

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Valley's Edge Park Ltd. v. Holden*,  
2026 BCSC 780

Date: 20260430  
Docket: S6907  
Registry: Golden

Between:

**Valley's Edge Park Ltd.**

Petitioner

And

**Moira Holden and Denis Holden**

Respondents

Before: The Honourable Justice Armstrong

## Reasons for Judgment-Costs

Counsel for the Petitioner:

M.A.S. Blakley

Counsel for the Respondents:

G.B. Davison, K.C.

Written Submissions on Costs by  
Respondents:

July 22, 2025

Written Submissions on Costs by Petitioner:

July 22, 2025

Place and Date of Judgment:

Golden, B.C.  
April 30, 2026

**Overview**

[1] In this proceeding the petitioner, Valley's Edge Park Ltd., alleged that the respondents, Moira and Denis Holden, had placed improvements on a strata lot subject to a Statutory Building Scheme (the "SBS") without permission of the administrator and in breach of the SBS. The petitioner requested an injunction compelling the respondents to remove the improvements placed on their strata lot and for costs payable pursuant to the SBS.

[2] In their response to the petition, the respondents acknowledged that a new deck constructed on their strata lot was placed without the written approval of the petitioner. However, they said that the deck did not interfere with anyone's quiet enjoyment of the development and that removal of the deck would be time-consuming and costly with no practical benefit to the resort. Thus, they opposed the specific relief claimed, being a mandatory injunction requiring removal of the structure placed on their strata lot.

[3] In reasons issued March 4, 2024, indexed as *Valley's Edge Park Ltd. v. Holden*, 2024 BCSC 377, I found that the respondents had breached the SBS but declined to order removal of the improvement and granted the petitioner leave to amend the petition to seek equitable damages in the alternative to the injunctive relief claimed in the original petition.

[4] The petitioner amended the petition to claim equitable damages. When further argument was made on the amended petition, the petitioner requested a reconsideration of the 2024 decision refusing the injunction and argued for equitable damages in the sum of \$20,000. In reasons indexed at 2025 BCSC 1177, I granted judgment to the petitioner in the sum of \$5,000 but refused reconsideration of the earlier decision and declined to issue an injunction as requested in the original petition.

[5] The parties were granted leave to make submissions concerning costs and these reasons address those submissions.

[6] The petitioner now seeks an order for full indemnity costs pursuant to a clause in the SBS. Alternatively, the petitioner seeks costs on a party and party basis pursuant to Rule 14-1(9) of the *Supreme Court Civil Rules*. The background facts to this application are set out in the reasons for judgment given previously and need not be repeated.

### **The Positions of the Parties**

#### **The Petitioner**

[7] The petitioner seeks full indemnity for costs incurred in this petition proceeding in which it sought an injunction to require the respondents to remove an improvement on a strata lot in the building scheme. This claim is based on clause 5.13 of the SBS, which reads as follows:

No owner will allow any breach of any covenants contained herein to continue for more than thirty (30) days after notice and (sic) writing delivered to the owner of the Strata Lot by the Administrator requesting the owner to remedy such breach, and if the owner allows such breach to continue the administrator may cause such work as may be necessary to cure the breach to be performed and the cost thereof including the administration of legal costs shall be a debt owing by the owner, payable upon delivery to the owner of such Strata Lot of an invoice for such work or services.

[8] The petitioner contends that this clause obliges the owner to pay any legal costs incurred by the administrator incurring the respondents' breach. The goal of the SBS is to ensure that the administrator is not burdened with the costs of enforcing the building scheme. Absent such a remedy, the administrator would face an insurmountable financial disincentive to cure breaches; this outcome would undermine the SBS's effectiveness.

[9] Notwithstanding the fact that no invoice for such work or services has been delivered to the respondents, the petitioner contends it is entitled to those costs mandated by the SBS. It would be wasteful and inefficient to require the petitioner to commence a separate lawsuit to recover unpaid legal fees as a debt, and its proposed approach will better promote judicial economy and align with the objectives of the *Supreme Court Civil Rules*.

[10] In the alternative, the petitioner seeks an order that the respondents pay costs at Scale B because the petitioner was successful in this proceeding.

### **The Respondents**

[11] The respondents argue that success in the hearing of the petition was divided because the court did not accede to the petitioner's renewed claim for an order to remove the improvement. After allowing the petitioner to claim equitable damages, the court granted a damage award in lieu of the injunction in the sum of \$5,000 in damages, which was 25% of the amount claimed by the petitioner. Thus, neither party was substantially successful.

[12] Alternatively, the respondents claim they should be entitled to costs for the hearing of the petition in 2024 and the petitioner be given costs for the hearing of the amended petition in 2025.

[13] The respondents argue that the claim for full indemnity costs (solicitor-client costs) should not be awarded because the language of the SBS does not "clearly and unequivocally" express an obligation falling on the respondents to pay those costs: see *Eisler Estate v. GWR Resources Inc.*, 2020 BCSC 562 at para. 31. On any objective interpretation of the agreement, the SBS does not include an obligation requiring the respondents to indemnify the administrator for full indemnity costs, in part because no "costs" – as contemplated by clause 5.13 – were incurred.

[14] The respondents contend that any reference to costs in clause 5.13 are costs contingent on the administrator performing "work" to correct a breach. They contend that this refers to actual "work" performed by the administrator, which in this case would have been work to remove the deck. Absent an authorization for the deck's removal, no work had been performed to cure the breach. Costs incurred would have been payable if the work performed to cure the breach and "the cost thereof" included the administration of legal costs.

[15] Further, "administration of legal costs" does not clearly or unequivocally refer to solicitor-client costs nor to an indemnity of any costs incurred.

[16] The respondents contend this language did not make clear that they were obliged to indemnify the administrator for all legal costs or for full indemnity costs of this proceeding.

[17] The respondents contend that the SBS was formed by the petitioner and that any ambiguity in the SBS was therefore caused by the petitioner and *contra proferentem* should be applied to the interpretation of the scheme.

[18] Moreover, even if solicitor-client costs were mandated under clause 5.13, the court should exercise its discretion to deny such costs and make an alternative order: see *Peace River Partnership v. Cardero Coal Ltd.*, 2023 BCCA 351 at paras. 148–49.

[19] Lastly, the respondents contend that an award of solicitor-client costs would have a chilling effect on any strata lot owner challenging decisions of the administrator or holding the administrator accountable for its decisions.

## **Analysis**

### **Interpretation of the SBS Concerning Costs Pursuant to Contract**

[20] Section 220 of the *Land Title Act*, R.S.B.C. 1996, c. 250 [*LTA*], provides for the creation of a statutory building scheme imposing “restrictions consistent with a general scheme of development”. A “Declaration of Building Scheme” is registered as a charge against the land, and the restrictions created by the building scheme run with and bind all the land affected, together with each owner and successor in title: *LTA*, s. 220(3). Here, the use and development of all strata lots are governed by the building scheme which is registered as a charge against strata lots in the Valley's Edge development.

[21] In this case, the respondents are correct in that the clause referring to costs is not “clearly and unequivocally expressed” in the SBS. The clear and unequivocal meaning of clause 5.13 is only that the administrator can recover costs of performing “work” to correct a breach. In the context of this case, “work” refers to physical work to remove an improvement which was placed on the strata lot without the approval

of the administrator. The petition did not succeed in obtaining the remedy of an injunction.

[22] Moreover, the phrase “such work as may be necessary to cure the breach to be performed and the cost thereof including the administration of legal costs shall be a debt owing by the owner” does not clearly and unequivocally encompass a claim for full indemnity for legal costs for a procedure which did not involve the performance of work to cure the breach.

[23] Further, no amount is payable until the petitioner has delivered to the owner of a strata lot and invoice for the work or services. In this proceeding no invoice has been issued and neither the amount claimed nor nature of the services provided are before the court.

[24] In my view, delivery of the invoice would have been necessary to trigger the respondent's obligation to pay costs and would have alerted the respondents to the nature and measure of those costs. As will be discussed further in these reasons, knowing the amount of the claim can be an important aspect to the exercise of the court's discretion to refuse a “contractual remedy” for costs.

[25] In *Canadian Petcetera Limited Partnership v. 2876 R Holdings Ltd.*, 2010 BCCA 469, the Court said:

[42] A distinction must be made between costs and legal (and other) expenses. Costs are awarded pursuant to the Rules of Court. They are normally granted on a party and party basis in accordance with a tariff contained in the Rule of Court, and they amount to only a portion of the party's actual legal expenses. By contrast, it is open to the parties to a contract to include a provision for reimbursement by one party to the other party for its actual legal and other expenses in certain circumstances. These are sometimes referred to as indemnity costs or contractual costs.

[26] In *Eisler Estate*, Donegan J. (then of this Court) set out the test to be applied when interpreting a contract requiring a party to pay actual legal fees:

[31] Where such a contract exists, the right to be indemnified for actual legal fees and expenses must be “clearly and unequivocally expressed.” However, it is important to remember that no “magical incantation” is required in order for a party to be entitled to a specific order for costs: *Bakshi v. Shan*, 2013 BCSC 969 at para. 44.

[32] Like all questions of a contractual interpretation, the reasonable intention of the parties falls to be determined on the basis of the language used: *Bakshi* at para. 44.

[27] The language used in the SBS was chosen by the administrator/developer at the time that the SBS was imposed on the title. It must be noted that the interpretation of this contract does not depend on the subjective intentions of the party; it involves the interpretation of terms from an objective perspective.

[28] In *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, Rothstein J. summarized the approach to be followed in contractual interpretation:

[55] Although that caution was expressed in the context of a negligence case, it applies, in my opinion, to contractual interpretation as well. As mentioned above, the goal of contractual interpretation, to ascertain the objective intentions of the parties, is inherently fact specific. The close relationship between the selection and application of principles of contractual interpretation and the construction ultimately given to the instrument means that the circumstances in which a question of law can be extricated from the interpretation process will be rare. In the absence of a legal error of the type described above, no appeal lies under the AA from an arbitrator's interpretation of a contract.

...

[57] While the surrounding circumstances will be considered in interpreting the terms of a contract, they must never be allowed to overwhelm the words of that agreement (*Hayes Forest Services*, at para. 14; and *Hall*, at p. 30). The goal of examining such evidence is to deepen a decision-maker's understanding of the mutual and objective intentions of the parties as expressed in the words of the contract. The interpretation of a written contractual provision must always be grounded in the text and read in light of the entire contract (*Hall*, at pp. 15 and 30-32). While the surrounding circumstances are relied upon in the interpretive process, courts cannot use them to deviate from the text such that the court effectively creates a new agreement (*Glaswegian Enterprises Inc. v. B.C. Tel Mobility Cellular Inc.* (1997), 101 B.C.A.C. 62).

[Emphasis added.]

[29] Although an SBS is a scheme for the mutual benefit of all owners and can be interpreted from a purposive approach to ensure they have practical or enforceable effect, the interpretation of a contractual term requiring one party to pay indemnity costs to another must be applied in light of the test requiring "clear and unequivocal" language.

[30] It is important to note that the costs provisions in the SBS are not part of the scheme whereby all owners are entitled to enforcement of the benefits. Nonetheless, in some cases the language of any particular restriction may be so imprecise and vague as to be unenforceable or void for uncertainty: see *Suomalainen v. Jernigan*, 2004 BCSC 465.

[31] Where a contract is sufficiently clear, the courts will generally enforce express covenants for solicitor-client costs, absent misconduct or harshness.

[32] I am satisfied that the terms of the SBS refer to the administration of legal costs when the administrator has performed work to cure the breach. This clause is not sufficiently clear or unequivocal that, absent the physical removal of the deck which was not authorized by the administrator, the administrator can claim indemnity costs for a petition it was unsuccessful in prosecuting.

[33] Thus, I will not award the petitioner full indemnity costs or solicitor-client costs of this petition.

### **Consideration of Party and Party Costs**

[34] The petitioner's alternative claim is for party and party costs at Scale B of the *Supreme Court Civil Rules*. In the original petition, it sought injunctive relief based on the respondents' breach of the SBS, which required them to obtain approval before constructing their deck. As it relates to the hearing of the first petition, it is clear to me the petitioners were successful in the claim advanced but not in the relief sought.

[35] In the final order granted, the petition was allowed although the claim for injunctive relief was denied. Moreover, the respondents were required to pay the petitioner \$5,000 in equitable damages in lieu of an injunction.

[36] I am satisfied that the petitioner was substantially successful in its petition and that the refusal to grant the injunction requiring the removal of the improvement was not an adequate basis to deny the petitioner costs on a party and party basis.

### Court's Discretion to Make Alternate Costs Orders

[37] If I am wrong in dismissing the petitioner's claim for full indemnity costs on the basis of my interpretation of the SBS, I must consider whether the court should exercise its discretion to deny the petitioner full indemnity costs.

[38] The history of this dispute involved a number of communications between the parties prior to commencement of the litigation. After learning that the respondents had constructed their deck without approval, the petitioner sent a notice on November 19, 2022, informing the respondents as follows:

In our capacity as Administrator pursuant to the above noted Statutory Building Scheme, we hereby give you notice pursuant to section 5.13 thereof that work conducted upon the strata lot is not in compliance with the approved plans. Specifically the installation of a rear deck has never been submitted for approval. We hereby give you Thirty (30) days within which to remove the deck or submit complete building plans as provided for in the building scheme. Failure to do so may result in us taking steps to enforce of the Building Scheme, including such court applications as may be necessary, with all resulting costs to your account.

[39] Drawings were sent by the respondents to the petitioner on November 26, 2022. On December 3, 2022, the petitioner took the position that these drawings were not in accordance with the SBS application process, although no details of that process were described in the affidavits. Moreover, the reasons for rejecting the plan received from the respondent on November 26, 2022, were:

I note that the deck is already built, without approval or even an application for approval. As you are well aware, the required form is posted on my website, as well as the strata's website. Also, ground-level deck adjacent to existing 4 ft. high decks are generally not approved.

[40] These reasons did not reflect the provisions of clause 5.11 prohibiting owners from constructing improvements in such a way as to:

... detract from the overall design and reputation of the Valley's Edge Park and the Strata Lots benefiting from this Building Scheme.

[41] The petitioner received copies of plans for the proposed improvement to the respondents' strata lot after the deck had been constructed. It is clear from the parties' correspondence that the petitioner's position was that the respondents had

breached the SBS requirement that an owner obtain approval for improvements and, having failed to obtain that approval, were obliged to remove the improvement. The petitioner, in receipt of the plans sent on November 26, 2022, appears to have accepted those plans as an application which was refused because level decks adjacent to existing 4-foot high decks are generally not approved. It appears the petitioner did not address the merits of the plans sent to it other than to state some “general practice” concerning other decks on strata lots.

[42] The court does have authority to decline awards of contract costs (including solicitor-client costs) in spite of an agreement to the contrary. This issue was considered in *Peace River*, where at paras. 138–40 the Court endorsed a decision of the Alberta Court of Appeal in *Schafer v. Schafer*, 2023 ABCA 117, discussing the authority to decline to award contract costs following a dispute under the SBS. In *Schafer*, the court considered circumstances in which a court might decline contractual costs after taking into account all relevant circumstances including things such as degrees of success and proportionality in terms of expense.

[43] In *Peace River* at para. 139, the BC Court of Appeal adopted the following discussion of the Alberta Court of Appeal’s discretion to refuse to order costs provided for in a contract in *Schafer*:

[73] Any contractual right to costs is always subject to the court’s discretion: Mark M. Orkin, Robert G. Schipper, *Orkin on The Law of Costs*, 2nd ed (Toronto: Thomson Reuters Canada, 2019) (loose-leaf updated 2020) at 219.1.1. The circumstances when a court may exercise its discretion to award costs in a manner different than what was agreed upon between the parties was recently addressed in *Driving Force* at paragraph 72:

Even if there is a binding covenant to pay solicitor and client costs, the trial judge has a discretion to depart from that covenant having regard to the way the litigation was conducted, the proportionality of the expense related to the amounts in issue, the degree of success achieved, and other relevant factors: [citations omitted].

[74] Therefore, we do not accept that a court should only exercise its discretion to not award contractually-agreed upon solicitor client costs where there has been abusive forms of litigation or other misconduct, although that clearly may be a relevant factor. Proportionality of the expense and degree of success achieved may also be considered.

[Emphasis added.]

[44] Thus, relative success may be one such circumstance to consider, depending on the facts of a specific case: *Schafer* at para. 73.

[45] The Court of Appeal also endorsed the following comments from the Ontario Court of Appeal in *Bossé v. Mastercraft Group Inc.*, [1995] O.J. No. 884, 1995 CanLII 931, leave to appeal ref'd 24702 (21 September 1995):

The costs of and incidental to a proceeding or a step in a proceeding are, subject to the provisions of a statute or the rules of court, in the discretion of the court and the court may determine by whom and to what extent the costs shall be paid: *Courts of Justice Act*, R.S.O. 1990 c.C-43, s.131(1); rule 57.01 of the Rules of Civil Procedure. As a general proposition, where there is a contractual right to costs the court will exercise its discretion so as to reflect that right. However, the agreement of the parties cannot exclude the court's discretion; it is open to the court to exercise its discretion contrary to the agreement. The court may refuse to enforce the contractual right where there is good reason for so doing - where, for instance, the successful mortgagee has engaged in inequitable conduct or where the case presents special circumstances which renders the imposition of solicitor and client costs unfair or unduly onerous in the particular circumstances. See, generally, *Orkin on Costs*, 2nd ed. 1993, p.2-111; *Collins v. Forest Hill Investment Corporation*, 1967 CanLII 291 (ON SC), [1967] 2 O.R. 351 (Ct. Ct.), *Ontario Potato Distributing Inc. v. Confederation Life Insurance Co.* (1991), 25 A.C.W.S. (3d) 809 (Ont. Ct. Gen. Div.), *Cabot Trust v. D'Agostino* (1992) 1992 CanLII 7507 (ON SC), 11 O.R. (3d) 144 (Gen. Div.), *C.D.I.C. v. Canadian Commercial Bank* (1989), 1989 ABCA 150 (CanLII), 68 Alta. L.R. (2d) 194 (C.A.), p.203-4.

[Emphasis added.]

[46] In *Peace River*, the Court concluded:

[148] Thus, where a contractual indemnity provision meets the threshold test of "clearly and unequivocally" establishing the right to indemnification (*Eisler Estate* (SC) at para. 31), that provision will, in our view, be presumptively enforceable. The burden then shifts to the party opposing indemnification to establish why the court should exercise its discretion to depart from the terms of the contract.

[149] As to when that discretion should be exercised, we do not think it is helpful to enumerate a list of specific factors that would justify doing so. Each case will turn on its specific facts. We agree with the court in *Schafer* that the circumstances in which a court may decline to award contractual costs are not limited to cases in which there has been litigation misconduct, although that may be a relevant factor. Nor do we think "extraordinary" circumstances are necessarily required. Rather, the court must consider all relevant circumstances, including factors such as degree of success and proportionality in terms of expense, keeping in mind that the overriding

objective of the *Supreme Court Civil Rules* is to secure a “just, speedy and inexpensive” determination of every proceeding on its merits: R. 1-3(1).

[47] In my view, the legal proceedings were prolonged due to the pleadings filed initially by the petitioner. Its failure to make an alternative claim for equitable damages as set out in *Arbutus Park Estates Ltd. v. Fuller*, [1977] 1 W.W.R. 729, 1976 CanLII 1118 (B.C.S.C.), resulted in the petition proceeding with a second hearing.

[48] It must be noted that the principal complaint here was not the appearance of the deck nor any specific issue concerning the deck which might have resulted in a refusal of approval by the administrator. Moreover, there is no indication of what costs are claimed, and the court is deprived of evidence that would be helpful in determining whether the extraordinary circumstances have been met by the respondent to resist the claim for full indemnity costs.

[49] In the result, if I am wrong in the earlier decision, I would still not grant the petitioner its full indemnity costs. I am, however, satisfied that the petitioner is entitled to its party and party costs. It was largely successful in this proceeding, albeit not with enforcement of the SBS by way of injunctive relief.

#### **Policy Consideration of Costs for Challenges to Administrators' Decisions**

[50] The respondents argue that if solicitor-client costs are imposed under the SBS, there will be a reluctance on the part of strata lot owners to challenge unreasonable decisions of the administrator. In this case, the administrator has very wide powers to consider, approve, or reject any improvement to a strata lot. It would not be in the interests of all owners to be deterred from challenging those decisions: see *Bosse*.

[51] In light of my finding that solicitor-client costs are not appropriate here, I need not decide anything on this basis.

**Conclusion**

[52] The petitioner will have its costs of the proceeding on scale B.

“Armstrong J.”