would be no cost savings to the Strata to go to a custom fabrication shop.

The last alternative would be to find an alternate guardrail manufacturer that makes a comparable product for supply only. I have found none. There are supply only horizontal and vertical cable systems for residential houses that are intended for the DIY market. These would not be customizable for our unique attachment requirements where we only have 4” of protruding concrete to secure to. My experience with these systems is that they often are not code compliant and can get away with it because the small house renovations tend not to have engineers or go through the building permit process. This is not the type of product that we would want at the Seastrand nor would I endorse them as the engineer of record.

Latera has worked with Rope and Cable to address the custom attachment requirements and the required cable tension, size and spacing to provide a code compliant system that meets the esthetic requirements of the Strata. This would seem to me to be the most prudent approach.

[68] The strata council met later that day (April 3) to finalize its recommendation for a special general meeting on April 30, 2024. Council chose to accept the advice of Latera and move forward with the Architek proposal. The minutes record that:

Council proceeded to consider options for funding the project including use of the Contingency Reserve Funds (CRF) and by way of a special levy. Following discussion, it was MOVED/SECONDED to convene a Special General Meeting (SGM) of the Owners on Tuesday, April 30, 2024 to seek approval to expend a maximum of \$3 Million for the purpose of removing the existing railing system and installing new custom made stainless steel vertical cable system railing with said funds to be raised by way of \$1 Million from the CRF and raising \$2M by way of special levy pro-rated over seven consecutive months. CARRIED

Based on this direction, it was also agreed to issue a letter of intent to Rope & Cable Canada and Architek Holdings Inc. to confirm that subject to the owners approving the required funding resolution at the April 30 SGM, the supplier and installer would be retained to complete this project.

It was also agreed to invite representatives from Latera Engineering to attend the April 30 SGM.

Events Leading Up to the 2024 SGM

[69] Although formal notice of the 2024 special general meeting was not given until April 9, 2024, it seems clear that Mr. Beach was aware of what was being proposed. On April 7, 2024, he prepared a document titled “Aide Memoire” for circulation to the other owners. It included a summary of bids that had been obtained in 2019 and 2021 with respect to the aluminum picket and glass designs, noting that the bid from one of the earlier contractors went up significantly over the two years. The document concluded:

I am also most concerned that at this time it has been indicated that there will be no competitive bids sought on the stainless steel railing design for which a proposal has been received from the Rope and Cable Canada company. For that reason, I urge all owners to vote against allocating funds for the project, and to protest the selection of Rope & Cable Canada. A fully specified railing removal and replacement tender call should be advertised, and no funds should be allocated prior to receipt of tenders from qualified contractors, for whatever designs they choose to propose. Owners should be able to vote to select a contractor based on price, design and contractor capability.

[70] Mr. Beach decided to seek out alternative bids himself. On April 9, 2024, Mr. Agnew received an email from a company called “Restorers Group”, stating:

I received an email from Colin Beach inquiring if we would be interested in providing a competitive bid for the railing replacement project at Seastrand. Yes, we would definitely be interested in receiving the specifications and drawings for this project so we can provide a competitive bid.

[71] Mr. Agnew responded that “At this time the direction being taken is that alternate tenders are not being sought.”

[72] On April 10, 2024, the day after notice was given of the 2024 SGM, Mr. Beach and two other owners (Messrs. Alldridge and Burritt) formed an *ad hoc* committee which they named the “Seastrand Homeowners’ Association Development Oversight Working Group”, for which they adopted the acronym “SHADOW”. That SHADOW committee issued some seven memoranda from April 10 to April 17, 2024, all of which were distributed to owners through being either placed in mail slots or slipped under doors.

[73] SHADOW Memo #1 explained that:

The S.H.A.D.O.W. COMMITTEE HAS BEEN FORMED as a result of dissatisfaction with the process that has been followed and is being pursued with respect to the removal and replacement of the balcony rail guards on the Seastrand building ...

[74] It noted that approval was being sought to spend up to \$3 million, with no competing bids having been received, which the memo argued was “anathema to basic principles of protecting all owners’ financial interests”. It suggested that, instead, the Strata Corporation should publish an advertisement to solicit bids in a major daily newspaper, a construction trade publication and the North Shore News, that any contractor who wished to bid should be given a full set of measurements and allowed to propose “any railing system of their choice which meets the B.C. Building Code”, and that after that, owners could vote “with the supplier receiving the most votes being awarded a contract”.

[75] SHADOW Memo #2, dated April 12, 2024, noted that strata council minutes from June 19, 2023, had referenced “tenders” being sought, and asserted that the explanation that had been given for not doing so was “unsatisfactory”.

[76] SHADOW Memo #3, also dated April 12, 2024, raised concerns about the risk of corrosion to steel systems exposed to marine air.

[77] SHADOW Memo #4, dated April 15, 2024, asserted that Wynford (the strata management company) had not supplied a reasonable explanation as to why the typical tender process would not occur.

[78] SHADOW Memo #5, also dated April 15, 2024, proposed that the 2024 SGM should instead adopt different resolutions, which would:

- a) Rescind the 2023 AGM's approval of the stainless steel design;
- b) Publicly advertise a bid for contractors to submit a proposal for a railing design of their choice; and
- c) Make full bids available to all owners to review prior to a new vote.

[79] SHADOW Memo #6, also dated April 15, 2024, called for the strata council to circulate the full tender package to all owners.

[80] SHADOW memo #7, dated April 17, 2024, again asked why the Strata Corporation should spend \$3 million when Code-compliant railings could be obtained for much less money, and invited owners to provide their proxies to Mr. Beach or Mr. Burritt.

[81] On April 16, 2024, Mr. Beach exchanged emails with a metal fabrication company, to which he had sent a photograph of the mock-up of the stainless steel cable railing system that Architek had provided for owners to view in 2023. The company had advised him that it would respond upon receipt of a tender package. Mr. Beach asked whether the company was “able to provide a stainless steel railing system, with vertical cables, such as the one pictured”, to which the company said that it would be “able to fabricate and install the railing with the cables in”, and again asked for specifications and drawings.

[82] On April 22, 2024, Mr. Agnew responded to a freedom of information request from Mr. Beach with the structural drawings submitted to the DRC and for purposes of obtaining the building permits.

[83] On April 23, 2024, Mr. Beach emailed Mr. Agnew asking for a written response to his four-page letter of April 3, 2024. Mr. Agnew responded that “the details related to your queries will be expanded upon with the owners in attendance at the scheduled Special General Meeting”.

[84] On April 25, 2024, Mr. Beach circulated a further one-page document to owners, titled “Why vote against the \$3,000,000 funding Resolution #2 to replace Seastrand’s aluminum railing system with a stainless steel cable railing system, at the Special General Meeting of Owners on April 30, 2024”. The document asserted that:

- a) The system would be extremely expensive, and that although owners had already voted for it, when they did so, they were not “reliably informed of the cost”;
- b) No competing tenders were sought, and there had not been a “reasonable explanation” for this;
- c) Competing bids should be solicited; and
- d) An aluminum railing system would be far less expensive, and could be funded entirely from the contingency reserve fund without the need for a special levy.

[85] On April 26, 2024, Mr. Beach circulated a further document to owners. It began by inviting owners to give their proxies to Mr. Beach so that he could vote against the resolution. It then went on to summarize his communications with three contractors who expressed a willingness to submit a bid on a stainless steel system, and also noted two others who had previously submitted bids on aluminum or glass railing systems.

[86] On April 27, 2024, Mr. Beach emailed a company in Shenzhen, China, that he understood to be an established manufacturer of various types of balcony railings. A company representative responded to him the same day saying that this type of

cable railing system was “no problem” for them to supply. Early in the day on April 30, 2024 – a few hours prior to the 2024 SGM – he received a quote from the company for fabrication of a similar railing system at a cost of US \$115,000.

[87] On April 28, 2024, Ms. Hardisty, the strata council president, circulated an information sheet on behalf of the strata council to explain why it was recommending the Architek proposal. As with the SHADOW memoranda, it was placed in owners’ mail slots or slid under doors, as well as being posted in a few locations around the building.

[88] The document, which commented that it was being supplied in consultation with Latera and Architek, asserted that the stainless steel that was to be used would not pit, stain or tarnish in a marine environment. It noted the experience and reputation of the manufacturer, then went on to say:

It is a superior product – this is why we are spending the money on it – the total cost estimated at the Information meeting March 21/23 was \$2.8 million and reviewed at the May 30/23 SGM before the 91% vote in favour of the stainless steel vertical cable system. The current resolution is for a sum of money not exceeding \$3 million including tax and all related expenses – remarkably close to the estimate. ...

We not only need the BEST product to withstand our marine environment, our engineer of record [Latera] has found NO ALTERNATE GUARDRAIL MANUFACTURER in the lower mainland that would supply and install in the same manner as Architek Rope & Cable, or that makes a comparable product that would be customizable for our unique attachment requirements where we have only 4 inches of protruding concrete to secure to. Mr. Robinson will be happy to expand on this at our SGM.

Our new railings will enhance our building, bring it to code, create railing safety, improve our views, and enhance the sale of our units when the time comes. We will never have this opportunity again without spending even more money.

Now is the time to pull together, to put our energy into something we know we have to do, with a superior product that uses this specific marine grade of stainless steel cable, with many installations worldwide and with the long term history of manufacturing to back it up. Nobody else in Canada can claim that.

The 2024 SGM

[89] The 2024 SGM was held at 7:00 p.m. on Tuesday, April 30, 2024, at the Seastrand lounge. 49 strata lots were represented in person and 43 strata lots were

represented by proxy. Mr. Agnew was there on behalf of the strata manager, and Mr. Robinson (the engineer) and Ms. Terrett (the architect) attended as guests.

[90] Ms. Hardisty chaired the meeting. The minutes note that at upon calling the meeting to order, she commented:

Owners were further requested that based on recent events and escalating tensions due to this particular resolution, the goal was set to restoring the harmony, goodwill and community enjoyment for everyone, starting by being respectful of your neighbours and the results of the final vote count.

[91] A preliminary resolution regarding amendments to the swimming pool rules was passed unanimously, and the meeting turned to the following resolution:

3/4 VOTE RESOLUTION #2 – SPECIAL LEVY & CONTINGENCY RESERVE FUND EXPENSE & REPLACEMENT OF BUILDING RAILINGS

Rationale to 3/4 Vote Resolution #2:

WHEREAS pursuant to section 72 of the Strata Property Act, the Owners, Strata Plan VR 840, Seastrand, are obligated to “repair and maintain common property and common assets”; and as such, the strata corporation have sought assistance from independent engineering services, completed a “Balcony Guard Evaluation / Design Brief and Caulking Review Report in August 2017” which confirmed an increasing concern related to the building liability exposure due to balcony railings which do not meet requirements of the BC Building Code and require attention to correct safety risks due to balconies with opening between the pickets in excess of 3.9 inches, a guard height less than 42 inches, flexible railings due to removal of braces and / or rusted base plate fasteners; and

WHEREAS following a review of the report with the consulting engineers, and subsequent to the owners defeating the proposed funding resolution at the Annual General Meeting on April 28, 2021, the District of West Vancouver was approached by an owner with respect to the Balcony Evaluation Report and subsequently requested information related to the condition of the railing; and

WHEREAS the Strata Council received direction from the District of West Vancouver Permits and Inspections restricting residents on using their balconies due to known liability exposure; and

WHEREAS further to researching design options for owners’ consideration and owner approval being provided at the May 30, 2023 Special General Meeting to proceed with the stainless-steel vertical cable system design; and

WHEREAS bas on this, a total funding budget has been prepared for completing this project and including the following:

Expenses (including Taxes)

Construction Fee \$2,591,190

Project Manager / Engineering Services	\$73,500
Building Permit Fee	\$30,439
Administration Fee	40,950
Contingency	262,500
Total	\$2,998,579

It was MOVED / SECONDED (#604 / #602) to approve 3/4 vote resolution #2, as presented.

BE IT THEREFORE RESOLVED as a 3/4 vote resolution of the Owners, Strata Plan VR 840, Seastrand (the "Strata Corporation"), that a sum of money not exceeding \$3,000,000.00 (including tax and all related expenses), be raised and spent for the purpose of to authorize a railing replacement project using the stainless-steel vertical cabling system, such expenditure to be funded and expensed as follows:

- a) \$2,000,000.00 by way of a special levy upon the registered owners in proportion to unit entitlement of their respective strata lots, for the amount shown opposite the strata lot on Schedule "A" attached hereto; funds raised by way of special levy will be utilized first; and
- b) up to \$1,000,000.00 to be funded from the Contingency Reserve Fund

...

[92] The resolution continued with details as to when and how funds would be payable and what was to happen if not all of the funds were used. As well, the resolution permitted an owner, "as a matter of financial convenience only", to pay the special levy in seven equal monthly instalments from July 2024 to January 2025.

[93] The minutes record that Ms. Lundy provided opening remarks summarizing the history of the project, followed by the two guests providing additional details including "the process applied in obtaining the fixed contractor costs". They note that the floor was then opened to owner questions and discussion.

[94] Ms. Hardisty's evidence is that Mr. Beach had previously asked for an opportunity to address the meeting, and that at this point in the meeting, he gave remarks that lasted about 20 minutes.

[95] The minutes record the following:

- Owners were provided information of the process applied for obtaining the fixed cost quotation which was included in the funding budget. It was noted that whereby the contractor, Rope & Cable Canada, a member of the Architek Group of Companies, was the exclusive distributor of the

proposed product as distributed by Jakob Rope Systems, this unique situation resulted in cost savings. On the basis of seeking costs from optional third-party general contractors, it was noted that costs would be escalated based on the general contractors' "mark-up" and requirement to obtain this particular product from the supplier. Due to these costs savings plus the recommended use of a AISI 316 marine grade stainless steel to protect against the marine environment, and the requirement for a custom solution due to the building unique attachment requirement where there is 4 inches of protruding concrete to secure too, additional tenders were not pursued. Further to an in-depth discussion regarding the option to obtain additional quotations and based on the direction provided by owner majority at this meeting, it was understood that further tenders would not be sought and to proceed with the tender as received to date.

- In order to address concrete restoration, an allowance was included in the contractors fixed price plus additional funds were included in the funding budget as a contingency allowance.
- Information was provided on different types and composition of aluminium and stainless-steel products and the benefits of the stainless steel.
- The engineer provided details on the thickness of the balcony slabs and observations noting a lack of delamination.
- In response to an owner query regarding the guard height extension which was shown as part of the "mock up" sample railing, the engineer advised that this was optional and based on owner input provided at the March 21, 2023 information meeting, this feature was removed from the final design as approved at the May 30, 2023 Special General Meeting.
- In response to a query regarding removing the "privacy" panels, it was confirmed these were part of guard rail system and it was required to remove these as part of the overall job and were not being replaced by the "web net" product as per owner direction provided at the March 21, 2023 information meeting and reiterated at the May 30, 2023 Special General Meeting.
- With respect to obtaining the building permit, it was suggested this would be available in July 2024.
- Further to an owner query regarding possible removal of floor coverings previously installed as an "owner upgrade / improvement", to the exterior balcony, the strata manager confirmed that replacement of any upgrades would remain the responsibility of the unit owner. Regardless, the contractor would also be advised to take all reasonable steps to protect the floor covering when removing and replacing the existing railing system.

There being no further questions for the guests, thanks were extended and they were excused from the meeting at 8:35 pm. Following a brief discussion, the question was then called and the vote taken by secret ballot with unit owners #301 and #602 volunteering to act as scrutineers of the vote count.

Following reconciliation of the ballot count, the vote count confirmed the motion was CARRIED (70 in favour, 20 opposed, 2 abstentions)

[96] The various matters discussed were confirmed by affidavits from both Ms. Hardisty and Mr. Agnew.

[97] Mr. Beach's evidence was that at this meeting, he "did not receive a satisfactory answer from Wynford or the Strata VR840 Council as to why a funding resolution was to be voted on when formal tenders had not been solicited or received" and as to "why the competitive bidding process had been abandoned". He said that during the meeting, he handed Mr. Robinson a copy of the quotation he had received that same day from the company in Shenzhen, China. Mr. Beach said his impression was that Mr. Robinson "seemed uncertain how to respond", and that when this happened "further discussion was terminated" and one of the other owners called the question.

Events after the 2024 SGM

[98] The next morning, Mr. Beach emailed a DWV official, Ms. Roberts, with respect to the removal of the asbestos panels that:

It was confirmed at the meeting last night that the intention is that they be removed and not replaced with any form of new privacy panels. PLEASE ENSURE DWV WILL NOT ALLOW THAT FROM A DESIGN OR PERMIT PERSPECTIVE. I do not believe owners ever approved that. Do you have a document proving they did? NOTE – I am not referring to privacy panels between balconies, but to the ones on the exterior façade which stop the public from seeing in and provide a wind barrier and shade

[99] Ms. Roberts responded that:

The existing railings are approved to be removed (yes that includes the privacy panels on the railings) and replaced with the vertical stainless steel cables. That change has been approved.

[100] Mr. Beach says that he was alarmed by this, because he had not been asked to "consent to the prospective invasion of my privacy resulting from the elimination of the privacy panels within the railing system" on his suite's balcony.

[101] Mr. Beach continued to collect more information about potential alternative quotations. On May 3, 2024, he received a quote from Riverside Iron Works

proposing a 42-inch powder-coated aluminum frame railing system with stainless steel vertical aircraft cable, at a cost for supply and installation of \$688,000.

[102] Mr. Beach also encouraged other strata lot owners to express concern to the strata council about the decision made at the 2024 SGM. He has put into evidence emails sent in respect of this on May 5, May 14, May 21 (two different owners), and May 30, 2024. One further letter was submitted in November 2024.

[103] Mr. Beach continued his correspondence with DWV officials, including a lengthy email to the Mayor on May 6, 2024.

[104] On May 7, 2024, the strata council approved a series of steps to implement the motion passed at the 2024 SGM, including:

- a) Acceptance of proposal #LP24-029 issued by Latera;
- b) Acceptance of the Large Project administration fee proposal issued by the Wynford Group;
- c) Payment to the DWV of the building permit application fee of \$14,310.74; and
- d) Acceptance of the contract tender dated January 2024 and submitted by Architek Holdings Ltd.

[105] On May 9, Mr. Beach received an updated quotation from the Shenzhen company for the supply of a stainless steel cable product, which he then forwarded to Riverside Ironworks for purposes of obtaining an installation cost. On May 9 and 10, he sent detailed freedom of information requests both to the Strata Corporation and to the DWV.

[106] On May 13, 2024, Riverside emailed the Strata Corporation with a quotation to supply 3,200 lineal feet of #316 stainless steel guard rail for \$880,000 plus GST. Mr. Agnew responded to Riverside that “solicitation of this proposal was not sanctioned by the Strata Council”.

[107] On May 17, 2024, Mr. Agnew wrote to Mr. Beach on behalf of the Strata Corporation, advising that:

Regarding your queries, and specifically a request to seek multiple tenders and installation of decorative panels located within the guardrail system, the Strata Council wish to reiterate that these issues have been previously discussed with the ownership through various meetings, including the March 21, 2023 information meeting, the Special General meeting convened May 30, 2023 and again at the Special General Meeting convened April 30, 2023.

With respect to tendering, owners were provided three optional railing systems at the March 21, 2023 Townhall meeting, including use of glass panels, pickets or the stainless steel cable guardrail together with a budget cost range for each style. Further to considering the options, owners provided their direction for proceeding with use of the stainless steel cable guardrail design and it was confirmed at that time that multiple tenders would not be sought for that specific design choice as opposed to using the glass or picket design. This is a result of the unique design, the contractor ability to act as both the supplier installer thus avoiding additional mark-ups and reduce the overall job costs. This information was provided again to the owners at the May 30, 2023 Special General Meeting and again at the April 30, 2024, Special General Meeting whereby the owner majority accepted that a single tender for a fixed cost was being received and this was included in the approved funding resolution.

With respect to the decorative panels installed within sections of the existing guardrail system, the PowerPoint presentation provided to owners at the March 21, 2023 information meeting included an optional “web net” design as a replacement. Through discussion at the March 21, 2023 information meeting, it was agreed that the use of the “web net” alternative would not be acceptable and to have this removed leaving the cables clean and unobstructed. This was reiterated at the May 30, 2023 Special General Meeting. In closing, the direction received is to confirm that further tenders will not be solicited and the railing replacement project is proceeding based on owner approved resolutions.

[108] In June 2024, Mr. Beach obtained alternative quotations from another Chinese manufacturer, this one in Guangdong, China, and also began reaching out to structural engineers to seek a further opinion as to whether the railing replacement project was even necessary.

[109] On June 18, 2024, the strata council resolved to approve a formal CCDC2 contract with Architek Holdings Inc. and to pay the initial contract draw of \$630,250 (less 10% holdback) in order to secure fabrication.

[110] On July 3, 2024, the DWV’s Director of Planning wrote to Mr. Beach:

I write in response to your recent inquiries to various District staff members regarding the Seastrand building and the forthcoming balcony upgrades.

Please direct any concerns you may have regarding design details or tendering issues to your Strata Council. The District is satisfied, based on meeting minutes, that strata lot owner feedback and authorization for the Strata Council to proceed with applying for and obtaining development permits and building permits on behalf of the ownership as a collective was properly sought and obtained by majority resolution at various general meetings over the past several years. The District does not become involved in internal owner disputes and cannot assist you further.

Regarding your inquiry about the nature and seriousness of the safety issues associated with the balconies and guardrails, and previous District directives for addressing same, please see attached for your information a letter sent from the District to the Strata requiring action on these items.

[111] The present proceeding was commenced by Mr. Beach filing a Petition on July 16, 2024.

[112] In September 2024, Mr. Beach had three structural engineering firms conduct inspections of some balconies at the Seastrand. The reports canvassed the possibility of repair rather than replacement of balcony railings, but also recommended that there be further testing. It is noteworthy that each of the engineers inspected the balconies of between one and six suites only.

[113] Mr. Robinson, in his affidavit, responded to these reports as follows:

- a) Latera's findings of the guardrails' conditions concur with the findings of these two engineering companies to a limited extent. Latera agrees that the existing guardrails in general can resist the load specified in the 2018 Building Code; however, load is only one of several requirements specified in the Code. Height, picket spacing, size of opening at the bottom, and climbability of the guardrails all need to be addressed for Code compliance in the proposed project.
- b) The existing guardrails are old, and many owners have modified them over the years to remove the asbestos panels to increase their view, replacing the openings with new pickets. This has resulted in an inconsistent look of the building. The existing guardrails also have diagonal braces near their mid-point in each balcony to add stiffness, but these braces have typically been cut and removed to accommodate the balcony enclosures where they have been installed. Several of the balcony enclosures have also increased the floor height of the units, making the existing guardrails under height. These conditions should have been brought into compliance with the Code when the enclosures

were installed. Seastrand’s guardrails must comply with other aspects of the Code whether they can carry the Code-specified load or not.

- c) If the spacing of pickets and space at the bottom of the guardrails were the only concerns, it may be possible to add pickets and components to bring that aspect into compliance with the Code; however, it would be impractical to increase the guardrail height by removing the top rails, adding an extension to each post, adding intermediate pickets, welding or securing them to the existing pickets, and then re-installing the top rails. There is unlikely an economical way to conduct the repairs, and there should not be an assumption that repair is less expensive than replacement.

Legal Context

[114] The balconies at the Seastrand are common property. Section 3 of the *Strata Property Act*, S.B.C. 1998, c. 43 [SPA], provides that:

Except as otherwise provided in this Act, the strata corporation is responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners.

[115] Section 72(1) of the SPA requires a strata corporation to “repair and maintain common property”.

[116] Section 71 is styled “Change in use of common property”, and provides:

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.

[117] The question of what constitutes a “significant change” to common property was dealt with in *Frank v. The Owners, Strata Plan LMS 355*, 2016 BCSC 1206.

A penthouse owner sought to increase the height of railings around his rooftop deck in order to meet code requirements. Justice Fisher (then of this court) noted at

para. 43 the non-exhaustive list of objective and subjective factors to be considered, summarized in *Foley v. The Owners, Strata Plan VR 387*, 2014 BCSC 1333 at para. 19:

- 1) A change would be more significant based on its visibility or non-visibility to residents and its visibility or non-visibility towards the general public;
- 2) Whether the change to the common property affects the use or enjoyment of a unit or a number of units or an existing benefit of a unit or units;
- 3) Is there a direct interference or disruption as a result of the changed use?
- 4) Does the change impact on the marketability or value of the unit?
- 5) The number of units in the building may be significant along with the general use, such as whether it is commercial, residential or mixed use.
- 6) Consideration should be given as to how the strata corporation has governed itself in the past and what it has allowed. For example, has it permitted similar changes in the past? Has it operated on a consensus basis or has it followed the rules regarding meetings, minutes and notices as provided in the *Strata Property Act*.

[118] At para. 44, she noted that these factors provide a “helpful guide in structuring an analysis”, but commented that each case will turn on its own facts.

[119] Section 31 of the *SPA* requires that:

In exercising the powers and performing the duties of the strata corporation, each council member must

- (a) act honestly and in good faith with a view to the best interests of the strata corporation, and
- (b) exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.

[120] With respect to this provision, the Court of Appeal in *Dockside Brewing Co. Ltd. v. Strata Plan LMS 3837*, 2007 BCCA 183 at para. 56 drew analogies to the duties of corporate directors:

[56] The statutory duty of care, to exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances, imposes an objective standard that takes into account the context in which a given decision was made (*Peoples Department Stores Inc.* at paras. 62-63). The Supreme Court explained (at para. 67):

Directors and officers will not be held to be in breach of the duty of care under s. 122(1)(b) of the *CBCA* if they act prudently and on a reasonably informed basis. The decisions they make must be reasonable business

decisions in light of all the circumstances about which the directors and officers knew or ought to have known. In determining whether directors have acted in a manner that breached the duty of care, it is worth repeating that perfection is not demanded. Courts are ill-suited and should be reluctant to second-guess the application of business expertise to the considerations that are involved in corporate decision making, but they are capable, on the facts of any case, of determining whether an appropriate degree of prudence and diligence was brought to bear in reaching what is claimed to be a reasonable business decision at the time it was made.

[Underlining added.]

[121] Section 164 of the *SPA* provides that:

- (1) On application of an owner or tenant, the Supreme Court may make any interim or final order it considers necessary to prevent or remedy a significantly unfair
 - (a) action or threatened action by, or decision of, the strata corporation, including the council, in relation to the owner or tenant, or
 - (b) exercise of voting rights by a person who holds 50% or more of the votes, including proxies, at an annual or special general meeting.
- (2) For the purposes of subsection (1), the court may
 - (a) direct or prohibit an act of the strata corporation, the council, or the person who holds 50% or more of the votes,
 - (b) vary a transaction or resolution, and
 - (c) regulate the conduct of the strata corporation's future affairs.

[122] A series of judgments of the British Columbia Court of Appeal have provided guidance with respect to s. 164 of the *SPA*.

[123] In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, the petitioner challenged temporary permission given by the strata council to two other owners to place planters in a common entry area. He felt that those items affected his view and the marketability of the unit. Justice Sinclair-Prowse, in the Supreme Court, dismissed the claim. As noted by Justice Ryan at para. 13 of the Court of Appeal judgment:

[13] Sinclair Prowse J. noted that there had been no decisions interpreting the meaning of "significantly unfair" since the *Act* came into force on July 1, 2000. However, under s. 42 of the *Condominium Act*, R.S.B.C. 1996, c. 64, which was replaced and repealed by the *Strata Property Act*, an owner could apply to the court for a remedy if the affairs of the strata corporation were being conducted in a manner which was "oppressive", or if some act or resolution of the strata council was "unfairly prejudicial" to the owner. Courts

had interpreted oppressive conduct to mean conduct that is burdensome, harsh, wrongful, lacking in probity or fair dealing or has been done in bad faith. Unfairly prejudicial conduct had been interpreted to mean conduct that is unjust and inequitable. Sinclair Prowse J. found that the term significantly unfair could be defined in the same way as oppressive and unfairly prejudicial.

[124] Justice Ryan noted that, in *Gentis v. The Owners, Strata Plan VR 368*, 2003 BCSC 120, Justice Masuhara had added the following comment:

[28] I would add to this definition only by noting that I understand the use of the word 'significantly' to modify unfair in the following manner. Strata Corporations must often utilize discretion in making decisions which affect various owners or tenants. At times, the Corporation's duty to act in the best interests of all owners is in conflict with the interests of a particular owner, or group of owners. Consequently, the modifying term indicates that court should only interfere with the use of this discretion if it is exercised oppressively, as defined above, or in a fashion that transcends beyond mere prejudice or trifling unfairness.

[29] I am supported in this interpretation by the common usage of the word significant, which is defined as "of great importance or consequence": *The Canadian Oxford Dictionary* (Toronto: Oxford University Press, 1998) at 1349.

[125] Justice Ryan commented at para. 27 that:

[27] ... I agree with Masuhara J. that the common usage of the word "significant" indicates that a court should not interfere with the actions of a strata council unless the actions result in something more than mere prejudice or trifling unfairness. This analysis accords with one of the goals of the Legislature in rewriting the *Condominium Act*, which was to put the legislation in "plain language" and make it easier to use (British Columbia, *Official Report of Debates of the Legislative Assembly*, Vol. 12 (1998) at 10379). I also note that the term "unfair" is defined in the *Canadian Oxford Dictionary* as "not just, reasonable or objective." It may be that this definition of "unfair" connotes conduct that is not as severe as the conduct envisaged by the definitions of oppressive or unfairly prejudicial. However, counsel argued this appeal on the basis that "significantly unfair" has essentially the same meaning as "oppressive and unfairly prejudicial". For the purposes of this appeal the distinction between the definitions makes no difference. On either definition, the resolution passed by the strata council cannot be said to be significantly unfair to Mr. Reid.

[126] In *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, the owners had purchased a unit in a presale that was, according to the marketing materials, to have a view window in the den. The window would afford a pleasant view of False

Creek, but it would also permit the occupants of units like theirs (called 01 units) to see into nearby 02 units. Prior to completion, the vision glass in all of the 01 units was changed to spandrel opaque windows. The petitioners applied for permission to replace the glass; the strata council concluded that this was a “significant change” within the meaning of s. 71, which required a 3/4 $\frac{3}{4}$ resolution to approve, and a resolution put forward at a special general meeting to approve this change was defeated. The petitioners claimed that they had been dealt with in a significantly unfair manner, and sought relief pursuant to s. 164. A chambers judgment concluding that there was significant unfairness, and allowing the replacement of the window, was upheld on appeal.

[127] All three judges on the Court of Appeal panel gave judgments. While Justice Hall concurred with Justice Garson in dismissing the appeal, he expressed agreement with Justice D. Smith that “courts should be very hesitant in interfering with the decisions of a strata council”. Justice Garson, on the other hand, expressed the following at para. 24:

[24] Section 164 is remedial. It addresses that, despite using a fair process and holding a democratic vote, the outcome of majoritarian decision-making processes may yield results that are significantly unfair to the interests of minority owners. Section 164 provides a remedy to an owner who has been treated significantly unfairly by co-owners or the strata council that represents them. The view that significantly unfair decisions reached through a fair process are insulated from judicial intervention would rob the section of any meaningful purpose. I agree with what Masuhara J. said in *Gentis* that the outcome of the vote is one factor to be considered in determining if the impugned action is unfair. I do not agree with the suggestion in *Pearce* that provided the process is fair and democratic, a court should defer to the decision of the strata council or corporation.

[128] She noted at para. 29 the analysis of Justice Greyell in an oppression proceeding under the *Business Corporations Act*, S.B.C. 2002, c. 57, and suggested at para. 30 that:

[30] In the case of a strata unit owner seeking redress under s. 164, I would adapt the test, suggested by Greyell J. slightly to the context of s. 164 and articulate it in this manner:

1. Examined objectively, does the evidence support the asserted reasonable expectations of the petitioner?

2. Does the evidence establish that the reasonable expectation of the petitioner was violated by action that was significantly unfair?

[129] She concluded at para. 37 that:

[37] On the facts of this case, the result of the Strata Corporation decision was to place the burden of the desired privacy on the wrong party. If the owners of 02 units wish privacy at times, they could install and close blinds in their own windows. It is burdensome (and that is my interpretation of the chambers judge's decision) to expect the owners of 01 units to entirely lose their view in order to afford occasional privacy to certain 02 units. The chambers judge found that this transferring of the burden was significantly unfair and I see no error in her conclusion.

[130] Justice Hall, in explaining his concurrence in the result, concluded that the decision of the majority imposed "too heavy a burden" on the minority (para. 44).

[131] In *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173, Justice Grauer noted this comment of Justice Hall and explained at para. 78:

[78] Justice Hall's use of the modifier in the term "too heavy" is important, echoing the adverb "significantly" in the term "significantly unfair". In assessing whether an appropriate balance was struck between minority rights and the majority will of the community, the question is not whether a heavy burden is imposed on the minority, or even whether the result is unfair. Rather, the question is whether the burden on the individual is *too heavy*, whether it rises to the threshold of "*significant* unfairness". Otherwise, the court or tribunal should not interfere, and the decision should be left alone.

[132] In *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342, the owners of parkade space strata lots challenged special levies that they said were of no benefit to them, but to which they were required to contribute in proportion to their unit entitlement. Justice Dickson, for the Court, described (at para. 2) the issue as whether cost allocation pursuant to the scheme in the SPA can amount to significantly unfair action. She noted at para. 4 that:

[4] Strata developments offer a unique form of land ownership and administration. As Justice Cromwell explained in *2475813 Nova Scotia Ltd. v. Rodgers*, 2001 NSCA 12, they serve as a vehicle for holding land that combines the advantages of individual ownership with those of a multi-unit development in which the individual owners make up a democratic society. A portion of the property is divided into individually owned units, the balance is owned in common and a strata corporation manages the common property and common assets for the benefit of the owners, who are generally "all in it

together”. The success of such developments depends largely upon whether an equitable balance is struck between the independence of individual owners and their interdependence as members of a cooperative community: *Rodgers* at paras. 3–4; *The Owners, Strata Plan LMS 1537 v. Alvarez*, 2003 BCSC 1085 at para. 35.

[133] At para. 62, she stated:

[62] As Justice Garson explained in *Dollan*, s. 164 is a remedial provision. Where the outcome of majoritarian decision-making yields results that are significantly unfair to the interests of a minority owner, the court is empowered to step in and provide a remedy: at para. 24. By this means, the framework protects against the risk of minority oppression and unfairly prejudicial conduct, the former being an inherent weakness within majority-ruled democracies. An interpretation of “action” and “decision” that encompasses such conduct on the part of a strata corporation, regardless of whether it may be otherwise permissible, best affords such protection.

[134] At paras. 82-87, Justice Dickson considered the three judgments in *Dollan*, including Justice Garson’s summary of the applicable test at para. 30 (quoted above). Justice Dickson concluded at paras. 88-89 that:

[88] As is apparent from the foregoing, the correct test for significantly unfair conduct in s. 164 is uncontroversial. It is as stated in *Reid* and fully endorsed in *Dollan*, namely, conduct that is oppressive in that it is burdensome, harsh, wrongful, lacking in probity or fair dealing, or done in bad faith, or conduct that is unfairly prejudicial in that it is unjust or inequitable. As I read Justice Garson’s reasons in *Dollan*, in her view where the significant unfairness in question involves allegedly oppressive conduct, a modified reasonable expectations test should form part of the inquiry into whether the impugned conduct meets the s. 164 definition. I agree with this approach, which I see as consistent with Justice Cromwell’s comments in *Rodgers* to the effect that some concepts and principles drawn from the law of corporations are relevant in the context of strata property law: at para. 5. In both contexts, the animating concern is one of achieving fairness in the resolution of conflicting interests between community stakeholders in a manner that is highly fact-specific.

[89] That being said, I also agree with Justice D. Smith’s view that application of a modified reasonable expectations test should not be permitted to complicate unduly a significant unfairness inquiry or misdirect its focus. However, I do not share her concern that application of the modified test would have these effects. In my view, consideration of the reasonable expectations of a petitioner, assessed in the manner described by Justice Garson, is simply one relevant factor to be taken into account in the conduct of an inquiry under s. 164.

[135] *Thurlow & Alberni Project Ltd. v. The Owners, Strata Plan VR 2213*, 2022 BCCA 257, deals more generally with court supervision of a strata corporation's repair obligations. In *Thurlow & Alberni Project*, the strata corporation contained a commercial section and a residential section. The building's exterior insulation and finish system required replacement, but it was opposed by the commercial section which held enough votes to defeat a 3/4 vote resolution. The strata corporation applied to the court pursuant to s. 173 of the *SPA* to order approval of the resolution notwithstanding the lack of a successful 3/4 vote resolution. The chambers judge dismissed the application, but the Court of Appeal reversed the decision.

[136] Justice Willcock, for the Court, discussed at paras. 76-94 the interplay between judicial supervision of repairs and the independent actions of strata corporations. He cited with approval the judgment of Justice Ralph in *Browne v. The Owners, Strata Plan 582*, 2007 BCSC 206. He commented at paras. 85-88 that:

[85] Section 165 empowers the court to make orders necessary to permit a strata corporation to discharge its statutory obligation to maintain the strata's property. When it has been invoked, as we have seen, the courts have approached the management decisions of strata corporations with deference. As Ralph J. observed in *Browne*: "the strata corporation is entitled to determine which actions to take in order to meet its statutory obligation": at para. 30.

[86] The same is true, in my view, when s. 173(2) is invoked. Before an application for court approval can be brought, the Strata Corporation must have proposed a resolution to approve a special levy. The levy must be intended to raise money for the maintenance or repair of common property, or common assets the Strata Corporation considers to be necessary to ensure safety or to prevent significant loss or damage. The *Act* requires the resolution to specify, among other particulars, the purpose of the levy; its total amount; and the date by which the levy is to be paid or, if the levy is payable in instalments, the dates by which the instalments are to be paid: at s. 108(3). Because the *Act* gives the court the power to approve a special resolution, rather than the power to draft the resolution, it leaves in the hands of the Strata Corporation the responsibility for formulation of the resolution and discretion to determine the timing and scope of repairs. It would be unworkable to leave such matters in the hands of the courts.

[87] For that reason, in my view, Fitzpatrick J. was correct in *Strata Plan VIS114*, to conclude, after citing *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784, and *Browne*, that the starting point for the analysis should be deference to the decision made by the strata council, approved by the majority of owners: at para. 68. Deferring to the strata corporation in that case, she concluded that "after a full consideration of the matter, the strata

corporation has concluded, I think reasonably, that the time to proceed is now”: at para. 71.

[88] A similar approach was taken by Pearlman J. in *The Owners, Strata Plan LMS 1383*, 2015 BCSC 1816, where he concluded that the strata corporation was entitled to rely on the professional advice it had received (and agreed himself that the repair proposed was necessary) ...

[137] With respect to the appointment of an administrator, s. 174(2) provides that:

The court may appoint an administrator if, in the court's opinion, the appointment of an administrator is in the best interests of the strata corporation.

[138] I was referred to only one authority with respect to this provision, *Lum v. The Owners, Strata Plan VR519*, 2001 BCSC 493, in which Justice Harvey, having reviewed certain authorities, summarized at para. 11 the following factors to be considered in exercising the court's discretion whether the appointment of an administrator is in the best interests of the strata corporation:

- (a) whether there has been established a demonstrated inability to manage the strata corporation,
- (b) whether there has been demonstrated substantial misconduct or mismanagement or both in relation to affairs of the strata corporation,
- (c) whether the appointment of an administrator is necessary to bring order to the affairs of the strata corporation,
- (d) where there is a struggle within the strata corporation among competing groups such as to impede or prevent proper governance of the strata corporation,
- (e) where only the appointment of an administrator has any reasonable prospect of bringing to order the affairs of the strata corporation.

[139] At paras. 11 and 12, Justice Harvey also referenced consideration of:

- a) The costs of involvement of an administrator, and
- b) The principle that the democratic governance of the strata community should not be overridden by the court except where absolutely necessary.

Positions of the Parties

Mr. Beach

[140] Mr. Beach's primary position is that:

- a) resolution #1 passed at the 2023 SGM (to "install new railings based on use of the stainless steel vertical cable system) and
- b) resolution #2 passed at the 2024 SGM (to expend a sum not exceeding \$3 million, of which \$2 million is to be raised by a special levy)

should both be set aside on the grounds that they are significantly unfair to him.

[141] He says they are significantly unfair because of:

- a) The lack of a competitive bidding process, which he believes has left him paying more than necessary;
- b) Procedural fairness issues, in that he suggests that some owners who provided proxies may have believed that there was going to be a competitive bidding process; and
- c) The failure to obtain consent from individual owners with respect to changes to the common property that he says impact on their privacy.

[142] Alternatively, he relies on the engineering opinions he obtained in the fall of 2024, and says that he and other owners who can obtain engineering inspections of the railings outside their strata lots that conclude that their specific railings are still in working condition should be allowed to keep the existing railings for the time being.

[143] Mr. Beach says that he and other owners had a reasonable expectation that the Strata Corporation would obtain competing bids for all aspects of the project, based on statements that had been made in previous years. He says that he and other owners are significantly impacted by having to contribute to a special levy that he says is unnecessary, given his opinion that any necessary repairs or replacement

could have been accomplished within the available amounts in the contingency reserve fund. He says that this is unduly burdensome to those owners who do not support the project.

[144] Mr. Beach also asserts that there were procedural fairness issues with respect to the resolution, in that:

- a) Some owners who gave proxies that were to be voted in favour of the resolution may have been relying on statements in various information circulated over the years about a tendering process, and may not have realized that the resolution was intended to approve a single-supplier contract;
- b) The resolution was insufficiently clear, in that it simply approved the project without the resolution itself specifically identifying matters that Mr. Beach has identified as changes significant to him, specifically:
 - i. The fact that the new system would not include anything comparable to the previous asbestos panels;
 - ii. The fact that there would only be two horizontal railings in the new system, rather than the three horizontal railings that were in one of the samples he viewed in the spring of 2023; and
 - iii. The fact that the railings would be 47 inches high, which was greater than the minimum BC Building Code requirement.

[145] Mr. Beach acknowledges the Strata Corporation's argument that the removal of the webnet feature was discussed at the Town Hall meeting. However, he says that the Town Hall meeting was not a formal meeting, there was no formal notice, no formal resolutions, and no minutes were kept. He says that as a result, the announcement at the 2023 SGM that the webnet feature was being removed was a unilateral decision of the strata council, and because it is a significant change, the strata council did not have the ability to make that kind of decision.

[146] He says that the 47-inch railing height is required because of the owners who have installed enclosures and raised their floor levels. He says it is unfair that all owners have to have a higher railing just to accommodate a voluntary decision made by others. He says that a higher top horizontal railing will interfere with his view and thus his use and enjoyment of his strata lot.

[147] He says as well that the strata council, by failing to engage in a tendering process, has not met the standard of care imposed by s. 31 of the *SPA*, which requires council members to:

- a) Act honestly and in good faith with a view to the best interests of the strata corporation; and
- b) Exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.

As I understand his submission, he says that these duties of a strata corporation inform the reasonable expectations of owners of their strata corporation, and that acts in breach of these duties are themselves significantly unfair.

[148] Mr. Beach says that, notwithstanding the special resolutions passed on April 30, 2024, it was unreasonable for the strata council to proceed with contracting with Architek when it had received Riverside's May 13, 2024 competing bid.

[149] Finally, he says that even if the majority of owners was determined to move ahead with a railing system made of materials that are significantly more expensive than what Mr. Beach believes are "industry standard" aluminum railing systems, that is significantly unfair to those owners who do not share that goal. He says even if the majority wants a Rolls Royce treatment, given that the impetus for the work is safety, there is no reason to install anything other than the least expensive available system.

[150] In terms of relief sought, Mr. Beach sought orders:

- a) Declaring that the passing of the special resolutions and the entering into a contract with Architek were significantly unfair; and
- b) Setting aside the special resolutions, or
- c) Alternatively, exempting him from paying his proportionate share of the special levy, and also exempting any other owners who oppose the project from having to pay.

[151] Assuming the special resolutions are set aside, Mr. Beach seeks further orders to:

- a) Require the Strata Corporation to obtain a “second opinion” reconsidering the opinions previously obtained from Sense Engineering and Latera Engineering, as to the need to replace the railing systems;
- b) If and only if the second opinion recommends replacement as opposed to repair of existing systems, the court should specify a tendering program including “appropriate due diligence” to be undertaken, with bidders permitted to propose any railing design they choose to; and
- c) Require that such system include railings only at the minimum BC Building Code height and that it contain privacy panels similar to those in the prior railing system.

[152] Mr. Beach also seeks appointment of an administrator to take over the duties of the strata council, with the power to reconsider whether repair of the existing railing system is acceptable and if not, to implement the proposed tendering process.

[153] Finally, Mr. Beach seeks an order for damages as a result of the Strata Corporation’s misleading statements to him, its refusal to consider the alternate bids he secured after the 2024 SGM, and the threat to his privacy arising from the removal of any panels from the new system.

[154] Although Mr. Beach had formally discontinued his claims against the DWV, he argued at the hearing that the Court should grant relief against the DWV in any event, including:

- a) An order that the building's existing systems are "grandfathered" such that the DWV cannot insist on their replacement.
- b) An order setting aside the development approvals granted for the new railings;
- c) An order prohibiting the DWV from issuing a building permit; and
- d) An order requiring the DWV to issue a stop work order.

[155] Although Architek was not named as a party to the proceeding, Mr. Beach sought an order cancelling the contract between the Strata Corporation and Architek and an order requiring Architek to repay any funds that have been paid. Mr. Beach said that at the suggestion of Justice P. Walker, when this matter first came on for hearing but was adjourned, he served a copy of the petition on Architek and notified them of the hearing date. He says that Architek's only response was to ask to be removed from his email list. He says that Architek should be deemed to have been notified of the relief sought, to have elected not to participate, and to be bound by whatever order is made against it.

The Strata Corporation

[156] The Strata Corporation says that it has relied throughout on the recommendations of professionals; specifically, Sense Engineering from 2015 to 2021 and Latera Engineering from 2021 to date. It says as well that, after the rejection of the proposed special resolution in April 2021, it engaged in a lengthy process of consultation and consensus-building through its railing replacement committee, the Town Hall meeting in March 2023, the 2023 SGM and the 2024 SGM, all of which led to approval of funding for and implementation of the project by way of a resolution with over 75% support.

[157] The Strata Corporation says that what was being contemplated evolved over time, but that by the time of the 2023 SGM, the substantive features of the proposed stainless steel cable system were known to those who voted at that meeting. Ninety percent of those in attendance voted in favour of that system, knowing that it was more expensive than other options, and being aware of the then-budget price of \$2.8 million.

[158] With specific regard to the asbestos panels, the Strata Corporation says that it was clear to owners from the Town Hall meeting onward that the proposed stainless steel cable railing system did not have any such feature. And with specific respect to the supplier, the Strata Corporation says that owners were aware from the Town Hall meeting onward that for the principal component of the project – the supply and installation of the stainless steel cable railing system – there was only one recommended supplier, that being Architek.

[159] The Strata Corporation says that from and after the 2023 SGM, when a decision was made to proceed with the stainless steel cable railing system, any references to tenders were to the competitive bids the Strata Corporation might potentially obtain from general contractors for work other than the supply and installation of the new stainless steel cable railing system.

[160] The Strata Corporation says that there can be no doubt that, as a result of the extensive communications to them over the course of April 2024, all owners were aware of the details of the resolution that was to be advanced at the 2024 SGM as well as the specific objections of Mr. Beach and those who joined with him in opposing the resolution.

[161] The Strata Corporation says that it reasonably relied on the professional recommendation of its engineering firm, Latera, that Architek was the sole recommended supplier of the proposed stainless steel cable railing system. It also reasonably relied on Latera's recommendation, as communicated to the strata council on April 3, 2024, that the most cost-effective approach would be to have Architek act as prime contractor, and coordinate the other required work, rather than

hire a different general contractor to coordinate the project, which would entail a mark-up on Architek's fees. While Mr. Beach clearly disagrees with both of these recommendations, the Strata Corporation says that it is entitled to rely upon the professional advice that it received.

[162] The Strata Corporation says that Mr. Beach is in essence asking the Court to interfere with the method of repair chosen by the owners acting democratically, and approved by the requisite supermajority. Although the majority of owners have chosen a repair solution that may be more expensive than other choices, this is not a basis for the Court to set aside a lawful decision made within the legal framework established by the SPA.

[163] The Strata Corporation says that an order rescinding the resolutions passed to authorize the work and the special levy would result in a heavy burden for owners, as the Strata Corporation will be unable to fulfill its contractual obligations and the unsafe railing conditions will persist.

[164] The Strata Corporation says that Mr. Beach has not established significant unfairness.

[165] With respect to the request for an administrator, the Strata Corporation says that none of the tests set out in the *Lum* case have been met.

Analysis

[166] While the factual recitation has been lengthy, and numerous arguments have been made, it seems to me that the disposition of this proceeding comes down to a few key points.

[167] The Strata Corporation and the strata council, in their respective meetings outlined above, have relied on advice provided to them by Latera Engineering. There are two elements of that advice that are fundamental to Mr. Beach's opposition – those being Latera's advice that:

- a) Architek is the only supplier and installer of a stainless steel cable railing system that Latera Engineering would recommend, given that it is a relatively new technology and given the size and nature of the project; and
- b) It would be more cost-effective for the Strata Corporation to contract with Architek as prime contractor, with Architek then subcontracting with and coordinating the work of other trades for matters such as asbestos abatement, staging and concrete repairs, than to retain a general contractor to perform that same work plus charge a fee to coordinate Architek's work.

[168] Mr. Robinson in his affidavit has confirmed his provision of that advice and has explained the basis for his recommendations. Mr. Beach clearly does not accept the explanations given. He thinks that Mr. Robinson is wrong. But other than his own heartfelt assertions to that effect, and the emails Mr. Beach has obtained from other businesses claiming to have the ability to supply and install a similar system, I have no basis not to accept that Mr. Robinson sincerely holds the opinions underlying the advice he gave to the Strata Corporation. The strata council relied upon Mr. Robinson's advice in putting forward the resolutions considered at the 2023 SGM and 2024 SGM, and the members relied upon that advice in approving the resolutions notwithstanding Mr. Beach's objections and his efforts to call that advice into question.

[169] I am not persuaded that Mr. Robinson is wrong based simply on the emails that Mr. Beach was able to secure in the days before and after the 2024 SGM. The fact that a business in China may think that it can produce a comparable system does not, in my view, make it unreasonable for Mr. Robinson to stand by his recommendation that Architek is the recommended supplier. Balcony railings on a high-rise building play a key safety role and it is not surprising to me that an engineer might be reluctant to recommend an unknown supplier from a distant country.

[170] Given that there is only one supplier of the recommended system, and given the relative value of the work not included in that supplier's scope, Mr. Robinson's recommendation that Architek be the prime contractor appears logical on its face.

[171] It is clear from the cases that a strata corporation is entitled to rely on professional advice received. It is my view that its reliance on Mr. Robinson's advice in the circumstances of this case was reasonable. Having reasonably relied on professional advice, there is no basis to conclude that the strata council did not exercise an appropriate degree of prudence, or that its failure to act contrary to that advice is significantly unfair.

[172] I turn now to Mr. Beach's procedural fairness arguments. He says that there may well have been confusion amongst owners, who were relying on prior representations that there would be competitive bidding with respect to the project, and on having seen a sample of the stainless steel cable railing system that had three horizontal railings and the webnet feature.

[173] I do not accept that submission. In my view, it is important to look at the three meetings and the written communications shared with owners in their entirety. The meetings in particular reflect an incremental consensus-building approach based upon extensive communication.

[174] I accept the evidence of Ms. Lundy and Ms. Hardisty that the Town Hall meeting was well attended, and that it included feedback that favoured the stainless steel cable railing system, but with the webnet feature removed. The discussion about the webnet feature is carried forward into the 2023 SGM, with the minutes making clear that the system that the owners were to vote on was one that did not include the webnet feature. As I read the minutes, excerpts of which are quoted at para. 48 above, they confirm that all of the issues subsequently raised by Mr. Beach were canvassed in the course of the question and answer discussion. Point (a) from that discussion deals with whether there was in fact a need to replace the system. Point (b) from that discussion deals with the nature of the horizontal railings.

Point (c) deals with the rationale for the proposed railing height. Point (g) confirms elimination of the web net feature.

[175] I accept that the fact there was a single recommended supplier of the stainless steel cable railing system was a matter of discussion at the Town Hall meeting as well as both the 2023 SGM and the 2024 SGM, while the question of securing multiple bids is canvassed extensively in the various memoranda circulated to owners in the weeks leading up to the 2024 SGM.

[176] In my view, the evidence makes clear that the owners knew exactly what it was they were approving at the 2023 SGM and the 2024 SGM.

[177] I turn now to Mr. Beach's argument that the new design contains significant changes to the common property that were not properly approved by a special resolution.

[178] I do not believe that either the difference between two and three horizontal railings, or the use of a 47-inch rail height, constitutes a significant change within the test set out in *Frank*. Neither of these has a significant impact on an owner's use or enjoyment of their unit. That said, my analysis below in respect of the loss of the asbestos panels would apply equally to those two changes in any event.

[179] Mr. Beach also argued that it is significantly unfair that all railings will be at a 47-inch height in order to provide uniformity, when that height is being dictated by those who raised their balcony floors. In my view, this is not the sort of "heavy burden" that would give rise to a finding of significant unfairness.

[180] I accept Mr. Beach's assertion that the loss of the former asbestos panels was a significant change, given that they provided shade, wind protection and some degree of privacy. In that way, they would affect the use or enjoyment of a unit.

[181] However, it is my view that the fact that these panels were being lost and not replaced was something that was known and understood by those voting at the 2023 SGM and the 2024 SGM, and is incorporated into the approval of the new design

and the funding thereof. In my view, there is no requirement that a special resolution set out in writing every feature of a change to common property that an owner might consider to be significant to them.

[182] The resolution at the 2023 SGM was “to remove the existing railing design and install new railings based on the use of the stainless steel vertical cabling system”. Owners had received extensive information on this system. The removal of the webnet feature that had been previously discussed, on which feedback had been obtained at the Town Hall meeting, was clearly confirmed at the 2023 SGM.

[183] It is my view that the 2023 SGM resolution approving the stainless steel vertical cabling system incorporated into it all of the changes, significant and otherwise, that were a part of that system.

[184] Mr. Beach has advanced a theory that, because his privacy is implicated by the loss of the transite asbestos panels, the Strata Corporation requires the individual consent of every owner to the new design. In effect, he says that each individual owner has a veto. None of the authorities presented to me support that assertion. While I accept that a privacy interest is something to consider, and can found a claim of significant unfairness, that does not give rise to a veto.

[185] Nor do I see the loss of the privacy features of the former asbestos panels as giving rise to significant unfairness. As in the *Dollan* case, privacy interests are to be considered and balanced against the other interests at play. In my view, the impact on Mr. Beach’s privacy is worthy of consideration but, as in *Dollan*, can be ameliorated through the use of blinds or other techniques. The loss of this feature does not impose the sort of heavy burden that would give rise to a finding of significant unfairness that would lead to court intervention with majority decision-making.

[186] Mr. Beach made a number of arguments based on having relied on representations made to him, including statements about an intention to tender the project. In my view, all of the statements made reflected the plans that were under

discussion at the time each statement was made. Those plans changed, for reasons that have been explained, based on decisions made by the Strata Corporation and on the evolving recommendations of Mr. Robinson. While Mr. Beach may have felt the explanations he received were unsatisfactory, for the reasons noted above I accept that it was reasonable for the Strata Corporation to accept and act on Mr. Robinson's advice.

[187] Mr. Beach commissioned various engineering studies a few months after the 2024 SGM and after the Strata Corporation had contracted with Architek and paid the first draw on that contract. Those engineering studies were limited in scope to a few strata units. Mr. Robinson has confirmed that they were not inconsistent with the findings of Latera that the stability and the imminence of safety threats varied.

[188] Mr. Beach is challenging resolutions that were adopted at the 2023 SGM and the 2024 SGM. In my view, even if the engineering studies had seriously called into questions the underlying basis on which Sense Engineering and Latera had been advising the Strata Corporation over a period of several years – and I do not conclude that those studies did so – that would not be a basis to find decisions made based on then-available information to be significantly unfair.

[189] Even if it would be possible to replace only a portion of the building's balcony railings, and leave others in place with repairs, that would not in my view prevent the Strata Corporation from voting to replace the entire system. Concerns about the patchwork nature of the existing look of the building appear to have motivated at least in part the decision the Strata Corporation made, and that is a decision that I would see as being open to it. The balconies are, as I have noted above, common property, and it is the Strata Corporation that is responsible to repair and maintain them.

[190] I turn finally to what I infer is the driving concern of Mr. Beach – that where more than 75% of the owners of a Strata Corporation prefer a repair that is not the least expensive, but the remaining minority would prefer to choose the least expensive option available, it is significantly unfair for the majority view to prevail. In

my view, that is not the law as established in the cases. In my view, there is no reasonable expectation that at a building like the Seastrand, any repair work will always be chosen based on the least expensive option available.

[191] I conclude that Mr. Beach has not made out any of the bases he alleges for relief against the Strata Corporation, either on the basis of significant unfairness or otherwise. As a result, I see no basis on which to consider appointment of an administrator.

[192] In light of this conclusion, there is no need for me to go on to consider whether any relief should be granted against either the DWV or Architek.

Conclusion

[193] The petition is dismissed.

[194] If the parties are unable to agree on costs, I will deal with the question by way of written submissions provided through Supreme Court Scheduling. The party seeking an order of costs should provide its submission within six weeks of this judgment. The other party may respond within three weeks thereafter, and a reply submission can be made within one week after that.

“Veenstra J.”