

CANADA / JUDGMENT

Jobanputra v. The Owners, Strata Plan VR 911

2025 BCSC 1610

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Supreme Court of British Columbia

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2025 BCSC 1610 Jobanputra v. The Owners, Strata Plan VR 911

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Jobanputra v. The Owners, Strata Plan

VR 911,

2025 BCSC 1610

Date: 20250821

Docket: S236343

Registry: Vancouver

Between:

Sharmila Jobanputra

Petitioner

And

The Owners, Strata Plan VR 911

Respondent

Before: The Honourable Justice Loo

On judicial review from: An order of the Civil Resolution Tribunal, dated July 18, 2023
(Jobanputra v. The Owners, Strata Plan VR 911, 2023 BCCRT 602,

Files: ST-2022-001719; ST-2022-005334; ST-2022-005848)

Reasons for Judgment

The Petitioner, appearing in person:

S. Jobanputra

Representative for The Owners, Strata Plan VR 911, appearing in person:

D.W. Rose

Place and Date of Hearing:

Vancouver, B.C.

July 17-18, 2025

Place and Date of Judgment:

Vancouver, B.C.

August 21, 2025

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Introduction

- [1] This is a petition for judicial review in which the petitioner, Sharmila Jobanputra, seeks to quash a decision (the "CRT decision") made by a member of the Civil Resolution Tribunal ("CRT") on May 26, 2023.
- [2] The CRT decision concerns several issues relating to the strata unit owned by the petitioner ("unit 4") at a strata complex located on West 10th Avenue in Vancouver. The matters in issue are governed by the Strata Property Act, S.B.C. 1998, c. 43 [SPA].
- [3] The CRT Decision identifies five claims that were made by the petitioner:
- a) that the strata has failed to repair unit 4's balconies, bathroom and kitchen: In this regard, the petitioner sought orders that the strata carry out certain repairs, and that the strata pay certain amounts to the petitioner. Those amounts included \$6,500 in increased electricity costs, \$25,000 for compromising the safety of unit 4's residents, and \$126,740 for the loss of unit 4's property value;
 - b) that the strata unlawfully imposed a series of special levies for building repairs: In this regard, the petitioner sought orders that the strata refund her \$30,390 in special levy contributions and pay her \$60,000 in damages for "economic hardship and stress";
 - c) that the strata has failed to follow the SPA, regarding banking and finances and has wrongfully permitted its president and treasurer to pay expenses from her personal account. In this regard, the petitioner sought an order that the strata provide "full details" about the president-treasurer's bank account, that the strata require the president-treasurer to pay outstanding strata fees from 2004 to the present, and that the strata be audited, among other orders. She claimed \$35,000 in damages for the strata's alleged breaches of the SPA;
 - d) that the strata has failed to provide her with certain records under the SPA; and
 - e) that the strata has treated her significantly unfairly in various ways. In this regard, she sought damages in the amount of \$500,000.
- [4] The tribunal member issued the CRT Decision on May 26, 2023, dismissing most but not all of the petitioner's claims, including the petitioner's claims for almost \$750,000 in damages.

- [5] On September 14, 2023, the petitioner filed this petition seeking judicial review of the CRT Decision, and on September 5, 2024, she amended the petition.

Issues and relief sought

- [6] In Part I of the amended petition, the petitioner seeks an order "to quash and set aside the portions of the CRT Decision regarding the petitioner's claims of significant unfairness, refund of the petitioner's special levy contributions, strata finances and records, and for damages sought".
- [7] She asks the Court "to decide claims in the petition and within the CRT Dispute" or, in the alternative, she seeks an order that any claims that the Court cannot decide on the petition be remitted to the CRT. Further, the petition states that the petitioner applies for the Court "to summons" bank statements of the strata's president-treasurer.

Standard of review

- [8] Section 56.7(2) of the Civil Resolution Tribunal Act, S.B.C. 2012, c. 25 [CRTA] provides:

56.7 (2) On an application for judicial review of a decision of the tribunal for which the tribunal must be considered to be an expert tribunal, the standard of review to be applied is as follows:

- (a) a finding of fact or law or an exercise of discretion by the tribunal must not be interfered with unless it is patently unreasonable;
 - (b) questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly;
 - (c) for all matters other than those identified in paragraphs (a) and (b), the standard of review to be applied to the tribunal's decision is correctness.
- [9] Pursuant to s. 121(2), the CRT is considered an expert tribunal in respect of strata matters.

Discussion

- [10] At the hearing of the petition, the petitioner provided the Court with a written argument comprised of 72 pages of single-spaced text. The submissions are divided into four categories: (1) procedural unfairness; (2) errors in statutory interpretation; (3) findings of fact or exercises of the tribunal's discretion; and (4) significant unfairness. I will address those submissions in the order they are advanced. As will be described below, the categories engage different standards of review.

Procedural unfairness

- [11] Some of the issues raised by the petitioner on this review are issues of procedural fairness and therefore fall under s. 56.7(2)(b). The question with respect to those issues is whether, in all the circumstances, the CRT acted fairly.

Allegedly unequal accommodations and extensions

- [12] The first set of procedural fairness arguments raised by the petitioner concerns extensions to file materials that were granted to the respondent, and materials filed by the respondent to which she allegedly did not have the opportunity to respond.
- [13] First, she focusses on 45 pages of documentary evidence that she claims were uploaded to the CRT portal by the respondent after the applicable deadline.
- [14] In this regard, the respondent acknowledges that it uploaded these documents to the CRT portal but submits that the petitioner had the opportunity to upload documents and in fact did upload further documents afterwards. In any event, submits the respondent, there is no evidence that these pages made any difference to the tribunal member's decision. In my view, given that the petitioner had the opportunity to respond to these 45 pages, even assuming that they were relevant to the decision, there was no breach of the petitioner's entitlement to procedural fairness.
- [15] Second, she submits that certain AGM minutes were rejected by the CRT when she tried to upload them and accepted when the respondent uploaded them subsequently. In this regard, the tribunal member held:

The strata emailed CRT staff 2 pieces of evidence late in the decision process, namely the minutes of the strata's May 2023 annual general meeting (AGM) and an email chain about those minutes. By the time the strata did this, I had already reviewed all the parties' evidence and submissions and decided how I would resolve the dispute. Nothing in the strata's late evidence changed my decision, so I decided not to ask Ms. Jobanputra to provide submissions on the late evidence, as doing so would needlessly delayed a final decision.

- [16] In my view, the tribunal member's decision on this point was sound. The tribunal member was entitled to disregard the late-submitted AGM minutes and, in any event, as the tribunal member stated, nothing in that evidence would have made any difference to the decision.
- [17] Third, the petitioner alleges that she was not permitted to refute improper and personal statements made by a representative of the respondent. She states that "the Tribunal denied the Petitioner's request to submit limited evidence to respond to inaccurate owner statements, false evidence, and breaches of the Code of Conduct." However, the tribunal member dealt with this issue at para. 14 of his reasons:

Ms. Jobanputra argues that I should not accept a written statement from one of the other owners, MM, because it contains personal attacks. I find that to the extent that MM's statement refers to Ms. Jobanputra and their family's personal and medical history, it is irrelevant. I find it unnecessary to "rule it inadmissible" as Ms. Jobanputra requests because the personal information in the statement played no role in the outcome of this dispute.

[18] Again, given the tribunal member's conclusion that the impugned evidence played no role in the outcome of the dispute, it was not necessary for him to invite or allow the petitioner to refute that evidence, or to "rule it inadmissible".

[19] In summary, I am unable to find that any of the issues raised by the petitioner regarding the late filing of materials and the filing of "improper and personal" statements by the respondent have resulted in procedural unfairness.

Legal representation

[20] The next procedural fairness issue raised by the petitioner arises from the fact that David Rose, a strata council member and director and an owner of a unit in the strata complex which is the subject of this dispute, is also a member of the British Columbia bar. He advises the Court that he is an in-house solicitor who works part-time at a small mining company, and that he has not appeared in court since the early 1990s when he was an employee of the Attorney-General's office.

[21] In support of her argument on this issue, the petitioner relies on s. 20 of the CRTA and the decision of this Court in *The Owners, Strata Plan BCS 1697 v. Hugo*, 2021 BCSC 2030.

[22] Section 20 of the CRTA provides:

General rule that parties to represent themselves

20 (1) Unless otherwise provided under this Act, the parties are to represent themselves in a tribunal proceeding.

(2) A party may be represented by a lawyer or another individual with authority to bind the party in relation to the dispute if

- (a) the party is a child or a person with impaired capacity,
- (b) the rules permit the party to be represented, or
- (c) the tribunal, in the interests of justice and fairness, permits the party to be represented.

(3) Without limiting the authority of the tribunal under subsection (2)(c), the tribunal may consider the following as circumstances supporting giving the permission:

- (a) another party is represented in the proceeding;
- (b) the other parties have agreed to the representation.

- (4) A person representing a party in a tribunal proceeding must be a lawyer unless
 - (a) the rules otherwise permit, or
 - (b) the tribunal is satisfied that the person being proposed to represent the party is an appropriate person to do this.
- (5) In the case of a party that is a corporation, partnership or other form of organization or office with capacity to be a party to a court proceeding, the person acting for the party in the tribunal proceeding must be
 - (a) a director, officer or partner of the party,
 - (b) an individual permitted under the rules, or
 - (c) an individual permitted by the tribunal.

[23] In *Hugo*, Justice Gomery, then of this Court, held at para. 34:

[34] the general rule in s. 20(1) is that parties are to represent themselves. In *Booth*, Saunders J.A. accepts that the general rule has something to do with keeping the playing field level. Reading s. 20 in the context of the CRTA as a whole, its apparent premise is that legal representation has the potential to tilt the playing field in favour of the party who can more easily afford to hire a lawyer, bearing in mind the kind of disputes coming before the CRT and its mandate to resolve disputes accessibly, speedily, economically, informally, and flexibly (s. 2(2)(a)), with as little formality and technicality as possible (s. 18). There is also the risk that the involvement of lawyers as representatives may tend to slow down, complicate, and formalize procedures in which they are involved.

[24] Neither *Hugo* nor s. 20 of the CRTA support the argument made by the petitioner in this case. In my view, both *Hugo* and s. 20 stand for the proposition that a strata corporation is not entitled to retain an external lawyer (or articulated student) to represent it in proceedings before the CRT without permission of the tribunal. However, neither precludes a person otherwise qualified to represent a strata corporation, for example because he is a director, officer or partner of the strata, from representing the strata simply because he is also a member of the bar.

[25] That conclusion is supported by s. 1.14 of the Civil Resolution Tribunal Standard Rules (the "Standard Rules") and by evidence given by the Executive Director and Registrar of the CRT who deposes that the "Standard Rules do not restrict strata council's representatives based on a strata council member's profession".

[26] Section 1.14 of the Standard Rules provides, in part:

Rule 1.14 -- Disputes Involving Corporations, Partnerships or Other Organizations

- 1) A party that is a corporation, partnership or other form of organization must act through one of the following:

- a) if the party is a strata corporation, by an authorized member of the strata council,
- [27] Further, the conclusion stated above is consistent with this Court's analysis in *Hugo*. In that case, as stated, the strata sought to have an articulated student retained by its insurer represent it before the CRT. The Court refused to allow the articulated student to represent the strata.
- [28] The lawyer who represented the strata in the hearing before this Court did not seek to appear before the CRT. Indeed, he was not willing to do so. However, it was clear on the Court's reasons that he was entitled to do so if he wished. Justice Gomery held at para. 22:
- [22] the Strata did not need to request permission to be represented by Mr. Nied, if he was willing to take it on, because s. 20(5)(a) of the CRTA provides for representation of an organization such as a strata corporation by one of its directors or officers, and Mr. Nied qualified on that basis.
- [29] In my view, Mr. Rose was entitled to represent the strata before the CRT on the basis that he was a member and director of the strata council.

Complaints about character limits and the CRT system

- [30] The CRT's online portal system involves an online form by which a party can advance submissions. In addition, parties are entitled to upload documents to be viewed by the CRT.
- [31] The petitioner submits that limits imposed on her by the CRT portal system "materially constrained [her] ability to present her arguments clearly and completely", and that the portal system does not adequately account for the portal's technical constraints impact the presentation of complex, multi-issue disputes.
- [32] I note that s. 2(2) of the CRTA provides:
- 2 (2) The mandate of the tribunal is to provide dispute resolution services in relation to matters that are within its authority, in a manner that
- (a) is accessible, speedy, economical, informal and flexible,
 - (b) applies principles of law and fairness, and recognizes any relationships between parties to a dispute that will likely continue after the tribunal proceeding is concluded,
 - (c) uses electronic communication tools to facilitate resolution of disputes brought to the tribunal, and
 - (d) accommodates, so far as the tribunal considers reasonably practicable, the diversity of circumstances of the persons using the services of the tribunal.
- [33] The legislation requires the CRT and ultimately the court on judicial reviews of CRT decisions to give weight to the values of accessibility, speed, economy, informality and flexibility, while applying principles of law and fairness, and while using electronic communication tools to facilitate resolution of disputes.

- [34] In this case, I have seen no indication that the petitioner sought an oral or in-person hearing under s. 39 of the CRTA. Whether there is a systemic lack of due process arising from the way in which the CRT system works in relation to more complicated cases generally is not before me on this petition.
- [35] I observe that the petitioner was encouraged by CRT staff and did split her case into three parts, thereby tripling the character limit on her submissions. Further, at the end of the exchange of submissions, the petitioner sought and was granted a further extension to the character limit imposed by the system upon her. Importantly, to the extent that the character limits and the portal system are constraining, both parties were subject to the same constraints.
- [36] In my view, for these reasons, the constraints placed upon the parties by the CRT portal system do not constitute a breach of the petitioner's entitlement to procedural fairness.

Resolution discussions and delay

- [37] The petitioner's written submissions state, in part:

The Tribunal Member failed to acknowledge that the Petitioner actively participated in the facilitation process, requested case manager assistance, and made efforts to resolve the dispute with the Strata. Despite these efforts, no joint facilitation meetings were scheduled by the case manager.

- [38] However, the CRT is entitled under Rule 5.4 of the Standard Rules to control the facilitation stage of any dispute before the CRT: in particular, "if the case manager decides that the parties cannot resolve their disputes by agreement, the case manager will inform the parties that the facilitation phase is over."
- [39] In her submissions before this Court, the petitioner does not explain how the case manager denied her procedural fairness by deciding not to schedule joint facilitation meetings in the circumstances of this case. In my view, the case manager's decision not to engage in joint facilitation meetings was not a breach of the petitioner's entitlement to procedural fairness.
- [40] In this section of her argument regarding the facilitation process, the petitioner also complains about s. 43 of the CRT Decision which states:

Since the summer of 2022, I find that the ongoing delay is due to Ms. Jobanputra's unreasonable behavior. I agree with the strata that it should not be held responsible for these delays. As mentioned above, it is the strata's responsibility to repair and maintain common property. The strata does not need Ms. Jobanputra's approval and Ms. Jobanputra has no right to direct the scope or timing of the repairs.

- [41] The delay described here is a delay in the making of repairs.

[42] However, the petitioner submits that the tribunal member's "focus on delay 'since the summer of 2022' reflects a selective and incomplete view of the dispute's timeline". Further, the petitioner submits:

The Tribunal unfairly attributed blame for delays solely to the Petitioner, without acknowledging the broader procedural context - including the strata's role in causing delays and the absence of joint facilitation efforts by the Tribunal. This selective assessment led to findings that were not supported by the full evidentiary record. Such omissions are not merely factual errors; they amount to a breach of procedural fairness under section 18 of the CRTA which requires proceedings to be conducted in a just, timely and fair manner.

[43] These submissions are particularly difficult to understand. It is not clear how the tribunal's attribution of blame for the delays in repairs relate to the absence of joint facilitation efforts. It may be that the petitioner misunderstands the CRT Decision on this issue.

[44] Further, if factual findings were made although not supported by the full evidentiary record, that issue does not amount to a breach of procedural fairness.

[45] Doing the best I can with the petitioner's submissions, I understand her argument to be based on a challenge to the factual findings in para. 43 that the ongoing delay to the repairs was due to her unreasonable behaviour. Assuming this characterization of her argument is correct, her challenge to the factual findings must be subject to the patent unreasonableness standard.

[46] In this regard, I have reviewed the petitioner's written submissions on this issue, and I am unable to find that the tribunal member's finding that the delay to repairs was due to the petitioner's unreasonable behaviour was "clearly irrational" as required by *Williams v. British Columbia (Civil Resolution Tribunal)*, 2023 BCSC 239, discussed below. Further, I am unable to discern how this finding, even if patently unreasonable, would affect the reasonableness of the decision taken as a whole.

Collapsing of disputes

[47] The petitioner complains that although she was instructed to file three separate claims due to the nature and scope of the issues, the CRT "administratively collapsed the disputes into one proceeding". She argues:

Although this was described as a "linking" for efficiency, the result with a single, consolidated Decision without clear attribution of findings, legal reasoning, or remedies to the individual disputes. It also created an unreasonable access to justice barrier by making the Petitioner pay three separate dispute fees.

- [48] I observe that Standard Rule 1.18 provides that "at any time during the tribunal process the tribunal can link disputes that have common parties or issues". Therefore, linking the disputes and addressing them together in one written decision was a procedural step that the CRT was entitled to take.
- [49] The petitioner argues that three "independently considered decisions" would "reasonably be expected" but she does not explain how the CRT's decision to link the disputes and to render one decision prejudiced her position.
- [50] It appears that she was required to pay three filing fees rather than one, but she received a benefit for the additional fees. As stated above, the fact that she split her case into three parts thereby tripled the character limit to which she was entitled on her submissions.
- [51] In my view, neither the linking of the three disputes, the issuance of a single decision, nor the requirement that she pay three filing fees constitute a breach of the petitioner's entitlement to procedural fairness.

Errors in statutory interpretation

- [52] Five issues raised by the petitioner on this review are characterized by her as issues of statutory interpretation. She argues that these issues give rise to "errors of law and render the Tribunal's Decision legally incorrect and patently unreasonable under s. 56.7(c) of the CRTA".
- [53] I will address each of the issues below.
- [54] While I agree with the petitioner that these issues are, at least in part, issues of statutory interpretation, I do not agree that they are subject to a review on a correctness standard under s. 56.7(c). In my view the interpretation of the SPA and the application of that statute to the circumstances of this case are findings of fact and law in respect of which the tribunal is considered to be an expert tribunal; therefore, the standard of review is patent unreasonableness.

Tribunal's refusal to issue strata records and to issue a summons

- [55] At various times during the course of this dispute the petitioner sought production of various financial documents. One document request arose because of the fact that the strata's president-treasurer (referred to in the tribunal member's reasons as "CB") used her personal bank account to hold funds and complete transactions on behalf of the strata. In this regard, she sought production of CB's personal bank statements.

- [56] Early in the process, she sent a request to a CRT case manager that a summons be issued to the strata for the production of certain documents. Nothing came of this request; however, it appears that the petitioner misunderstood the rules regarding the issuance of a summons. Section 33(1) provides that a summons is issued by a party, by the delivery of a specified form, subject to review and cancellation by the tribunal. It is not issued by sending an email to the CRT.
- [57] Ultimately, the tribunal member addressed the petitioner's document requests at paras. 100–109 of the CRT Decision. In this regard, he was guided by s. 35 and s. 36 of the SPA: s. 35 lists the records that a strata corporation must prepare and retain, and s. 36 states that the strata must provide access to and copies of any section 35 record within two weeks of a request (except for bylaws and rules, where the deadline is one week).
- [58] The tribunal member noted in his reasons that the CRT has no authority to order a strata corporation to create or disclose records that are not listed in s. 35. The tribunal member ordered the production of much of what the petitioner had requested, including six years of bank statements and six years of cancelled cheques.
- [59] It appears that the petitioner's primary complaint on this review is that she has not received copies of CB's bank records. She submits:

The result is absurd: the Petitioner succeeded in proving that the use of [CB's] personal account for strata business contravened the SPA yet the relevant bank records were never produced.

- [60] The tribunal member addressed this issue as follows at s. 104:

Above I found it was improper for CB to use their personal bank account for strata business. However, I find that this does not create a right for Ms. Jobanputra to review CB's personal bank statements under section 35 of the SPA. It also does not create a right for the strata to obtain them from CB and disclose them to other owners. I dismiss the claim.

- [61] The petitioner has not persuaded me that this reasoning is incorrect or patently unreasonable. In my view, the tribunal member's decision on this point was correct: the strata corporation cannot be ordered to produce bank statements for accounts that do not belong to it.
- [62] The petitioner also challenges the tribunal member's decision not to order production of strata contracts, contractor correspondence, or records regarding special levy payments.
- [63] Regarding the first two of these items, the tribunal member noted that the petitioner's Dispute Notice only sought financial records, and so these requests were not properly before him. He was entitled to reach this conclusion, and, in my view, that conclusion was not patently unreasonable.
- [64] There is no reference in the section of the CRT Decision regarding the production of records to special levy payments. I was not shown that the petitioner made a request for such records to the CRT. At paras. 105–109 of the CRT Decision, it is noted that the petitioner in

submissions before the CRT "clarified" her broad request for "full disclosure of strata finances, bank statements, tax returns and financial records" to mean bank statements (the production of which was ordered), records of GICs purchased by the strata (production refused), cancelled cheques (production ordered), invoices (production refused), and strata contracts and strata correspondence (production refused).

[65] I observe (see para. 94 of the CRT Decision) that the strata's financial statements and budgets were in evidence before the tribunal and the statements described by the tribunal as being "relatively detailed".

[66] It is unclear what records would be encompassed by the request in this Court for records relating to special levy payments. In any event, given that the petitioner does not appear to have asked for these records from the CRT, I decline to order their production on this judicial review.

Alleged failure to segregate CRF and special levy funds

[67] The petitioner sought an order before the tribunal and continues to assert in this Court that the strata ought to be required to open separate bank accounts for its operating fund, Contingency Reserve Funds ("CRF") and special levy funds. The tribunal member rejected that argument, stating that "while many strata corporations choose to [use separate accounts] as an administrative convenience and for added clarity, I find no legal obligation to do so".

[68] The petitioner argues that this conclusion is "both unreasonable and legally incorrect". She asserts that it "fails to give meaningful effect to the statutory obligation under [s]s. 95(1) and 108(4) of the SPA to 'account for' contingency reserve funds and special levy funds separately from other strata funds. Properly interpreted, 'account for' requires both the use of separate bank accounts and distinct accounting records".

[69] In my view, the petitioner's submission on this point is without merit. The legislation requires the strata to "account for" the three categories of funds separately, but there is no requirement that the funds be segregated. The petitioner is simply incorrect when she asserts that the words "account for" require the use of separate bank accounts, and she has provided no authority in support of that proposition.

Alleged failure of the tribunal to consider fiduciary duties under the SPA

[70] The petitioner asserts in her written submissions that the CRT Decision "makes no reference to s. 31 of the SPA and provides no analysis of the strata councils' fiduciary obligations". However, she does not assert that any argument based on the council members' fiduciaries duties was advanced by her before the CRT. There is no mention of fiduciary duties in the CRT Decision or in the amended petition.

- [71] As the petitioner did not advance this argument before the CRT or in her amended petition, I decline to address it on this review.

Alleged failure of the tribunal to make certain orders

- [72] The petitioner asserts that despite making various findings critical of the CB for paying strata expenses directly from personal funds, the "Tribunal Member issued no order prohibiting the practice or directing the strata to comply with its financial obligations". Further, the petitioner asserts that "the Tribunal Member's failure to issue orders enforcing the proper collection and payment of strata fees constitutes a legal error."
- [73] However, the tribunal member did find the strata's practice in allowing CB to use her own bank account to pay strata expenses to be inconsistent with s. 92 of the SPA. Further, he ordered the strata to collect CB's strata fees and to deposit them into its bank account (para. 89), to collect certain additional fees from CB (para. 91), and to prepare an updated budget and financial statement for the current fiscal year (para. 96).
- [74] The tribunal member refused to grant a general order sought by the petitioner that the strata comply with the SPA because such an order "simply repeats a legal obligation the strata already has". In addition, in my view, such an order would be unacceptably vague. The tribunal member's decision with respect to this issue was neither patently unreasonable nor incorrect.

Approval and collection of special levies

- [75] There is a lengthy argument in the petitioner's submissions regarding the way in which the strata presented, approved and collected special levies in 2018.
- [76] The tribunal member agreed with the petitioner that the strata breached the SPA in numerous ways in relation to the presentation, approval and collection of special levies in that year. The primary issue advanced by the petitioner on this review appears to arise from the fact that the tribunal member refused to refund her portion of those 2018 levies. In this regard, he stated (at para. 69):

The difficulty here is that the work is complete. The strata has [spent] all the funds raised by the 2018 special levies. I find that ordering the strata to repay only Ms. Jobanputra's share of the special levy when the owners were all equally impacted by the strata's SPA breaches would amount to a windfall for Ms. Jobanputra.

- [77] No authority has been provided to me which states that special levies raised by means of a defective approval process must be refunded. In my view, the tribunal member's decision not to refund the petitioner's portion of the levies on the basis that the work had been completed was both reasonable and correct.

Findings of fact or law or exercises of the tribunal's discretion

- [78] Several issues raised by the petitioner concern findings of fact or law and therefore fall under s. 56.7(2)(a). These issues require the petitioner to establish that the CRT's decision was patently unreasonable.
- [79] The patent unreasonableness test requires a high degree of deference. That test in the context of the CRT was discussed in *Williams*, in which this Court adopted with approval the following passage from *Victoria Times Colonist v. Communications, Energy and Paperworkers*, 2008 BCSC 109:
- [65] When reviewing for patent unreasonableness, the court is not to ask itself whether it is persuaded by the tribunal's rationale for its decision; it is to merely ask whether, assessing the decision as a whole, there is any rational or tenable line of analysis supporting the decision such that the decision is not clearly irrational or, expressed in the *Ryan* [*Law Society of New Brunswick v. Ryan*, 2003 SCC 20] formulation, whether the decision is so flawed that no amount of curial deference can justify letting it stand. If the decision is not clearly irrational or otherwise flawed to the extreme degree described in *Ryan*, it cannot be said to be patently unreasonable. This is so regardless of whether the court agrees with the tribunal's conclusion or finds the analysis persuasive. Even if there are aspects of the reasoning which the court considers flawed or unreasonable, so long as they do not affect the reasonableness of the decision taken as a whole, the decision is not patently unreasonable.
- [80] Similarly, in *Macdonald v. The Owners*, EPS 522, 2024 BCCA 52 at para. 9, the Court held:
- [9] The standard of review of patent unreasonableness is highly deferential. A patently unreasonable decision is one that is "openly, clearly, evidently unreasonable" and "almost borders on the absurd": *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22 at para. 28. To be considered patently unreasonable, the decision must be so flawed that no amount of curial deference can justify letting it stand: *Maung v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2023 BCCA 371 at para. 42.
- [81] It must be observed that the record on this judicial review is comprised of more than 700 documents and well over 1,000 pages. This observation is relevant because in respect of several issues, the petitioner has pointed the Court to specific pieces of evidence that she submits contradict the tribunal member's findings on various issues, but the respondent has been able to point to other evidence which supports the tribunal member's conclusion.
- [82] It is not the Court's role on a judicial review to consider the evidence meticulously and to determine which position to accept. The findings of the tribunal member must be given deference unless, in the words of *Macdonald*, they are "openly, clearly, evidently unreasonable" and "almost [border] on the absurd".

- [83] The amended response contains 33 points in respect of which the petitioner alleges that the tribunal misapprehended the evidence, did not adequately explain why he did not accept the petitioner's evidence or made findings unsupported by the evidence. However, many of these alleged errors are not addressed in the petitioner's written submissions. Further, the petitioner's written submissions contain a large number of references to conflicts in the evidence, but many of those references are not linked to challenges of any specific findings of the tribunal member. For example, the petitioner alleges that the Tribunal failed to distinguish between two bathrooms in the house and that its failure "taints its core findings and undermines the integrity of the Tribunal's Decision".
- [84] It is not sufficient to submit baldly that an error "taints" the decision's core findings or undermines their integrity. As stated in *Williams*, the decision will not be set aside even if there are aspects of the reasoning which the court considers flawed or unreasonable, so long as they do not affect the reasonableness of the decision taken as a whole.
- [85] In my view, it is not necessary to address most of the alleged factual errors set out in the petition and the petitioner's written submissions because, even if the tribunal's findings on these discrete points were patently unreasonable, I am unable to discern how they affected the reasonableness of the CRT Decision either taken as a whole or in respect of any of the decisions made by the tribunal member in the course of his reasons.
- [86] I will address two broad factual issues that the petitioner specifically raised during oral submissions.

Repairs to the petitioner's unit

- [87] At para. 29 of the CRT Decision, the tribunal member held that in 2018, "AS [a contractor] told the strata that it would need to do further repair work in other parts of the strata, including Unit 4's upper balcony, because of water ingress or rot issues". At para. 30, the tribunal member held that "AS [a contractor] completed some limited work in and around Unit 4 as part of the first phase".
- [88] It appears that both of these statements are incorrect, but the strata submits that the errors are inconsequential. In my view, these are examples of errors that did not affect the reasonableness of the CRT Decision either taken as a whole or in respect of any of the decisions made by the tribunal member.
- [89] The petitioner does not explain how these errors may have affected a decision made by the tribunal member, except to state that the "Tribunal's mischaracterization of the record undermined the core claim of unequal treatment under SPA s. 164".

- [90] In March 2022, a different contractor ("Solution Renovations") provided the strata with a written report regarding its inspection of the petitioner's unit and recommended some repairs. Subsequently, Ms. Jobanputra retained two other contractors to provide an assessment of unit 4's balconies and they both recommended other repairs. The tribunal member held that the strata was entitled to rely on the recommendations made by Solution Renovations.
- [91] Given the subsequent assessments and recommendations made in 2022, there is no indication that the erroneous findings regarding the extent of and recommendations regarding repairs to the balconies in 2018 made any difference to any finding or decision subsequently made by the tribunal member.

Financial issues allegedly justifying an audit

- [92] The petitioner refers to para. 97 of the CRT Decision, wherein the tribunal "dismissed the Petitioner's request for an audit on the basis that no fraud or misappropriation had been 'credibly alleged'".
- [93] She provides citations to evidence which, according to her, show a \$1,000 cash payment towards a special levy that was reflected in strata records yet did not appear in the bank statements. She also alleges various other shortfalls involving deposits or cheques that do not match the strata's accounting records. She alleges that the tribunal "failed to engage with material evidence, misapprehended the factual record, and arbitrarily dismissed the audit request without adequate justification".
- [94] The strata submits that one of the shortfalls now alleged by the petitioner was not raised before the CRT. Further it has proffered a detailed response to the petitioner's allegations regarding financial discrepancies. The petitioner submits that in reply at the CRT, there were further submissions made by her with regard to these financial issues.
- [95] The tribunal member stated that he considered both parties' positions on these financial issues. He held that "CB provided a detailed response to Ms. Jobanputra's line-by-line review of the strata's bank accounts, which appear to explain most, if not all, of the issues Ms. Jobanputra identified". On that basis, the tribunal member found that Ms. Jobanputra "has not established that the strata's financial recordkeeping is so deficient that an audit is warranted. Earlier in his reasons the tribunal member held that "audits are an extraordinary remedy because they are administratively burdensome and costly".
- [96] As stated above, it is not this Court's role on a judicial review to consider the evidence meticulously. While it appears that there may be some minor discrepancies between the strata's accounting records and the bank statements, the tribunal member has found that the strata's financial record keeping is not "so deficient" as to warrant the costly and burdensome remedy of an audit. In my view that finding is entitled to deference and I am unable to find on the submissions advanced by the petitioner that it is patently unreasonable.

Application of the significant unfairness test

[97] One of the petitioner's dispute notices sought relief under s. 164 of the SPA which provides that the Supreme Court may make any interim or final order it considers necessary to prevent or remedy a significantly unfair action or threatened action by, or decision of, the strata corporation, including the council, in relation to the owner or tenant.

[98] As pointed out in the CRT Decision, s. 164 of the SPA allows only the Supreme Court to make the orders contemplated in that section. However, the tribunal member observed that the CRT has authority to make orders remedying a strata corporation's significantly unfair actions or decisions under s. 123(2) of the CRTA. That subsection provides:

123 (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.

[99] In *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113, this Court held that the test for significant unfairness is the same under s. 123(2) of the CRTA and s. 164 of the SPA. Further, it held:

[84] when adjudicating a request for relief pursuant to s. 123(2) of the CRTA, the Tribunal must consider and answer two questions:

1.Examined objectively, does the evidence support the asserted reasonable expectation of the applicant?

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

[85] "Significant unfairness" in s. 123(2) of the CRTA includes "oppressive" conduct, which has been defined as conduct that is burdensome, harsh, wrongful, lacking in probity or fair dealing, or has been done in bad faith. It also includes "unfairly prejudicial" conduct, which has been defined as conduct that is unjust or inequitable. It has to be conduct that is more than mere prejudice or trifling unfairness: *Dollan* at para. 49.

[100] The petitioner argues that the tribunal "incorrectly relied on a general 'reasonableness' standard rather than applying the two-part test mandated under s. 164 of the SPA". She argues that the tribunal conflated reasonableness and significant unfairness.

[101] However, I do not agree with the petitioner's submissions on this issue. In my view, the tribunal member used the word "reasonable" in two ways.

- [102] In some instances, he used it to indicate that an action was not significantly unfair: in other words, an action that was reasonable cannot be, by definition, lacking in probity or fair dealing, carried out in bad faith, or unjust or inequitable. For example, at para. 75, he found that "the strata mostly acted reasonably in how it handled Ms. Jobanputra's repair requests".
- [103] In other instances, he used the word "reasonable" in the context of the petitioner's reasonable expectations. In *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173 at para. 92, the Court of Appeal held that "the reasonable expectations of the minority owner are relevant as one of the factors to be taken into account in an inquiry under section 164". Consistent with this authority, the tribunal member held (at para. 74 of the CRT Decision) that in applying the significantly unfair test, "the owner or tenant's objectively reasonable expectations are relevant, but not determinative." At para. 78 of the CRT, for example, he found the petitioner's expectations of identical treatment was unreasonable.
- [104] In my view, it is apparent from the CRT Decision that the tribunal member understood and correctly applied the principles set out in *Dolnik* and *Kunzler*. Further, he carefully reviewed each of the allegations of significant unfairness advanced by the petitioner and explained why the actions described were not significantly unfair. His findings in this regard are entitled to deference and I am unable to find that any of them are patently unreasonable.

Conclusion

- [105] For the reasons stated above, the CRT Decision was not patently unreasonable, and the petitioner was not denied procedural fairness. Further, the tribunal member did not commit any errors of statutory interpretation and did not misapply the substantially unfair test in s. 123 of the CRTA.
- [106] Accordingly, this petition for judicial review of the CRT Decision is dismissed.
- [107] Costs of the petition shall be payable by the petitioner to the strata owners at scale B.
- "Loo J."

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