IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Maughan v. Owners of Strata Plan VR 778,* 2025 BCSC 1830

Date: 20250919
Docket: S242289
Registry: Vancouver

Between:

Diana Dorrance Maughan and Walter Maughan

Petitioners

And

The Owners, Strata Plan VR 778, Annie Chen, Felicia Lau, Ning Wei, Linda Fanning, Long Tran and Katherine Chan

Respondents

Before: The Honourable Madam Justice Burke

Reasons for Judgment

Counsel for the Petitioners:	P.J. Dougan J. Robinson, Articled Student
Counsel for the Respondents:	A.K. Aggarwal
Place and Date of Hearing:	Vancouver, B.C. June 27 & 28, 2024, February 14, 2025
Place and Date of Judgment:	Vancouver, B.C. September 19, 2025

Introduction

[1] This matter concerns the repair of a rooftop patio on the top floor of a five-storey residential strata building consisting of 35 strata lots. The building is located in Vancouver, BC and commonly known as “The Briar”. The petitioners, Ms. and Mr. Maughan, are the occupants of strata lot #35 in The Briar. The respondents are the Strata Corporation of The Briar, which operates pursuant to the *Strata Property Act,* S.B.C. 1998, c. 43 [*SPA*], and several members of the Strata Corporation in their personal capacities.

[2] The Strata Corporation is insisting the petitioners pay for common property repairs, including pavers, a railing, and glass within the railing, all of which the petitioners say is exclusively the domain of the Strata Corporation to repair. In making these demands, the petitioners say the Strata Corporation has singled them out and treated them inconsistently, inequitably and in a significantly unfair manner. As a result, the petitioners seek a remedy pursuant to s. 164 of the *SPA*.

[3] The Strata Corporation is governed by a set of bylaws filed in the Land Title Office (the “Bylaws”). The Bylaws have been amended numerous times since the creation of the Strata Corporation in 1980, including an amendment in 2003 to bring the Bylaws under the *SPA,* which came into force in 2000. The Bylaws have not been amended since 2013, when the petitioners bought their unit.

[4] The strata plan shows that strata lot #35 has 2,669 square feet of internal space, often described as habitable area, and is surrounded on three sides by a patio. The patio is comprised of two distinct legal parts. There is a limited common property (“LCP”) space taking up the bulk of the westerly-facing patio. Around the LCP space, on all sides—including an approximately one-hundred-foot long, 6’6”-wide south-facing area—is a common property (“CP”) space.

[5] In and around spring 2024, the roof membrane of the unit below the petitioners’ unit was replaced. Because the roof of one property is the patio of the property above, this replacement required the removal of the petitioners’ patio pavers. The Strata Corporation also intended to have the railing removed and

reinstalled along the LCP and CP boundary during the roof repair, but because of this ongoing litigation that has not yet occurred.

[6] The petitioners take issue with the proposed relocation of the railing, as they submit that the railing was always placed around the *entire* patio (enclosing both the CP and the LCP), and on top of a two-foot parapet wall, meaning that the proposed relocation would cut the size of their patio in half.

[7] The Strata Corporation submits that the railing must be placed at the boundary of the LCP and CP. To the extent that the railing was previously along the outside of the entire patio, the Strata Corporation says that this was done at a time "unbeknownst" to them and was an unapproved alteration.

[8] In addition, following the roof repairs, the Strata Corporation had a portion of the patio filled with gravel instead of replaced with the pavers that were there previously. The petitioners say that the entire patio should have been covered in pavers.

[9] The petitioners argue that these actions of the Strata Corporation are oppressive and significantly unfair. In addition, the petitioners argue the end effect of the Strata Corporation's decisions and its specific actions or omissions have created an unnecessary inequity for them, and display bad faith and dishonesty on behalf of the Strata Corporation and the personal respondents.

[10] The respondents disagree and maintain the petitioners do not have standing to lay a charge of bad faith and sue a member of the Strata Corporation personally, unless the member is in breach of the "conflict of interest" section of the *SPA* at s. 32, as per *Wong v. AA Property Management Ltd*., 2013 BCSC 1551 [*Wong*]. That has not been alleged in this case. (See also *Dockside Brewing Co. Ltd. v. Strata Plan LMS 3837*, 2007 BCCA 183 [*Dockside Brewing*] on this point.)

Background and position of the parties

Railing boundary between LCP and CP

[11] As set out above, the parties disagree on the proper placement of the patio railing. The petitioners say that the railing always enclosed the entire patio, including the LCP and CP, and that the Strata Corporation's intention to reinstall the railing along the border of the LCP and CP is contrary to the *SPA* and the Bylaws. The petitioners say the railing should remain in its current position on the parapet wall which would allow the petitioners their previous use of the entire patio.

[12] The Strata Corporation says that the railing should have always been along the LCP/CP boundary, and that the moving of the railing to the outside of the CP, along the parapet wall, constitutes an illegal change made without approval or permit. The Strata Corporation further submits that the patio pavers were extended onto the CP without approval prior to the roof repair. The Strata Corporation says that, since it became aware of the petitioners' misuse of the CP and the unapproved relocation of the railing, the parties have disagreed over the petitioners' perceived rights over the CP and the legitimacy of the railing on the parapet wall. The respondents say they have not acquiesced to the petitioners' use of the CP surrounding the patio or the location of the railing.

[13] In submitting that moving the railing and extending the pavers are unapproved, illegal alterations, the Strata Corporation relies on Bylaw 6.2, which states that an owner must request the Strata Corporation's approval before altering LCP or CP. Additionally, Bylaw 6.3 provides that any alteration made by an owner without authorization may be removed by the Strata Corporation and any cost incurred as a result shall be paid by the owner to the Strata Corporation. The Strata Corporation also relies on s. 133 of the *SPA*, which they say authorizes the Strata Corporation to do what is reasonably necessary to remedy a contravention of Bylaw 6.2, including the removal and relocation of the railing.

[14] In addition, the Strata Corporation says that pursuant to s. 71(b) of the *SPA*, a Strata Corporation must not make a significant change in the use and appearance of

CP unless the change is approved by a resolution at an annual or special general meeting. The case of *Foley v. The Owners, Strata Plan VR 387,* 2014 BCSC 1333 [*Foley*], at para. 19, sets out the factors for determining what is a significant change in use and appearance. In this case, the Strata Corporation says the moving of the railing to sit atop the parapet wall would be a significant change to the use and/or appearance of the CP and would therefore require approval through a resolution of the owners, which has not occurred.

[15] The petitioners say there is no proof that the original position of the railing is where the Strata Corporation sets out, and that even if it is, that it is the wrong position for the railing. They rely on expert evidence that says the parapet wall is the ideal place to put the railing to preserve integrity and prevent damage to the roof membrane, which provides water protection for the roof. Additionally, the petitioners say that having a railing separate the LCP/CP boundary is contrary to best practice for roofers, as it creates significant safety, repair and maintenance issues since cleaning the CP area will now require a harness and roof anchor.

[16] The petitioners also submit that the Strata Corporation is denying the *status quo*, as the railing has been placed on the parapet wall for over 40 years, during which time the owners of the unit had use of the full patio area.

[17] The Strata Corporation says however that if this was the *status quo*, it is unable to be maintained as it is unlawful. They say that the petitioners' request to keep the railing on the parapet wall is in contravention of the Bylaws, the *SPA*, and potentially the City of Vancouver's rules and bylaws.

[18] The petitioners also argue that they have been treated differently from other strata lots in the building with patios, including strata lots 29, 30, 33, and 34. The petitioners point out in particular that strata lots 29 and 30 both have CP areas that are inside the patio railing and included as part of the space used by the owners of the units. For example, strata lot 30, similar to strata lot 35, has always had a paved CP area inside the railing on the parapet wall. Similarly, while strata lot 29 originally

had a CP area outside the railing, the railing is now placed on the parapet wall, meaning that the CP area is inside the railing and available for the owners' use.

[19] The petitioners say that this differential treatment makes the respondents' insistence on having the railing delineate the LCP and CP on their patio all the more egregious.

[20] The petitioners further submit that the respondents were negligent in saying that the railing was moved at a time "unbeknownst" to the Strata Corporation. Significantly, the petitioners say that they have made various improvements to the patio over the years, including having a hot tub removed from the patio by crane. This would have been an obvious activity to members of the Strata Corporation. The petitioners submit that the Strata Corporation knew about these changes and had either expressly approved them or observed the changes and said nothing.

Repairs to CP and proposed relocation of the railing

[21] In brief, the petitioners assert that the Strata Corporation has acted significantly unfairly and in breach of s. 72 of the *SPA* by refusing to pay for repairs to the CP area and in not allowing the railing to remain in its current location.

[22] Until 2022, there were wooden planters on part of the CP area of the patio. After the petitioners owned their strata lot for approximately five years, the planters started to disintegrate. The petitioners assumed the planters were their responsibility, and tried to repair and maintain them, but to no avail. Ultimately, the petitioners had them removed at an approximate cost of $5,000.

[23] The petitioners maintain that the planters should have been repaired by the Strata Corporation, as they were on CP and therefore the responsibility of the Strata Corporation. However, the planters had never been maintained or repaired by the Strata Corporation. This, the petitioners say, supports their position that the railing must remain at its current location.

[24] The petitioners say the Strata Corporation has singled out the petitioners and treated them in an inconsistent, inequitable, and significantly unfair manner by making them pay for repairs to CP, including pavers, the railing, and glass on the rooftop patio and refusing to allow the railing to remain at its current location. The petitioners say that these repairs are exclusively within the domain of the Strata Corporation, and that imposing these repairs upon individual owners is a breach of s. 72 of the *SPA.*

[25] In reply, the respondents maintain, at all times, the Strata Corporation met its duty to maintain and repair the CP in accordance with the *SPA* and the Bylaws, and the Strata Corporation met the requisite standard of care and exercised its duties honestly and in good faith – with a view to the best interests of the Strata Corporation's community. The respondents also maintain that the Court must review the petition with deference to the object of the *SPA* and be hesitant to interfere with the democratic process that underpins strata governance.

[26] Pursuant to s. 72(2) of the *SPA*, a Strata Corporation may, by bylaw, make an owner responsible for the repair and maintenance of LCP that the owner has the right to use. While the respondents concede that a strata cannot pass a bylaw that makes an owner responsible for the repair and maintenance of CP, in this case, the respondents say Bylaw 22.3, which make the owners responsible for the repair and maintenance of LCP (not CP), is lawful and in compliance with s. 72(2) of the *SPA*:

> **Bylaw 22.3:** An owner who has the exclusive use of a balcony or patio which is designated LCP for the use of their strata lot must replace, repair, and maintain their LCP balcony or patio and all improvements thereon including, without limitation, glass enclosures, glass within the railing, and interlocking bricks, no matter how often the replacement or repair or maintenance occurs.

[27] Relying on Bylaw 22.3, the respondents submit they are not trying to make the petitioners pay for CP repairs as alleged, or at all. Rather, the petitioners are being asked to pay for repairs which fall under their responsibility, as per Bylaw 22.3, or that arise from their requests.

[28] The respondents also point out there was a vote amongst the owners which sought to turn the CP into LCP to satisfy the petitioners wishes. That vote was ultimately not successful. The petitioners maintain however it is no defence to say the Strata Corporation's actions were fair as there was a democratic vote as to whether to approve the alleged changes to the CP which failed. This argument was firmly struck down by the Court of Appeal in *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44 [*Dollan*], which confirmed that s. 164 of the *SPA* provides for an examination of these actions to ensure they are not "significantly unfair".

[29] Further, the respondents say that if the petitioners seek a repair or renovation that is not required but arises from their own personal desires, then the petitioners should bear the costs of that request. For example, since the petitioners sought to install new pavers when the existing pavers were suitable for reinstallation, they should be responsible for that expense.

[30] The Strata Corporation also submits that whether it has satisfied its duty to repair and maintain CP is assessed on a standard of "reasonableness", as per *Weir v. Owners, Strata Plan NW 17,* 2010 BCSC 784 at paras. 27–28. They say the Strata Corporation is entitled to decide between different options and will not have breached its duty simply because it chose a cautious or conservative approach. A strata is also permitted to retain and rely on professionals and take advice on repair strategies. As per *Weir* at para. 28, choosing a "good" rather than the "best" solution does not render that approach unreasonable. (See also *Wright v. The Owners, Strata Plan #205,* 20 B.C.L.R. (3d) 343, 1996 CanLII 2460 (S.C.) at para. 30.)

[31] The respondents say that at all material times, the Strata Corporation met its duty to repair and maintain the roof in accordance with the *SPA*. In addition, it met the requisite standard of care, including exercising its duties honestly and in good faith with a view to the best interests of the strata community, and was guided by advice from professionals.

Conversion of LCP to habitable units

[32] The petitioners also seek an order that part of the LCP of their strata lot be converted to become part of the unit, as they are solariums that have since been turned into bedrooms and have been used as such for some time. The petitioners note that, while the size of the strata lot will increase, this will also increase their payments to the Strata Corporation, based on this increased square footage. Alternatively, the petitioners seek an order that the strata plan be redrawn, as the petitioners' counsel has found errors in the strata plan with respect to the boundaries of the lots and CP, which could be addressed by a proper redrawing of the strata plan.

[33] The Strata Corporation submits that the construction of these two habitable indoor bedrooms from the LCP is an unapproved alteration, and that this is in further contravention of the Bylaws and the *SPA* (similar to the extension of the pavers and the movement of the railing, discussed above).

Issue

[34] The parties have made many arguments in this case concerning the repair of the rooftop patio, including referring to the Strata Corporation's Bylaws. I have considered all of these arguments but ultimately conclude the determinative question distills to whether the Strata Corporation's actions constitute "significantly unfair" conduct to the petitioners as per s. 164 of the *SPA*. This includes the question of whether the actions of the Strata Corporation are in breach of s. 72 of the *SPA,* which requires the Strata Corporation to repair and maintain CP and common assets. The location of the railing and the question of the repairs to the patio will be considered in this context.

[35] I will focus on these actions as part of the analysis in this case.

Legal Principles

[36] The following provisions of the *SPA* are relevant to the case at hand:

Responsibilities of strata corporation

> 3 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.
>
> …
>
> **Repair of property**
>
> **72** (1) Subject to subsection (2), the strata corporation must repair and maintain common property and common assets.
>
> (2) The strata corporation may, by bylaw, make an owner responsible for the repair and maintenance of
>
> (a) limited common property that the owner has a right to use, or
>
> (b) common property other than limited common property only if identified in the regulations and subject to prescribed restrictions.
>
> (3) The strata corporation may, by bylaw, take responsibility for the repair and maintenance of specified portions of a strata lot.
>
> …
>
> **Preventing or remedying unfair acts**
>
> **164** (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
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> (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.

[37] Additionally, as noted in *Getzlaf v. The Owners, Strata Plan VR 159,* 2015 BCSC 452 at para. 35:

> - a strata corporation, in carrying out its mandate, must consider and act in the best interests of all the owners. It must endeavor to accomplish the

greatest good for the greatest number. See *Gentis v. Strata Plan VR 368*, 2003 BCSC 120 at para. 24;

- "significantly unfair" encompasses at the very least oppressive conduct and unfairly prejudicial conduct or resolutions. "Oppressive conduct" has been interpreted to mean conduct that is burdensome, harsh, wrongful, lacking in probity or fair dealing, or has been done in bad faith. "Unfairly prejudicial conduct" has been interpreted to mean conduct that is unjust and inequitable. See *Gentis* at para. 27;
- 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 "significantly" indicates that the 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. *Gentis* at para. 28; see also *Reid v. Strata Plan LMS* 2503, 2003 BCCA 126 at para. 27; …

[38] Further, as set out by Justice Walker in *0790482 B.C. Ltd. v KBK No. 11 Ventures Ltd.,* 2022 BCSC 1095:

> [74] A strata corporation's repair and maintenance obligations are defined by the standard of reasonableness. In *The Owners of Strata Plan NWS 254 v. Hall*, 2016 BCSC 2363, Justice Pearlman said at para. 24:
>
> > The strata corporation's obligation to repair and maintain is measured against a test of what is reasonable in all of the circumstances: *Taychuk* at para. 30; *Wright v. The Owners, Strata Plan No. 205* (1996), 1996 CanLII 2460 (BC SC), 20 B.C.L.R. (3d) 343 (S.C.), aff'd (1998), 1998 CanLII 5823 (BC CA), 43 B.C.L.R. (3d) 1 (C.A.).
>
> [75] Strata corporations must act in the best interests of all owners, as opposed to any one unit owner, in respect of common property and common assets. In *Gentis v. The Owners*, 2003 BCSC 120, Justice Masuhara said at para. 24:
>
> > In carrying out this mandate, the Corporation must consider, and act in, the best interests of all the owners. Put differently, the Corporation "must endeavour to accomplish the greatest good for the greatest number": *Sterloff v. Strata Plan No. VR 2613* (1994), 38 R.P.R. (2d) 102 at para. 35 (B.C.S.C.).
>
> [76] While s. 72(2)(b) allows a strata corporation to require a unit owner to repair common property, it can only do so if such right is identified in the regulation. The Continuing Legal Education publication, *Strata Property Manual*, points out at c. 22.8, there is currently no legislative authority permitting a strata corporation to make a unit owner repair common property under s. 72(2)(b):

> Although s. 72(2)(b) contemplates that a strata corporation may delegate the responsibility to repair and maintain common property (other than limited common property), that ability is subject to the regulations. To date, no regulations have been adopted permitting a strata corporation to make such a delegation. As a result, a strata corporation cannot purport, directly or indirectly, to make an owner responsible for the repair and maintenance of common property through the bylaws.
>
> [Emphasis added]

Summary of parties' positions

[39] In brief, the petitioners submit the Strata Corporation has acted in a "significantly unfair" manner, contrary to s. 164(1) of the *SPA,* by not maintaining the *status quo* with respect to the railing and pavers, which had existed since the petitioners purchased their unit and up until the recent roofing repairs, and requiring the repairs to be paid for by the petitioners.

[40] Additionally, the petitioners say that the Strata Corporation has breached s. 72(1) of the *SPA,* as its obligation to repair and "maintain common property" means that it must restore the area that was affected by the remedial work to substantially the same appearance as was the case prior to the roofing repair project.

[41] The respondents submit that the petitioners have breached the Bylaws by making an unapproved alteration to CP—specifically, by relocating the railing to the parapet wall without first obtaining the approval of the Strata Corporation by a resolution passed at an annual or special general meeting. The railing was moved at a time unbeknownst to the Strata Corporation.

[42] In addition, the respondents say that any allegation of significant unfairness solely arises because the petitioners failed to undertake the due diligence required of them when Ms. Maughan purchased the lot. To assist the petitioners and let the democratic process decide the railing issue, the respondents put the matter of the railing surrounding the patio to a vote at its last Annual General Meeting. The

community chose to reject the petitioners' request to "legitimize" the railing surrounding the CP.

[43] Further, as set out earlier, the Strata Corporation says it is following expert advice and has a concern with the railing being in compliance with the City of Vancouver's bylaws.

Analysis

[44] At the outset, I note that, as pointed out by the petitioners, any attempt by the Strata Corporation to make owners responsible for CP expenses is a breach of s. 72 of the *SPA*. If, as the respondents argue, the outer area of the patio is all CP, then the Strata Corporation cannot claim any expenses for any repair or maintenance of that area. The patio horizontal areas, the parapet wall, the railing, and the glass are therefore all CP, the repair of which is the obligation of the Strata Corporation, per s. 72.

[45] The respondents argue there can be no finding of significant unfairness in this case, as they are required to consider and act in the best interest of all the owners and accomplish the greatest good for the greatest number of owners.

[46] The respondents point to *Oldaker v. The Owners, Strata Plan VR 1008*, 2010 BCSC 776, which noted "[a] central thesis underlying the interaction of owners within a strata corporation is that they engage in a form of communal living. The majority of owners dictates and determines the direction of the corporation": at para. 38.

[47] While the respondents say they put the matter of the railing surrounding the CP to a vote at its last Annual General Meeting, the BCCA set out the following in *Dollan,* at para. 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 orders. 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, the court should defer to the decision of the strata council or corporation.

[48] The outcome of the vote is therefore only one factor to be considered. If that was not the case, the protection under s. 164 against "significantly unfair" treatment could be rendered largely illusory by this process.

[49] The respondents are correct in saying that a Strata Corporation is required to act in the best interests of the owners. However, a review of the evidence establishes that in requiring the delineation between the LCP and CP (which had never previously been done), refusing to pay for the railing on CP (in contravention of the *SPA* and standard bylaws), and attempting to reduce the usual space of the patio by half, the Strata Corporation has not benefitted the owners, and specifically adversely affected the petitioners. The material filed in this matter furthermore, demonstrates the Strata Corporation has not, despite what it maintains, followed expert recommendations as to how to renew the roof membrane, to leave the railing on the parapet wall, or with respect to the replacement of the pavers. There is also no evidence that the railing should be in the location the Strata Corporation now requires.

[50] The respondents argue, however, that they are only required to make a "good" decision and not the best decision. They maintain their actions are to ensure the patio is up to City of Vancouver requirements and that this benefits all the owners. The respondents say they are following the advice of experts in doing so.

[51] The petitioners point out, however, that the railing has enclosed the entire patio for over 40 years, and the Strata Corporation has never in the past insisted on strict compliance and has been governed in a loose fashion for years. As per the decision in *Foley,* they say the Strata Corporation's decision to do so at this time creates a significant unfairness to the petitioners contrary to s. 164 of the *SPA*. In addition, the petitioners point out they have repaired and maintained this area for

this significant period of time without objection or comment from the Strata Corporation, despite what they say have been obvious maintenance, including the removal of the hot tub by crane.

[52] I am inclined to agree with the petitioners in this case. The only real alleged benefit to having the railing on the LCP/CP border is to allegedly "put the patio up to code", but at significant expense. This is at no benefit to any of the other owners, who do not and have never had access to this area.

[53] Furthermore, while the Strata Corporation says it must put the patio up to code, the evidence does not establish this requirement. While there is some reference to communication with the City of Vancouver, this communication does not establish that it is necessary for these changes to be made to ensure they comply with the City's code requirements.

[54] In addition, an inspection report in 2021 by Garland, a roofing consultant, concerning the main upper roof section says, at page 11:

> accessing areas outside the railings does not comply with WorkSafeBC regulations without the use of safety anchor system and cannot be maintained otherwise. The railing will have to be installed to safely access the area.

[55] While the respondents say this comment was with respect to patio 401, a similar conclusion could be reached in accessing areas outside the railings in strata lot #35.

[56] The respondents have not established that placing the railing on the LCP/CP border is a requirement of the building code. In addition, they appear to be ignoring safety advice and possibly creating a safety hazard in doing so.

[57] The material also shows that the Strata Corporation appears to object to paying for repairs to a portion of the building as the other owners do not have access to the patio. This is even though the area is considered CP with the resultant responsibilities arising from that designation, as set out under s. 72 of the *SPA*. As noted by the petitioners, this action appears to be motivated in part to ensure in

effect the “affluent patio owners” (as has been characterized by some of the other owners in the building) do not get the benefit of additional patio space, without paying for it. This is despite the requirements of the *SPA*, and encompasses conduct that could be characterized as bad faith.

[58] The petitioners have couched the matter in terms of significant unfairness as per s. 164 of the *SPA*. They also allege bad faith on part of the personal respondents. In doing so, the petitioners rely on s. 31 and maintain the Strata Corporation members did not do their job to the standard they were required to by law. There are no allegations of personal benefit or a conflict of interest against the respondents, but rather allegations of negligence, wilful blindness and omission causing significant cost and upset to the petitioners. Bad faith is by definition part of significant unfairness and a breach of s. 31.

[59] More importantly in this case however, the respondents have no answer to the uneven treatment of these petitioners compared to the other strata lots with patios in the building, as outlined above.

[60] Specifically, the owners of strata lots 29, 30, 33, and 34 all have some form of LCP/CP divide on their patios, but only the petitioners are being targeted regarding this concern. Strata lots 29 and 30 are similar in that their railing appears to enclose both the LCP and CP such that the owners of those units have use of the entire patio.

[61] Strata lot 35, the petitioners’ lot, has an LCP patio area directly in front of the patio doors leading from the strata lot property into the patio area. The LCP area is surrounded by a CP area. As noted, the respondents now say this matter is a breach of the Bylaws and perhaps unlawful because of City bylaws and permit requirements. This is not established on the evidence and lends credence to the petitioners’ position that the respondents are specifically targeting and acting “significantly unfairly” to the petitioners, perhaps along with some malice.

[62] An example of this is the respondents' position, in response to the petitioners' proposal that all owners pay the portion of the repairs for which they are solely responsible for and resolve the differences at a later date, that "the Penthouse Owners are the most affluent of all owners, why should the owners put up the cost in front for them, and how could the owners engage the Penthouse Owners into a good faith negotiation later or to enforce payment?".

[63] With respect to "bad faith" on part of the personal respondents, I agree that the limitation set out in *Wong* with respect to standing does not apply in this case. The petitioners reference *Dockside Brewing* which quoted para. 66 of the Supreme Court of Canada's decision in *Peoples Department Stores Inc. (Trustee of) v. Wise*, 2004 SCC 68.

[64] While the parties have a disagreement over the standing issue and/or the conflict of interest provisions of the *SPA,* the petitioners are not relying on s. 33 of the *SPA*, nor are they alleging the respondents have an interest in a contract or a transaction. Paragraph 59 from *Dockside Brewing* does not say s. 33 is the only remedy for s. 31 breaches. Section 33 says "if the council member has not acted honestly and in good faith, [a court may] require the council member to compensate the strata corporation or any other person for a loss arising from the contract or transaction, or from the setting aside of the contract or transaction."

[65] I also note it is not clear how, as argued by the respondents, the petitioners' argument flies in the face of the comments of Justice Shergill in the previous litigation of this matter concerning the levy for individual owners paying for the roof repair of the building. One cannot isolate two paragraphs from an extensive judgment for such a proposition in this case and without more, this argument is not persuasive. (See *The Owners, Strata Plan VR 778*, 2023 BCSC 552)

[66] Ultimately, as noted by the petitioners, instead of "renewing the membrane, putting new railings on the outside of the parapet wall, and installing 18x18 pavers, or 24 x 24 pavers," the Strata Corporation has "delineated between LCP and CP property, contrary to the history of the building, refused to pay for common property

railings and reduced the usable space of the patio by about half". The proposed relocation of the railing would see half of the patio space of the unit fall outside the railing and be unusable for no real established rationale, and certainly not a rationale that provided the greatest good for the greatest number of owners in the building.

[67] Overall, the argument of the respondents is contradictory. While the respondents argue the petitioners should pay for the repairs of what they say is CP, the *SPA* requires the Strata Corporation to pay for CP. The Strata Corporation has now insisted that a significant part of the patio previously enjoyed by the petitioners is CP yet is requiring the petitioners to pay for the repairs to that CP. As noted earlier, the respondents' fundamental quarrel is with the fact they will have to pay for repairs to CP that they do not have access to. Rather, their view is that the petitioners who do have access to this patio property should pay.

[68] While the respondents may not have access to the area in question due to the particular construction of the building and layout of the floor plans of the various units, as the petitioners have pointed out, the petitioners were required to pay for replacement carpet in the hallways of the building's other floors, despite their floor being the only floor to have a tiled, and not carpeted, hallway. Furthermore, it must not be forgotten that the patio is part of the roof of another floor, and therefore part of the common benefit to the Strata Corporation and all owners.

[69] The fundamental reality, as per s. 72 of the *SPA*, is that the Strata Corporation is required to pay for CP repairs. While the respondents submit there can be no finding of significant unfairness as they are to consider and act in the best interests of all the owners and accomplish the greatest good for the greatest number, they have not demonstrated their actions have done so. Rather, their actions appear targeted against the petitioners and simply have not accomplished the greatest good for the greatest number.

[70] In view of the circumstances outlined above, I conclude the Strata Corporation has violated s. 72 of the *SPA* and has acted in a "significantly unfair"

manner towards the petitioners contrary to s. 164 of the *SPA*. In view of this it is unnecessary to deal with the parties' legal estoppel arguments.

[71] In addition, I conclude the petitioners' request for part of the LCP of their strata lot be converted to become part of their unit should be granted. They are now bedrooms and have been used as such for some period of time. As noted, this will increase the size of the strata lot with a consequential increase of payments and thereby benefit the Strata Corporation.

[72] The Strata Corporation has provided no good reason to oppose this. In the context of this case where the Court has found that the Strata Corporation has acted in a manner that is significantly unfair to the petitioners, I see no reason not to grant this request and do so.

Remedy

[73] The respondents argue if the petitioners are successful, the proper remedy would be order the petitioners to enter into a lease with the Strata Corporation for 20-30 years at a fair market value rate to be negotiated between the parties as per *Poole v. Owners, Strata Plan VR 2506*, 2004 BCSC 1613 [*Poole*]. In *Poole*, the petitioner believed in error that all of the roof area was limited common property. The Court ultimately allowed the petitioner to continue his use of the common property portion of the roof deck subject to him entering into a lease with the respondent for a particular term and rent.

[74] The respondents argue that this case, which involves "paper work and reality not conforming", is far more similar to *Poole* instead of *Frank v. The Owners Strata Plan LMS 355*, 2016 BCSC 1206 [*Frank*], which the petitioners advance. In *Frank,* the petitioner was successful as the roof deck has always been LCP and was designated for the exclusive use of the petitioner's unit. The respondents say unlike this case, the installation of the railing in *Frank* did not expand the area to which the petitioner had access. Furthermore, other owners in *Frank*, had not objected to the railing and the respondent strata was ordered to repair the railing.

[75] I conclude however as part of the remedy in this case, as the Strata Corporation has acted "significantly unfairly" to the petitioners, the Strata Corporation should provide and pay for the repairs to the CP of the patio. As argued by the petitioners, such a lease is not contemplated by the *SPA* in the circumstances of this case. The petitioners have been providing the maintenance and repairs for all of this property, including both the LCP and the CP, as they were of the view the entire patio was LCP. As is now evident, part of the property is CP and the Strata Corporation is thus responsible for those repairs. The railings should however remain in its current position.

[76] The Strata Corporation has been found to have acted "significantly unfairly" to the petitioners in both insisting that the petitioners pay for the repairs and that the railing be placed in a manner that separates the LCP and CP, thereby reducing the petitioners' patio, which has been used for many years without issue, by half. The Strata Corporation has not demonstrated why the railing cannot remain in its current position atop the parapet wall. As noted, I conclude the railing should remain in its current position and should not be reinstalled along the LCP/CP border.

[77] While I have some concerns about the actions of the individually named respondents, the complete ingredients for "bad faith", which require more egregious behaviour, have not been established. While there does appear to be some animus towards the petitioners, it does not rise to the level of bad faith as characterized by the jurisprudence in this matter.

[78] The petitioners have a long list of actions against the respondents alleging bad faith, particularly in supporting a dichotomy between patio and non-patio owners, which is not permissible at law. This Court is not however prepared at this time to find bad faith. As a word of caution, it may be that if this pattern of behaviour continues, such an allegation could be established and remedies against the personal respondents may be appropriate.

[79] As a remedy in this case, and as per s. 165 of the *SPA,* this Court orders:

a) The Strata Corporation must remove any gravel or aggregate previously deposited on the CP and LCP deck appurtenant to strata lot #35 and replace it with 18x18 or 24x24 inch patio pavers at the discretion of the roofing contractor;

b) The Strata Corporation must replace the railing and glass of the CP railing with new railings and glass situated on the parapet wall surrounding the deck appurtenant to strata lot #35;

c) The Strata Corporation has acted in a manner that is significantly unfair to the petitioners;

d) The “appurtenances” that are currently described as LCP on the strata plan be converted to strata lot property and the unit entitlement of strata lot #35 be adjusted to reflect the addition of this habitable space;

e) The Strata Corporation must repair the common property in strata lot # 35 pursuant to s. 72 of the *SPA*.

f) While the petitioners’ patio is a mixture of CP and LCP, the petitioners are entitled to the full use of the patio space.

[80] The petitioners are entitled to costs of this proceeding.

“Burke J.”