

CANADA / JUDGMENT

Downing v. Strata Plan VR2356

2019 BCSC 1745

COURT

Supreme Court of British Columbia

DECIDED

27 September 2019

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2019 BCSC 1745 Downing v. Strata Plan VR2356

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Downing v. Strata Plan VR2356,

2019 BCSC 1745

Date: 20190927

Docket: S196580

Registry: Vancouver

Between:

Charlotte Elizabeth Downing

Petitioner

And

Strata Plan VR2356

Respondent

Corrected Judgment: The text of the judgment was corrected on the twelfth page on November 6, 2019.

Before: The Honourable Mr. Justice Crerar

Oral Reasons for Judgment

Counsel for Petitioner:

Faith Hayman

Counsel for Respondent:

Alexander James Chang

Place and Date of Hearing:

Vancouver, B.C.

September 24, 2019

Place and Date of Judgment:

Vancouver, B.C.

September 27, 2019

I. Introduction

- [1] The parties to this petition have asked the Court to determine whether this matter should proceed as a petition, converted into an action, in the Supreme Court of British Columbia, or whether it should be referred to the Civil Resolution Tribunal ("CRT") under the provisions of its governing legislation, the Civil Resolution Tribunal Act, SBC 2012, c 25 (the "Act").

II. FACTS

The strata unit suite

- [2] The subject of the present petition is a residential strata unit in North Vancouver owned by the petitioner. The suite is one of 72 strata lots in the strata complex governed by the respondent strata corporation.
- [3] The petitioner is now 92 years old. In August 2017 she suffered a stroke, necessitating a move to the supportive facilities of a seniors residence.
- [4] In January 2018 she retained a realtor, Dana Panchyshyn, to sell her suite. In April 2018, she moved out of the suite into the seniors residence.
- [5] At the relevant time, the suite was unoccupied, although some of the petitioner's furniture appears to have remained.

The water ingress

- [6] In April 2018, Mr Panchyshyn entered the suite to show it to potential buyers. He noticed some moisture on the carpet. He consulted with the petitioner and a Ms Barclay (who has power of attorney over the petitioner's affairs). He also notified the Strata Council Vice President, Monique Talle. He left the key to the unit under Ms Talle's door so that she could see the water damage in the petitioner's suite for herself.
- [7] There is disagreement as to whether Mr Panchyshyn asked Ms Talle to "remedy" the moisture problem, whether he authorized her to take steps towards that remedy, or whether the petitioner's realtor was in a position to authorize such steps.

- [8] The strata corporation claims that it is authorized and obligated under its bylaws and the Strata Property Act, SBC 1998, c 43 (the "SPA") to enter the suite to take appropriate steps to investigate and address the water ingress (and other such problems), and that it was authorized by the petitioner through her agent the realtor.
- [9] When Mr Panchyshyn returned to the suite a few days later, he discovered that the kitchen, living room, dining room, den, and second bedroom had been, in the words of the petitioner's counsel's submissions, "torn apart". Photos exhibited to the affidavits show that carpets had been pulled up, built-in cabinets and shelving taken off the wall, and sections of drywall cut out of the walls.
- [10] It was later learned that the strata corporation had retained a contractor and an engineer to enter the suite to investigate and try to address the water ingress and damage. The strata corporation authorized emergency work to abate the water damage and mould. These steps apparently required the removal of the drywall, carpeting, and cabinetry.
- [11] The strata's building engineer inspected the building envelope and determined that there were multiple leaks into the petitioner's unit through the building membrane and windows. The final repairs to the interior of the suite could not be completed until the underlying building envelope issues that were causing the leaks were repaired by the strata corporation.

The petition

- [12] The petition was filed on June 10, 2019.
- [13] In her petition, the petitioner complains that she never authorized the strata corporation to enter her suite and carry out the extensive alterations that it did through the contractor.
- [14] The petitioner's initial concept for the petition was to seek relief under the SPA for orders that the strata corporation promptly repair the suite, in order to allow her to show and sell the suite, which was allegedly unmarketable in its gutted state.
- [15] At first, the strata corporation tried to authorize membrane and window repairs to the petitioner's suite as part of a planned broad building envelope repair to the entire complex. Internal disputes arose amongst strata members, however, largely due to the high costs of the broader repair project. The strata corporation also claims that problems with contractors and suppliers contributed to the delay.
- [16] In any case, it did not appear that the petitioner's suite would be repaired in the immediate future. The petitioner decided that a claim focusing on damages would be the more appropriate course.
- [17] To this end, if the petition survives the present consideration of whether it should be allowed to proceed in this Supreme Court, as opposed to being referred to the CRT, the petitioner seeks an order that the petition be converted to an action.

[18] The respondent filed its response on July 23, 2019. That document raised the jurisdictional objection that the CRT was the appropriate forum to adjudicate this strata dispute.

[19] In response, the petitioner amended the petition to add a claim in trespass, including damages for mental distress, on July 29, 2019. She claimed that the delay in being able to market and sell the suite has caused various categories of financial loss, including loss of opportunity to sell the suite in a more favourable real estate market, depreciation of value caused by increased market awareness of the problems with the building, interest on a line of credit, loss of value in the shares she had to sell in order to finance two residences, and the payment of otherwise unnecessary taxes, strata fees, and insurance.

[20] To summarize, Part 1 of the Amended Petition, on which this decision is based, sets out the orders sought:

1. Immediate relief: An order pursuant to s. 165(a) of the Act directing the strata corporation established under Strata Plan VR2356 ("the Strata Corporation") to perform a duty it is required to perform under the Act and its resolutions. The specific relief sought by the petitioner is an order directing the Strata Corporation to immediately complete repairs to the common property pursuant to sections 3 and 72(1) of the Act that will address water damage to the petitioner's Suite and, pursuant to Council Minutes dated September 27, 2018, the Strata Corporation immediately thereafter arrange for repairs to be completed to the interior of her Suite which match the condition of her Suite before it was ripped apart.
2. Subsequent relief: An order pursuant to s. 164(1)(a) of the Strata Property Act, SBC 1998, chapter 43 ("the Act"), remedying a significantly unfair action by the Strata Corporation in relation to the unauthorized destruction of the petitioner's unit at 105 - 995 Roche Point Drive, North Vancouver, BC V7H 2X4 ("the Suite") in April 2018. Specifically, the Petitioner seeks damages for losses arising from the unauthorized destruction of the Suite and delays in repairing same.
3. Such further and other order pursuant to s. 165(c) of the Act as is necessary to effect prompt repairs to the exterior membrane of the strata building, or at least those portions that impact the Suite and repairs to the interior of the Suite to a degree that matches the state of the Suite prior to its destruction.
4. The Petitioner also seeks:
 - a) general damages for trespass, including, for damages for mental distress; and
 - b) damages arising from the devaluation of the Petitioner's Suite as a result of delays in her ability to sell the Suite.
5. Such further and other order as this Honourable Court deems just.
6. Costs of this petition.

[underlining in original petition to indicate the added amendments]

III. LAW

[21] The Court of Appeal recently described the purpose of the CRT in *Allard v. The Owners, Strata Plan VIS 962*, 2019 BCCA 45 at para 34:

The general purpose of the Tribunal was recently summarized by the Supreme Court of British Columbia in *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164:

- [49] The purpose of the CRT is to provide an accessible, flexible and speedy dispute resolution process to parties involved in strata claims falling within s. 3.6(1) of the CRTA. The CRT's online processes and emphasis on facilitated dispute resolution are intended to provide the parties with a quick and less expensive form of decision making than adjudication in the Supreme Court
- [22] In *Yas v. Pope*, 2018 BCSC 282 at paras 12-15, Justice Baird set out the purpose and objectives of the CRT and the Act, and noted that the Act directs most strata disputes from the court to specialized adjudicators with the CRT:
- [15] The Act was designed to deal quickly, efficiently and inexpensively with strata matters and to remove a wide swathe of strata disputes from the dockets of our over-burdened ordinary courts: see Act s. 3.6. Counsel have informed me, and my own research has confirmed, that the members of the CRT have been carefully selected for their specialised expertise, competence and experience within the areas of jurisdiction reserved to it.
- [23] Subsection 121(2) expressly confirms that the CRT is to be considered "...to have specialized expertise in respect of claims within the jurisdiction of the tribunal" with respect to disputes arising from the SPA.
- [24] Section 121(1) of the Act provides the CRT broad authority to determine most forms of strata disputes:

Claims within jurisdiction of tribunal for strata property claims

121(1) Except as otherwise provided in section 113 [restricted authority of tribunal] or in this Division, the tribunal has jurisdiction over a claim, in respect of the Strata Property Act, concerning one or more of the following:

- (a) the interpretation or application of the Strata Property Act or a regulation, bylaw or rule under that Act;
- (b) the common property or common assets of a strata corporation;
- (c) the use or enjoyment of a strata lot;
- (d) money owing, including money owing as a fine, under the Strata Property Act or a regulation, bylaw or rule under that Act;

- (e) an action or threatened action by a strata corporation, including the council, in relation to an owner or tenant;
 - (f) a decision of a strata corporation, including the council, in relation to an owner or tenant;
 - (g) the exercise of voting rights by a person who holds 50% or more of the votes, including proxies, at an annual or special general meeting.
- [25] Section 122 of the Act specifies sections of the SPA over which the CRT does not have jurisdiction. The procedures enumerated in that section are more complicated, drastic, and fundamental matters such as the forced sale of strata lots, the appointment of an administrator for the strata corporation, and the winding up of the strata corporation. Even under stretched categorization, the present claim does not fall under any of the sixteen exceptions set out in s. 122.
- [26] While the Act generally limits the monetary jurisdiction of the CRT to that of the Small Claims Court, the Act specifically does not limit the CRT's monetary jurisdiction with respect to SPA disputes. As stated in Yas at para 14:

The CRT is limited in most matters over which it has jurisdiction to claims not exceeding the small claims monetary jurisdiction of the Provincial Court. However, for strata property claims the Act contains no such limit. The Act makes a point, in other words, of differentiating strata property claims from all others rendered justiciable by the CRT. The legislature by necessary inference has mandated that the CRT should handle strata claims in any amount, large or small.

- [27] Division 3 of the Act sets out the factors that guide whether a matter is to be heard by this court or the CRT. Those provisions confirm that the CRT is to hear designated matters unless there exist exceptional circumstances, in the interests of justice and fairness, indicating that this court (or another adjudicator) should hear the matter.
- [28] Two sections in Division 3 presumptively bar a proceeding in this court if the subject matter of that proceeding is one over which the Act deems the CRT to have specialized expertise.
- [29] First, under s.16.1, the court presumptively must stay or dismiss such matters:

Court must stay or dismiss certain proceedings

16.1 (1) Subject to subsection (2) and section 16.4 (1) and (2) [bringing or continuing claim in court], if, in a court proceeding, the court determines that all matters are within the jurisdiction of the tribunal, the court must

- (b) in the case of a claim in respect of which the tribunal is to be considered to have specialized expertise, dismiss the proceeding unless it is not in the interests of justice and fairness for the tribunal to adjudicate the claim [emphasis added]

- [30] Second, under s.16.4, a party presumptively must not bring or continue a claim in this court over a subject matter that is within the jurisdiction of the CRT:

Bringing or continuing claim in court

16.4 (1) Subject to this section and Division 5 [Objection to Tribunal Small Claim Decision] of Part 5 [Tribunal Resolution], a person may not bring or continue, as the case may be, a claim that is within the jurisdiction of the tribunal as a claim in a court unless one or more of the following apply:

- (a) the tribunal decides not to give an initiating notice under section 6 [initiating notice];
- (b) the tribunal refuses to resolve the claim under
 - (i) section 10 [claims to be resolved must be within tribunal authority], or
 - (ii) section 11 [general authority for tribunal to refuse to resolve claim or dispute];
- (c) the court orders under section 16.2 that the tribunal not adjudicate the claim;
 - (c.1) the tribunal has made a final decision in relation to a tribunal small claim and a party has made a notice of objection under section 56.1 (1) [notice of objection renders decision non-binding];
- (d) the tribunal declines jurisdiction in respect of the claim under section 114 [limited jurisdiction and discretion to decline jurisdiction to apply the Human Rights Code];
- (e) the claim is a counterclaim to a notice of claim or a notice of civil claim, as applicable, filed in the court;
- (f) the person is in a class of persons prescribed by regulation.

[emphasis added]

[31] The only applicable s.16.4(1) exception is (c).

[32] The petitioner asks this Court under s.16.2 of the Act for an order that the CRT not adjudicate her claim. Specifically, the petitioner relies upon s. 16.2(1)(b), which allows this court to hear a matter otherwise directed to the CRT on the grounds that "it is not in the interests of justice and fairness for the tribunal to adjudicate the claim."

[33] Section 16.3 itemizes relevant considerations in the interest of justice and fairness:

Considerations in the interest of justice and fairness

16.3(1) For the purposes of sections 16.1(1) and 16.2(1), when deciding whether it is in the interests of justice and fairness for the tribunal to adjudicate a claim, the court may consider the following:

- (a) whether an issue raised by the claim or dispute is of such importance that the claim or dispute would benefit from being adjudicated by that court to establish a precedent;

- (b) whether an issue raised by the claim or dispute relates to a constitutional question or the Human Rights Code;
 - (c) whether an issue raised by the claim or dispute is sufficiently complex to benefit from being adjudicated by that court;
 - (d) whether all of the parties to the claim or dispute agree that the claim or dispute should not be adjudicated by the tribunal;
 - (e) whether the claim or dispute should be heard together with a claim or dispute currently before that court;
 - (f) whether the use of electronic communication tools in the adjudication process of the tribunal would be unfair to a party in a way that cannot be accommodated by the tribunal.
- (2) For the purposes of section 16.1(2), when deciding whether it is in the interests of justice and fairness for the tribunal to make the determination referred to in that subsection, the court may consider the principle of proportionality.
- [34] For completeness, although it is not directly relevant to the present application, s.11 of the Act also provides a general authority for the CRT itself to decline to resolve a claim before it, and direct it to this court or another forum, based on certain specific grounds, including the following:

General authority for tribunal to refuse to resolve claim or dispute

11 (1) The tribunal may refuse to resolve a claim or a dispute within its jurisdiction if it considers that any of the following apply:

- (a) the claim or the dispute
 - (i) would be more appropriate for another legally binding process or dispute resolution process, or
 - (c) issues in the claim or the dispute are too complex for the dispute resolution process of the tribunal or otherwise impractical for the tribunal to case manage or resolve;
 - (d) resolving the claim or the dispute may involve a constitutional question or the application of the Human Rights Code;
 - (e) the tribunal is satisfied that it has been established, on the basis of satisfactory evidence, that the claim or the dispute is beyond the jurisdiction of the tribunal.
- (2) The tribunal may exercise authority under this section
- (a) at the time of considering a request for tribunal resolution, or
 - (b) in the case of a request that has been accepted, at any time before the tribunal makes the final decision resolving the dispute.

IV. DECISION

Should this Court or the CRT decide this dispute?

[36] Counsel for the respondent strata corporation, with reference to s.121(1) of the Act, argues that all of the issues raised in the petition in some way deal with a combination of:

- A. The application of the SPA and the strata's bylaws;
- B. The decisions of the strata corporation and its council; and
- C. The actions of the strata corporation.

[36] I agree. I further agree that this matter is appropriately stayed under s.16.1 of the Act and referred to the CRT under s.16.4 of the Act.

[37] The dispute set out in the petition falls under several of the s.121 categories over which the Act expressly confers jurisdiction on the CRT, including:

- (a) the interpretation or application of the Strata Property Act or a regulation, bylaw or rule under that Act;
- (b) the common property or common assets of a strata corporation ;
- (c) the use or enjoyment of a strata lot;
- (e) an action or threatened action by a strata corporation, including the council, in relation to an owner or tenant;
- (f) a decision of a strata corporation, including the council, in relation to an owner or tenant

[38] I will address the petitioner's arguments that this dispute should remain in this court.

[39] The petitioner starts by noting that s.16.1 only requires the court to dismiss the Supreme Court proceedings in favour of resolution by the CRT if the court determines that "all matters" are within the jurisdiction of the CRT. She argues that the trespass and mental distress claims, and the extremity of the facts, move this dispute outside the typical jurisdiction of the CRT, and that fairness and justice demand that they remain in this court.

[40] The petition in its original form entirely concerned the application of the SPA. The amended additions do not change the complexion of the dispute. Although trespass and mental distress have been added, they of course, arise from the allegation that unauthorized entry and destruction of a strata unit constituted trespass and caused distress. I agree that at its core, this dispute concerns the strata corporation's powers and duties to enter, inspect, maintain, and repair strata property. This falls firmly within the specialized expertise and jurisdiction granted to the CRT under s.121(1), and specifically under paragraphs (a), (e), and (f).

[41] The petitioner makes several further arguments as to why it would be not in the interests of justice and fairness for the CRT to adjudicate the dispute, as per s.16.1, and the specific considerations set out in s. 16.3, quoted above.

[42] First, as per s. 16.3(1)(a), the petitioner argues that the dispute is of great importance not only to the petitioner, but to other strata owners in her complex, and strata owners generally: when may a strata corporation enter and physically alter a strata unit? While this may be an important issue, I find that it falls squarely within the CRT's statutorily recognized area of expertise, and will likely turn entirely or substantially on an interpretation of the SPA as well as the applicable bylaws of the individual strata corporation. Further, while precedential value is a stated reason that the court may elect to adjudicate a given strata dispute, precedent is not entirely a monopoly of the courts: the reasons of the BCCRT are publicly available online and would provide persuasive, albeit not binding, authority and guidance for future similar disputes. Finally, this dispute will largely turn on the individual facts: whether the specific words constituted an authorization, and what degree of dismantling was necessary or appropriate given the specific water damage. The Court of Appeal made a similar observation in the face of a similar argument in the recent Allard decision at para 26, concerning whom between the strata corporation and the owner was responsible for the costs of repairing the owner's unit:

1. Precedential Value

[26] Given the concerns expressed above, it seems to me that the issues raised by the respondent would not benefit from the establishment of Supreme Court precedent. The two substantive questions articulated in the order are thoroughly infected by the particular facts of the dispute at issue. Accordingly, I am unable to see how an answer to either question, even if they could be reframed as questions of law, could serve as a guide to strata disputes beyond those party to the immediate proceedings.

[43] The above passage concerns precedential value in the test for leave to appeal, but also speaks to a discussion of s. 163(1)(a).

[44] Second, as per s. 16.3(1)(b), the petitioner argues that trespass of a person's residence is such an assault on personal dignity and safety as to be analogous to a constitutional or Human Rights Code claim. She submits that, "[t]he nature of the Respondent's trespass and destruction of her suite was sufficiently serious and the consequences significantly enduring as to alter the fundamental complexion [of] the issues." She analogizes it to a failure to obtain informed consent before medical procedures, citing *Hollis v. Dow Corning Corp.* [1995] 4 SCR 634. Again, the facts and issues of the present dispute fall squarely within the CRT's jurisdiction. Whether a strata corporation or another party is authorized to enter a strata unit for repairs or otherwise, is an issue that arises not infrequently in residential strata disputes. The CRT has decided cases where a central issue was whether a trespass had occurred into the owner's strata lot: for example, *Hryhorka v. The Owners, Strata Plan VIS 2216*, 2019 BCCRT 441 at paras 2, 52. And while I wish to be careful not to influence the

ultimate CRT decision, it is not controversial that no one was present or lived in the suite at the time of the alleged trespasses.

- [45] Third, as per s. 16.3(1)(c), the petitioner argues that the amount claimed, which could well exceed \$100,000, and the potential complexity of evidence concerning lost sales opportunities and the falling real estate market, makes the present dispute more complicated than the typical strata dispute heard by the CRT. To this, see, again, Yas at para 14: "the legislature has mandated that the CRT should handle strata claims in any amount, large or small." While the CRT does generally adjudicate smaller monetary amounts, the CRT has also adjudicated disputes concerning damages claims in the six digits: see, for example, *James MacArthur v. The Owners, Strata Plan K588*, 2016 BCCRT 2 (\$100,000). The Yas dispute, directed back to the CRT by this Court, involved cross-claims for damages of \$185,395 and \$200,000: para 18.
- [46] As to evidential complexity, it is not rare for a strata property dispute to involve allegations of lost opportunities to sell units due to the actions of a strata corporation (see, for example, *Fisher v. The Owners, Strata Plan VR 1420*, 2018 BCCRT 151). The CRT can consider expert evidence of, for example, real estate evaluators. Further, the present dispute itself is not particularly complicated: indeed, given the tangled and acrimonious factual backgrounds of many strata disputes, the present circumstances, rising from a single incident, are relatively simple.
- [47] Finally, the CRT is fully equipped to make orders providing the relief sought. Section 123 of the Act states:

Orders available in strata property claims

123 (1) In resolving a strata property claim, the tribunal may make one or more of the following orders:

- (a) an order requiring a party to do something;
 - (b) an order requiring a party to refrain from doing something;
 - (c) an order requiring a party to pay money.
- (2) In resolving a strata property claim described in section 121 (1) (e) to (g), the tribunal may make an order directed at the strata corporation, the council or a person who holds 50% or more of the votes, if the order is necessary to prevent or remedy a significantly unfair action, decision or exercise of voting rights.

[emphasis added]

- [48] Fourth, as per s. 16.3(1)(f), the petitioner points to the procedural limitations of the CRT: the presumptive mode of a written electronic hearing rather than oral testimony will, for example, not adequately resolve the credibility dispute as to whether the petitioner's realtor authorized the vice-president to allow the contractor to enter and dismantle the strata unit.

But the CRT, like other administrative tribunals, frequently adjudicates disputes where there are conflicts in the evidence. Further, ss. 39 to 42 of the Act permit the CRT to question parties and witnesses, and to convene an in-person hearing with oral testimony if appropriate.

- [49] Fifth, the petitioner argues that she will be at a procedural disadvantage in prosecuting these important claims if she is required to continue in the CRT rather than this court. She notes that while the Act originally provided an appeal to this court from the CRT, it has since been amended to replace the appeal process with a judicial review process, with the onerous patently unreasonable standard of review. Again, this represents a policy decision of efficiency and finality, as described in *Yas*, above. It is, of course, not unusual for the Legislature to create a judicial review regime with respect to the decisions of a designated specialized decision-maker.
- [50] Finally, and with respect to all of the petitioner's arguments, it appears that the order sought by the petitioner -- this Court assuming jurisdiction over a CRT matter over a party's objection -- would be unprecedented. The parties were able to find only one case where this court ordered under s. 16.2, to transfer a dispute from the CRT to this court on the basis of justice and fairness: *The Owners, Strata Plan VR 855 v. Shawn Oaks Holdings Ltd.*, 2018 BCSC 1162. Importantly, the parties in *Shawn Oaks* all consented to the court hearing the matter. Further, the *Shawn Oaks* style of proceeding, with 29 parties, readily distinguishes it from a typical strata dispute, and from this present two-party dispute: para 56.

May a former "owner" bring a claim under SPA?

- [51] The respondent asks this Court to confirm that the CRT would still have jurisdiction over a SPA dispute even if the petitioner were to sell the unit before or during the CRT process. This concern arises as a result of the CRT decision in *Somers v. The Owners, Strata Plan VIS 1601*, 2017 BCCRT 28 at para 15, where the CRT concluded that the term "owner" did not include a former owner:

"Owner" is a defined term under section 1 of SPA that means "a person shown in the register of a land title office as the owner of a freehold estate in a strata lot, whether entitled to it in the person's own right or in a representative capacity " I find that definition to be clear and unambiguous

- [52] Section 189.1 of the SPA permits an "owner or tenant [to] make a request under section 4 of the Civil Resolution Tribunal Act asking the civil resolution tribunal to resolve a dispute concerning any strata property matter over which the civil resolution tribunal has jurisdiction "

- [53] Unfortunately, the Somers CRT was not provided this Court's decision in *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32. While that decision did not directly concern the CRT's jurisdiction over former owners of strata units, it decided squarely the main issue before the Somers tribunal; does the SPA definition of "owner" include former owners? At paras 230 - 233, this Court determined that it did. Specifically, Justice Wendy Harris stated:
- [230] In this case, the plaintiff submits, first of all, that the defendants are not entitled to make a claim under s. 164 of the SPA as they are no longer "owners" within the meaning of that section. The plaintiff makes the distinction between s. 164 which applies to "owners and tenants" and s. 165 which applies to "other interested persons", as well as owners, tenants and mortgagees. The plaintiff also refers to s. 1(1) of the SPA which defines "owners" as the registered owner of the strata lot and s. 35(1.1) which entitles a "former owner" to inspect records of a strata corporation. The plaintiff submits the legislative scheme suggests that "owner" does not include a former owner and refers to *Owners of Strata Plan NW2212 (Re)*, 2010 BCSC 519 at para 48 and *Peace v. The Owners, Strata Plan VIS 2165*, 2009 BCSC 1791 at para 44.
- [231] In my view, neither of these cases support the interpretation advanced by the plaintiff. In *Owners of Strata Plan NW2212 (Re)*, Madam Justice Dillon was considering whether a strata corporation could take action against itself under s. 164; and in *Peace v. The Owners, Strata Plan VIS 2165*, Mr. Justice Sewell was, as I read his decision, simply confirming that some act of the strata corporation has to be the source of the unfairness complained for s. 164 to apply. Further, the fact that the legislation recognizes the right of former owners to inspect records of the strata corporation is consistent with their continuing to have remedies which derive from the time when they were owners.
- [232] Under s. 8 of the Interpretation Act, R.S.B.C. 1996, c. 238, every enactment must be construed as remedial and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.
- [233] As noted by Madam Justice Garson in *Dollan*, s. 164 is a remedial provision. It is intended to provide a remedy to an owner or tenant who has been treated significantly unfairly. Given the purpose of the provision, an entitlement to a remedy under s. 164 cannot reasonably be interpreted to depend on whether the owner or tenant continues to be an owner at the time the action is commenced. In my view, it is consistent with the purpose of s.164, that an entitlement to seek a remedy be based upon whether the person was an owner or tenant at the time of the alleged unfairness. In that regard, I note that under s. 164, the court is given a broad authority not only to prevent a significantly unfair action but also to provide a remedy for action which has already occurred.
- [54] The *Sze Hang* decision is binding upon this Court as well as the CRT. Insofar as *Sze Hang* was not before the Somers tribunal, that decision was per incuriam.

- [55] The petitioner argues that the ratio in *Sze Hang* turns upon this court's inherent jurisdiction, and that its expansive interpretation of the defined term "owner" is limited to this court. I do not read anything in the operative paragraphs of that case as so limiting its use to this court. It is an interpretation of a defined term of general application throughout the statute. Nor is the specific section under consideration in *Sze Hang* - SPA s.164 ("Preventing or remedying unfair acts") - ousted under s. 122 of the Act. Indeed, s.123 of the Act expressly confers on the CRT the power to make an order "to prevent or remedy a significantly unfair action, decision or exercise of voting rights"
- [56] Courts are generally loath to make decisions that are premature or based upon hypothetical scenarios. In the present case, however, the primary basis for the petition and the damages sought therein, is delay of the pending sale of the strata unit suite. It would not serve the objectives of the Rules of Court, or of the Act, or of the CRT itself, and would not assist the finances of the parties themselves, to decline to decide this live issue now. If the Court declines to determine this issue now, it may well set in motion a series of applications, each costing time and money, that will likely reach the same result; the petitioner, or the CRT on its own motion, would direct back to this Court the issue of whether the CRT has the jurisdiction to hear a matter brought by a former owner.
- [57] For these reasons, the fact that the petitioner at some point in the future ceases to be a current owner and becomes a former owner would not in itself render her no longer an "owner" under SPA, sections 1 and 189.1, or oust the CRT's jurisdiction to decide the dispute.

V. CONCLUSION

- [58] As there was no formal application before the Court, and as both parties sought and indeed required clarification on this somewhat novel point concerning a relatively new tribunal, no costs are ordered.
- [59] I thank both counsel for their able and helpful and thorough submissions.

"Crerar J"

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