

CANADA / JUDGMENT

Murphy v. The Owners, Strata Plan VR 1291

2025 BCSC 1270

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Supreme Court of British Columbia

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2025 BCSC 1270 Murphy v. The Owners, Strata Plan VR 1291

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Murphy v. The Owners, Strata Plan VR 1291,

2025 BCSC 1270

Date: 20250620

Docket: S245560

Registry: Vancouver

Between:

Joseph Murphy, David Aune, Joanna Aune, Elizabeth Baechler,

Keith Baechler, Celine Beaudoin, Thomas Becher, Elaine Carty,

Roland Carty, Barbara Chalmers, Guy Dalcourt, Heather Dalcourt,

Teresa Dorcey, Anthony Dorcey, Elma Drosso, Dorothy Elliott,

Richard Erskine, Karen Hallett, Sharon Handelsman, Rosamund Harrison, Bryon Hodges,
Christina Hogarth, Carol Howden, James Howden,

Eric Jeffries, David Jenks, Marilyn Jenks, Soo Lim, Tony Lim,

William Maurice, Carl Meilicke, Katherine Piotrowski, Merle Rootman,

Judith Schnarr, Lynn Shane, Michael Shane, Gregory Sirois, Misha Sirois, Robert Springborg,
Brenda Tansley, David Thomas, Jennifer Thomas,

David Tucker, Richard Unger, Maureen Whelan

Petitioners

And

The Owners, Strata Plan VR 1291

Respondent

-and-

Docket: S250820

Registry: Vancouver

In the Matter of an Application brought by The Owners, Strata Plan VR 1291 under s. 173(2) of the Strata Property Act, SBC 1998, c. 43

Re: The Registered Owners of Strata Plan VR 1291

Before: The Honourable Justice S. Ramsay

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioners:

P. Dougan

Counsel for the Respondent, Strata Corporation:

G.S. Hamilton

Counsel for Roy Brian Gordon:

G. Haddock, K.C.

S. Douglas

Counsel for Strata Council:

J. Stephen

S. Evans

Place and Date of Hearing:

Vancouver, B.C.

May 6, 7, 8, 2025

Place and Date of Judgment:

Vancouver, B.C.

June 20, 2025

- [1] THE COURT: Thank you to counsel for making yourself available this morning on short notice. The circumstances of the parties warrant an expeditious decision and my schedule will make it difficult to release a written decision before the end of next month. I therefore decided to deliver these reasons for judgment orally today.
- [2] I will edit any transcript that is ordered for clarity and organization, to correct typographical errors, and to include full citations to the legislation and authorities. The substance of my decision will not change. I will just remind the various people who are attending to remain on mute. Thank you.

Introduction

- [3] There are two petitions before me, effectively seeking the same relief, but under different provisions of the Strata Property Act, SBC 1998, c. 43 [SPA]. The petitioners seek court approval of a resolution for a special levy to raise just over \$60 million to fund a comprehensive building envelope renewal project.
- [4] The determinative question in both petitions is whether the building envelope renewal project is "necessary," as that word is used in the SPA, s. 173(2)(a) or, alternatively, s.165(c). The petitioners say that it is. The respondent, an individual owner, but someone who I accept speaks on behalf of a larger contingent of owners, opposes court approval of the resolution on the grounds that: (1) the petitioners have not proven that the proposed project is "necessary," and (2) I should in any event not exercise my discretion to grant the relief sought.

Background

- [5] The strata property in question is a large residential complex that was completed in three phases between 1983 and 1986. The building is a single structure.
- [6] While the scope and cause of the problem is very much in dispute, there is no question that the building has experienced some degree of water ingress over the years. Certain owners have experienced significant issues with water leaks and damage in their units. The building has also reached an age where replacement of certain components has or will soon become necessary. To date, these issues have been addressed with targeted repairs and maintenance. Between 2012 and 2023 the strata corporation spent over eight million dollars on targeted repairs.
- [7] The current strata council has determined that the strata corporation should now undertake a comprehensive building envelope renewal project rather than continue with targeted repairs and maintenance. The estimated cost of the project is significant and requires funds to be raised by a special levy assessed against the strata corporation owners.

- [8] There is a long history of the strata corporation obtaining reports evaluating the condition of the strata property which have informed decision making regarding repairs and maintenance that have occurred to date, and which informs the present strata council's decision to now pursue a more comprehensive project. Much of the hearing time before me was occupied by counsel helpfully taking me through a detailed review of portions of these reports, which cover the period 2002 to present. The reports are lengthy and many include information that is quite technical. I do not propose to summarize all the various reports in detail in these reasons, but I have considered them at length. For present purposes, I will focus my comments on more recent reports that detail the scope of the proposed project.
- [9] In a Building Envelope Condition Assessment ("BECA") report prepared by RDH Building Services Inc. dated May 27, 2022, RDH recommended a comprehensive renewal of window and door assemblies in the strata property and identified 11 major areas that RDH considered to be a baseline scope of recommendations for required work. At a special general meeting held in September 2023, the owners voted to obtain a detailed design report to provide a plan for carrying out the work suggested by RDH.
- [10] RDH subsequently prepared a design report dated December 15, 2023, which provided three cost estimates. These are described in the design report as a "baseline" option at an estimated cost of \$48.9 million, a second "baseline plus better insulation" option at an estimated cost of \$52.8 million, and a third "baseline plus better insulation plus improved conditions" option at an estimated cost of \$62.95 million. The baseline option included a complete renewal of the north, south, and east sides of the strata property. The second option added improved insulation and finishes. The third option contemplated even better insulation and also added renewal of the strata property's west elevation wall and window assemblies. The west elevation had already been renewed relatively recently and could be retained, but replacement was proposed for consideration, with RDH providing various factors it said should guide the strata corporation in deciding whether to include that work in the project.
- [11] On May 14, 2024, the strata corporation held a special general meeting to vote on funding the work described in the design report. Owners were presented with three options: first, the baseline recommendation plus project management costs and a contingency allowance for a total of \$50.2 million in funding, and second and third options for additional funding that were contingent on the first resolution passing. The first resolution did not pass-- owners were evenly split in their votes.
- [12] Another special general meeting was held in July 2024, where new resolutions were put to the owners. This came about as a response to a group of owners who were opposed to the scope of work proposed in the design report and wanted an alternative. The first resolution at this meeting was to commission and fund a new BECA. The second resolution was to commission and fund a new BECA plus a peer review of the previous BECA reports. These resolutions failed. The third resolution, to fund only a peer review report of the previous BECA reports, passed.

- [13] The strata corporation engaged RJC Engineers to prepare the BECA peer review report which is dated October 4, 2024. The peer review report concluded, in summary, that the property had reached "an inflection point" and the strata corporation had a choice between two options: (1) a comprehensive building envelope renewal; or (2) continue with targeted repairs and maintenance. It recommended proceeding with the renewal.
- [14] In October 2024, RDH provided the strata corporation with an updated proposed scope of work and associated costing. The updated scope of work contemplated a complete renewal of the building, including the property's west elevation. In these reasons, when I refer to "the project" I am referring to this updated scope of work. The updated cost estimate was \$60 million.
- [15] The strata corporation held another special general meeting on November 19, 2024. Unlike the May 14, 2024, special general meeting, where owners were presented with three options for addressing the repairs described in the design report, at the November 19, 2024, meeting the owners voted on a single resolution to approve a special levy of \$60.3 million for the purpose of completing the updated scope of work designed in the October 2024 update letter. This is the resolution at issue in these petitions.
- [16] The November 19, 2024, resolution did not pass, because it did not receive the requisite 75% of votes. However, it did receive just slightly over 50% support: 146 owners voted in favour of the resolution, 131 owners voted against the resolution, and 3 owners abstained from voting. The majority vote engaged the strata corporation's ability to seek a court declaration approving the resolution as necessary within the meaning of s. 173(2)(a) of the SPA, and consequential orders pursuant to s. 173(4) approving the resolution and permitting the strata corporation to proceed as if it had been passed. The strata corporation did so, commencing petition S250820, which I will refer to as the "strata corporation petition".
- [17] In addition, a group of 45 owners, who I will refer to as the "owner group", commenced petition S245560, also seeking orders to facilitate moving forward with the project, including an order approving the resolution but under a different section of the SPA, s. 165. I will refer to this as the "owner group petition".
- [18] Given the overlapping subject matter and similar relief sought in each petition, I heard them together.

Analysis

Strata Corporation Petition

- [19] Turning first to the strata corporation petition. There is no dispute that the resolution required 75% owner approval to pass, pursuant to s. 108(2)(a) of the SPA. Where, as here, a resolution does not achieve 75% approval but the votes exceed 50% in favour, s. 173 creates a mechanism by which strata corporations may seek court approval of the resolution.

- [20] In *Thurlow & Alberni Project Ltd. v. The Owners, Strata Plan VR 2213*, 2022 BCCA 257, the Court of Appeal provides the following guidance on the application of s. 173:
- [92] The provision in question is remedial. It should be read purposively with a view toward permitting strata corporations to discharge their statutory obligation to maintain and repair the strata property. It permits the court to authorize special levies to effect repairs that are necessary, but does not require that the repairs be immediately necessary or that the proposed repair be the minimum necessary to address the problem. It should be read in a manner that permits the Strata Corporation to determine the timing and method of repair. The Act requires the Strata Corporation to maintain and repair its common property. Section 173, seen in that context, is not intended to place the court in the position of overseeing or managing repairs but, rather, to afford a tool to break a deadlock and permit a simple majority to resolve to effect necessary repairs. It would be contrary to the remedial intention of the provisions to require the court to intensively analyse the scope of the work the strata corporation proposes to do. Doing so will only increase costs to owners and fail to address the deadlock the legislature clearly intended to resolve.
- [21] In *The Owners, Strata Plan BCS 2884*, 2024 BCSC 2373, Justice Stephens distilled from *Thurlow* the following two-part test for determining whether to grant approval of a resolution under s. 173(2), at para. 29:
- (1) On a balance of probabilities, are the repairs necessary to ensure safety or to prevent significant loss or damage, physical or otherwise, where "significant loss or damage" means that which is considered to be extensive or important enough to merit attention?
 - (2) If so, should the court exercise its discretion to approve the special resolution?
- [22] In determining the threshold question of necessity, *Thurlow* establishes that "the starting point for the analysis should be deference to the decision made by the strata council, approved by the majority of owners" (para. 87). However, this presupposes that the strata corporation's decision relates to maintenance or repairs that are "necessary." While necessity does not require "that the work must be done immediately, that there is an imminent risk to persons or property, or that the work proposed is the minimum necessary to address the identified risk" (*Thurlow*, at para. 93), it does require that the work is necessary for one of the two purposes stated in s. 173(2)--that is, "to ensure safety or to prevent significant loss or damage, whether physical or otherwise".
- [23] The respondent's position is that the work proposed in the resolution is not "necessary". The force of his submissions is that the evidence does not establish that there is a systemic failure of the building envelope of the strata property that would necessitate a complete building envelope renewal. He says that water ingress issues are isolated to discrete locations and can continue to be addressed through targeted repairs and maintenance. He emphasizes that physical inspections have only identified water damage at discrete, isolated locations. He takes issue with the conclusion in later reports that there has been a "systemic failure" of the building envelope, arguing that this is a statement that is unsupported by

findings made in earlier reports.

- [24] There is some merit to the respondent's critique of conclusory statements that there has been a systemic building envelope failure. The reports that make this assertion do not clearly explain the basis for that conclusion. However, in my view, the respondent places undue emphasis on that critique and pays inadequate attention to the express objective of prevention mandated under s. 173(2).
- [25] The strata corporation is not required to prove that there has been a failure of the building envelope to succeed under s. 173(2). The question at the first stage of the test is whether the evidence proves that the building envelope renewal proposed in the resolution is necessary to ensure safety or prevent significant loss or damage, physical or otherwise. The respondent's position also does not adequately address the concerns raised in the reports about aging infrastructure at the strata property.
- [26] The strata corporation has the burden of proof. When considered as a whole, there is compelling evidence before me of the need to take steps to prevent further and future loss or damage at the strata property. This includes not only the evidence of actual water ingress or water damage in specific locations, but also evidence of potential building defects that increase water ingress risk and, importantly, evidence that original building components--in particular, window assemblies--are reaching end of life. These are realities that cannot be ignored.
- [27] Reasonable people can disagree as to the preferred manner of addressing issues of maintenance, repair, and upkeep of property, as they clearly do here. The decision of how to proceed is particularly challenging where there is a significant cost difference between two options, at least in the short term, with no available middle ground, as is the case here. The respondent--and, I accept, other owners--would choose to continue with targeted repairs and maintenance. Based on professional advice, the strata council instead chose a comprehensive approach, a choice supported by just over 50% of owners. Doing nothing is not an option. If it applies, s. 173(2) provides a mechanism for breaking the deadlock.
- [28] The question for determination in the strata corporation petition is not whether a comprehensive repair solution is better than, or preferable to, targeted repairs. The question is also not whether a comprehensive repair, in concept, is necessary to ensure safety or prevent loss or damage. My jurisdiction comes from s. 173(2), which allows me to approve the resolution that received over 50% but less than 75% of the owners' votes. The question I must decide, therefore, is whether the evidence establishes that the work proposed in the resolution is "necessary," as that word is used in s. 173(2). I only have discretion to approve the resolution if the answer to that question is "yes".
- [29] I am mindful that I must not "intensively analyze the scope of work the strata corporation proposes to do" (Thurlow, para. 93). I understand the Court of Appeal's caution in that regard to flow from the starting principle that the strata corporation is entitled to deference in its decision making regarding how to address what it perceives as the issues facing the strata

property. I accept that I should assess the overall project proposed in the resolution. Subjecting each line item that comprises the project to the necessity analysis would be onerous and unworkable, as it does not allow flexibility in including items that may not be obviously "necessary" when viewed in isolation but are necessary when considered in the context of the overall project.

- [30] However, I do not take the Court of Appeal in *Thurlow* to suggest that the court ought not engage in any analysis of the scope of work. The work need not be "the minimum necessary to address the problem," but it must still "address the problem" to meet the necessity threshold (*Thurlow*, para. 92). This is where I struggle with the relief sought by the petitioners.
- [31] The strata corporation tendered opinion evidence of Mr. Knowles, an engineer with RDH. Mr. Knowles observed that the scope of work included in the updated costing provided by RDH in October 2024 "includes the minimum baseline scope of work, as well as items that should be implemented." He goes on to provide his opinion about why those specific items should be implemented. Notably, replacement of the property's west wall brick and window assemblies is not one of the items he discusses. I can only infer that is because renewal of the west elevation is not, in Mr. Knowles' opinion, "necessary to ensure safety or prevent significant loss or damage."
- [32] Indeed, it would have been surprising if Mr. Knowles had opined otherwise, given that none of the reports commissioned by the strata corporation say that replacing the west wall and window assemblies is necessary to address issues of water ingress and aging building components. To the contrary, the design report confirms that those problems can be addressed without replacing the west wall and window assemblies. This is because there has already been a full replacement of the insulated glazing units ("IGUs"--in simple terms, windows and doors) with associated brick wall replacement on the west elevation of the strata property, completed in the 2018 to 2020 timeframe. The brick and windows are relatively new, and located at areas outside of residential suites.
- [33] The design report states that there are several considerations that are relevant to the decision of whether to replace the brick and glazing at the west elevation as part of the comprehensive building repairs: potential for slightly different brick and mortar colour as between the new assemblies and the retained assembly; likelihood for different frame profile and colour as between the new and retained assembly; and lower thermal resistance of the retained assembly as compared to renewed walls and windows. None of these factors involve considerations of safety or damage and loss prevention. They are factors related to aesthetics and personal comfort.
- [34] I do not consider inclusion of the west elevation work in the project to be a scenario where the strata corporation has simply opted to pursue repairs that go beyond "the minimum necessary to address the problem." At some point there must be a line drawn between work that is necessary to address a problem, and work that is not. In my view, there is an

important distinction between a scenario where repairs must be done and the strata corporation opts for upgrades or improvements in completing the work, such as, for example, deciding to incur the increased costs of higher quality materials and finishes, and a scenario where the repair is optional. The evidence clearly establishes that renewal of the west elevation is optional; the problem the strata corporation is addressing can be resolved without including it in the project.

- [35] The strata corporation opted to include the west elevation in the project presented for approval in the resolution. It had the discretion to do so--as observed by the Court of Appeal in *Thurlow*, the SPA "leaves in the hands of the strata corporation the responsibility for formulation of the resolution " (para. 86). There is of course nothing wrong with prioritizing aesthetics and comfort. The strata corporation clearly placed weight on those considerations and must have considered them sufficiently important to address them as part of the proposed project. However, aesthetics and comfort are not purposes that give the court jurisdiction under s. 173(2).
- [36] For these reasons, I conclude that because of the inclusion of the west elevation in the project presented for approval in the resolution, the necessity threshold under s. 173(2) is not met in respect of the resolution and the relief sought by the strata corporation in the strata corporation's petition must therefore be dismissed.

Owner Group Petition

- [37] The owner group also seeks approval of the resolution but pursuant to s. 165(a) and sub (c) of the SPA. These provide that:

165 On application of an owner the Supreme Court may do one or more of the following:

- (a) order the strata corporation to perform a duty it is required to perform under this Act, the bylaws or the rules;
- (c) make any other orders it considers necessary to give effect to an order under paragraph (a)

- [38] The respondent does not contest that the strata corporation is required to repair and maintain the common property of the strata corporation (s. 165(a)). However, he disputes that approval of the resolution is necessary for compliance with that duty (s. 165(c)).
- [39] Not all relief sought in the owner group petition was argued before me. At the hearing, the owner group sought discrete, specific orders that align with the strata corporation petition, and adjourned the remaining relief sought in its petition. That was a sensible approach given that if the strata corporation petition was successful the owner group petition would effectively be moot. Had the owner group proceeded with all relief sought in its petition, the hearing most certainly would not have completed in the scheduled three days.

- [40] Unfortunately, that approach gives rise to an insurmountable difficulty with the specific relief the owner group sought at the hearing, as it is tied to the repairs contemplated by the resolutions. Specifically, the owner group asks that I make the following orders:
- (1) Pursuant to s. 165 (a) of the Strata Property Act, SBC 1998 c. 43, the Strata Corporation, The Owners, Strata Plan VR 1291 is ordered to repair and maintain the common property of the Strata Corporation;
 - (2) Pursuant to s. 165 (c) of the Strata Property Act, the Strata must do all that is necessary to comply with this order, and as such the Court further orders:
 - (3) A declaration the $\frac{3}{4}$ vote resolution (3/4 Vote Resolution) to raise the sum of \$60,300,000.00 by special levy to fund the cost of a building envelope repair project put forward at a special general meeting of the Strata Corporation on November 19, 2024, is necessary to ensure safety or to prevent significant damage or loss, whether physical or otherwise.
 - (4) An order that the $\frac{3}{4}$ Vote Resolution for the special levy of the sum of \$60,300,000 (the "Special Levy") is approved.
 - (5) An order that the Strata Corporation may proceed as if the $\frac{3}{4}$ Vote Resolution for the Special Levy had been passed under s. 108(2)(a) of the Strata Property Act, SBC 1998 c. 43.
- [41] The orders sought by the owner group under s. 165(c) mirror the language of s. 173(2). For the reasons I have already explained, I am not persuaded that the project must be approved to ensure safety or to prevent significant damage or loss.
- [42] A further issue is that orders under s. 165(c) must be necessary to give effect to the order made under s. 165(a). I do not consider an order approving the project to be necessary to give effect to an order "to repair and maintain the common property of the strata corporation", the order sought under s. 165(a) in this case.
- [43] Again, in my view, the difficulty arises with the inclusion of the west elevation renewal in the project. The west wall and assemblies do not require repair and maintenance. To the contrary, they have already been repaired. None of the report writers or experts recommend that they be replaced. The project, as it exists, is therefore not "necessary" to comply with an order that the strata corporation "repair and maintain the common property of the strata corporation".
- [44] For these reasons, I dismiss the owner group's application for orders made under s. 165(c). While I do not understand there to be any opposition to the order sought under s. 165(a), I decline to make such an order at this time as it would be of no utility given my dismissal of the s. 165(c) orders.

- [45] The dismissal of the application for s. 165(c) orders is without prejudice to the ability of the owner group to seek other orders under s. 165(a). In saying that, I express no view as to whether a reduced scope of work that retains the existing repaired west wall and window assemblies would meet the necessity threshold under s. 165(a). The dismissal is also without prejudice to other remedies that might be available to the owner group, including the relief sought in their petition that did not proceed before me.
- [46] I wish to acknowledge the uncontroverted evidence that some owners have experienced extensive water ingress issues and other problems related to leaking and poor environmental conditions in their strata units, which have caused them significant negative impacts. My conclusion that the orders sought under s. 165(c) cannot be granted is in no way intended to minimize their experiences.

Conclusion and costs

- [47] To conclude, I dismiss the strata corporation petition in its entirety, and I dismiss the owner group application for a declaration and orders under s. 165(c) approving the resolution.
- [48] The respondent Mr. Gordon submits that no matter the result, there should be no costs awarded. I agree that in the circumstances, and for the reasons he expressed at the hearing, it is appropriate that each party bear their own costs in each petition.
- [49] Finally, as my reasons do not fully resolve the owner group petition, I add that while the parties may request to appear before me in any future hearing dates that might be scheduled in that petition, I am not seized. I make that order to avoid the potential of my schedule delaying things if they do indeed move forward.
- [50] That concludes my reasons.

"Ramsay J."

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