

Case Name:

AW-NM Ventures Ltd. v. Strata Plan LMS 2856

Between

AW-NM Ventures Ltd., plaintiff, and
The Owners Strata Plan LMD2856, defendants
(Vancouver Registry No. S000474)

And between

Niat Min Yeung Lai Wah also known as Emilie Yeung,
plaintiff, and

Dr. Niat Min Yeung Lai Wah Inc., defendant, and
The Owners Strata Plan LMS 2856, third party
(Vancouver Registry No. S011529)

And between

Niat Min Yeung Lai Wah also known as Emilie Yeung,
plaintiff, and

Dr. Niat Min Yeung Lai Wah Inc., defendant, and
AW-NM Ventures Ltd., third party, and
The Owners Strata Plan LMS 2856, fourth party
(Vancouver Registry No. S001530)

[2004] B.C.J. No. 1004

2004 BCSC 666

Vancouver Registry Nos. S000474, S011529 and
S001530

**British Columbia Supreme Court
Vancouver, British Columbia
Hood J.**

Heard: September 23 - 27 and 30, October 1 - 4,
2002, February 24 - 28, and March 3 - 5, 2003.

Judgment: May 18, 2004.
(458 paras.)

Counsel:

R.J. Ellis, Counsel for the Plaintiffs, Emilie Yeung, Dr. Niat Min Yeung Lai-Wah Inc. and AW-NM Ventures Ltd.

B.J. Murray, Counsel for the Defendant, The Owners, Strata Plan LMS 2856

HOOD J.:—

I. INTRODUCTION

¶ 1 There are three actions before me which have been ordered to be tried at the same time. In substance, and by agreement, the claims being advanced are those of the plaintiff, Dr. Yeung, against the defendant, The Owners, Strata Plan LMS 2856, pursuant to the provisions of the Condominium Act, R.S.B.C. 1996, c. 64, (the "Act").

¶ 2 The two companies, AW-NM Ventures Ltd., ("Ventures") and Dr. Niat Min Yeung Lai-Wah Inc. ("Lai-Wah Inc.") belong to Dr. Yeung and her husband, Mr. Yeung. Mr. Yeung is a chartered general accountant, a shareholder in the companies, the administrator of her medical practice and acts as her agent.

¶ 3 Dr. Yeung's claims arise out of differences she has had with other unit owners of the Strata Corporation pertaining to the size or length of a commercial sign which she initially proposed to install above her Unit on the north wall of the strata building, to the exclusion of the other unit owners; and which she eventually did install, notwithstanding the firm position of the defendant Corporation that the signage area was common property to be shared by all of the unit owners on a unit entitlement basis.

¶ 4 The sign was eventually taken down by the Council in the face of a threatened lawsuit by Dr. Yeung. She claims that as a result of the removal of her sign there was an appreciable reduction in the number of her walk-in patients, and that she has thereby suffered substantial damages.

¶ 5 At the time the dispute arose, there were two other unit owners in addition to Dr. Yeung. At the present time there are seven unit owners.

II. OVERVIEW

¶ 6 Dr. Yeung carries on a medical practice, which is described as a "medical" clinic, at Unit B-7340 Westminster Highway in Richmond, British Columbia. Her ground floor unit is also at times referred to as "Unit 180" and "Strata Lot 2". Ventures is the registered owner of Strata Lot 2. It provides the premises and facilities to permit the operation of the medical clinic, to her other company Lai-Wah Inc. That company provides day to day administrative services to Dr. Yeung in the operation of the clinic. These relationships are of little relevance, obviously having been structured for tax and other purposes.

¶ 7 I turn to the pleadings in the three actions to ascertain therefrom the nature of the claims being advanced by Dr. Yeung against The Owners, Strata Plan LMS 2856, which I will refer to as the Corporation from time to time. The defendant, of course, is a Strata Corporation pursuant to the Act, with its registered office at 7340 Westminster Highway in Richmond, British Columbia.

¶ 8 In the first numbered action wherein Ventures is plaintiff, the claims against the defendant are contained in the following paragraphs of the Statement of Claim:

4. On or about November 24, 1997, the Plaintiff sought permission from the Defendant for the installation of a commercial sign advertising the Medical Practice operated by the Plaintiff, to be installed on the external fascia of the Plaintiff's property (the "Sign"). Despite assurances it would respond, the Defendant failed to respond to the Plaintiff's request at all. The Plaintiff thereafter obtained a permit from the City of Richmond for the installation of the Sign and thereafter commissioned the construction and installation of the Sign which was completed on or about May 19, 1998.

5. On August 6, 1998 the Defendant, in breach of the requirements of the Condominium Act relating to notice, quorum and votes, and in bad faith, passed a regulation restricting the signage permitted at the Strata Plan (the "August 1998 Regulation").
6. Pursuant to the August 1998 Regulation, the Defendant, on or about December 14, 1999, and January 10, 2000 ordered the Sign to be removed, and on January 25, 2000 the Defendant wrongfully removed the face of the Sign, and on January 26, 2000 wrongfully removed the remainder of the Sign.
7. The Plaintiff says that the actions of the Defendant were invalid, and constitute oppressive and unfairly prejudicial conduct, as a result of which the Plaintiff has suffered damages. (Emphasis added).

¶ 9 The relief sought is:

- (1) A Declaration that the actions of the defendant in
 - 1.1 Restricting the plaintiffs signage,
 - 1.2 Passing the August 1998 Regulation, and
 - 1.3 Subsequently ordering the removal of and removing the sign
 were invalid, oppressive and unfairly prejudicial.
- (2) An order directing the defendant to permit and authorize the sign to be installed and retained by the plaintiff.
- (3) Damages.

(Emphasis added).

¶ 10 In the second action, wherein Lai-Wah Inc. is the plaintiff, Ventures is the defendant and the Owners Strata Plan LMS2856 is a third party; and in the third action, where Dr. Yeung is the plaintiff and Lai-Wah Inc. is the defendant and Ventures and the Owners Strata Plan LMS2856 are third and fourth parties, the claims are for damages for breach of an asserted agreement, that is, the failure to secure appropriate and adequate signs to advertise the business of the medical clinic. The pleadings in the second and third action are of no assistance to me.

¶ 11 I pause to observe that it is not clear to me why Dr. Yeung brought the inter-company actions. However, I was told by counsel that her claims against the defendant are "contained in these pleadings". The plaintiff's somewhat narrow claim then is that the acts of the defendant Corporation in restricting the plaintiff's signage, in passing the August 1998 Sign By-law and in subsequently taking down the plaintiff's sign, were done in bad faith, were invalid, oppressive and unfairly prejudicial to the plaintiff.

¶ 12 The cause of action then is expressed or framed in the words contained in s. 42 of the Act, which provides that a unit owner may apply to the Court to "prevent or remedy a matter if the owner alleges" that the affairs of the Corporation are being conducted in a manner oppressive to one or more unit owners, or that some act of the Strata Corporation is unfairly prejudicial to one or more of the unit owners. Section 43 of the Act provides that under s. 42 the Court may make an interim or final order which it considers appropriate, including prohibiting or varying an act of Council, and regulating the conduct of the Corporation's future affairs. There is no reference to a claim for damages. Finally, under

s. 15 of the Act, which is entitled "Legal Proceedings" ss. (6) provides that an owner may sue the Corporation "about any matter relating to the common property, common facilities or the asset of the Strata Corporation".

¶ 13 Counsel did not refer to or discuss these provisions of the Act, or the appropriateness of a claim for damages seemingly under s. 42; as opposed to an application to the Court to prevent or remedy an internal problem between the Strata Corporation and one of its unit owners. This may well be because the issue has been decided. However, absent submissions and enlightenment, I do not propose to consider the matter further, since it is my opinion that the plaintiff cannot recover in this action in any event, and I do not propose to consider the question of damages.

¶ 14 I believe it to be of some import to note that nowhere in the pleadings is there a claim or assertion made that Dr. Yeung had any right, or indeed the basis of such right, to install a sign on the common property above her windows on the outer north wall of the building, for the full length of the fascia there located, and to the exclusion of all other unit owners. I observe, as well, that this is Dr. Yeung's primary claim, which is fundamental to her case.

¶ 15 The strata building in which Dr. Yeung's offices are located, as are the offices of the other strata owners, is described as a two storey commercial building located on Westminster Highway. The building was developed by Quintus Development Corporation, (Mr. H. Goertzen) and title to the building was stratified with seven separate strata lots, three at ground level and four on the second floor.

¶ 16 Dr. Yeung's offices are at ground level and face onto Westminster Highway. As I have said, it has been her position from day one that she was absolutely entitled to place a large commercial sign, advertising her clinic, across the entire width of the outer north wall of her strata offices, in the fascia above the windows, to the exclusion of all other strata owners.

¶ 17 It will be seen that it is an inexorable position which Dr. Yeung continues to maintain vis-à-vis the defendant Corporation, represented by the Strata Council, and which in my opinion has caused all of her problems with the defendant, and all of the defendant's problems with her, including this lawsuit. Further, I am satisfied that the conduct of the defendant (the Strata Council) in relation to Dr. Yeung, (some of which at times, no doubt, was born of frustrations brought about by Dr. Yeung), and on which Dr. Yeung relies, was caused directly by her relentless pursuit of the excessive signage rights which she claimed; and which she knew very early on she did not have, and that the Council would never be prepared to approve; the defendant's position always being that the limited signage space on the common property of the building, particularly on the north wall, should be shared by all unit owners in the building, on a unit entitlement or equitable basis.

¶ 18 It will be seen that once some physical problems relating to the size of the panels in the original fascia on the north wall were resolved by the defendant, by installing a box sign with seven equal panels, the defendant's position was that rather than apportioning the signage space strictly on a unit entitlement basis, each of the seven unit owners would be entitled to a signage space on that wall of no more than six feet. This was Dr. Li's evidence, which I accept.

¶ 19 I wish to make it clear at this point, rather than await the review of the evidence as is usually done, that in my opinion, as between Dr. Yeung and the defendant, and the other strata unit owners, she had no right whatsoever to use the whole of the signage space demanded, or, it follows, to put up her sign on the north wall. Further, I am of the opinion that because of Dr. Yeung's conduct in persisting that she alone had the right to the use of this signage space, and in maintaining this position in all of her dealing with the defendant, that is, in meeting after meeting, Dr. Yeung cannot succeed in this action.

¶ 20 I am satisfied that the conduct or acts of the defendant Corporation (Council) about which Dr. Yeung complains, were not wrongful in the sense of being oppressive or unfairly prejudicial to Dr. Yeung; and that they were brought about by Dr. Yeung's own conduct or "misconduct". There is no evidence before me that the Corporation was not acting in good faith, or not acting in an equitable manner, during the ordeal. While its members were as inexperienced as the Yeungs were, what the Corporation was always attempting to do was to protect the communal interests and rights of all the unit owners, from the individual and contrary interests and rights claimed by Dr. Yeung.

¶ 21 It is fundamental to the Corporation's existence that it conduct itself in a manner beneficial to all of the unit owners, not simply for the benefit of an individual unit owner. This is especially so where that unit owner's interests are contrary to the interests of the other unit owners. And with regard to common property, the Act makes it clear that a primary duty of the Corporation is to control, manage and administer the common property for the benefit of all owners. Here, as I have said, the conduct of the Corporation complained of was brought about by Dr. Yeung's own misconduct, vis-à-vis the other members of her community. If she has suffered any misfortune, she is its author.

¶ 22 I will deal later with the problems caused to this Strata Corporation by the City of Richmond's Signage By-law and the City's position. At this point I will simply say that the City's By-law does not entitle Dr. Yeung to install her sign on the common property above her Unit; a sign which has not been approved by the Corporation and, in addition, is contrary to its December 15, 1997 Rule and to its Signage By-law, which has been developed by the Corporation for the benefit of all the unit owners pursuant to its statutory duty. It will be seen that a stalemate has occurred.

¶ 23 I turn now to the issues as stated by counsel, in this hard fought case. In this regard because of the length of the trial, (it was set for 5 days and took 18 days), the fragmentation of the evidence and the issues, I requested that counsel provide me with a signed agreed Statement of Issues. Counsel provided me with this Statement which is dated October 31, 2002.

¶ 24 I will deal with each of the issues set out in counsel's Statement of Issues, although not in detail, later in these Reasons. I will deal also with what I consider to be the primary issues, as they relate to the acts complained of; although I may also deal with some of the issues on which greater emphasis was placed by counsel. In my opinion, there are two primary issues before me. The first issue is whether Dr. Yeung ever had any right to the signage space she claims, to the exclusion of the other unit owners. The second issue is the issue of credibility, which both counsel submitted must be determined in order to decide the issues between the parties.

¶ 25 The issues set out in counsels' Statement of Issues are as follows:

Liability

1. At the time the Plaintiff purchased her unit in the commercial building located at 7340 Westminster Highway, Richmond, B.C. (the "Building") was signage on the north and east fascias included in the Plaintiff's Contract of Purchase and Sale?
2. Is the signage area on the north (Westminster Highway side) and the east fascia of the Building "common property"?
3. Did the City of Richmond grant to the Plaintiff a valid sign permit for the installation of signage on the north fascia, or Westminster Highway side of the Building?
4. If the City of Richmond has granted the Plaintiff valid sign permits to install signage on the north and east fascia of the Building, can the City of Richmond

- determine that only the Plaintiff is entitled to that signage space when the Building is a commercial strata building? In determining this issue, is the Richmond City by-law subordinate to the Condominium Act, R.S.B.C. 1996, c. 64 (the Condominium Act)?
5. If the City of Richmond has granted the Plaintiff valid sign permits to install signage on the north and east fascia of the Building, can the Defendant restrict the amount of signage the Plaintiff installs on the Building?
 6. Was the Extraordinary General Meeting held on August 6, 1998 ("E.G.M.") properly constituted pursuant to the Condominium Act?
 - (a) In particular, did the Defendant deliver to the Plaintiff a notice of the E.G.M. in compliance with sections 123 and 129 of the Condominium Act?
 - (b) Was there a quorum present at the E.G.M.?
 - (c) Was the Plaintiff in arrears as of the date of the E.G.M.?
 7. Whether the Sign By-law is unfair or oppressive to the Plaintiff?
 8. Whether the ordering of and subsequent removal of the Plaintiff's signage by the Defendant is oppressive or unfairly prejudicial pursuant to section 42 of the Condominium Act?

III. THE EVIDENCE

¶ 26 I turn now to the evidence which I have carefully considered. While counsel spent a great deal of time going through each meeting of the Council and the evidence of those present, I do not propose to strictly follow that format. Instead, I will attempt to confine myself to the evidence bearing on the issues, particularly the primary issues, the determination of which, in my view, should end the matter. I also propose, from time to time, to comment on whether I accept the evidence of a witness, or whether I find his or her evidence to be worthy of belief, and to make findings of fact, although by then I will not have referred to all of the evidence, rather than returning to the evidence later in more detail, for those purposes.

IV. THE PLAINTIFF'S EVIDENCE

¶ 27 Dr. Yeung is a physician and surgeon having graduated from the University of Glasgow. She qualified in British Columbia in 1987. She worked as a locum for two years and then started to practice in Richmond in 1989. She practiced there for about eight years on the fifth floor of a six floor building. It was a conventional practice based on referrals. There were no walk-ins.

¶ 28 In 1997 she decided to change her practice from a referral type of practice to a walk-in type of practice and thereby increase the number of her patients. At the time she had about 1,700 patients who came with her when she moved. She began to look around for a location suitable for a walk-in practice. To that end she sought the assistance of a Realtor, Ms. Robson, to relocate from her low profile, high rise office, to a high profile, storefront location that would attract walk-in patients. She said that access and visibility were the most important factors to her; also that advertising signage was most critical if her walk-in clinic was to be successful. Eventually she settled on the subject two storey building where she has carried on her practice since moving in on June 27, 1997.

¶ 29 She was the first unit owner to move into the building. LeGear Pelling, Insurance Agents, was the next owner to move in a month or two later. The third owner to move in was Dr. Li, a dentist. They were the only unit owners for some period of time, until sometime in 2000, when Mr. T. Johnson, an

accountant, moved in.

¶ 30 Dr. Yeung said on direct examination that she discussed the "issue of signing" with Ms. Robson. She said that Ms. Robson was acting for the developer, Quintus Development Corporation, as to which she was mistaken. Ms. Robson was acting for Dr. Yeung. In this regard Mr. Ellis said in his opening, referring to Dr. Yeung:

... she raised with the Realtor, Connie Robson, the issue of availability of signage for her proposed Unit. Connie Robson spoke to the developer's agent, and was advised that there was no restriction on signage placement and that Dr. Yeung would be able to place her advertising signage above the storefront windows of her Unit. (Emphasis added).

It will be seen that this statement is simply not correct; that it was only Dr. Yeung's evidence part of the time (that the developer had told them that there were no restrictions on her signage placement on the building) and it was never Ms. Robson's evidence. It will be seen also that I am satisfied that the developer made no such representation, or any representation, to Dr. Yeung or to Ms. Robson.

¶ 31 She was referred to some materials she received from Ms. Robson, who received them from the vendor's real estate agent, Mr. R. Symington. In the pricing document, which is included in the Re/Max brochure, it is clearly stated at p. 4 that signage is not included in the selling price, and that "signage space is not yet determined".

¶ 32 The material also contained a copy of Dr. Yeung's Contract of Purchase and Sale, to which she was referred by her counsel. She agreed that there was no reference to signage in the Agreement; although the Agreement does contain a "no representation outside the Agreement" clause.

¶ 33 She was asked by her counsel why she did not have inserted in the Agreement a clause entitling her to the signage space which she continues to say was hers. She said that it was because she "understood that signage was a part of her Unit", and that it was "my mistake". I observe that she made no reference to any representation made to her, or to her agent, by the developer, which both she and her husband maintained with the Council during the many Council meetings. She was then asked what other things did she think went with her Unit, although they were not specifically referred to in her Contract. She said electricity, walls, ceilings and plumbing.

¶ 34 I did not appreciate the question or the answer. This is particularly so since both Dr. Yeung and Ms. Robson knew about the contents of the Pricing document, to which I have just referred, and, in addition, Mr. Symington, whose evidence I accept, said that he made it clear to Ms. Robson during their pre-Contract meeting, that Dr. Yeung would not be entitled to the extensive signage she wanted to have on the north wall, to the exclusion of the other unit holders. Dr. Yeung then knew, even before she signed the Contract, that the amount of signage she would be entitled to was quite restricted.

1. The First Meeting Of October 6, 1997

¶ 35 Dr. Yeung was referred to an Agenda for the first meeting involving the Strata Council which took place on October 6, 1997, in Mr. Goertzen's office. Those present were Dr. Yeung, her husband, Mr. B. Pelling and Mr. A. Tablotney, (the partners in LeGear Pelling) Dr. Li, Mr. H. Goertzen (the developer) and Mr. Symington, who she knew was the realtor acting on behalf of the developer. It is common ground that at this meeting the Strata Council members elected were Mr. Pelling, Dr. Li and Mr. Yeung.

¶ 36 The Agenda was prepared by Mr. Symington who handed out copies of it to those present at the meeting. Two of the topics of discussion set out in the Agenda under the topic "Other Topics for Discussion" were "Building Sign Design" and "Free Standing Sign". The free standing sign was adjacent to the building. This sign was erected and owned by LeGear Pelling, pursuant to its Contract of Purchase and Sale with the developer.

¶ 37 Dr. Yeung testified that after handing out copies of the Agenda Mr. Symington left the meeting. Mr. Yeung gave similar testimony. Mr. Symington, on the other hand, testified that he chaired, and was there throughout, the entire meeting. I am satisfied that such was the case.

¶ 38 Dr. Yeung testified that the issue of her signage "came up" during the meeting. It was a very loud meeting with "lots of shouting". When Mr. Pelling said that his company owned the free standing sign, her husband told him that the free standing sign should be owned by the Strata Council as a whole, not by one member. Her husband also questioned whether the free standing sign was in fact on government property. At this point Mr. Pelling became very angry.

¶ 39 Mr. Yeung also told those present at the meeting that when Dr. Yeung bought "their" Unit the Yeungs were told by the developer that there were no restrictions to their putting a sign on the outside walls of their Unit. According to Dr. Yeung, both Mr. Pelling and Mr. Tablotney then disagreed with the assertion that she had the unrestricted right to put up her sign on the walls above her Unit. At the same time, Dr. Li noted that he was entitled to a portion of the signage space over Dr. Yeung's windows, which he had negotiated for as a part of his Contract of Purchase and Sale Agreement.

¶ 40 According to Dr. Yeung, a lengthy heated discussion then ensued. When it ended Mr. Goertzen said he would look into the "allotment of signage". At that time there were three owners, Dr. Yeung, Dr. Li, Mr. Pelling (LeGear Pelling), with Mr. H. Goertzen representing the developer and owner of a number of units still not sold.

¶ 41 When Dr. Yeung was asked about the level of civility of the meeting, she said it was very loud, there was a lot of shouting and swearing. Mr. Pelling and Mr. Tablotney did the yelling. Dr. Li and Mr. Goertzen were quiet. While her husband was not happy, she did not think that he was shouting. She herself said nothing. Mr. Pelling was the one that was doing the swearing.

¶ 42 Mr. Ellis said that he led this evidence, and similar evidence through Mr. Yeung, "to show a pattern of oppression". It will be seen that I do not accept the exaggerated evidence of the Yeungs on the "tone" of the meetings. I prefer the other evidence which satisfies me that Dr. and Mr. Yeung were equally and fully involved in the heated arguments.

¶ 43 Dr. Yeung said that as a result of this meeting she asked Ms. Robson to prepare a statement for her, which was at some point given to the other owners. The statement is "To Whom It May Concern" and the subject matter is Dr. Yeung's Unit, Unit 180. The statement provides:

This is a statement to say that I have been the realtor dealing with Goertzen Holdings on behalf of my client, Dr. Emilie Yeung, in the purchase of the above property and that during my transaction with the seller, neither me nor my client were made aware that there has been a restriction to the sign panel in her Unit. Both me and my client were under the firm impression that we would be able to use these sign panels as to our discretion, and that we were given no indication to believe otherwise.

The sign panels here indicated are the ones that form part of the wall facing Westminster Highway (around 20 feet) and the ones that form part of the wall facing

7360 Building (around 26 feet).

Yours truly,

Connie Robson, Realtor

Date: October 8, 1997.

Witness: E. Yeung

Date: October 8/97

(Emphasis added).

¶ 44 It is noted that on its face the statement purports to be "witnessed" by Dr. Yeung. However, it will be seen that it was Dr. Yeung who actually prepared the statement, (this was the evidence of Mr. Yeung as well as Ms. Robson) contrary to Dr. Yeung's evidence, and then simply had Ms. Robson sign it. I observe as well that the statement, drawn by Dr. Yeung, makes no reference to the developer having told her and her husband that there were no restrictions to their putting a sign on the outside walls of their Unit. By October 8, 1997 then, it was simply an "impression" that they would be able to do what they wanted to do, although in later meetings with the Council the Yeungs continued to maintain to them that the developer had told them that there would be no restrictions on their signage.

2. The Second Meeting Of November 25, 1997

¶ 45 She was then referred to the Minutes of the November 25, 1997 meeting, the second meeting of Council, which she attended. Her husband prepared these Minutes. Present were those listed on p. 1 of the Minutes, Mr. Goertzen, Mr. Pelling, Mr. Tablotney, Dr. Li, Dr. Yeung and Mr. Yeung. The only reference to signage in the document is as follows:

2. Signage and Electric Meter

Herve Yeung submitted to the Council request of the exterior sign to be done to his Unit #180. Brad Pelling and Henry Goertzen will look into it and will report at the next meeting.

(Emphasis added).

It will be seen that this description, in the context of what was said and done during the meeting, is somewhat brief, if not misleading.

¶ 46 Dr. Yeung said that at that time her husband had not been appointed to take the Minutes of the meeting, "he just took them". The evidence to the contrary, which I accept, was that during the earlier meetings Council had agreed that one of them would be appointed to take the Minutes. Mr. Yeung was appointed to do so at this meeting. Mr. Pelling was appointed to take the Minutes for the next three meetings. When it was pointed out that Mr. Goertzen had said that he would look into the allotment of signage at the first meeting, she said that at the meeting on November 25 there was no resolution, that Mr. Goertzen had said he was still looking into it.

¶ 47 She said that the level of civility at the second meeting was the same as the first meeting; there was lots of arguing and shouting, and at one point "nearly a fight" between Mr. Pelling and her husband. It related to her husband's application for permission to put up her signage referred to earlier. She said that at the meeting the design of her sign was approved, but her allotted amount of space was still to be determined.

¶ 48 Dr. Yeung's counsel then referred her to an Agenda for the meeting of November 25, 1997 prepared by Mr. Pelling, pointing out a written notation on the document "clarify allotment of signage to each owner by December 15, 1997." She said she had never seen the document prior to the lawsuit.

¶ 49 I observe the difference in the descriptions pertaining to signage in the two documents, which is of some importance. In my view, Mr. Pelling's description of what was left to be done was much more accurate than that of Mr. Yeung. Mr. Yeung, in accordance with his Minutes, testified that what Mr. Pelling and Mr. H. Goertzen agreed to do, at the end of the first and second meetings, was to look into the Yeungs' request to put up their proposed sign.

¶ 50 The better evidence given by other witnesses, including Mr. Symington, Mr. Tablotney and Dr. Li, whose evidence I accept, was that it was made clear at the 1997 meetings that the other unit owners would not agree that Dr. Yeung was entitled to the signage space she claimed and was requesting; that they were of the view that the signage would have to be apportioned among all of the unit holders on a unit entitlement basis. What the two men agreed to do then was to look into the allotment of the limited signage space available to each owner, including Dr. Yeung's allotment. Dr. Li's evidence was that the reason for the delay was the physical makeup of the panels in the fascia, that is, the signage space on the walls at that time.

¶ 51 After the November 25 meeting, Dr. Yeung and her husband went to the City of Richmond to find out the City's position on signage. This was in February 1998. She was then shown a copy of the City of Richmond's By-law No. 5560, which she sent to the other owners. Mr. Tablotney's copy, which is dated November 27, 1997, and notes "from H. Yeung" is in evidence.

¶ 52 When asked why she sent the By-law to the other owners, she said it was "just to confirm our belief that we were allowed to put a sign on our wall". I should observe that By-law No. 5560 provides as follows:

Signs shall be in area no greater than 1 meter square (10.8 feet square) per meter (3.3 feet) of wall length of the wall to which they are affixed, provided that the wall in question shall be limited to the business premises related to the sign. (Emphasis added).

It will be seen that in effect, in the end, the Yeungs fell back on the By-law as allowing them, absolutely, as against the other unit owners and the Strata Council, to put up their proposed sign, that is, without regard to the other unit owners' rights, or to the Strata Council's decision to the contrary. This is not the law. The By-law, which could have been worded better, only says that a business cannot put up a sign above the wall or unit of another business.

¶ 53 While the By-law may prevent the other unit owners from putting up a sign in the signage space above Dr. Yeung's Unit (which is common property) without her consent, it does not give Dr. Yeung the absolute right to put up her sign. Dr. Yeung cannot put up her sign to the exclusion of her fellow unit owners, (and contrary to their community interests and rights or the directions of the Strata Council). The duties of the Strata Corporation, by virtue of ss. 14 and 166(a) is to control, manage and administer the common property for the benefit of all owners. Under the Act and the present Act, the Strata Property Act, 1998 S.B.C. c. 43, s. 4, the duty is the same. Reference might also be made to the definition of the phrase "unit entitlement" in both Acts, with reference to each owner's share in the common property. As I have said, a legal stalemate, or deadlock, has occurred.

3. The Third Meeting Of December 15, 1997

¶ 54 Dr. Yeung and her husband, Mr. Pelling and Dr. Li attended; which appears to be in accord with the Minutes of the meeting, save for Mr. Yeung. The issue of Dr. Yeung's signage allotment was again discussed, but no decision was made. The principle of "unit entitlement" was also discussed, but nothing definite was decided.

¶ 55 She was referred to Mr. Pelling's hand written Minutes dated December 15, 1997, (which contains two Resolutions) which she said she had not seen until after the lawsuit was started. She was read the first paragraph which is as follows:

BE IT RESOLVED that signage on common property will be approved by Council upon application by a strata lot owner based on unit entitlement as per strata plan.
Carried (2 in favour; 1 opposed)
(Emphasis added).

She was asked whether the Resolution was made, and she said "I don't remember".

¶ 56 She was then read the second paragraph as follows:

Application for signage from strata lot (Unit 180) is tabled pending clarification of signage entitlement for above unit based on unit entitlement.
Carried (2 in favour; 1 opposed)
(Emphasis added)

¶ 57 Dr. Yeung was then asked by her counsel whether this happened. Her answer was unclear. She at first said "yes", and then added that discussion had taken place about signage at the meeting. When pressed by her counsel as to whether it happened, she said "no". She seemed to be somewhat uncertain, while her counsel tried to persuade her to answer the questions.

¶ 58 Her counsel then asked her whether at that meeting there had been a discussion with regard to her signage allotment, and she said "yes". She was asked whether after the discussion there was any Resolution and she said "no". I had some difficulty with her evidence in this area.

¶ 59 She was then asked specifically about the Resolution that her application for her signage would be tabled pending clarification and so on, as stated in the Minutes. She was specifically asked, "did that happen" and she said: "Yes, there were discussions". I observe that this Resolution, in fact, describes exactly what happened to her application.

¶ 60 I observe, as well, that I am satisfied that it is more likely than not that the two Resolutions referred to in the Minutes were in fact passed, with Mr. Pelling and Dr. Li being in favour and Dr. Yeung opposed. The evidence of the other witnesses, which I accept, as to what was said and done during the first, second and this third meeting, and, in deed, of the conduct of the Yeungs after that meeting, supports this finding.

¶ 61 Dr. Yeung acknowledged that after the meeting of December 15, she and her husband applied to the City of Richmond for permission to put up her sign. Her written application/permit dated January 24, 1998, for each of the two signs, are in evidence. It appears that nothing turns on the fact that the applications referred to the south elevation as opposed to the north elevation.

¶ 62 Dr. Yeung said that because there was no Resolution by December as to her allotted signage space, and still no Resolution by February 1998, she went to the City to obtain a letter dated February

12, 1998, which is in evidence. It is addressed to Ventures, and states with reference to her building:

Please be advised that the sign area allocation space of Unit 180 - 7340 Westminster Highway is for the exclusive use of that Unit, and is not available for other tenants in the building to utilize to display their signage.

If you have any other questions, or wish to discuss the matter more, please contact the undersigned at 276-4199.

The letter is signed by A. Clark, Manager, Zoning. When asked why she got the letter and gave it to the Strata Council, she said that it was because the Strata Council would not make a decision, and she wanted to clarify her position. She believes that the letter was probably delivered to Dr. Li and Mr. Pelling, since there were only three owners at the time.

¶ 63 It will be seen that the Yeungs maintain the position that the Strata Council never responded to Dr. Yeung's application to put up her sign, and that they did not make a decision. In my opinion, the Strata Council did respond and did make a decision which told her what to expect, that is, that the limited signage on the building would be apportioned among the unit owners on a unit entitlement basis, and that on that basis her signage space would be less than any other unit owner. The only decision, or Resolution, not made was the exact percentage or amount of her signage space, which clearly would have been less than six feet.

¶ 64 And I observe again that I do not accept the Yeungs' evidence that what Mr. Pelling and Mr. Goertzen, and later Dr. Li, were looking into was whether Dr. Yeung should be permitted to put up the sign which she proposed to put up. On the contrary, the evidence of Mr. Symington, Mr. Tablotney and especially that of Dr. Li, which I accept, satisfies me that from the very first meeting the other owners (the Council) made it clear to the Yeungs she would not be given permission to put up her sign; that what they were looking into was the allotment of the limited signage space available to each of the owners on a unit entitlement basis. I should note that while I am referring to the "Yeungs' evidence", at times it seemed that Dr. Yeung's evidence was more in line with the evidence of the other witnesses, than with that of Mr. Yeung, as to what the two men were looking into.

¶ 65 The gist of Dr. Li's evidence in this regard was that the panels in the original fascia, on the north wall, varied in length and this made it difficult to apply the unit entitlement formula to ascertain the length of the sign of each unit owner. This problem was later resolved when Council replaced the fascia with a sign box containing seven six-foot panels, and Council decided that each unit owner was entitled to a six-foot sign; the result of this equitable disposition being that Dr. Yeung would receive more signage space than if the unit entitlement formula was strictly applied.

¶ 66 The next meeting was on March 17, 1998. These Minutes, and those for the March 24, 1998 meeting, were prepared by Mr. Pelling, and are in his handwriting. Item 3 in the March 17 Minutes notes that: "Sign Allotment to be determined". She said the note accurately sets out what happened at the meeting. The next meeting was on March 24, 1998. The signage note in the Minutes of that meeting is "Sign issue - allotment and style". Her proposed signage was again discussed, but no definite decision was made about it.

¶ 67 The Minutes of the two March meetings bolster the position of the defendant and the evidence led by it on the subject matter of signage, and what the two men were going to look into. Additionally, in the March 17 Minutes it is stated that agreement in principle was reached to bring forth a Motion to engage a property manager to assist the Council in the running of the Strata Corporation. In the March 24 Minutes it is indicated that the vote on the appointment of a property management company was

passed on a two to one basis, with Dr. Yeung being opposed.

¶ 68 Dr. Yeung was asked again about the tenor and tone of these meetings. She said that they were like the earlier meetings. Mr. Pelling would shout at them and tell them to shut up, and that they could leave the meeting if they did not like it. She said that Mr. Pelling threatened her. My note of her evidence was as follows:

I tried to stop him to say something. He said if you interrupt me again I'm going to be very angry. I felt threatened.

When asked how loud he was speaking, she said very loud. When asked if he made any "body gestures", she said that he pointed his finger at her. I have already stated my view of the Yeungs' evidence concerning the tone of these meetings, and the suggestion that they were harassed or oppressed during them.

¶ 69 She was next referred to her husband's letter dated March 25, 1998, to Mr. Pelling as Chairperson of the Strata Council. In it he complained that Century 21 should not have been appointed as their property management company over the other bidder, CB Commercial Co., because of an asserted conflict of interest on Mr. Pelling's part, and because of his "unethical, unprofessional and unfair" conduct in relation to the two bidders; assertions made without foundation and, according to Dr. Li, for personal reasons.

¶ 70 He also said:

Also, I am not satisfied with the management of the operations of the building and the on-going conflicts of interest encountered on various daily issues. In view of the above, I find that the business of the Council cannot be properly conducted. I resign from the Council as Treasurer to avoid any liability that may subsequently ensue. The bank has been notified that I have withdrawn my authority to sign the Strata Council bank account effective immediately. All the related documents (invoices, bank deposit book, bank statements and cheques) are hereby returned.

I request to have a copy of all the approved Minutes of the Council's meetings to date, contracts relevant to the issue of signs, insurance and maintenance of the building and a copy of all my correspondence with Council. Please, forward these to the above address.

¶ 71 I do not propose to deal further with this letter at this time. The allegations contained in the letter are unfounded, and its timing should be noted. It is some evidence of the continued complaints by the Yeungs, and their almost daily running battle with the Council. While much was made by counsel for the Yeungs of the demand for documents and the apparent failure of the Council to respond, I am satisfied that it is likely that the demand was not made in good faith, that Mr. Yeung had most of the information and documents demanded, and knew that some of them did not exist. Further, no injury was done to the Yeungs, if in fact there was no response at all, which I do not believe to be the case.

¶ 72 Dr. Yeung was next referred to her husband's letter to the Council dated May 15, 1998, in which he said:

Dear Sirs,

In August 1997 I moved into the suite 180 of 7340 Westminster Highway, Richmond.

In November 1997 I made a sign application to the Strata Council with complete details

of the sign. To this day, I have not received any response on the sign. Since the application, it has been seven (7) months. As you know, when a business changes address, it depends a lot on the sign for its customers. As a result, my business has suffered considerably for this lengthy wait. I'm left with no alternative but to go ahead with the sign as applied. To this end, I have obtained the authorization of the Municipality of Richmond, and a copy is attached.

I have made arrangements for the company to put up the sign and it will be posted on May 19, 1998. (Emphasis added).

¶ 73 The attached "authorization" is a letter dated February 12, 1998, from Mr. Clark of Richmond's Permits and Licences Department, to Ventures, stating:

Re: 7340 Westminster Highway, Richmond

Please be advised that the sign area allocation space of Unit 180 - 7340 Westminster Highway is for the exclusive use of that Unit, and is not available for other tenants in the building to utilize to display their signage.

If you have any other questions or wish to discuss the matter more, please contact the undersigned at 276-4199.

(Emphasis added).

¶ 74 I pause to observe that by this point Council had entered into a Professional Management Contract with Century 21 Prudential Estates (RMD Ltd.) which was effective May 1, 1998. The named property manager was Mr. C. Weant. I observe also that from the beginning, all of the other unit owners, before and after they became a Council, struggled because they had no experience whatsoever in strata matters, and, in addition, were busy running and developing their respective businesses. It seems to me that Mr. Tablotney's description of the circumstances was appropriate. He said that on the one hand they were trying to run their own developing business, and to run the Strata Council's business as well, and deal with all of its many problems, while on the other hand, the Yeungs were constantly objecting to everything they did and simply advancing their own interests. However, as of May 1, 1998, they had an experienced property manager who could guide them with regard to their problems, once he was brought up to speed. It was in that context that Mr. Yeung's letter was written, and perhaps dictated the urgency in putting up the sign.

¶ 75 I also observe that Mr. Yeung's letter was simply inaccurate and misrepresents the situation, especially where it stated that he had not received any response on the sign. As I have already said, the response was that the Yeungs were told, and (knew from the first meeting) that the other unit owners (the Council) did not agree that Dr. Yeung could put up her proposed sign to the exclusion of the other unit owners; and that the limited signage on the building would be apportioned among all of the owners on the basis of unit entitlement. Nothing was left then but the calculation of the percentage of Dr. Yeung's space on that basis.

¶ 76 I observe also that I am satisfied that it is more likely than not that the Yeungs could have made that calculation, to ascertain Dr. Yeung's percentage of the signage, if in fact they did not do so. The Yeungs were given the Unit Entitlement Schedule at the time of purchase, as required by the Act. It had been explained to them during the earlier meetings. And Mr. Yeung had in fact used it in the fall of 1997 when as Treasurer he prepared his Reconciliation of the Strata Corporation's expenses and the share thereof of each owner.

¶ 77 I have already noted that the City of Richmond's By-law, and its position with regard to signage, does not assist Dr. Yeung as a unit owner of the Strata Corporation. It is the Corporation, as represented by the Council, which expresses and protects the community interests and rights of the unit owners,

those which come immediately with membership in the Corporation, and those which are later provided for in the By-laws and Rules. They govern how owners may use their units, as well as the common property. As I opined earlier, Dr. Yeung had no right to use the entire signage space above her Unit to the exclusion of her fellow unit owners. To attain those rights would require the approval of the other unit owners (who would be giving up their rights) as expressed in a Resolution made at a meeting of Council.

¶ 78 On May 19, 1998, Dr. Yeung had two full length signs installed on the fascia on the outer north and east walls of her Unit. By this time the property manager, Mr. Weant, was becoming involved with the Strata Corporation's more pressing matters. On May 22, 1998, he wrote to her asking for a contribution of \$800 so that he could pay outstanding bills and keep the building functioning. At this time there were only three owners, Dr. Yeung, Dr. Li and LeGear Pelling and the developer, who still owned the unsold units, and had not been paying his share of the costs and expenses for some time, and the Corporation was constantly without funds.

¶ 79 In his letter Mr. Weant stated that he was sorry to read of Mr. Yeung's resignation, that he would be pleased to meet with Dr. Yeung to discuss her concerns about the management of the Strata Corporation, (an offer which was never taken up) and that an Annual General Meeting ("A.G.M.") would be held within three weeks, the purpose being to fix the annual budget and the election of the new Council.

4. The First Annual General Meeting Of The Owners

¶ 80 Dr. Yeung acknowledged that she received Notice of the June 16, 1998 meeting. I observe that on its face the Notice brings to the attention of the owners the following: the purpose of the meeting which was to adopt the 1998/99 operating budget; that a quorum of at least one third of the persons entitled to vote must be present in person or by Proxy; that no owner was entitled to vote at any General Meeting unless all the contributions payable in respect of his/her strata lot had been paid in full; and that an instrument appointing a Proxy must be in writing. The Notice package also contained a copy of the Unit Entitlement Schedule, which set out the entitlement of each unit, and an Agenda.

¶ 81 Dr. Yeung acknowledged that she did not attend the meeting, she did not give notice to the Strata Council that she would not attend, or the reason for her non-attendance, and she did not use her Proxy. At trial she said that she did not attend because her father-in-law was sick and at that time she was out of the office. The result was that at the meeting there was no quorum, and it had to be rescheduled.

¶ 82 She received the new Notice dated June 17, 1998, for the rescheduled meeting to be held on June 24. This time she wrote to Mr. Weant on June 19 advising him that she could not attend the meeting which was scheduled for June 24, 1998, because she would be out of town that week, but that she would be available the following week of June 29, except for July 1. The meeting went ahead on June 24, 1998, when only two owners were present, Mr. Pelling and Dr. Li.

¶ 83 Mr. Tablotney said that when calling the meetings Council always tried to accommodate everyone. They were all busy with their own businesses. He also said that in this case the following week was not convenient to the other unit owners, it was holiday time, and they were facing a deadline. The gist of his evidence was that the Yeungs' conduct was suspect, Dr. Yeung could have used her Proxy or one of them could have attended the meeting or made an effort to attend the meeting. I will return to the point in a moment.

¶ 84 With regard to signage, the Minutes of the June 24 meeting provide as follows:

There is concern by some of the owners that one owner has placed signage over its strata lot, the size of which is inproportionate to the strata lot unit entitlement. It was determined that the developer had established a proportionate signage ratio for each strata lot and that each strata lot purchaser was made aware of the amount of space allotted to each strata lot at the time of purchase. Council recognizes that the owner of strata lot has contravened the maximum size of signage for the strata lot and that this item will be addressed at a future Extraordinary General Meeting.

This appears to be the only matter of complaint by Dr. Yeung with regard to the June 24 meeting. Strata Lot 2, of course, is Dr. Yeung's offices.

¶ 85 When questioned about this statement by her counsel, Dr. Yeung said that she was never made aware of any such formula at the time of her purchase. She added that "there were no restrictions on the placing of my sign". She said that she had never heard before this time that the developer had established any proportionate signing ratio for the owners; although it had been explained to her that each owner's signage space would be based on the size of his or her unit.

¶ 86 At this point Mr. Ellis said that it was his understanding from the evidence that the developer never created the referred to ratio or formula. While perhaps the statement in the Minutes might have been clearer, counsel's advice was not correct; and neither was the witness' evidence. In any event, the point is of no moment in my view. The evidence is that at the time of the sale, each unit purchaser, including Dr. Yeung, was given a package which included the Strata Plan, as well as a copy of the Unit Entitlement Schedule; which is used under the Act for the purposes of calculating, among other things, a unit owner's percentage or share of the common property.

¶ 87 I have already dealt with the point. I am satisfied that at least at the time of the first meeting, the Yeungs knew about the Schedule and its use, and that at a glance they would have known that its application to the signage space on the north wall, which was the centre of the dispute, and was common property, would result in Dr. Yeung being allotted the smallest percentage of the signage space among the other unit owners simply because she owned the smallest unit.

¶ 88 Before leaving the first A.G.M. which was held on June 24, I must say that I do not consider that the fact that the Council went ahead with the meeting, in the circumstances, constitutes evidence of bad faith on the part of the Council, or of oppression or prejudice, unfair or otherwise, to Dr. Yeung.

5. The Extraordinary General Meeting Of August 6, 1998

¶ 89 Dr. Yeung was asked whether she received the Notice for the August 6, 1998 meeting. By this Notice the unit owners were told that two Special Resolutions would be put forward at the meeting, the first being a Schedule of Fines to cover contravention of the Strata Corporation's By-law and delinquent maintenance payments, and the second, a Signage By-law as set out in the Notice. It is important to note that the Notice gave the Yeungs notice, in effect, that each unit owner's signage allotment would be formally restricted by the application of the Unit Entitlement Schedule; that in Dr. Yeung's case, her signage allotment would be no more than six feet. It also gave them notice that no owner was entitled to vote at any General Meeting unless all the contributions payable with respect to his or her strata lot had been duly paid.

¶ 90 After looking at the documents, and her own documents, she said that she did not have a copy of

it. She then said that she did not receive a copy of the Notice. When asked whether she enquired as to when the meeting would be held because of the reference to it in the June 24 Minutes, she said that she had spoken to Mr. Pelling in the corridor asking when the meeting was being held and he told her "I'll phone you, or something like that". According to her testimony, she was never told that there was going to be a meeting on August 6. I observe that I had some difficulty with her evidence in this area, as I did in other areas; that on a consideration of the conflicting evidence, including Mr. Weant's evidence which I accept, I am satisfied that it is more likely than not that Dr. Yeung was given proper Notice of the August 6, 1998, E.G.M. I will return to the point in a moment.

¶ 91 In para. 2 of the Minutes of the August 6, 1998 meeting, which were prepared by Mr. Weant, a professional in these matters, it is stated:

Calling the Roll and Certifying of Proxies

Attending the meeting were two (2) owners in person. No owners by Proxy. The two owners present were the only owners eligible to vote, as all other owners are in arrears on the maintenance payments. The two (2) owners constitute a quorum and the meeting was declared competent to proceed.

¶ 92 Special Resolution #2 - Signs, set out in the Minutes, provided as follows:

1. An owner or lessee will be allowed to place a sign only in the common property area allotted on the face of the building between the first and second level of the building and/or on the existing free standing sign on the north side of the property.
2. The maximum size of signage on the common area for each strata will not exceed the amount of signage space as determined by that strata lot's unit entitlement.
3. No strata lot shall have more than 50% of its signage allotment to a maximum of six feet on the front, (north) wall of the building.
4. Each ground level strata lot will be allowed signage on the designated common area over the entrance to that strata lot.
5. All signs must be pre-approved by the Strata Corporation before being installed.

¶ 93 At the meeting the Resolution was adopted and became the Corporation's Signage By-law, the validity of which Dr. Yeung now disputes. She testified that had she been given Notice of the August 6 E.G.M. she would have attended and voted against Resolution #2.

¶ 94 When asked what the reason was, she said that it was because "it was always my position that I have the right to put my sign on the fascia outside space". She then emphasised that she thought that she had the right, and that it was "documented", referring to the letter from the City of Richmond.

¶ 95 When she was asked was she saying that the City's position was the paramount reason, she said "no", that it was her position that she always had the right to put her sign on the fascia and that her rights, as stated by the City, could not be taken away. No one else could put signage on that fascia.

¶ 96 I pause at this point to observe that counsel for Dr. Yeung urged me to find that the Signage By-law was invalid because Dr. Yeung was not served with Notice of the August 6, 1998, E.G.M.. His alternative argument was that even if she had been served, (given notice) the By-law was invalid because at the meeting the Special Resolution No. 2 was amended to include para. 3 of the By-law, which was not contained in the Notice of the meeting. I am unable to agree with these submissions.

¶ 97 First, I note that at the meeting Mr. Weant filed proof of Notice of the meeting having been delivered within the prescribed time, and it was moved, seconded and carried that the Notice for the E.G.M. be accepted as distributed. I do not believe that this would have occurred had Mr. Weant not notified Dr. Yeung of this most important meeting. I also find it difficult to believe that Mr. Weant would fail to notify Dr. Yeung of the meeting knowing its importance and that it would be a nullity if Notice was not given.

¶ 98 It is true that by the time of trial Mr. Weant could not remember how Dr. Yeung was given notice of the meeting; also that in answer to a discovery question left unanswered, he said that the Notice had been mailed, which was his standard method of serving such Notices. However, in investigating the subject further, he observed that he had hand delivered the Notice to the two other owners, and that his records showed no postage was recorded or charged for the delivery of the Notice to any of the unit owners. He therefore concluded, as I do, that it is more likely than not that he hand delivered the Notice to Dr. Yeung, or to her office as in other cases.

¶ 99 Further, while Mr. Weant may have had some difficulties with his evidence, he did not impress me as being biased or untruthful. Rather, he appeared to strive to present his best recollection of events which, of course, had occurred some years before. The thrust of his evidence was to rely on his practice and his records since he had no present actual recollection of the event.

¶ 100 It is to be remembered as well that Mr. Weant's office was just across the street from the strata building in which the three owners carried on their respective businesses, and that on previous occasions he had simply walked across the street and hand delivered letters and Notices to the owners or their offices, rather than going to the time and expense of mailing the Notice. In my view, it is highly unlikely that this professional property manager would have gone to the building and delivered Notices to the other two unit owners, but not to Dr. Yeung or her office, while knowing of the Yeungs' signage dispute and that failing to notify her would jeopardize the Resolution, which probably would end the dispute, if it were passed.

¶ 101 I observe also that there is no evidence, oral or written, before me that the Yeungs ever complained about the validity of the August 6, 1998 meeting, or of the By-law which was passed at that meeting, or ever took any steps to have it declared a nullity or at least to have a new meeting so that Dr. Yeung could attend and vote. A similar observation may be made with regard to the June 24 first A.G.M..

¶ 102 While Dr. Yeung may now believe that she was not given Notice of the meeting, I am satisfied, as I have indicated, that it is more likely than not that Mr. Weant hand delivered the Notice to Dr. Yeung, or to her office. The only evidence to the contrary is that of Dr. Yeung.

¶ 103 The fact that the Resolution was amended at the meeting does not make the By-law invalid in my view. Dr. Yeung was given Notice of the meeting and about the Resolutions, particularly Resolution #2, which she knew would officially end, for the second time, her unilateral claim to the substantial signage; the first time being when the December 15, 1997 Resolution was passed.

¶ 104 She also knew that if she attended the meeting she could not vote; and even if she did attend and vote, she could not win the day. She chose not to go to the meeting. I think that it is also fair to say that she could reasonably have expected or anticipated that amendments to the Resolutions might occur, particularly in this case. It is also noted that the amendment provides Dr. Yeung with more signage than she would have been allotted had the Council strictly applied the Unit Entitlement Schedule. Further, in my view, given her previous conduct and the matrix of the By-law, it would not be just to set aside the

By-law in the circumstances, on her trial evidence alone, constituting her first complaint.

¶ 105 Finally, I have one further observation to make on the point, and that is, that in my opinion it matters not whether the By-law was validly passed (if it was not, the situation can, of course, be corrected) because Dr. Yeung had no right whatsoever in the first place to put up her sign. Even if she had such a right, it was foreclosed by the December 15, 1997 Resolution; and if that Resolution was invalid, she still did not have the right to put up her sign. She did not attain that right when she unilaterally bullied her way (if I may put it that way) into putting up the sign she wanted. Nor did she attain that right as a result of the fact that the Council, which was busy with other matters, and continuing to attempt some Resolution which would satisfy Dr. Yeung, did not take the sign down for about eighteen months. It is seen that in my view, both the Resolutions and the By-law were validly passed, and in turn governed her signage rights, as well as those of the other unit owners.

¶ 106 In the circumstances I do not propose to deal with the further meetings of Council, as did counsel, although I may refer to some of them on a specific point. And, as I said earlier, I may also deal, more particularly, with any meeting emphasised by counsel, if it appears necessary. It may be safely assumed that during these meetings Dr. Yeung's signage was discussed, and she continued to maintain that she was entitled to the amount of signage she claimed, and, at times, that the developer had told her this at the time she purchased her Unit; while in the end Council decided on an equitable allotment of the signage with each of the seven unit holders being allotted one-seventh of the signage space which amounted to about six feet.

¶ 107 Dr. Yeung said that at the meeting of November 16, 1999, Mr. Tablotney told her that her sign should be grandfathered. Mr. Tablotney, whose evidence I accept, said that the subject matter was raised by Dr. Yeung, and that it was made clear to her that her sign would not be grandfathered. Common sense dictates as well that if there had been an agreement to grandfather Dr. Yeung's signage, this would have been recorded and the proper Resolution passed in due course.

¶ 108 Reference should also be made to the December 14, 1999 meeting, which the Yeungs attended. At this meeting Mr. Johnson sought approval to put up his sign. He urged the Council to enforce the Sign By-law, and questioned why Dr. Yeung had been able to install her sign in the first place. In this regard it is stated in the Minutes of the meeting:

Mr. Johnson pointed out that the owner installed the sign without approval from the Strata Corporation. This was in contravention of the Regulation imposed at the December 15, 1997, Council meeting, that read;

BE IT RESOLVED THAT signage on common property will be approved by Council on application by a strata lot owner based on unit entitlement.

(Emphasis added).

¶ 109 The evidence is that at the meeting Dr. Yeung did not say that the December 15, 1997 Resolution had not been passed, and did not otherwise attack its validity. Rather, her response to Mr. Johnson's submissions, as contained in the Minutes, was that they were told by the developer that they could place signage on the front and side of the building over their Unit, without any restriction as to the size of the sign.

¶ 110 The next meeting which bears some reference took place on January 24, 2000. By then Mr. Ellis had been retained, and had written a letter to the Council dated January 25, 2000, in which he

stated:

Unless, you will, by January 25, 2000, grant unconditional permission to the continuation of the signage affixed to strata lot 2 ... and make the necessary By-law amendments in this regard, I am instructed to file a petition in the Supreme Court of British Columbia to permit same.

In that event, unless you agree to allow the signage to remain in place pending a Court determination, I have instructions to seek an Injunction to prohibit your removal of the sign until the Court can resolve this matter.

¶ 111 Mr. Ellis' letter was discussed at the meeting and in this regard the Minutes contains the following:

Discussion was that Council would enforce the By-law and has no choice but to do so as the Motion of January 10, 2000, was if no positive response was received from the owners of Unit 180 Council would enforce the By-law. As Council was given no time to consult a lawyer, discussion was that the signage on the north and east sides placed by Unit 180 shall be removed. It is directed by Council that the Property Manager be contacted immediately and told to remove the signage first thing the next morning.

At 9:00 a.m. the next morning Dr. Yeung's sign was taken down. According to her, when she arrived at her Clinic later on and found her sign missing, she "didn't know who took it" so she called the police and told them that it was stolen. I do not propose to deal further with Dr. Yeung's evidence, or that of her husband, with regard to the removal of her sign, other than to say that it is another area where I find it most difficult to believe their evidence.

¶ 112 On cross-examination Dr. Yeung acknowledged that at the time she purchased her Unit she knew that she would have to abide by the Rules and By-laws of the Strata Corporation or Council. She also knew that it was the majority who ruled, and who determined the Rules.

¶ 113 She also acknowledged that she had read the brochure at p. 4 which clearly showed that signage and security systems were not included in the sale price. She also knew from the statement, "signage space is not yet determined", that signage had not been determined. Yet, when it was put to her that she knew then that individual signage space had not been determined, she would not agree.

¶ 114 Dr. Yeung agreed that prior to purchasing her Unit, neither she, nor her husband, ever spoke to the developer, Mr. H. Goertzen, or to his agent, Mr. Symington, about her signage. It was Ms. Robson who "negotiated with" Mr. Symington.

¶ 115 She was then referred to her examination for discovery which took place on September 29, 2000, and the following exchange, which took place when counsel was examining her as to the importance of advertising in her practice, and why she did not see that it was included in her Agreement:

201 Q. My question to you is, the issue of signage could not have been that big a deal to you for your practice if you don't include it in this Contract of Purchase and Sale?

A. That's correct.

¶ 116 Dr. Yeung then said that at the time she was asked the question she had not understood it. She

said that it was incorrect to say that she had not negotiated signage in her Agreement because it was not important. It was put to her that she would have included it in the Agreement if it was important, and she said "no".

¶ 117 She agreed that she read the entire Agreement before she signed it. In particular she read para. 9 which provides:

- 9. There are no representations, warranties, guarantees, promises or agreements other than those set out in this Contract and the representations contained in this Property Condition Disclosure Statement, if attached, all of which will survive the completion of the sale.

It was put to her that she understood that no verbal promises were being made to her outside the Contract. She would not agree. She did agree that her Realtor explained the Agreement to her. Again, I had difficulty with her evidence.

¶ 118 At this time Mr. Ellis submitted that questions 198, 199 and 200 should also be read in with question 201, and defence counsel agreed. They are as follows:

198 Q. I understand that your position is that advertising for your practice is extremely important?

A. Yes

199 Q. If advertising via signage was such an important ingredient for your practice, wouldn't you agree that you would have included that in your Contract of Purchase and Sale at the time that you purchased the unit?

A. If I see ...

Mr. Ellis: I think that's argument, is it not?

The witness: The argument is not there because if I have just an example, if I have to buy a car, the door is very important, I don't necessarily have to put in writing the door has to be there.

200 Q. But for your livelihood, where you say it is so very important, isn't that a very key aspect to have included in this Contract of Purchase and Sale?

A. If your question is why didn't I include it in writing, the question, I don't know.

¶ 119 Dr. Yeung was asked whether her answer to question 201 was true at the time. She said "no", that she did not understand the question. Counsel read the question and asked the question again, and she said that the answer was true "at the time as I understood the question".

6. The First Meeting Of The Owners On October 6, 1997

¶ 120 It was put to her that Mr. Symington was in attendance during the whole of the first meeting, and that he had heard the whole discussion about her signage. She did not recall, and agreed that he may

She agreed that it was to be based on unit entitlement. She knew, as well, that under that formula she would not get the twenty-foot sign on both walls simply because of the fact that her Unit was the smallest unit in the strata building. Her evidence in this regard is contrary to her earlier evidence, and the evidence of her husband, but is consistent with other evidence which I accept.

¶ 129 She also agreed that there was another heated discussion between the parties, because she and her husband were adamant that the signing space was for her Unit only, while the other owners said that it was to be shared among all of the unit owners. She said that while the argument was heated and her husband was angry, she was not loud, and she could not recall that her husband was loud. This, in the face of her earlier evidence, that the arguments were so heated that at one point it looked as if her husband and Mr. Pelling were going to get into a fist fight.

¶ 130 Mr. Ellis said that the evidence about Mr. Pelling's conduct at the meetings goes to his submission of a continuous pattern of oppression brought to bear on Dr. Yeung by the Council. I am satisfied that this was not the case. Dr. Yeung, and particularly Mr. Yeung, impressed me as being astute business persons, and worthy adversaries during the heated discussions. I have concluded on the evidence that they both participated in the heated arguments and that they gave as much as they took, protecting their position about their signage, and attacking Mr. Pelling's position about the pylon signage.

8. The Third Meeting Of December 15, 1997

¶ 131 Counsel referred her to the Minutes of the meeting which indicated that Mr. Pelling, Dr. Li and Dr. Yeung were present. She did not recall anyone taking Minutes at the meeting. She did not recall a Motion being put forward and voted on, as stated in the first paragraph of the Minutes, where it says "Carried 2 in favour and 1 opposed". She did not recall this happening. After some thought she said that it did not happen. She did agree that sign allotment by unit entitlement was discussed, and that the discussion was that she was not entitled to the amount of signage she wanted.

¶ 132 I observe that the two Resolutions record exactly what the Yeungs were told at this meeting, according to the evidence which I accept. They were told that signage on common property would be approved by Council upon application by a unit owner, based on unit entitlement. They were also told that Dr. Yeung's allotment, based on unit entitlement, would be determined at a later date.

¶ 133 Dr. Yeung's testimony in the end was that the two Resolutions were never made or passed. Her husband's evidence was the same. I prefer the evidence to the contrary, that the Resolutions were made and passed.

¶ 134 Dr. Yeung was referred to her husband's letter dated May 15, 1998, to the Council which attached Mr. Clark's letter to him dated February 12, 1998. She, too, said that they did not receive any response to her husband's letter which notes that nothing had been done since his November 1997 sign application; that he was going to go ahead with the sign, having been authorized by the City of Richmond to do so. I have touched upon the contents of this letter and probably will do so again. I will just observe again that the letter was most inaccurate, as it is clear from the evidence that Council had responded to her application for approval of her signage.

¶ 135 On the issue of whether Dr. Yeung was in arrears on her assessment or maintenance payment at the time of the August 6, 1998 E.G.M., and as a result was not eligible to vote, I am satisfied that such was the case. She knew that June 1, 1998, to May 31, 1999, was the budget period. She knew from Mr. Weant's letter that he had requested that he be provided with post-dated cheques so as to be assured that

¶ 141 It is seen that I have difficulties with Dr. Yeung's evidence. Her evidence is in conflict internally, and with the evidence of other witnesses, whose evidence I accept. It is also inconsistent with the obvious probabilities to which the circumstances give rise. I do not believe that it would be safe to make any substantial finding based on her recollections, unless it was consistent with, or supported by, other evidence which I accept, or the evidence of other witnesses whose evidence I accept. I will observe that I am unable to find, on her evidence alone, that she ever had any right to the unrestricted signage which she claimed; that the evidence is to the contrary and simply bolsters the conclusion that it simply did not happen.

¶ 142 I now propose to deal with the evidence of Mr. Symington and that of Ms. Robson, before turning to the evidence of Mr. Yeung.

V. THE EVIDENCE OF MR. R. SYMINGTON

¶ 143 He has been in the real estate business, selling both residential and commercial real estate, for about twenty years. He is presently a manager with a large real estate firm. He was the listing agent for Mr. Goertzen who developed the properties at 7340 and 7360 Westminster Highway through his holding company, Quintus Development Corporation.

¶ 144 I found Mr. Symington to be a fair and truthful witness, and as close to an independent witness as one can be, if he is not an independent witness. I accept his evidence and prefer it over the evidence of Dr. Yeung and her husband and that of Ms. Robson, where their evidence is in conflict.

¶ 145 Mr. Symington gave the following evidence: he prepared the Re/Max brochure referred to earlier. With regard to the statements made at p. 4 of the brochure, he said that it was intended that signage would be part of the common property which would flow with the project, as opposed to individual units. The idea was to have the Strata Council control the signage so as not to "clutter it".

¶ 146 When asked how LeGear Pelling came to own the free standing sign, he said that it was a joint venture participation between LeGear Pelling and the developer, with only one condition attached to the right to build the sign; that LeGear Pelling had to provide advertising space for the unit owners at a rental cost. There was never any intent that the second storey units would have priority for signage on the pylon. The original design of the sign, which was later changed, was for sufficient signage for each unit.

¶ 147 He had no dealings with Dr. Yeung or with her husband. He discussed a number of issues with Ms. Robson prior to the written Contract being entered into, including signage. He testified that Ms. Robson told him that Dr. Yeung wanted full signage on the front or north wall of her unit, as well as on the east side. He told her that such signage was not available, it was not included, and it could not be negotiated into her Contract; that there probably would be a high demand for the signage on the north side, and that Dr. Yeung would only be able to get about one panel. However, he thought that she could get more signage on the east side of her unit because nobody else seemed interested in it.

¶ 148 When asked what Ms. Robson had to say, he recalled a brief conversation about signage, "but I made it clear to her this was the way it was and it wasn't going to change - that's basically how we left it". He never told Ms. Robson that there were no restrictions on this signage space, or on Dr. Yeung's signage space. No terms were written into her Contract with regard to signage.

1. The First Meeting Of October 6, 1997

- ¶ 149 Mr. Symington attended the meeting and for that purpose prepared a meeting Agenda, which is in evidence. Under topic 4 - "Other Topics for Discussion" appear two items, the first being Entrance Directory and the second, "Signage: building sign design and free standing sign".
- ¶ 150 The meeting was held in Mr. Goertzen's office on the second floor at 5:30 p.m. He chaired the meeting. He was there throughout the entire meeting. He has an actual recollection of the meeting.
- ¶ 151 The main purpose of the meeting was to introduce the new owners to the concept of strata title ownership, to elect a Strata Council and to discuss what he considered to be important matters, including signage and parking. He gave the unit owners a summary of their responsibilities as strata unit owners and an overview of the concept of strata ownership, the fact that they had to elect a Council and to hold regular meetings.
- ¶ 152 He also discussed self management versus the use of a property manager. He recommended the use of a property manager because the owners did not have any experience to deal with strata matters, and their interests would be diverted by their businesses.
- ¶ 153 He opened the discussion on Item 4, the topic of "Signage". He believes that Dr. Yeung spoke first, advising of her intention to put the signage around the fascia of her unit.
- ¶ 154 A very heated discussion then ensued between Dr. Yeung and Mr. Pelling. It was basically an argument whether she would be allowed to put that signage up. Mr. Pelling became fairly animated. Mr. Symington said that he did not pay too much attention to what he said, that he finally broke in to keep them from getting out of hand. During the argument Mr. Pelling became very red in the face and somewhat animated. Dr. Yeung spoke in a similar voice to Mr. Pelling.
- ¶ 155 He told Dr. Yeung what his concept was for her signage, basically what he had told Ms. Robson during their pre-Contract negotiations. Dr. Yeung responded that she had been told she would be given unrestricted signage. He asked her who told her that and she initially said "the developer". He then asked her who specifically, and she said "you", referring to Mr. Symington.
- ¶ 156 He reminded her that the two of them had not had any direct conversations about signage, and asked her again who told her she would have unrestricted signage. She continued to respond "you", meaning Mr. Symington. He then decided to end the discussion, after warning Dr. Yeung that she should not proceed with her intention to put up that signage.
- ¶ 157 Dr. Yeung questioned LeGear Pelling's right to build/own the pylon. Mr. Symington explained to her that the cost of the pylon was very high, and that the developer did not pay for it. By absorbing the cost of building the pylon, LeGear Pelling was given the right to build and rent space on the pylon; with the condition that the other owners would have the right to rent space on it.
- ¶ 158 Mr. Symington said that at the meeting Mr. Goertzen did not tell Dr. Yeung that signage space over the units belonged only to the unit owner. No one told Dr. Yeung that there would be no restrictions on the amount of signage she could have. Neither Dr. Yeung, nor her husband, questioned Mr. Goertzen about the amount of signage Dr. Yeung could have.
- ¶ 159 At the meeting there was a discussion about common property. He said that when he broke into the argument he explained that there were a limited number of panels on the north wall of the building, that the plans were to have the Strata Council distribute the space among the unit owners.

¶ 160 I turn to Mr. Symington's evidence on cross-examination. He was aware of the Strata Property Act. He dealt with it on a daily basis. He was also aware of the Richmond City By-law but had never read it. He was not dealing with signage and was not concerned with it. It was not included.

¶ 161 It was suggested to him that he was making representations to Dr. Yeung in the Re/Max brochure. His evidence was that he was not making representations to her; that if he was making representations in the brochure, it was that signage was not included in her Contract. She was told, initially through Ms. Robson, and then at the first meeting, that she would not be given signage across the front of her unit, "but that there would be a panel allotted to her out of the pool". He also told Ms. Robson that Dr. Yeung could probably have the signage on the east wall of her Unit since no one wanted it, although he had no authority. This was during the discussion of the potential offer and what could be in it, but nothing was put in the offer.

¶ 162 The only notes he has of the October 6, 1997, meeting is his typed Agenda, with a few written notes on it, which contained topics he felt were important to be discussed. He did not discuss these matters with anyone before coming to Court. The first time he reflected on the discussions at the meeting was about a year and a half ago, before the first trial date when he met with counsel. He agreed that it was fair to say that from October 1997 to 2001 he had not reflected on the meeting.

¶ 163 It was put to him that he said on direct examination that when Dr. Yeung and Mr. Pelling were talking he did not pay attention to what they were saying. (Actually what he said was that Mr. Pelling was fairly animated and that he did not pay too much attention to what he said). And I note that his answer was "yes - not full attention - a lot of things going back and forth between the two of them and I could not keep up". He did not feel that it was an "insignificant skirmish". It was sufficient enough for him to interrupt it. He did not want the meeting to get out of hand. He repeated that it was a heated discussion between Mr. Pelling and Dr. Yeung. He was asked if he would disagree if someone said that it was between Mr. Pelling and Dr. Yeung's husband. He said that the husband was involved in the argument - "but I remember it being between Dr. Yeung and Brad".

¶ 164 He would not agree with the suggestion that he was simply testifying as to what he thought was said at the meeting. He was giving evidence from his memory, which in effect he said was heightened because of the emotions attached to it. It was a four year project for him. What happened was fairly imprinted in his mind. He was present throughout the entire meeting.

VI. THE EVIDENCE OF MS. C. ROBSON

¶ 165 Ms. Robson has been a realtor since 1980. She is now with a large real estate company. She has known Dr. Yeung for some time. Apparently Dr. Yeung is her family doctor.

¶ 166 She believes that she received the promotion materials from Mr. Symington with regard to the two buildings in 1994. She showed the material to Dr. Yeung and then made an appointment to see Mr. Symington and discuss the proposed development. Dr. Yeung was only interested in main floor space because of its exposure as it was important to her that people would be able to walk in to her offices.

¶ 167 She said that she had a number of meetings with Mr. Symington and Mr. Goertzen. She told them that it was important that Dr. Yeung have office space on the ground floor. They also discussed signage. When she asked them about signage, Mr. Goertzen said that there would be a pylon sign in the middle of the two buildings. She was asked whether there was discussion about any other kinds of signage and she said "no". She was asked whether they discussed signage on the fascia of the walls of the building, and she said "no, it was never discussed".

¶ 168 Ms. Robson was asked did they discuss what kind of signage Dr. Yeung wanted. The witness asked if counsel was referring to the pylon? When counsel said he was referring to signage anywhere, Ms. Robson said that she was told by both men that Dr. Yeung would have signage rights on her Unit. She said "at the time we just assumed signage would be put on the Unit", apparently referring to the glass.

¶ 169 She was asked whether during her discussions with Mr. Symington and Mr. Goertzen, if either of them indicated any restriction on the type or location of signage for Dr. Yeung, and she said "no".

¶ 170 In cross-examination Ms. Robson was referred to p. 4 of the brochure, where it is stated that signage was not included in the sales price, and that "signage space is not yet determined". She said she interpreted this to mean signage on the pylon, that "this was the only space we talked about".

¶ 171 She was then referred to a photograph of the north wall of the building and agreed that it depicts where the signage space is on the north wall. It was suggested to her that that was the available space on the north fascia which she and Mr. Symington and Mr. Goertzen were talking about. She said that that was not correct. She said "we did not talk about that signing. The only signing I talked about with Richard Symington and Henry Goertzen was the pylon signing".

¶ 172 She said that she had acted for other purchasers involving strata corporations before and that she was familiar with the Strata Property Act. She had "done an 8-storey medical building". She understood that the strata corporations must maintain the exterior of the building, including the decorating of the exterior of the building. She also understood that the corporations must regulate the common property for the benefit of all unit owners.

¶ 173 It was put to Ms. Robson that Mr. Symington would say that he told her that the signage space on the front, or north wall, of the building had not been determined yet. She said that he never "said those things to me". It was put to her that he would say that during the negotiations he told her that the signage was designed as common property so that each unit owner would have a space in it. She stuck to her guns, saying that Mr. Symington only told her about the pylon, that the "fascia sign was never discussed".

¶ 174 She also reiterated her direct evidence that there was no discussion about any restrictions on signage. She agreed that she did not ask about restrictions, and that she just assumed the fascia on the front of the building was for Dr. Yeung.

¶ 175 Ms. Robson was asked whether she wrote her purported statement of October 8, 1997 for Dr. Yeung. Ms. Robson said that the statement had not been prepared by her. When asked who prepared it, she said that she believed that it was prepared by Dr. Yeung's lawyer, or Dr. Yeung. She said that she was just asked to sign it. I observe that the evidence is, and I find, that the statement was in fact prepared by Dr. Yeung.

¶ 176 She was asked whether Dr. Yeung or Mr. Yeung ever told her to get in writing from Mr. Symington or Mr. Goertzen, that there were no restrictions on Dr. Yeung's signage? She said "no", that it was their understanding that there were no restrictions. When she was asked why she was asked to sign the statement, she said it was because a lawsuit was going on and she guessed they were trying to clarify what happened during the process. I did not appreciate the answer. The statement is dated October 8, 1997, two days after the first meeting, and long before the action was commenced. Further, the statement is clearly misleading. It was set up so as to persuade the reader that Ms. Robson was the author and that Dr. Yeung was simply the witness.

¶ 177 When pressed by counsel that she simply made the assumption that the fascia was for Dr. Yeung's own use (as she had testified) she said that it was not just an assumption, that there was a By-law, referring to the City of Richmond's By-law, which she described as "an understood By-law".

¶ 178 I pause to observe that I have had some difficulty with Ms. Robson's evidence on its own, and in particular, when considered in light of the evidence of Mr. Symington, whose evidence I accept. What she seemed to be saying is that she did not discuss the fascia signage on the walls of the building at any time with Mr. Symington or Mr. Goertzen, (although this was the only signage Dr. Yeung was interested in); that they only discussed signage on the pylon sign, (which Dr. Yeung was not interested in).

¶ 179 Again, I have difficulty with Ms. Robson's interpretation of the statements contained on 4 of the Re/Max brochure as having application only to the signage on the pylon. The words in question (in the document which is addressed to Ms. Robson) "signage", "not included in sales price", and "signage space is not yet determined" in themselves do not suggest, even remotely, a credible interpretation on her part.

¶ 180 In my view, placing Ms. Robson's testimony at its highest level, her assumptions, (even if based somehow on her general knowledge of the City of Richmond By-law) without more, that is without alerting Mr. Symington and Mr. Goertzen to her interpretation, and finding out what they had to say, cannot entitle Dr. Yeung to maintain that she was told that she had an unrestricted right to the signage she claimed, or that she had such rights, as against the other unit owners and the Strata Council.

¶ 181 Finally, as I have indicated earlier, I prefer and accept Mr. Symington's evidence over that of Ms. Robson where they conflict; particularly that she told him during their pre-Contract discussions that Dr. Yeung wanted full signage on the north wall of her unit, as well as on the east wall; that he told her that such signage was not available as there probably would be a high demand for north wall signage, and that it was likely that she would get only about a six-foot panel.

VII. THE EVIDENCE OF MR. YEUNG

¶ 182 Mr. Yeung is a certified General Accountant since 1990. He has been employed as a business auditor for fourteen years. He looks after the daily operations of Dr. Yeung's practice.

¶ 183 I do not propose to review his evidence in great detail. Suffice it to say that Mr. Yeung supported Dr. Yeung's case. At times his evidence was basically the same as her evidence. On other occasions his evidence seemed to go father and to be in conflict with her evidence. He in effect was Dr. Yeung's advocate. When testifying he was defensive, argumentative and inclined to explain his answers at some length. As in the case of Dr. Yeung, I did not find Mr. Yeung to be a good historian at all times.

1. The First Meeting Of October 6, 1997

¶ 184 Mr. Yeung like Dr. Yeung, testified that Mr. Symington left the meeting after a short while. I have concluded that this is simply not the case and I refer to Mr. Symington's evidence, which I have just reviewed and which I accept.

¶ 185 When Mr. Yeung was asked what was discussed, he said that as far as he could recall, a very aggressive and threatening discussion took place. Some members were very upset. They started to shout and threaten, pounded on the table and pointed a finger at him. When asked who did this he said mainly Mr. Pelling, and "a little bit by Andrew Tablotney". The developer, Mr. Goertzen, was doing it too.

¶ 193 Mr. Yeung then went to the City of Richmond and spoke to Mr. Clark, the Manager of Zoning and Permit Department. He says that he explained the situation to Mr. Clark, including the position of the Council that they "governed" the disputed space. Mr. Clark told him that it was up to the City to make the decision.

¶ 194 He also obtained a copy of the By-law which he then made available to the other unit owners. When asked why he sent the By-law to the other owners, he said it was because he wanted them to be aware that the City "has given me the right to put the sign on my space above my Unit - why the Strata Corporation can't control that space".

3. The Third Meeting Of December 15, 1997

¶ 195 Mr. Yeung says that it was a very heated, intense and threatening meeting when Dr. Yeung's signage rights were discussed again. Mr. Pelling pounded his fist on the table saying, in effect, that he had already told them that they could not have the signage which they wanted and so on. Mr. Pelling had been told by friends in real estate, and in Strata Councils, that they did not have the right they claimed. He said "you don't have the right, do you understand? How many times do I have to tell you? All we are going to do is allocate the space".

¶ 196 When asked whether the Resolutions set out in the December 15 meeting were made, the witness said at first that he did not recall. However, when pressed by his counsel, he denied that the two Resolutions were passed. He said that they did not happen. I have already stated my opinion that it is more likely than not that the Resolutions were in fact passed.

¶ 197 When asked how the issue of signage was left, he said that Dr. Li, Mr. Goertzen and Mr. Pelling were going to look into it. I have already stated my conclusion that all that was left to look into, after the meetings, was the percentage, or amount, of the signage available for each unit owner on the basis of unit entitlement. There is ample evidence to support this finding, including the Minutes of the December 15, 1997, meeting, and of the two March 1998 meetings, and, in deed, the evidence of Dr. Yeung on at least one occasion.

¶ 198 I observe also at this time, that I have concluded on the evidence before me that the Yeungs (particularly Mr. Yeung) knew what unit entitlement meant, and that since Dr. Yeung's unit was the smallest unit, her corresponding share of the signage would be the smallest share of all the seven unit owners. It certainly would be substantially less than what she claimed to be entitled to. It is difficult therefore to appreciate Mr. Yeung's evidence, and at times Dr. Yeung's evidence, that during the various meetings, when signage was discussed, at the end it was always agreed that Mr. Pelling and Mr. Goertzen, would look into Dr. Yeung's application for a substantial signage claim, rather than it being simply a matter of allotment (which was the case); and that Council never did respond to Dr. Yeung's application for approval of her signage (which was not the case).

¶ 199 He was referred to his March 25, 1998 letter to Mr. Pelling in which he complained about a number of matters, tendered his resignation and requested copies of specified documents. I have already indicated that I see little merit in the allegations made in this letter as to the conduct of Mr. Pelling and the Council. While Mr. Yeung said that he requested the documents because he did not have any of them, I am satisfied that he did have most of them, and that he knew what the situation was. I am unable to find that the demand for documents was made in good faith.

¶ 200 He was then referred to his letter dated May 15, 1998, to Mr. Pelling in which he complained about not having any response to their application for permission to put up their sign, and gave notice of

their intention to put up the sign on May 19, 1998. I have also dealt with this letter when dealing with the evidence of Dr. Yeung. I have noted that it is substantially inaccurate in the allegation that no response had been received on the sign. The letter perhaps is an attempt to justify putting up the sign, although in my view, none existed. Perhaps the letter came about because of the fact that by then a property manager, a Mr. Weant, had been appointed by Council, and he was in the process of familiarizing himself with the problems of the Strata Corporation and the building.

¶ 201 In any event, I am satisfied that Council made it clear to the Yeungs that they were not entitled to the signage claimed, would not approve it, and that the signage was to be allotted among all of the unit owners on a unit entitlement basis. There was, in my view, full response to Dr. Yeung's application for approval of her signage, save that Council put off making Dr. Yeung's allotment, and those of the other unit owners, because of the problems with the make up of the original fascia or signage panels.

¶ 202 Mr. Yeung was referred to the Minutes of the June 24, 1998, the first A.G.M. of the owners, and the passage therein under the subject "(b) Signage" which I earlier set out. Mr. Yeung said that he never heard about the developer having established a proportionate signage ratio for each strata lot, nor was he aware of this as a purchaser. I am unable to accept this evidence.

¶ 203 I have already found that the Yeungs were aware from day one that the Unit Entitlement Schedule or formula would be applied to the building signage in order to ascertain each unit owner's allotment; and what the results would be to the signage Dr. Yeung was claiming. When each unit owner received his or her initial package, including Dr. Yeung, it included the Strata Plan and the Unit Entitlement Schedule under the title "Condominium Act", as required by the Act. This is the proportionate signage ratio referred to in the passage quoted earlier. It was explained to them during the earlier meetings, and later on by Mr. Weant, and Mr. Yeung used the Schedule in the fall of 1997 when he calculated each unit owner's share in the Corporation's expenses.

4. The Extraordinary General Meeting Of August 6, 1998

¶ 204 Mr. Yeung says that he was not given Notice of this meeting; that had he received the Notice he would have gone to it and voted against the Special Resolutions proposed on p. 3. I have already dealt with this issue when dealing with Dr. Yeung's evidence and I need not go into it in detail again. I am satisfied, on a balance of probabilities, that the Yeungs were given Notice of the meeting by Mr. Weant, and that the By-law, including the amendment addition to cl. 3, is valid, and that if it is not valid it can be corrected. I have also pointed out that even if it is invalid, in my opinion the Council's conduct in attempting to pass it is not evidence of oppressive conduct or acts unfairly prejudicial to Dr. Yeung. Finally, I have noted that whether or not the By-law was passed, Dr. Yeung never had the right to the signage she claimed.

¶ 205 Mr. Yeung testified that at the September 14, 1999 A.G.M. Mr. Tablotney "mentioned that my sign would be grandfathered". He said that the subject matter of grandfathering of Dr. Yeung's sign was also discussed at the November 16, 1999 meeting of Council. I have already dealt with the grandfathering issue, and for the reasons given earlier, I am unable to accept Mr. Yeung's evidence pertaining to it. In my view, the late attempt to establish some form of grandfathering agreement is just another attempt by the Yeungs to get what they always wanted, the exclusive right to the available signage on the north and east walls.

¶ 206 Mr. Yeung was referred to the meeting of January 24, 2000, (the evening before the sign was removed) when Dr. Li presented Mr. Ellis' letter, which was then discussed. His description of Mr. Tablotney's conduct, "flying into a rage, jumping up and shouting" and so on, might be said to be

somewhat exaggerated in light of the description of the other witnesses. Further, he failed to point out that all of the other owners were in favour of having Dr. Yeung's sign removed immediately, and that the primary concern of Council at the time was the threat by his counsel that an Injunction would be obtained immediately.

¶ 207 I turn to Mr. Yeung's evidence on cross-examination. It will be immediately evident that he rarely agreed with facts put to him by defence counsel, which in the main I am satisfied are the facts; also that much of his evidence is in conflict with other evidence given by him. He and Dr. Yeung had no dealings with Mr. Symington or Mr. Goertzen during the purchase of the Unit. However, he would not agree that Mr. Goertzen did not tell them that the upper floor unit owners had priority over the pylon signage.

¶ 208 He would not agree that Mr. Symington attended throughout the whole of the first meeting. He did agree that Mr. Symington recommended that they hire a property manager because few people could do without one. He agreed also that at the first meeting Mr. Pelling was appointed the Chairperson, Dr. Li was the Vice-Chair, and he became the Treasurer. At this point the witness said "we did not know what the titles meant", and specifically, that he did not know what "Treasurer" meant.

¶ 209 He was referred to his Reconciliation of the Strata Corporation's expenses for 1997, and his allotment of expenses, pursuant to the Unit Entitlement Schedule. He agreed that he had received "all documents and paper to prepare it"; that he was familiar with the concept of unit entitlement. However, he said that he did not obtain the Schedule from the package they received at the time of Dr. Yeung's purchase. It was given to him by Dr. Li.

¶ 210 He was then shown the package documents produced by him in the action, including the Strata Lot Plan, and the page containing the Unit Entitlement Schedule. He then acknowledged that Dr. Yeung had indeed received a copy of the Unit Entitlement Schedule in her package. He had said earlier that he also had portions of the Act pertaining to the Unit Entitlement Schedule when he did his Reconciliation. He agreed that he took the information from the documents and then calculated each unit owner's share of the expenses; that he "took the square footage of each unit and divided it into the total square footage".

¶ 211 He would not agree that at the first meeting of October 6, 1997, Mr. Symington told them that the signage on the north side of the building was common property. He said that Mr. Symington was not there, that he left half way through the meeting. He had said earlier that Mr. Symington had left the meeting immediately after he handed out his Agenda. I must state that the evidence is simply not believable.

¶ 212 It was put to the witness that Mr. Symington did not tell him that the signage area over Dr. Yeung's Unit belonged to them. He insisted that Mr. Symington did tell them that, and that he also said that the pylon was for the second floor unit owners; that they had priority. He said that he clearly asked Mr. Symington about their signage rights, "whether I was entitled to put our sign along my Unit"; that Mr. Goertzen was sitting right beside him at the time. I observe again that another strong ally came forth, according to the witness, and was never heard from, or about, again.

¶ 213 He agreed that he and Dr. Yeung told the other owners present, and Mr. Symington, that when they bought the Unit, they were told that there would be no restrictions on their signage, and that they were going to put up their sign over their entire Unit. He agreed that he made the statements, but would not agree that Mr. Symington was present at that time.

¶ 214 He would not agree that at the meeting they were told by Mr. Tablotney, Mr. Pelling and Dr. Li that they could not put up the sign because the space had to be shared among all of the unit owners. He said that Mr. Goertzen kept referring to the purpose of the pylon signage - "so people upstairs have priority, that's why it's divided into four".

¶ 215 Mr. Yeung said that at this meeting the discussion became even more heated, that "Brad became violent". He would not agree that the heated discussion involved the Yeungs saying that the signage belonged to them, and the other unit owners saying that it belonged to all of them. He did not agree that the other unit owners told the Yeungs that they could not put up the sign above their Unit. He said that there was no question of common property at that point, that they were only talking about where the signage was to be located for everybody. He said that they "had their signage space", referring to the signage space above their Unit.

¶ 216 He then agreed that his argument with Mr. Pelling became heated because Mr. Pelling was telling him that he was not entitled to the amount of signage space claimed. He did not agree that he challenged Mr. Pelling. He said that he was simply putting his point forward. He denied raising his voice, while Mr. Pelling was shouting. He said that Mr. Pelling was "quite fearful in his mannerism", that he "punched the table and pointed his finger". He added that Dr. Yeung was very intimidated and frightened.

¶ 217 He also agreed that the conversation was heated because Dr. Yeung told Mr. Pelling that he should remove the pylon. He told Mr. Pelling that they were not aware that the pylon belonged to LeGear Pelling, that it was on common property. Again, he said that he was not angry with Mr. Pelling, they were just stating their respective positions, "I told him the pylon was on common property".

¶ 218 Mr. Yeung was referred to the purported statement of Ms. Robson, dated October 7, 1997, which they "got from her". He acknowledged that Dr. Yeung had written the statement, that Ms. Robson "may have read it" and simply signed it. When asked whether the statement was given to the other owners, he said that he did not think so. When asked whether it was because Ms. Robson had not written it, he said "no, that's not the reason, we didn't think it was that important at the time".

¶ 219 He would not agree that at the November 25, 1997 meeting, neither he, nor Dr. Yeung, asked Mr. Goertzen to tell the other owners that Dr. Yeung had no restrictions on her signage. He was then referred to his letter of November 24, 1997, to the Strata Council, requesting permission to put up their sign, with the sign design attached, which was handed out during the meeting the following day. In this letter he states that the north wall sign would be twenty feet and "please, note that this forms part of the Unit 180".

¶ 220 He would not agree that no one had told him that the fascia on the north side of the building was part of his Unit. He did agree that he never got anything in that regard in writing, saying that he understood that it was part and parcel of the Unit when it was purchased. He agreed that Dr. Yeung's Contract contained no reference to her signage claimed. He would not agree that the other unit owners at the meetings told him that the amount of the signage they claimed was unacceptable. He said that they simply agreed to look into it.

¶ 221 The witness would not agree that Mr. Pelling told him at the November 25, 1997, meeting that they were claiming too much signage, repeating that all he said was he would look into it. He also denied that at that time he and Dr. Yeung were told that the allocation of signage would be based on unit entitlement.

¶ 222 It was pointed out to the witness that he did not record any of these conversations in his Minutes of the meeting of November 25, 1997; that in particular he did not record Mr. Goertzen's statements that there were no restrictions on Dr. Yeung's signage. He agreed, saying that the bottom line was that they would look into it.

¶ 223 I need not refer to his further evidence about Mr. Pelling's conduct at the meeting, while he, the witness, was not angry, was not shouting and so on, but was just discussing his point of view. As in most cases I do not accept this witness' evidence. I am satisfied that both sides were angry, that discussions were heated on both sides, and that it was a give and take situation. Finally, I am satisfied that the primary topic of the heated discussions was Dr. Yeung's claim that she was entitled to substantial signage, to the exclusion of the other unit owners.

¶ 224 Mr. Yeung acknowledged going to the City of Richmond after the November 25, 1997, meeting. It was put to him that he went to the City because of the opposition by the other unit owners to their proposed signage. He did not agree, saying that he went to the City to find out its position, and the City told him that they had the right to put up the sign. He agreed that he was of the opinion that the City's By-law and position would end the matter.

¶ 225 Mr. Yeung acknowledged that he was Treasurer of the Council from October 1997 to March 1998, over five months. During this time, after Mr. Goertzen stopped contributing to the Corporation's expenses, those expenses were paid for by the other unit owners on a voluntary basis. During this time the witness did not prepare a budget or a Reconciliation to determine what each unit owner's share of the expenses was. He said that Mr. Pelling was supposed to do that. However, he did prepare a form of Reconciliation in December 1997, which has already been referred to with regard to his use of the Unit Entitlement Schedule.

¶ 226 Mr. Yeung said that while the subject matter of the two Resolutions in the Minutes of the December 15, 1997 meeting were discussed, no Resolutions were passed. He also denied being told at the meeting that Dr. Yeung's allotment of signage would be based on unit entitlement, thus seemingly denying the contents of the two Resolutions. He also denied that at the meeting, Mr. Pelling or Dr. Li told him that they were not entitled to the signage space they claimed, adding that "they said they would look into it". He then said that he also told the other unit owners what the City had said, that they, the Yeungs, had the right to the signage claimed and that the other unit owners had no rights to it. In the end, he again denied that the Resolutions were passed on December 15, 1997. It is seen that I am fully satisfied, on the whole of the evidence, that the Resolutions were passed, as stated in the Minutes.

¶ 227 Notwithstanding the signage statements about allotment in the March 17 and March 24 Minutes, Mr. Yeung continued to maintain that they were not told that they were not entitled to the signage Dr. Yeung was claiming, that Mr. Pelling was simply going to look into it. I have already rejected Mr. Yeung's evidence as to what specifically was discussed at the earlier meetings, and what he said Mr. Pelling and Dr. Li were to look into.

¶ 228 The witness was then referred to his March 25, 1998 letter to Mr. Pelling in which he requested copies of all documents listed. He agreed that while he was at the earlier meetings, he was not sure whether Minutes were taken. He was then questioned with regard to his allegation of a conflict of interest on the part of Mr. Pelling with regard to Century 21 providing a property manager. The gist of his evidence was that his conclusion was based on a wrong assumption on his part. I have already questioned his assertions in the letter and whether his request for documents was made in good faith. I observe also that Mr. Weant did respond to his letter within three weeks of his appointment.

¶ 229 He was also referred to his letter dated May 15, 1998, again to Mr. Pelling, wherein he said that he had not received any response to Dr. Yeung's sign application which was made on November 27. He continued to maintain that the contents of his letter were correct. Again, I need not consider the letter in any detail. I have already expressed my opinion that the letter is inaccurate and misleading, including the fact that from day one, contrary to the witness' evidence, Mr. Yeung knew that the other unit owners rejected their claim to the substantial signage, and that the only thing left to be done was to work out the amount of Dr. Yeung's signage, based on unit entitlement. It is a point, like some others, on which he was not prepared to budge.

¶ 230 I have thoroughly dealt with the issue of whether Notice of the August 6, 1998 meeting was given, when dealing with Dr. Yeung's and other evidence, and see no reason to deal with it further at this point. I have concluded that Mr. Weant hand delivered the Notice to Dr. Yeung, or to her office, and that her assessment or maintenance payments were in arrears with the result that she could not vote, and that the By-law was validly passed; and that even if it was not, Dr. Yeung never had the right to put up the signage she claimed, as I have explained.

¶ 231 I see no useful purpose in continuing to review the balance of Mr. Yeung's evidence. I believe that I have demonstrated why I did not find Mr. Yeung to be a good historian. His evidence is in conflict with all of the other witnesses, his evidence and even the evidence of Dr. Yeung at times. I prefer the evidence of Mr. Symington, Mr. Tablotney and Dr. Li over his evidence when they are in conflict. I do not believe that it would be safe to make any substantial findings based on his recollections or evidence, unless it was supported by other evidence which I accept.

VIII. THE EVIDENCE OF MR. A. CLARK

¶ 232 I will say straight a way that the City's Sign By-law, and the evidence of Mr. Clark, is of no assistance to me in determining the issues before me; although they create problems for the Strata Corporation in the event that Dr. Yeung is not prepared to consent to one or more of the other unit owners placing a sign above her Unit, and the City is not prepared to reach some accommodation once all the facts are known, given the very limited amount of signage space available on this building.

¶ 233 Mr. Clark is the manager of Zoning for the City of Richmond and has been for twelve years. He writes zoning by-laws and ensures that signs comply with them and issues permits on that basis.

¶ 234 The City's Signage By-law regulates the installation and operation of signs in the City of Richmond. It primarily deals with the public being confused by the location of "third party advertising". A business cannot place its sign over the premises occupied by another business, because the public will assume that the business being advertised is carried on in the premises, which is not the case. The City will not issue a permit for one business to advertise over the premises of another business. He was asked by the Yeungs to put this in writing and he did so, referring to his February 12, 1998 letter which he says sets out the City's "exact interpretation". He "always enforces the By-law in that manner".

¶ 235 He has not received any requests with regard to the building to clarify or discuss the City's position. He has a system with regard to received telephone calls. He keeps a binder, and writes down the time when calls are received and the name of the caller. To the best of his recollection he has never received any calls from Mr. Weant, Mr. Johnson, Mr. Tablotney, Mr. Sexsmith, Dr. Li, Mr. Pelling, or Mr. Goertzen.

¶ 236 He was asked whether he received any messages from any of them asking him to contact them with regard to signage, and he said that to the best of his recollection there were no calls in that regard.

¶ 237 I pause to say that I have no reason to disbelieve Mr. Weant and Mr. Tablotney when they told me of their unsuccessful attempts to reach Mr. Clark, and to have him return their calls, although they were able to discuss matters with a clerk. I have no reason to disbelieve Mr. Clark either. I conclude that Mr. Clark's system is somehow flawed, either in the recording of calls, or in seeing that he is informed of calls to be returned.

¶ 238 He was referred to a number of photographs showing business signs over premises occupied by other businesses. He was referred to these businesses by Mr. Yeung. He said that he had directed his staff to start enforcement proceedings because the signs were illegal.

¶ 239 On cross-examination Mr. Clark said that the Yeungs' first application was on November 25, 1997. It was observed that there was nothing in his files indicating that Dr. Li had an agreement for a piece of the signage over Dr. Yeung's premises, or that the area was the common property of a strata corporation.

¶ 240 He said that he was not familiar with the Act at the time that the permits were issued, although he was aware of the fact that a strata corporation governs common property, but added that a strata corporation could not override a City By-law. He was not aware of the fact that the strata corporation had to maintain the exterior of the building, including the decoration of the exterior. He said that if an owner applied for a sign and complied with the By-law he was not sure that he could refuse the application.

¶ 241 He seemed to agree that the City could not force the Strata Corporation to put up a sign; and that whether the Strata Corporation would allow Dr. Yeung to put up the sign is a different matter. I agree.

IX. THE EVIDENCE OF MR. A. TABLOTNEY

¶ 242 Mr. Tablotney is the president of LeGear Pelling. His current partner is Mr. S. Sexsmith. When they moved in to their unit, Mr. Pelling was his partner. Mr. Pelling subsequently had a stroke, and it is common ground that he is not available to give evidence. He ceased to be Mr. Tablotney's partner on July 4, 1999.

¶ 243 LeGear Pelling is located on the ground floor in the north-west corner of the building. He chose the location because it was in the centre of town, on a main street, and had high visibility; and he was able to obtain a twelve foot square signage box, the pylon. They felt that the signage on the north wall of the building was not high profile enough for them. He described it as "poor visibility" signage. In any event, they were told that they could not put up as much signage as they wanted on the north wall, because it was going to be divided up among all of the unit owners.

1. The First Meeting Of October 6, 1997

¶ 244 He and Mr. Pelling were present, representing LeGear Pelling, as were Dr. and Mr. Yeung, Dr. Li, Mr. H. Goertzen and Mr. R. Symington, who chaired the meeting. It lasted about one and a half hours. Mr. Pelling was elected Chairperson, Dr. Li as Vice-Chairperson and Mr. Yeung as Treasurer.

¶ 245 Mr. Tablotney gave the following evidence with regard to this meeting, which pertained mainly to the disputes: Dr. Yeung said that she wanted to put up her sign, and explained what she wanted. Mr. Pelling told her that she was not entitled to that amount of signage. There were lots of discussion. Dr. Yeung then brought up their pylon at the front of the building. She asked why they had

it, why it did not belong to the Strata Corporation. It was explained to her that they had negotiated it with the owners in their Contract.

¶ 246 Dr. Li also indicated that he had negotiated signage space in his Contract. The space was on the north side of the building, at the north-east corner. Dr. Yeung told him that his signage would be over her Unit in space where only she was entitled to signage.

¶ 247 With regard to the tone of the meeting, Mr. Tablotney said that it went well until they got down to the question of signage. Once Dr. Yeung was told that the pylon belonged to LeGear Pelling and that she was not going to get signage across the entire front of her Unit, she complained about the pylon blocking the view of her Unit, and suggested that it should be moved. At that point the meeting started to break up. Mr. Pelling told Dr. Yeung that he was not going to remove the sign.

¶ 248 Voices were raised on both sides, Mr. Pelling on one side and both Dr. Yeung and her husband on the other. As to a plan of action to deal with the problem, it was decided that they were going to have to determine what amount of signage each unit owner was entitled to. Mr. Pelling was going to look into the question of allotment. When asked what Mr. Pelling told Dr. Yeung and her husband about the amount of signage they wanted to put up, he said that Mr. Pelling told them that they were not entitled to all of the signage they wanted. Everyone told them that the signage area was common property. I prefer Mr. Tablotney's description of the "tone" of the meeting over that of the Yeungs, particularly Mr. Yeung.

2. The Second Meeting of November 25, 1997

¶ 249 The witness was then referred to the Agenda for the second meeting, which was held on November 25, 1997. Item 2 on the Agenda referred to signage. And written on the face of the document by Mr. Pelling is the note "clarify allotment of signage to each owner by December 15, 1997". At that meeting the allotment of signage to unit owners still had to be clarified.

¶ 250 Mr. Tablotney was then referred to the Minutes of the meeting, which were made by Mr. Yeung. I have already pointed out that it differs from the Agenda, and from Mr. Tablotney's evidence, and what I find to be the case, that what Mr. Pelling and Mr. Goertzen were to look into was the allotment of signage on the building to each unit owner. He was asked about the statement in the Minutes that the two men "were looking into it", what did "it" mean? He said "it" was how to determine the owners' shares in the signage by unit entitlement.

¶ 251 Mr. Tablotney was asked whether at the meeting Dr. Yeung or her husband brought up with Mr. Goertzen that he, or Mr. Symington, or anyone else, had told them that there would be no restrictions on their signage and he said: "not at that meeting or any subsequent meeting". Thereafter Mr. Goertzen no longer attended any of the meetings.

3. The Third Meeting Of December 15, 1997

¶ 252 Mr. Tablotney was then referred to the Minutes of the December 15 meeting taken by Mr. Pelling. He did not attend the meeting, but had discussions about what had happened with Mr. Pelling immediately after it ended. Plaintiff's counsel described the meeting as "critical" and objected to Mr. Tablotney relating what his partner had told him because his partner could not be called to give evidence. After hearing submissions, I allowed the evidence to go in since it was probably more a matter of weight than anything, and more importantly, because I was satisfied that the evidence was necessary and relevant.

¶ 253 Mr. Tablotney said that Mr. Pelling told him that the signage issue had been discussed again, and that the two Resolutions set out in Mr. Pelling's Minutes were passed. He was told that Dr. Yeung's application for her signage was tabled until it could be determined what Dr. Yeung was entitled to in terms of signage. The determination was to be made by Mr. Pelling, with the assistance of Mr. Goertzen, on a unit entitlement basis. Mr. Tablotney said that at that time they did not know that Mr. Goertzen, was "bailing on us". He no longer paid the assessments for his units or any other expenses. He made himself unavailable and eventually moved to the United States. I believe this to be common ground.

¶ 254 He recalled receiving from Dr. Yeung at one of the meetings, probably in March 1998, a copy of the City of Richmond's Signage By-law, to which I referred earlier. He said that it was given to them to support Dr. Yeung's position that they should give her the entire signage space claimed. At that meeting Dr. Yeung also supplied them with a copy of Mr. Clark's letter dated February 12, 1998, again in support of her position; that the signage space was for her exclusive use and was not available to other strata unit owners.

¶ 255 After receiving these documents he went to City Hall to see Mr. Clark. He was unable to do so. He left a message to which there was no response. He then spoke to a City clerk. And at the meeting of March 17 he conveyed to Dr. Yeung "my discussion with the clerk".

¶ 256 The witness was then referred to Mr. Pelling's handwritten Minutes of the March 17, 1998 meeting at which the witness, Mr. Pelling, Dr. Li and Dr. Yeung attended. He specifically recalled discussing the security system at the front door at this meeting. He also recalled Mr. Pelling making his notes.

¶ 257 At the meeting everybody agreed, in principle, that they needed to bring in someone with more experience to help them run the Strata Corporation. The unit entitlement of each unit owner to signage had not yet been determined. The task could be left to the expert, the property manager to be appointed.

¶ 258 The witness also attended the March 24, 1998 meeting, as did Dr. Li and Dr. Yeung and her husband and Mr. Pelling, who again took the Minutes. At that meeting they looked at two proposals pertaining to a property manager, one from Century 21 and the other from Caldwell Bank. As best he could recall, both were comparable. The vote was for Century 21. Mr. Pelling and Dr. Li voted in favour, while Dr. Yeung voted in favour of Caldwell Bank. The sign allotment and the sign styles were discussed again, and they were left to the property manager.

¶ 259 He also recalled receiving a copy of Mr. Yeung's letter dated March 25, 1998, to Mr. Pelling. The Council did not respond to the request. They decided to leave it to the property manager who started on May 1, 1998. They also did not think that the request was legitimate since Mr. Yeung knew the situation; for example, there were no "approved Minutes" of the Council meetings to date, and he already had most of the documents.

¶ 260 The witness was also familiar with Mr. Yeung's letter dated May 15, 1998, to Mr. Pelling. I have already noted that the letter is, to say the least, highly inaccurate. During the seven months over which Mr. Yeung said he had "not received any response on the sign", there were various meetings and discussions, some of them heated, about the amount of signage Dr. Yeung was claiming and wanted to install. She knew that the Council did not agree with the asserted right (which in fact was never established) and that the only response they would receive from Council was that they would be entitled to a pro rata share of the available signage, which would probably be no more than one panel.

¶ 261 Mr. Tablotney's evidence was basically the same. The Yeungs were told on numerous

May 15, 1998, and the fact that he had gone to see Dr. Yeung about her putting the sign up. He said he recalled attending at her offices on one occasion when she was not available. He cannot say when. He did go on that occasion and he was told not to come to see her during business hours, that he was to telephone her. His best recollection is that he went to see her, but did not talk to her.

¶ 269 The meeting took place on August 6, 1998. Present were the witness, Mr. Pelling, Dr. Li and the property manager, Mr. Weant. Thus there were only two owners in person and no Proxies produced. According to the witness the other owners were in arrears on their fee payments; and this was also Mr. Weant's evidence, with which I agree. Their eligibility was determined at the meeting by the property manager. The two owners in arrears were Dr. Yeung and Mr. Goertzen.

¶ 270 According to the Minutes of the August 6, 1998 meeting, Mr. Weant reported that the Notice of the E.G.M. was delivered within the prescribed time, as indicated in the Act. The Special Resolution was then amended and passed as a "Signage By-law".

¶ 271 Mr. Tablotney was asked whether an issue about grandfathering Dr. Yeung's sign came up after the September 14, 1998 meeting? He believes that it came up at one meeting, which probably would have been the November or December meeting, when Dr. Yeung tried to make her case to a new unit owner that her sign should be grandfathered because the sign was up prior to the Signage By-law Motion which passed at the E.G.M. He said that he told Dr. Yeung in no uncertain terms that her signage would not be grandfathered.

¶ 272 Mr. Tablotney was present at the December 14, 1999 meeting of Council when Mr. Johnson challenged Dr. Yeung's signage, maintaining, among other things, that the sign had been put up in contravention of the Regulation passed at the December 15, 1997 Council meeting. Mr. Tablotney was asked whether at this meeting Dr. Yeung advised those present that the December 15, 1997, Resolution had not been passed, and he said "no". Her only response to Mr. Johnson's submission was that when she purchased her Unit the developer told her that she could place signage on the front and side of the building over her office without any restriction.

¶ 273 Mr. Tablotney said that at the January 24, 2000 meeting, when Mr. Ellis' letter was read, all of the unit owners, except Mr. Yeung, felt that the letter was a "nasty tactic" which left them no time to seek a legal opinion, and required a response the next day "or potentially an Injunction would be placed on the sign". The concern was that it could be "potentially a couple of years before the issue is settled" and it was the Council's opinion that they had no alternative but to direct the property manager to remove the sign. This was done and the sign was removed the next morning.

¶ 274 On cross-examination he agreed that at his examination for discovery he had expressed little recollection of the earlier meetings, for example, the October 6 and November 25, 1997, meetings. He was asked then how he was able to give considerable details of discussions about signage at trial. He said that when he heard Dr. Yeung give her evidence at trial, particularly about the arguments and so on, and read the documents, "everything came back into place". None of this surprises me in the circumstances, and I accept his explanation. I did not find him to be an untruthful witness, and I observe that his evidence is consistent with other evidence which I accept.

¶ 275 Mr. Tablotney acknowledged that at the November 25, 1997 meeting, Dr. Yeung's sign design was basically approved, but the size of the sign was not. The amount of her signage was subject to the application of the Unit Entitlement Schedule. He referred to Mr. Pelling's allotment note on the second typed Agenda for the November 25, 1997 meeting. He agreed again that unit entitlement was discussed and was the basis for determining how much signage the unit owners would have. They all knew that it

was going to be a percentage. He agreed also that the unit entitlement was a relatively simple matter to calculate, particularly if they had a property manager.

¶ 276 I pause at this point to reiterate that I am satisfied that during the meetings in the fall of 1997, the Yeungs well knew what the results would be of the application of the Unit Entitlement Schedule to the signage Dr. Yeung was claiming. It was not difficult to see that its application would substantially reduce the amount of signage to be allotted to Dr. Yeung, vis-à-vis the other seven unit owners.

¶ 277 He acknowledged that the unit entitlement had not been calculated by the December 15, 1997, meeting. This was because they were busy on other more pressing matter which were increasing in number in December of 1997 and into January and February of 1998. The developer was not paying his bills, there were problems with the elevator and its installer, and so on.

¶ 278 Mr. Tablotney agreed that the calculation of the unit entitlements were not done by the time the March 17 and March 24, 1998 meetings were held. He then noted that the trial evidence was that the Yeungs had the Unit Entitlement Schedule prior to the meetings being held. Reference was also made to Mr. Yeung's Reconciliation, in which he used the Unit Entitlement Schedule, which he believes he prepared in December 1997. I observe also that Mr. Yeung testified that he was in fact familiar with the Schedule.

¶ 279 The point that Mr. Ellis was pressing was that the application of the Unit Entitlement Schedule was a simple matter, so why was it not done at an early date? Why was the determination of the unit entitlement delayed? The gist of Mr. Tablotney's evidence was that Mr. Yeung was on Council, and the Yeungs had the Unit Entitlement Schedule. He pointed out that they were all inexperienced, they made mistakes, and if they had retained a property manager in October, when the Yeungs "put up a fuss about hiring one", matters would have been different. I have already noted Dr. Li's evidence with regard to the difficulties involved in applying the Unit Entitlement Schedule to the fascia panels on the north side of the building at that time.

¶ 280 He was referred again to the Minutes of the March 17 and March 24 meetings, and the reference therein to the fact that signage allotments were to be determined. He agreed that the issue was always coming up and not being determined. He reiterated that by February they had many other more important matters to deal with and they were in the process of hiring a property manager. During this time he knew that Dr. Yeung wanted to put her sign up. He also knew that Dr. Li wanted to put up his sign as well, but he was not making any fuss. He did not agree that Dr. Li had a sign in his window.

¶ 281 Mr. Tablotney agreed that Council did not respond to Mr. Yeung's March 25, 1998, letter. He said that at the time it was their opinion that it was unreasonable. The Yeungs knew that they were going to appoint a property manager, that they had no formal Minutes, and so on. He said again that if there had been agreement in October 1997 to appoint a property manager, none of this would have happened.

¶ 282 He noted that the decision to retain Mr. Weant as property manager was made at the March 24 meeting, and that Mr. Yeung's letter came in the next day; the inference being that the letter was prompted by the fact that a knowledgeable person would be brought in to consider their problems. In this regard I note that the Yeungs were opposed to the appointment of the property manager; and that Mr. Yeung's letter dated May 15, 1998, advising that they were going to put up the sign almost immediately, was written shortly after the property manager was appointed, and obviously before he could be brought up to speed.

¶ 283 Mr. Tablotney also agreed that for each meeting someone was designated to take notes. He

knew that Mr. Pelling took the notes for the December 1997 and the two March 1998 meetings, although he was not sure whether or not he had been designated. The evidence says that Mr. Yeung was designated to take notes for the November 15, 1997 meeting. He was then referred to Mr. Yeung's March 25 letter again. It appears that he did not appreciate that Mr. Yeung was asking for Mr. Pelling's notes, according to his counsel.

¶ 284 Mr. Tablotney was then asked about Mr. Yeung's letter dated May 15, 1998. He is not sure when he received the letter. He said that in any event they were not given time to address it, and that he had handed it over to the property manager. He knew that they did not have the Council's approval to put up the sign.

¶ 285 At this point the witness was cross-examined in some detail with regard to his direct evidence that he had gone over to Dr. Yeung's office, on at least one occasion, to speak to her. He was referred to a transcript of his trial evidence on the point. He pointed out that he had corrected his evidence. Mr. Ellis said that he was not suggesting that the witness was lying; he was attempting to point out the frailties of recollection. In the end, the witness' best recollection was that he had gone over to see Dr. Yeung and probably had been unable to see her. In any event, I need not deal with the point further.

¶ 286 Mr. Tablotney was then referred to the aborted Notice of the first A.G.M. which was to be held on June 16, 1998. He acknowledged his earlier evidence that when scheduling meetings he tried to obtain a mutually convenient date, especially when they were talking to each other. At this time the Yeungs were only communicating with them by mail. He denied that the June 16 meeting was set up without regard to Dr. Yeung. It was done by the property manager. She had been given 16 days notice. He said that if she had given sufficient notice that she was not available, they probably could have accommodated her or she could have used her Proxy.

¶ 287 He was then referred to the re-scheduled meeting of June 24, 1998, and Dr. Yeung's letter of June 19, saying that she could not attend. He said that he was not aware that she was not available until shortly before the meeting was to be held. He knew that she could have used her Proxy vote. The following week was not convenient for the rest of the parties, they had a deadline and in his opinion they had to go ahead.

¶ 288 He was then referred to the Minutes of the June 24, 1998 meeting and para. 6(b) which is entitled "Signage". I have set out the passage earlier on. The reference is to the fact that the package given to each unit owner at the time of purchase contained the Unit Entitlement Schedule which set out the ratios. This had been pointed out to them by the property manager. It is also stated in the passage that each strata lot purchaser was made aware of the amount of space allotted to each strata lot at the time of the purchase, and that Council recognized that Dr. Yeung's sign contravened the maximum size of signage for her unit.

¶ 289 As I said earlier, these conclusions were readily available to the Yeungs themselves had they directed their mind to it, and I am satisfied that they did. I do not propose to deal further with the issue because as I have already stated, I am satisfied that the Yeungs knew in the fall of 1997 that Council would allot them their share of the building signage on the basis of unit entitlement, and they would have known, generally speaking, that the percentage of the signage would be the minimum amount relative to the other unit owners.

¶ 290 I do not propose to consider in detail this witness' evidence pertaining to the August 6, 1998 E.G.M.. They were told by the property manager that since Dr. Yeung had not paid her June, July and August strata fees, she was not entitled to vote. He agreed that later, when a Reconciliation was done, it

was found that all of the unit owners had overpaid monies to the Corporation prior to the first budget, which was fixed at the June 24 meeting. He also agreed that cl.3 of the By-law had been introduced by amendment at the meeting. When asked whether he knew it would impact on Dr. Yeung, he said "yes - we were looking for equitable distribution of the only signage available on the north side, each person would get six feet".

¶ 291 Mr. Tablotney was also asked about the grandfathering of Dr. Yeung's sign in the fall of 1999. He said again that she had brought it up and that they continually rejected the idea. When counsel put it to him that it was the evidence of Dr. Yeung and of her husband that the grandfathering had been approved, he said in effect that it did not happen. I am satisfied that that is the case. It is most difficult to believe that after a continuous running battle for over four years the issue died quietly, without being recorded, and with the Council giving in to Dr. Yeung's position that she was entitled to all of the signage available on the north wall to the exclusion of the other unit owners. I need not point out that the battle continued after this alleged approval of the grandfathering of Dr. Yeung's sign. If, as suggested by counsel, it was their evidence that the grandfathering of her sign was approved by Council, I simply do not believe them.

X. THE EVIDENCE OF DR. LI

¶ 292 I was impressed with Dr. Li and his evidence, which I accept. He presented as a thoughtful and careful witness, attempting to be as accurate as possible, but not inflexible.

¶ 293 He is one of the seven unit owners. He moved in in September of 1997. He negotiated his deal with Mr. Symington. His Contract provided for signage in the north-east corner, above Dr. Yeung's unit. His offices are located on the second floor, above Dr. Yeung's offices, in that corner.

¶ 294 His sign was originally to be within the eleven-foot wide panel directly above Dr. Yeung's offices. The present sign box has seven six-foot panels in it. If the defendant's proposals are accepted, his sign will take up one of those panels.

¶ 295 Dr. Li says that at the time of his purchase he was told by Mr. Symington and Mr. Goertzen that his signage space would be based on unit entitlement. The space had to be worked out with the Strata Council. It had not been established at that time.

1. The First Meeting Of October 6, 1997

¶ 296 Dr. Li confirmed that Mr. Symington chaired the meeting; that the three members of the Council were to be Mr. Pelling, Mr. Yeung and the witness. The evidence of Mr. Symington, Mr. Tablotney and Dr. Li, of course, was not identical, and to some extent at times, emphasised different things. However, I found their evidence to be consistent and in line with what I considered to be the balance of probabilities flowing from the circumstances.

¶ 297 Dr. Li said that initially there were discussions about the kind of signage which should be used. No decision was made because there were only three unit owners and not enough money available. He said that Dr. Young wanted to put signage across the entire front of her Unit on the north and east sides. She was told by Mr. Symington and Mr. Goertzen that she could not do so; that the signage area was common property and signage allotment among the unit owners would be based on unit entitlement.

¶ 298 Unit entitlement was then discussed. Mr. Symington and Mr. Goertzen both presented the Schedule which showed how much each unit owner was entitled to have. When Dr. Yeung was told of

this, she maintained that the signage area above her Unit was her property and that she intended to have her signage across the entire space, that is, spanning her Unit. When Dr. Yeung said this, he, the witness, informed her that his Contract provided that he was to have signage in the north-east corner above her Unit. He does not recall getting much of a response from Dr. Yeung.

¶ 299 When asked whether Mr. Symington said anything in response to Dr. Yeung's statement, he said that the Yeungs were told on many occasions, again and again, that the signage space was common property. It was to be apportioned on a unit entitlement basis. They were told this at every meeting where signage was discussed.

¶ 300 There were also discussions about LeGear Pelling's pylon. Mr. Symington and Mr. Goertzen explained that the pylon was installed by LeGear Pelling as a part of their Contract. LeGear Pelling wanted to put up a smaller sign but Mr. Goertzen wanted the larger sign which in fact was built. He wanted enough space so that the other unit owner could rent space from LeGear Pelling if they chose to. They were told whoever wanted to rent space on the pylon could do so.

¶ 301 Dr. Li said that Dr. and Mr. Yeung were not in favour of the location of the pylon sign. They said that the sign obstructed the exposure of her medical clinic. Mr. Pelling responded that the sign was placed according to the request of the City.

¶ 302 When asked about the tone of the meeting Dr. Li said that it was quite heated and less than orderly. When asked why, he said it was because Dr. Yeung maintained that the signage space around her Unit belonged to her, while everyone else said that it was common property to be shared by all of the unit owners. He said at times voices were raised, referring to Dr. Yeung, Mr. Yeung and Mr. Pelling. His description of the tone of the meeting is more consistent with that of Mr. Tablotney.

2. The Second Meeting Of November 25, 1997

¶ 303 The Minutes of the meeting were prepared by Mr. Yeung. At this meeting the Yeungs requested the signage they were claiming on the outside of Dr. Yeung's clinic. He said that Mr. Pelling and Mr. Goertzen were to look into it. They were trying to resolve matters based on unit entitlement. It was not simply a matter of saying yes or no at that point.

¶ 304 Dr. Li was asked whether Dr. Yeung or Mr. Yeung brought up at the meeting that at the time of their Contract the real estate agent told them they could have as much signage as they wanted? His answer was, "I heard something like that sometime, but I can't recall exactly what meeting." He could not recall whether Mr. Goertzen was at the meeting when the statement was made. When asked whether he could recall the Yeungs asking Mr. Goertzen at a meeting to tell those present that they were entitled to as much signage as they wanted, he said he could not recall hearing that.

¶ 305 Dr. Li was then referred to the Unit Entitlement Schedule, which was referred to earlier as being part of the package given to the unit holders at the time of purchase. He says that Mr. Goertzen produced it at the first meeting of October 6, 1997 and explained it to them. When asked about his understanding of the Schedule, he said that it was how to apportion signage, to calculate unit entitlement.

¶ 306 Dr. Li said that another issue arose; the panels above the offices on the main floor made the application of the unit entitlement ratios difficult because they were of varying lengths and were not continuous. There were spaces between them and dividers between the longer panels. Physically it would not be easy to subdivide the panels into different portions for signs. That was the real matter that

had to be looked into.

¶ 307 Another issue brought up at the meeting related to the LaGear Pelling sign being hooked up to the common electrical meter. The witness said that strictly speaking this should not have been done, because it was LaGear Pelling's sign. In his view minimal power was being used, and it was not an important issue.

3. The Third Meeting Of December 15, 1997

¶ 308 Dr. Li was shown the Minutes of the meeting dated December 15, 1997 which shows that "Brad, Li and Yeung" were present. He was asked if he could recall that that was who was present at the meeting. He said he believed so, but he could not recall whether there was one or two Yeungs present. He does not believe that Mr. Goertzen was attending meetings by that time. Mr. Goertzen could not sell the remaining units and did not have any money. He owed monies to his creditors and some of them were filing liens against the building units.

¶ 309 He was asked to recall what the discussion was about the signage issue. He said, "that signage on common property would be based on unit entitlement". He also recalled that a vote was taken. He and Mr. Pelling were for it and Dr. Yeung was opposed. He could not recall whether by that time the unit entitlements had been calculated.

¶ 310 He also recalled a discussion about Dr. Yeung's signage application. It was that the Council would look into it, and find out exactly what Dr. Yeung's unit was entitled to under the Unit Entitlement Schedule. Again, a vote was taken with the same result. It will be seen that I am satisfied on this, and other evidence, that the Resolutions referred to in the December 15 Minutes were in fact passed; notwithstanding the Yeungs' evidence to the contrary, and attempts in cross-examination to bring this witness' evidence in line with theirs.

¶ 311 He was asked whether Dr. Yeung said anything at the time. He said from what he could recall she always claimed the entire space above her unit. Whenever she brought it up he would also bring up the fact that he had a contractual right to signage over her Unit. He does not recall any response from her.

¶ 312 When asked whether either Dr. Yeung or Mr. Yeung offered to take notes at the meeting, the witness said that from what he could recall they usually wrote some notes on their own. He did not make notes.

¶ 313 Dr. Li recalled sometime in the fall of 1997 dropping in to see Dr. Yeung in her office and pointing out where the panel was that had been assigned to him, and indicating that he would like his second location to be close to his unit. He asked her would it be agreeable to her for him to have one sign on the east side. When asked about Dr. Yeung's response, he said he did not get any response from Dr. Yeung, meaning that she just looked at him and did not answer.

¶ 314 Dr. Li said that at the March 17, 1998 meeting someone suggested that they bring in a property manager because their meetings to date had not been too productive. He may have made the suggestion. He believes that all of the unit owners agreed in principle. He volunteered to get a quote from Caldwell Bankers. Mr. Yeung told him later that he also got a quote from Caldwell Bankers. A quote from Century 21 would be obtained by Mr. Pelling.

¶ 315 He was asked about the reference, "sign allotment to be determined" in the Minutes of the

March 17 meeting. He said that he thought that situation remained the same from the previous meetings, that there was nothing new. The general understanding was that the allotment of space would be by unit entitlement. The problem, which he raised earlier, was a physical problem. The existing panels did not allow them to separate them into small units based on unit entitlement.

¶ 316 He was then referred to the Minutes of the March 24, 1998 meeting. At that meeting a vote was taken on the property management company. Century 21 won by a vote of two to one, the opposer being Dr. Yeung. His view of Dr. Yeung's vote was that the Yeungs felt that the Century 21 property manager would see the signage space as common property, and not as part of her property.

¶ 317 When counsel questioned this evidence, Dr. Li said that prior to the meeting, at one point in time, one of the Century 21 operators was invited to one of their meetings, and was consulted at the time as to whether the signage space in dispute was common property or belonged to the unit owners, and he had said that it was common property under the Act. At that time Dr. Yeung did not say that she would not vote for Century 21 because of what the representative had told them earlier.

¶ 318 When asked about the reference in the Minutes of the March 24 meeting, "sign issue allotment and style", he said that they were still talking about the same problem and how to handle it, i.e. a box or the existing panels. He said it must be put in perspective too, because at that time there was no money and Mr. Goertzen was not paying monies with respect to the unsold units. If they decided to put the box in then (which they did much later) where would the money come from? Further, because they wanted to maintain the aesthetics of the building, it made more sense to do the entire front at one time, instead of loading up individual boxes for each unit owner.

¶ 319 He does not recall any notes being prepared for the March meeting other than Mr. Pelling's note. When asked whether Mr. Yeung volunteered to take notes, he said that as usual he took notes as far as he was aware. He was asked why formal Minutes were not prepared and distributed to everybody? He said he did not know how to answer that question; that everybody was protecting their own interests rather than working as a Strata Corporation. While counsel for Dr. Yeung made much of this evidence, I point out that what the majority of Council were doing was protecting the interest and rights of all of the unit owners, including those who eventually purchased the remaining four units, although in doing so it could be said that they were in effect protecting their own interests as well.

¶ 320 He was then referred to Mr. Yeung's Reconciliation and allotment pursuant to the Unit Entitlement Schedule; which document showed the expenses and who paid how much from September 26 to December 1, 1997. It also showed who paid how much and who had credit, the determinations being based on unit entitlement. He acknowledged that the document shows that according to Mr. Yeung's calculation, Dr. Yeung's share was 8.33 percent.

¶ 321 Dr. Li recalled that this document was brought to the meeting. He could not recall any disagreement with it. He was asked whether there was any disagreement with regard to the use of the Unit Entitlement Schedule regarding the signage space. He said that there was a general understanding that signage space would be apportioned on a unit entitlement basis. When asked what he meant by general understanding, he said, "that everyone agreed to it."

¶ 322 I pause to observe at this point that the document referred to ends with the following statement, "The common property expenses are prorated according to the unit entitlement as stipulated in the Act [s. 12(1)]. A copy is attached." The witness said that he believed that he received a copy of s. 12(1). It is noted that that section is entitled "Common Property" and that ss. (1) therein provides:

The common property, common facilities and other assets of the strata corporation must be held by the owners as tenants in common in shares proportional to the unit entitlement of their strata lots.

¶ 323 Dr. Li was referred to Mr. Yeung's letter dated May 15, 1998. He did not agree that there was no response to Dr. Yeung's sign application. It was not just a yes or no issue as he stated earlier. It had to do with the signage panels and light boxes and the location of the signs and so on. He said that the reason signage was discussed every meeting was because they were trying to find an amicable solution for everybody.

¶ 324 Dr. Li also noted that at every meeting prior to May 15, 1998, every time signage was brought up, Dr. Yeung was told it would be based on unit entitlement. He was asked whether anyone worked out the amount she would be entitled to at any meeting. He said that he did, that the ratios were very straightforward and everybody was aware of them. They were self-explanatory and were presented at the very first meeting. He then produced calculations which he made showing how many feet each unit owner was entitled to based on a percentage of the total footage. His percentage was 19.39% which amounted to 8.14 feet, assuming 41.99 feet were available on the front wall. Dr. Yeung's percentage was 8.33%, which amounted to 3.5 feet.

¶ 325 Dr. Li said that because of the close proximity of Century 21's offices, all Notices to him were hand delivered to his office, including the Notice of the E.G.M. which was held on August 6, 1998. To the best of his knowledge no one directed the property manager not to deliver the Notice to the Yeungs.

¶ 326 I do not find it necessary to go through the rest of Dr. Li's evidence pertaining to the rest of the meetings, but may touch on one or more of them later, if necessary. One meeting of interest is the December 14, 1999 meeting. At this meeting Mr. Johnson complained that Dr. Yeung's sign had been installed contrary to the Resolution of December 15, 1997, as well as the By-law. Dr. Li confirmed that Dr. Yeung's response was to maintain that she had been told by the developer, when they purchased the Unit, that they could place signage on the front and side of the building over their office, and that there were no restrictions with regard to the size of the sign. She did not complain about the accuracy of the December 15 Minutes, or that the Resolutions therein set out were not passed. In fact there is no evidence before me that she ever complained about the Minutes, or took these positions until the lawsuit.

¶ 327 Dr. Li's evidence pertaining to what went on at the January 24, 2000 meeting is basically the same as that given by Mr. Tablotney. Because of the time restraints in Mr. Ellis' letter, and having to respond by the next day, the Council felt that it did not have enough time to consult counsel and that they had no other option than to enforce the By-law. And the property manager was instructed to remove the sign, which was done the next day.

¶ 328 I pause to say again that in my opinion Dr. Yeung never had any right to put up the sign. As a member of the Strata Corporation she could not simply do what she wanted to do, contrary to the communal rights of all of the unit owners. Additionally, when she put the sign up she was in violation of the December 15 Resolution or Rule which was validly passed at the December 15, 1998 meeting. Thus, in my opinion, the Rule need not be brought into play, although it further bolsters the position that Dr. Yeung's sign was illegal.

¶ 329 I turn now to Dr. Li's evidence in cross-examination. He was asked whether anyone told him at the time of his purchase that there was a proportional signage ratio in place for the building. He said that he was told by Mr. Symington that the signage would be on a unit entitlement basis, and that there

would also be a pylon sign for unit owners to rent if they so desired.

¶ 330 Dr. Li said that Dr. Yeung did not tell him that she wanted a walk-in clinic. He was not aware that she wanted a walk-in clinic until later on, when she became so demanding about signage and when she put up her sign box, suggesting to him that she was really serious about getting exposure. He questioned that if she intended to operate a walk-in clinic at the time of her Contract, why did she not secure signage space then.

¶ 331 Like the other owners, Dr. Li was questioned about the August 29, 1997, s. 22 Resolution of the owners accepting a Grant of Easement pertaining to the LeGear Pelling sign. The Agreement was signed by Mr. Goertzen, who by statute then represented the defendant there being no Strata Council, and no meetings having been held. It was noted that according to his Contract Dr. Li became an owner on June 30, 1997. As in the case of Dr. Yeung, he was not consulted about the Easement, and he did not consent to it.

¶ 332 I pause at this point to say that, in my opinion, the situation pertaining to the Easement on the common property has no bearing on whether or not the plaintiff should succeed. The sale of the sign to the Strata Corporation would seem to cure any defect, or problem relating to it. However, in any event, and without regard to the sale, if there is something wrong about it I am not persuaded that the result should be a finding in favour of the plaintiff.

¶ 333 It is noted that the Easement was granted pursuant to the provisions of the Act; also that at the time the defendant Corporation was barely off the ground, and its members, LeGear Pelling, Dr. Yeung and Dr. Li did not have any experience in relation to such matters. If there was something wrong with the Easement it could have been corrected; and there is no evidence before me that the Easement was not obtained in good faith.

¶ 334 What I have said about this Easement issue applies to other issues (I would call them side issues) raised by the plaintiff in her determined attempt to exclude her fellow unit owners, and obtain Court approval of her claim of entitlement to the substantial signage. An example would be LeGear Pelling's use of the Corporation's electricity for the sign (on the basis of a set-off) and Dr. Li's use of a small part of the common property under the stairwell, yet to be referred to, on the basis of an Agreement with the developer.

¶ 335 As I have said on more than one occasion, the primary issues in this case are whether Dr. Yeung was ever entitled to the signage she claimed, and whose evidence is credible in this somewhat bizarre case. Even if it may be said that the other unit owners, LeGear Pelling in the first instance, and then Dr. Li, made mistakes, before and after they tried to run the defendant Corporation, there is no evidence before me of any wrongful intent on their part, or that anything they did was not done in good faith. What they did was done in the open and if actually wrong could have been corrected. But it is not evidence of oppressive conduct or of acts unfairly prejudicial to Dr. Yeung.

¶ 336 Dr. Li said that he was told that signage on the pylon was available to any unit owner who wanted to rent it from its owner. It was never his understanding, from Mr. Goertzen and Mr. Symington, that the upper floor unit owners would have preference or priority. However, he did agree that it was wrong that LeGear Pelling was using Corporation electricity for the sign. He was aware that at least three of the earlier meetings LeGear Pelling agreed to disconnect the pylon from the Corporation meter, but then failed to do so. When asked why the Council did not enforce its directive he said that the matter should be put into its proper perspective, the amount was minimal and there were so many other pressing issues that had to be dealt with, such as the elevator, outstanding strata payments and in

particular, signage. He added, "In the meantime I had no sign up, and the elevators were not working."

¶ 337 It was put to Dr. Li that he installed a pump for his own purposes in the electrical room which was common property. He did not agree. The pump was actually installed in a small cubicle under the stairwell by Agreement with the developer. It is an air compressor, or vacuum pump, for suction purposes. There is nothing in his Contract pertaining to the installation of this equipment. However, he did negotiate an Agreement with the developer for the use of the space and he understood it was in his purchase price. In his opinion it was the same as the reserved parking he negotiated and which was included in his purchase price. Like the parking space, he has not paid anything extra for the space under the stairwell.

¶ 338 Dr. Li was then cross-examined with regard to his "dislike" of the original panels for signage purposes, and the reasons he felt that the continuous light box produced better signage for everybody. He responded that if the original panels had worked he would have been for them. Dr. Li also noted that both he and Dr. Yeung preferred the sign box, the box which was eventually installed by Council.

¶ 339 Dr. Li would not agree with the suggestion that at the first meeting of October 6, 1997, the turning point was the discussion about LeGear Pelling's pylon and the Easement. He said that the pylon was one of the matters discussed, but it was not the largest single source of consternation at the meeting. Dr. Yeung's signage was the main issue, and the main controversy between her and Mr. Pelling.

¶ 340 He agreed that he said on direct examination that at the meeting Dr. Yeung raised the issue of her signage and became embroiled in an argument with Mr. Pelling. It was suggested that it was her husband who became involved in the heated discussion with Mr. Pelling. He said that it was not his way of saying it; that it was the Yeung's representations whoever it was. He could not recall exactly which one of the two. He was asked to agree that in almost all of the meetings Dr. Yeung was, in fact, a quiet and calm individual. He did not agree.

¶ 341 I pause at this point to say that I am fully satisfied that everyone knew from day one that each unit owner would be allotted a percentage of the signage space, based on the corresponding percentage of the individual's unit; that the Yeungs well knew how Dr. Yeung's signage allotment was going to be assessed; and that given that she had the smallest unit her allotment would be the smallest allotment of the seven unit owners; and that it would be substantially less than that which she was claiming.

2. The Second Meeting of November 25, 1997

¶ 342 Dr. Li was asked whether Mr. Symington was at this meeting, and he said that his best recollection was that he was at the meeting. I note, from other evidence to the contrary which I accept, and from the fact that the Council was elected or appointed during the first meeting, that Dr. Li's recollection obviously is mistaken.

¶ 343 Dr. Li agreed that at the end of the meeting there had been no resolution of the issue of signage allotment. He was referred to a copy of the City of Richmond's By-law, which on its face suggests that it was received by Mr. Tablotney from Mr. Yeung on November 27, 1997, two days after the meeting. He did not recall seeing a copy of the document at that meeting. He was asked to agree that Mr. Yeung presented information at that meeting of what the City's position was with regard to signage on the building. He said that what he did recall was that the Yeungs always said that the signage space belonged to their Unit.

¶ 344 He was then asked whether any time prior to August 6, 1998, if he was aware that the Yeungs

had presented information as to what the City's position was regarding signage on the building, and he said that it might have happened. When asked whether he was personally ever aware of the City's position prior to August 6, he said "If I have to say yes or no, I'd say no". I observe that at this time the witness seemed perhaps confused about the dates and the event, that it was not clear to me whether he was thinking about the October 6, 1997 meeting as opposed to the August 6, 1998 meeting. It should be noted that Mr. Clark's first letter to Mr. Yeung, in which he states the City's position, is dated February 12, 1998. Notwithstanding this, there does not appear to be any reference to the City's position in the March 17 and March 24 meetings. And in those meetings it is clear from the Minutes that Dr. Yeung's signage allotment was yet to be determined.

3. The Third Meeting Of December 15, 1997

¶ 345 Mr. Ellis asked the witness to say who was at the meeting without looking at any documents. He was, of course, entitled to do so, as that is the usual practice. However, in this case, all of the witnesses who were at the meetings, and in particular, Dr. Yeung, looked at the Minutes of the meetings before attempting to answer counsel's questions. That was the case practice.

¶ 346 When asked who was present at the meeting without using the Minutes, he said that he, Dr. Yeung and Mr. Pelling were there, and perhaps Mr. Tablotney. When he was asked could he recall what happened, he said, "Not now". Mr. Ellis then stated that he was demonstrating "the recall of the witness". Dr. Li was then referred to Mr. Pelling's December 15, 1997 Minutes of the meeting of that date. He agreed that he had never received a copy of that document before coming to Court. He also agreed that if he did not have the document before him he would have no independent recollection of the meeting.

¶ 347 I pause at this point to say that the same could be said of any of the witnesses giving evidence about what was said at meetings so long ago; that without something refreshing their memory they would have no recollection of the events to be related. It was a four year project for Mr. Symington, and he did have his Agenda and his scribbled notes to refresh his memory. I observe again that all of the other witnesses who attended these meetings had to read through the Minutes of the meetings, and think about it, before responding to questions; and Dr. Yeung was no exception to this practice.

¶ 348 Dr. Li was told that Dr. and Mr. Yeung had said that no Resolution had been passed, that there was just a discussion. Would he agree? The witness asked, "Resolution in what form." The question was, "Properly put forward and voted on." And the answer was, "Not a formal vote, but in the discussion we agreed to look into it further to see if we could resolve it. It was an ongoing thing." It was suggested to him that what happened at the meeting was there was a lot of discussion, people were leaning in different directions, and it was agreed to look into the signage issue further, and he agreed.

¶ 349 It was suggested to him that the outcome was that there was no formal agreement on signage, the parties agreed to look at it further and come to a decision down the road, and he answered "yes".

¶ 350 I pause at this point to note that what the witness was saying is consistent with the content of the second Resolution contained in the December 15, 1997 Minutes. There it is stated:

Application for signage from strata lot (Unit 180) is tabled pending clarification of signage entitlement for above unit based on unit entitlement.

Carried (two in favour, one opposed)

What the witness was saying was that there had been no formal decision or vote on Dr. Yeung's

application for signage. This is the case. According to the Resolutions it was put off, or tabled, pending clarification of her unit entitlement. But the Resolution was passed as Dr. Li testified on direct examination.

¶ 351 I have already noted my conclusion on the evidence, including Dr. Li's evidence, that it is more likely than not that Mr. Pelling's Minutes of December 15, 1997 accurately described what occurred at that meeting; that those Resolutions were passed on a two to one vote. I am not prepared to find that Mr. Pelling simply made up the Minutes. I have already observed that I found his other Minutes to be quite accurate. Finally, and most importantly, the Resolutions really set out exactly what happened at that meeting, what the Yeungs were told by the other unit owners: signage allotments were to be based on unit entitlement and the decision pertaining to Dr. Yeung's allotment was put off until it could be calculated on a unit entitlement basis.

¶ 352 I do not interpret Dr. Li's above interpretive evidence as evidence to the contrary. The questions and answers satisfy me that what Dr. Li was focussing on was whether there had been a final resolution of Dr. Yeung's signage problem. Clearly, it was not resolved at that meeting, and was put off as the Resolution states. Again, I emphasize that the Resolutions described exactly what happened at that meeting and I am satisfied that the votes described were taken.

¶ 353 Dr. Li said that by the time the two March 1998 meetings were concluded he was aware of the City's position, as contained in its letter dated February 12, 1998. He left it to the developer and to Mr. Pelling to investigate. They were still looking into Dr. Yeung's signage allotment.

¶ 354 Dr. Li acknowledged that having seen Mr. Yeung's letter of May 15, 1998, he knew that the Yeungs were taking the position that they had not received a response to their sign application made in November of 1997. He said that he was in the same position in the sense that he wanted to put up his sign and the signage allotments had not been determined. However, he was willing to wait for the decision, pointing out again that it was not simply a yes or a no situation. He agreed also that the "group" was dysfunctional because they were unable to resolve their differences.

¶ 355 Dr. Li acknowledged that he spent most of his days with his patients, and that he had a receptionist who handled callers. It was put to him that when he said that most Notices were delivered to him by hand, he meant to his office and he would not know how the Notice got there. He said that this was not true, that a lot of the time Mr. Weant walked in and asked for him. This occurred most of the time.

¶ 356 Dr. Li was asked whether cl.3 of the By-law was a "critical provision" to the By-law being effective. When asked what he meant, counsel suggested that without cl.3 a unit owner could have more than six feet of signage space on the north side and he agreed. In this regard I note that cl.2 provides that the maximum amount of signage on the common area for each strata lot would not exceed the amount of signage space as determined by that strata lot's unit entitlement ratio.

¶ 357 In any event Dr. Li agreed that cl.3 was critical, and after checking agreed that it was not in the Notice that came about as an amendment at the meeting. While agreeing that cl.3 was the real teeth of the By-law, he referred to cl.2 adding that without allotment being based on unit entitlement "it would not work either." He, Mr. Pelling and perhaps Mr. Tablotney, with advice from Mr. Weant, drafted the By-law. They left to Mr. Weant the question of notifying unit owners who did not attend about the cl.3 amendment. In this regard I do not recall seeing any recorded protest, or hearing of any, or any attempts to amend the By-law further, or to set it aside, by Dr. Yeung.

¶ 358 When asked why they did not enforce the By-law against Dr. Yeung immediately the By-law was passed, Dr. Li said that it was common property, Council wanted to please everybody, and still hoped it could be settled without confrontation. He would not agree that from September 1998 to December 1999 there had been no communication between the parties. He would not agree that the reason that no steps were taken was because Council agreed that the sign could be left there. He said that from the very start it was Council's view that the property was common property.

¶ 359 On re-direct the witness was referred to the December 15, 1997, Minutes of the meeting held on that date. He was referred to his statement on direct that, "certain people leaned one way or the other", and asked what was discussed at the meeting. He said that it always had to do with signage space, whether it was common property or it belonged to Dr. Yeung, whether it was unit property or a common area. It was Council's position that it was common property and its allotment would be based on unit entitlement.

¶ 360 He was then referred to the Minutes, noting that the Resolution was put forward and then carried. He agreed that no decision on Dr. Yeung's application for signage was made at the meeting. He was asked again about the words actually used by Mr. Ellis, that people were leaning in different directions. He said in effect that he and Mr. Pelling were leaning one way and Dr. Yeung was leaning the other.

¶ 361 He was asked whether at the meeting they actually had to raise their hand to show support, or lack of support, for the Resolution. He said that it was a formality which he was not quite "conscious about - the process." He was asked whether there was an actual vote and he said, "Yes - it happened", although he could not recall raising his hand. This evidence, in my view, supports my finding that the Resolutions were passed.

¶ 362 Finally, he was asked why the By-law was amended to include cl.3 at the meeting of August 6. He said that it was to make sure that the By-law worked out for everybody.

XI. EVIDENCE OF THE PROPERTY MANAGER, MR. C. WEANT

¶ 363 Mr. Weant commenced his duties as the property manager on May 1, 1998. He had been a property manager with Century 21 for about seven years. I would describe him as a professional manager, experienced in the various areas where the unit owners and Council were having problems. I found him to be a good historian, a truthful witness who attempted to give his best recollection of the conversations and events which occurred.

¶ 364 Mr. Weant was asked what were the primary issues that Council needed assistance with at the time of his appointment. He said that the most pressing thing was the preparation of the budget, and the calling of the first A.G.M. to approve it, and to elect a Council. A budget is most important in order for Council to assess each owner for a maintenance contribution, so that the Corporation can pay its bills and carry on.

¶ 365 He was made aware of the problem with signage. He was told that an owner wanted to obtain approval for signage which was to be placed on common property. He knew that the Act provided that common property is under the control of, and required permission from, the Strata Corporation. He recommended to Council that they should have a Signage By-law. They asked him for information on signage by-laws and he provided it. He recommended a By-law because of his previous experience, including owners putting up signs on common property. At the time he was familiar with the City of Richmond's Signage By-law.

¶ 366 In helping the Council draft the Signage By-law he was concerned with two factors, that signage allotment should be based on unit entitlement, and that all unit owners would have the same size of sign on the north wall of the building. He said that the decision was made because it was felt that the By-law would serve the interests of all of the owners equally.

¶ 367 Mr. Weant was familiar with the Unit Entitlement Schedule which developers must provide when registering a Strata Plan. He said that he measured the linear footage available for signs on the four sides of the building which was 177 feet. He then allotted each unit owner's entitlement as a percentage using the Unit Entitlement Schedule. Because Dr. Yeung's Unit was the smallest Unit, her percentage of the total signage on all four walls was 14.75 feet. He believes that he prepared his calculations in late 1999. He advised Dr. Yeung of the amount of signage available to her at one of the Council meetings and in her office as well.

¶ 368 Mr. Weant said that when he was given a copy of Mr. Clark's letter of February 12, 1998, he tried to contact Mr. Clark. My note of his evidence is as follows:

I left him two voice mails indicating to him that I did not believe his authorization was enforceable to put a sign anywhere on a piece of private property, and that he should have consulted the Strata Corporation to find out if that sign placement was authorized.

He was referring to the fascia just above Dr. Yeung's unit. The witness continued, referring to Mr. Clark:

He did not respond to my voice mails. I tried to contact him again. I was unsuccessful. I left another voice message asking him to respond to my questions or set up a meeting date to talk about it, and I received no response from him.

He sent a note to Mr. Pelling reporting the problem. Mr. Pelling was aware of his position on ownership and of the fact that he was raising it with the City officials. I accept his evidence as to his attempts to communicate with Mr. Clark. I have concluded, with respect, that there must be some flaw in Mr. Clark's system of recording and communicating telephone messages.

¶ 369 He was then referred to Mr. Yeung's letter dated May 15, 1998, to Mr. Pelling advising, among other things, that he intended to put the sign up on May 19, 1998. The witness said that he spoke to Dr. Yeung in her office about the letter, and advised her that she did not have permission to put up a sign, and that it was far too large. It is interesting to note as well that the conversation took place before the June 24, 1998 first A.G.M.. It is clear, as well, that nothing could deter Dr. Yeung from her unyielding view that somehow, against all reason, she was entitled to the large signage she claimed to the exclusion of her fellow unit owners.

¶ 370 At that time, Dr. Yeung told him that she had permission to put up the sign; that the By-law Enforcement Officer told her that she could put up the sign, and the developer said that she could put it up as well. He said that he told Dr. Yeung that what she had been told was not true, the sign was not supposed to be there.

¶ 371 In my view, it is of some importance to note that the sign was put up after Dr. Yeung had two conversations with Mr. Weant in which she was told, by this professional, that her percentage of the signage would be relatively small (less than six feet on the north wall) and that what she had been told by the Enforcement Officer, and what she (alleged) was told by the developer was wrong. I observe also that this is the context of the events surrounding Dr. Yeung's non-attendance at the June 16 and June 24, 1998 meetings.

¶ 372 With regard to his letter of May 22, 1998, to the unit owners requesting a contribution of \$800, he said that Dr. Li and Mr. Pelling paid him the monies immediately. Dr. Yeung paid her \$800 close to a month later (it was subsequently shown that he was mistaken on this point) and wanted an accounting. The developer refused to pay any monies. The owners were asked to participate in an equal payment, which would be applicable to the first year of operations, when the final accounting of that year's operations was balanced. The monies paid would be applied to the unit entitlement amount owed by each unit owner for the first year of operations.

¶ 373 The witness prepared all of the documents, the Notice, Agenda, the proposed budget and the Unit Entitlement Schedule for the June 16, 1998 A.G.M. The purpose of the meeting is stated on p. 1 of the Notice, namely, to inform the owners of the operations of the Strata Council, to adopt the 1998-99 Operating Budget and to elect Council for the coming year. It also gives notice that no owner is entitled to vote at any General Meeting unless all the contributions payable in respect of the strata lot had been duly paid. He said that at the time he had no record of who owed what, or of the previous year's accounting. Thus, everyone was entitled to be at the meeting.

¶ 374 Dr. Yeung testified that she received no Notice of the decision after she sent her letter. No one got back to her and said whether they would or would not proceed on the 24th. It will be seen that this is not the case; that prior to the meeting of the 24th, she telephoned Mr. Weant to ask if the meeting was going ahead and she was told that it was. I would observe that it must have been obvious to her that the meeting had to proceed, if for no other reason than a budget had to be fixed. Mr. Weant said in response to this that a Notice of the adjournment was sent to all owners indicating that the meeting would be seven days later, and there were no inquires. He then sent out a letter dealing with the new date, which was one week later, and then received Dr. Yeung's letter asking that he reschedule.

¶ 375 When he received Dr. Yeung's letter he went over to the building to speak with Dr. Li and LeGear Pelling. They decided to have the meeting on the date fixed, June 24, 1998. When asked why he said that on other occasions it always seemed difficult for Dr. Yeung to attend. Many adjustments had to be made to accommodate her. He said: "The two owners said enough is enough". They would go with the date prescribed in the Act. After being instructed to leave the meeting for June 24, he received a telephone call from Dr. Yeung who enquired as to whether the meeting would proceed on the 24th, and he told her that it would. However, he did not receive a Proxy from the Yeungs.

¶ 376 Mr. Weant prepared the June 24, 1998, Minutes. He was referred to the topic "Signage" therein, and it was put to him that there was nothing in writing to indicate that the developer had established a proportional signing ratio. He said that he did not agree, and noted that the Unit Entitlement Schedule was attached to the Strata Plan which was registered. I observe also that the Unit Entitlement Schedule was included in the package provided for the June 16, and then the June 24 meetings; and finally, that I am satisfied that the Yeungs knew all about the Unit Entitlement Schedule long before June of 1998.

¶ 377 Mr. Weant was referred to his letter dated July 8, 1998, to all unit owners, advising them of their new monthly assessments for their maintenance payments. He confirmed that Dr. Yeung did not pay her June 1, July 1 or August 1 assessments prior to the August 6, 1998, E.G.M. The Yeungs did not tell him why the payments were not made, and they did not attend the meeting. A short time after the meeting they told him that they felt that they were not in arrears because of the payment of \$800 in May. They believed that they had a credit against the 1998-99 operating budget. Apparently at the time they did not complain about not being served with Notice of the meeting, or about the validity of the meeting.

¶ 378 Mr. Weant said the purpose of the \$800 was to cover the previous year's expenses where the Strata Council was short approximately \$2,800 for the payment of its bills. He said that when Mr.

Yeung told him that they were not in arrears, he told Mr. Yeung that they had not made any payments for the present operating budget, and he was in three months arrears on the present operating budget.

¶ 379 The other two owners made their payments and therefore were in good standing with their maintenance payments. Unlike Dr. Yeung, they did not request that any overpayment made prior to the budget being passed on June 24 be set-off against monthly assessments made from June 1 on. In this regard Mr. Weant said that at the time there had been no account reconciliation for the previous year, so he did not know whether the \$800 would cover those expenses; that it was possible that more than \$800 was owed. In any event, as far as he was concerned the Yeungs were in arrears for the first three months of the current year. It is seen that I am in agreement with this conclusion.

¶ 380 Mr. Weant said that the purpose of the E.G.M. of August 6, 1998, was to have the owners consider the Special Resolutions pertaining to a penalty for late payment of an assessment and the passing of a Signage By-law; both important matters to the Yeungs, I would suggest, if they intended to carry on with their position with regard to the late payment of their maintenance and the use of their substantial signage.

¶ 381 The witness was then referred to his postage and photocopying records for the month of July. They show that on the date of the Notice, July 21, 1998, eight photocopies were made of the Notice. They also disclose that no postage was charged out for the month of July. He was then asked if there were no charges for postage, how were the photocopies of the Notice delivered, and he said "I delivered them" to all three owners. He did not have any instructions not to deliver the Notice to Dr. Yeung.

¶ 382 The witness was referred to Item 3 - Eligibility, on the face of the Notice. He said that only owners whose account was in good standing at the beginning of the meeting could vote on the Resolutions. LeGear Pelling and Dr. Li were in good standing. Dr. Yeung, who had not paid her first three monthly assessments, was not eligible to vote. He then observed that while only Mr. Pelling and Dr. Li attended at the meeting, and were eligible to vote, the two men constituted a quorum under the Act. I agree with his conclusions that Dr. Yeung was not eligible to vote and that in the circumstances the two men constituted a quorum.

¶ 383 He was then shown bank statements which showed the two payments in the amount of \$214 paid by LeGear Pelling and Dr. Li, and that Dr. Yeung was in arrears for three months assessment. The records also show that as of June 21 the Council had a balance of \$6.33 in its account.

¶ 384 Mr. Weant was taken through the Minutes of the meeting of August 6, 1998. The revised By-law is to be found on the last page. He said that the amended provisions of cl.3 were added during the meeting, to make sure that every owner would have an equal amount of signage on the front of the building. When asked whether he was required to give Notice of the amendment, Mr. Weant said that it was not required; that under the Act Special or Extraordinary Meetings can be voted on, and can be amended because of the generality of the Resolution.

¶ 385 In this regard it seems to me that not every amendment made at a meeting requires notice, especially if the amendment is not substantial. In the case at Bar, notwithstanding the interpretations of some of the witnesses, the amendment is not substantial with regard to Dr. Yeung, and it gives her more signage space than she would have been entitled to if the Unit Entitlement Schedule had been strictly applied. She said that if she had been given Notice, she would have attended the meeting and voted against the Resolution. That assertion may be entitled to some weight if the issue is whether or not she was given Notice of the meeting, but that is not the issue here. I have found that she was given Notice of the meeting, and of the fact that she was not eligible to vote, and that ends the matter. Further, I would

not give the same weight to the assertion where the issue is whether or not to vote for an amendment which is beneficial to her.

¶ 386 Finally, Mr. Weant says that the amended Resolution was carried unanimously, while only a 75% majority was necessary. I am satisfied that this is the case.

¶ 387 Mr. Weant was also referred to his records for the month of August, 1998, pertaining to postage. The record showed that two sets of Minutes of the E.G.M. were mailed out on August 11. The postage record shows the postage used. Mr. Weant says that he hand delivered the other copies.

¶ 388 I turn now to Mr. Weant's evidence on cross-examination. He agreed that the Corporation was not running smoothly when he arrived. He would not agree that it was his job to straighten things out and get the Council going; although I observe, in effect, he did so. His job was to verify invoices etc, and to do the accounting work. The Strata Corporation, he said, was self-managed.

¶ 389 He agreed that two areas required attention. First, the preparation of the June 1, 1998 budget, and second, straightening out the previous financial period. At the time he knew that Mr. Yeung had resigned as Treasurer and no one was tending to the day-to-day finances of the Corporation. He was also aware of Dr. Yeung's signage issue with Council.

¶ 390 He saw the City of Richmond's letter of February 12, 1998, around the same time, probably earlier than June 24. He had a copy of the City's By-law, which he used for general purposes, in his office. When asked whether he knew that the City would allow Dr. Yeung to put up her sign, but no one else, he said "yes", but added that he did not understand the City's conclusion.

¶ 391 He was then cross-examined with regard to his attempts to communicate with Mr. Clark. This occurred over a two or three day period. He has also attempted to discuss the City's position with anyone at the City since that time. He went to the By-law and Signs office. He spoke with a clerk named Kim; he also spoke with a clerk named Holly. On both occasions he asked to speak to Mr. Clark, who was unavailable. He never wrote or emailed Mr. Clark. He did not leave a message to have him call because he was out at the time when he spoke to the clerk. He did leave messages on earlier occasions. The calls were not returned.

¶ 392 The witness was told that Mr. Clark said at trial that without Dr. Yeung's consent the City would not grant any one a permit to place signage above her Unit. He was asked if he had any reason to say that Mr. Clark had no authority to take that position. He said that he believed that he did. The gist of his view was that the City had no authority over private property without consulting the other unit owners; that an owner cannot place a sign on common property which affects the other owners' rights.

¶ 393 When asked whether that was his interpretation of the Sign By-law, he said that it was what the City clerks told him. When he was asked whether he was saying that Mr. Clark's interpretation of the By-law was wrong, he said that Council was right. He said again that Mr. Clark was wrong if he said that a person could put a sign anywhere on private property without regard to the other strata owners. The location of Dr. Yeung's sign is still subject to the approval of the Strata Council.

¶ 394 I see no purpose in continuing with Mr. Weant's evidence on cross-examination with regard to an apparent "clash" between the City's By-law and the duties and powers of the Strata Corporation; although perhaps it does demonstrate that the witness has some experience in these matters. The gist of what he is saying is that having joined the Strata Corporation, Dr. Yeung simply cannot do what she wants with the common property to the exclusion of her fellow unit owners and without regard to the

directions of the Corporation. Nor can the City force the Strata Corporation to permit Dr. Yeung to put up her sign over the common property and without regard to the interests of her fellow unit owners and the directions of the Corporation. I agree.

¶ 395 I do not see the necessity of continuing with Mr. Weant's cross-examination since his answers do not advance the plaintiff's case. Mr. Weant acknowledged that the Yeungs repeatedly told him that they had overpaid their contribution for the previous year, and wanted a Reconciliation done; and he told them that if there was an overpayment it would be credited to their account. He actually said this in his letter dated May 22 to Dr. Yeung. I accept his evidence that he delivered his "rough note" to Dr. Yeung in response to her letter of September 6, 1998.

¶ 396 I have already stated my conclusions that on August 6, 1998, Dr. Yeung's budget account was in arrears and that she was not entitled to vote at the meeting on that date; regardless of the fact that it turned out later that by that date she had overpaid her contribution to the previous year's expenses by \$1,040.67. In my view, on November 6, 1998, she was not entitled to set-off those monies against her budget assessments which she refused to pay after June 1, 1998. There were no monies in the Corporation's account and the June 24 budget did not allow for the rebate of her overpayment and those of the other unit owners. The rebates would have to await the following year's budget as a credit.

¶ 397 On re-direct Mr. Weant was asked whether he had any reason not to deliver the Notice of the August 6, 1998, meeting to the Yeungs and he said "no". He then reiterated his earlier evidence (which I probably have not detailed sufficiently, and which I accept) that his photocopying and postage records, and the fact that he had hand delivered the Notice to the other two owners in the same building, caused him to conclude that he hand delivered the Notice to Dr. Yeung, or to her office. He also said that generally speaking his practice on all strata corporation matters was to deliver Notices, letters, etc., by mail. Here hand delivery was used more often because of the proximity of his office to the strata building.

XII. THE SUBMISSIONS

1. The Submissions of Mr. Ellis

¶ 398 I turn briefly to the submissions. It will be seen that I have dealt with most of the issues, side issues and points raised by Mr. Ellis in his written submission. In demonstrating this I will refer only to some of the issues or points initially raised by him in his written submission. It will be seen that, with respect, they are contrary to the evidence and to the facts to which they give rise.

¶ 399 Mr. Ellis commenced by saying that:

Connie Robson spoke to the developer's agent, and was advised that there was no restriction on signage placement and that Dr. Yeung would be able to place her advertising signage above the store front windows of her Unit.

And:

Without seeking legal advice, but relying on the representations from the developer, she entered into a Contract of Purchase and Sale to purchase strata lot 2.
(Emphasis added).

¶ 400 There is no acceptable evidence before me to support these assertions. The evidence, including

that of Mr. Symington, and even that of Ms. Robson, is overwhelmingly to the contrary. These "events" simply did not happen and I need not refer to the "no representations" clause in her Contract.

¶ 401 Counsel said that "no conclusive reply was given during the fall of 1997" to Dr. Yeung's signage application. As I stated earlier, this simply is not so. The Yeungs knew, at least from the early meetings onward, that it was the Council's position (response) that the building signage would be shared by all unit owners on a unit entitlement basis; and that nothing remained for response to Dr. Yeung's application save the determination of Dr. Yeung's percentage of the signage on application of the Unit Entitlement Schedule.

¶ 402 The words "no conclusive reply" can only apply to the Council's determination of her percentage of the signage; and I am satisfied that in all probability the Yeungs applied the Schedule to the known signage space available, and ascertained that her expected allotment was minimal when compared to the other unit owners and, in particular, when compared to the amount of signage she was claiming.

¶ 403 The argument that Dr. Yeung informed Council that as they would not give an answer to her application she intended to install the sign, falls as well on barren ground. She was fully informed of the circumstances, and of what her signage rights were (including Mr. Weant's advices) at the time that she went ahead and put up her sign.

¶ 404 Dr. Yeung never had any right to put up her sign. Once she purchased her strata Unit, she became a part of the Strata Corporation, and subject to its community interests as opposed to her individual interest; which included the control, management and administration of the common property. Her only interest in the common property is proportional to the unit entitlement of her strata lot. She was not entitled to use even her interest in the common property in a manner which would interfere with the other unit owners' interests; and, in any event, she was not entitled to use the common property without the express approval of the Strata Corporation as expressed by the Council.

¶ 405 Counsel argued that Dr. Yeung was not given Notice of the August 6, 1998 E.G.M., and that it was a critical issue. It denied Dr. Yeung's right to maintain her sign installation. I have found on the conflicting evidence that it is highly probable that Dr. Yeung was given Notice of the meeting by Mr. Weant, and chose not to attend in the context of its purpose. Again, she had no right to install or to maintain the sign. Even if the Special Resolution (the By-law) was invalid, she did not have any signage rights, and the Council still had the right to take the sign down.

¶ 406 I have also made it clear that I am satisfied that in the circumstances Dr. Yeung was in arrears of her monthly maintenance fees which were so vital to the Strata Corporation carrying on from June 1, 1998; that she was therefore not entitled to vote had she attended the August 6, 1998 E.G.M..

¶ 407 It is equally incongruous to argue that Dr. Yeung's signage was grandfathered in the circumstances of this case alone, and in the face of evidence to the contrary which I accept. It may be accurate to say that there is a standoff between the position of the Strata Council and that of the City of Richmond. This has come about as a result of Dr. Yeung's wrongful persistence in her claim that she is entitled to the signage she claims; and it matters not whether the By-law is in fact valid. I am also concerned that the City of Richmond has not been given the full picture of the facts and circumstances surrounding Dr. Yeung's application for the permit to put up her sign, and the involvement of the Strata Corporation. I question whether Mr. Clark would have told Dr. Yeung, that as a member of the Strata Corporation she could put up her sign without regard to the rights and interests of the other unit owners, as well as the position of the Corporation, simply because of the signage permit granted to her by the

City. She was not entitled to put up the sign.

¶ 408 I turn now to Mr. Ellis' more detailed submissions on specific matters.

XIII. CREDIBILITY OF AND COMMENTS ON WITNESS

¶ 409 Mr. Ellis submits:

There have been disputed questions of fact at this trial, and the Court will have to assess the credibility of witnesses. The plaintiff's position is that where there is conflicting evidence, the evidence given by the plaintiff and the witnesses called on her behalf, ought to be preferred to that given by the witnesses for the defendant.

There were a number of meetings which took place. Many of the witnesses for the defendant had no independent recollection of the meetings and could testify only with the aid of memorandum from the meetings. Dr. Yeung, and her husband, Herve Yeung, however, did have an independent recollection of the meetings. This is reasonable as this was an issue of paramount concern to them, whereas it was not of as great concern to the other witnesses.

(Emphasis added).

¶ 410 I trust that I have made it clear that I am not in agreement with these submissions. Neither Dr. Yeung nor Mr. Yeung demonstrated any independent recollection of what was said or done at the meetings. They demonstrated very poor recollections, even with the assistance of documentation. All of the witnesses gave evidence about conversations and events which occurred five or six years earlier. None of the witnesses was perfect. And contrary to the submission, generally all of the witnesses, particularly when giving evidence about what occurred at various meetings, had to consult documents, usually the Minutes of the meetings, in order to answer questions put to them. Dr. Yeung and Mr. Yeung were no exception.

¶ 411 I have already said that I did not find Dr. Yeung, Mr. Yeung and Ms. Robson to be good historians at all times. I prefer the evidence of Mr. Symington, Dr. Li, Mr. Tablotney and Mr. Weant over their evidence, where the evidence is in conflict; although, as I have said, none of them were perfect witnesses. While the evidence of these defence witnesses may emphasise different parts of the unfolding story, and may even seem to be in conflict in some respects, particularly on collateral matters, (and it is not simply a matter of numbers) I find their evidence to be consistent, and much more in line, with the preponderance of probabilities to which the circumstances give rise. Finally, I would not make a substantial finding in favour of Dr. Yeung, on the basis of her evidence or the evidence of her husband, unless their evidence was consistent with, or corroborated, by other evidence which I do accept.

XIV. RELATIONSHIPS BETWEEN THE STRATA OWNERS

¶ 412 As I stated earlier, I am unable to accept the Yeungs' evidence as to the tone of the meetings, and that it was a one sided affair. I am satisfied, as I have said, that the meetings were a give and take situation, and that the Yeungs were just as vocal and adamant when advancing their interests as was Mr. Pelling, and later Mr. Tablotney, when advancing theirs.

¶ 413 I am also unable to accept the "preferential treatment" argument as regards LeGear Pelling's pylon and Dr. Li's use of the small space beneath the stairwell. LeGear Pelling became the owners of the pylon sign pursuant to their Contract with the developer and the s. 22 Grant of Easement. Dr. Li's use of the small space beneath the stairwell also came about as a result of his agreement with the developer,

although as I recall, it was not expressed in his written Contract.

¶ 414 I observe that these are matters which, if found to be wrong, can be corrected; although in the case of the pylon, I understand that it has been sold to the defendant Corporation. In any event, in my view, they do not constitute evidence of oppression alone, or together with other perhaps more trivial matters of complaint. I am satisfied that they were only raised by the Yeungs during the first few meetings when they found that Dr. Yeung's proposed signage was strongly opposed by the other unit owners and the Council. Dr. Yeung (still) had no right to put up her sign.

¶ 415 Clearly, Council's motivation was the communal interests of all of the unit owners, not personal gain or advantage. Further, success by Dr. Yeung, as regards these complaints, cannot somehow lead to a finding that she was ever entitled to put up her sign. What I have said applies equally to LeGear Pelling's use of the common electrical supply; although it is clear that the line should have been disconnected. The other unit owners apparently thought it was a trivial matter and considered it in light of LeGear Pelling's conduct in helping to maintain the Corporation when it was without funds and the elevator was prevented from working.

XV. THE 1997 MEETINGS

¶ 416 I have already dealt with these meetings in the evidence of the various witnesses. However, I will repeat here that I do not agree with Mr. Ellis' version of what was left for decision by Mr. Pelling and Mr. Goertzen. As I hopefully made it clear earlier, what was left was nothing more than the calculation of Dr. Yeung's signage percentage or space based on unit entitlement; a calculation which, I am satisfied, the Yeungs were perfectly capable of making on their own.

¶ 417 I also repeat that I have concluded on the conflicting evidence that it is more likely than not that the December 15, 1997, Resolutions were passed; and that Mr. Pelling's Minutes of that meeting accurately describes what occurred. In my opinion, Dr. Li's evidence goes no further than acknowledging that at that meeting there was no formal disposition of Dr. Yeung's signage application; that he was not saying that the Minutes were inaccurate.

¶ 418 Finally, as I stated earlier, even if it can be said that the Resolutions were not passed, and I am not prepared to make that finding, it does not assist Dr. Yeung's case; because at the least, the December 15, 1997 Minutes sets out exactly what happened at that meeting according to the evidence of the witnesses, whose evidence I accept. The Council made it clear that signage on common property would be approved by Council upon application by unit owner on the basis of unit entitlement, and that Dr. Yeung's allotment would be put off pending clarification of her allotment based on unit entitlement. The Minutes do not demonstrate any intention on the part of Council to grant signage rights to Dr. Yeung, other than in the manner specified.

XVI. 1998 Events

¶ 419 I do not find it necessary to review Mr. Clark's evidence. While Mr. Tablotney and Mr. Weant were unable to communicate with him, I accept their evidence as to their attempts to do so, and that, in fact, they were able to speak to a clerk who in effect led them to believe that the situation was not as black and white as suggested by the Yeungs.

¶ 420 In any event, I do not propose to deal with the asserted "dispute" between the City of Richmond and the Strata Council, other than to say that it can be resolved by Dr. Yeung consenting to the proposal of the Council of the equitable sharing of the signage, and perhaps making some agreement

with other unit owners about their particular space. The "dispute" or conflict is really between Dr. Yeung's rights as an individual and her rights as a member of the Strata Corporation. She basically gave up the former in favour of the latter when she became a member of the Strata Corporation.

¶ 421 I am also satisfied, having considered all of the photographs before me, particularly those showing signage over another unit owner's premises with an arrow pointing to the actual location of the sign owner, that some arrangement or accommodation may be made with the City of Richmond. Even Dr. Yeung uses a sign with her signage on her glass window.

¶ 422 I have already dealt with the content of Mr. Yeung's May 15, 1998 letter and do not propose to deal with it further. It is misleading and inaccurate, and would not justify Dr. Yeung's conduct in putting up the sign, even if that were not the case.

¶ 423 I have also dealt with the fact that Dr. Yeung did not advise the Council that she would not be attending at the June 16, 1998 meeting, and then advised that she could not attend at the rescheduled meeting on June 24. While generally speaking, the Court could not condone a deliberate failure to notify Dr. Yeung of any meeting, the conduct of both sides must be considered in light of the context, including what was going to be done at the meeting to Dr. Yeung's knowledge, and the probable outcome of the meeting, again to her knowledge. Further, I am satisfied that she was told by Mr. Weant that the meeting would proceed on June 24. She could have used her Proxy

¶ 424 It must also be observed that the only real complaint Dr. Yeung had with the outcome of the June 24, 1998 meeting was the statement in the Minutes with respect to her signage; a statement which is quite accurate in its context. The Yeungs knew, from the package given to them when Dr. Yeung purchased her Unit, and from what they were told during the first three meetings, and from the Resolutions passed on the December 15, 1998 meeting, that the building signage would be allotted on the basis of unit entitlement and that the signage claimed by Dr. Yeung far exceeded her unit entitlement allotment.

¶ 425 I am therefore of the view that Mr. Ellis' statement that "the evidence was that there was no signage rules prior to the August 6, 1998 E.G.M. Resolution" is somewhat inaccurate, when considered in context. I take him to be saying that there was no signage rule preventing Dr. Yeung from putting up her sign. I do not agree; see the Act; additionally, I respond by saying that there was no signage Rule or Resolution permitting her to put up her sign, or any sign. She never had that right.

¶ 426 Mr. Ellis argued that notification of the E.G.M. is a critical issue. I agree that it is critical to the issue of the validity of the two Special or Extraordinary Resolutions, and of the By-law which was passed. However, in my view, it is not critical to the issue of Dr. Yeung's entitlement to put up her sign, or to the issue of the Council's entitlement to take it down. While I am of the opinion that the Signage By-law was validly passed, it matters not whether it was because Dr. Yeung had no right to put up her sign, and Council had every right to take it down.

¶ 427 I earlier dealt with the conflicting evidence as to whether Dr. Yeung was given Notice of the August 6, 1998 meeting. I repeat my finding, that it is more likely than not that the Notice was hand delivered to her, or to her office, and that she had sufficient notice of the meeting; that I am unable to accept Dr. Yeung's evidence that she did not receive the Notice.

¶ 428 I observe also my conclusion that the amendment to cl.3 of the By-law, which was done at the meeting, was not as substantial as argued by Mr. Ellis. It seems to me that cl.2, which makes it clear that signage space will be determined by unit entitlement, already covered the situation, which amending cl.3

covers, although the latter makes it perhaps a little clearer, and gives Dr. Yeung more signage than she would have received if the unit entitlement ratio was strictly applied and no amendment had been made.

¶ 429 Finally, I do not accept Mr. Ellis' argument, perhaps more by implication, that Council, having failed to give Dr. Yeung Notice of the E.G.M., and when she did not attend, took the opportunity to significantly amend the proposed By-law "to further restrict and affectively prohibit Dr. Yeung's signage and to nullify the decision of the City of Richmond". While that may be a result, and I need not find whether or not it was, I repeat that I am satisfied that what Council was doing was at long last attempting to specifically control building signage so as to prevent Dr. Yeung, and in deed any other unit owner who might in the future attempt to follow in her footsteps, from taking over a substantial amount of signage to the exclusion of their fellow unit owners.

XVII. GRANDFATHERING OF DR. YEUNG'S SIGN

¶ 430 I have dealt with the question of grandfathering on more than one occasion. I do not agree with the final submission that:

In the fall of 1999 the issue of their sign was discussed at a Council meeting, and it was agreed that as no sign rules had been placed at the time they installed their sign, their signage would be grandfathered, and not affected by the August 6, 1998 Sign By-law. Their evidence is consistent with the inaction of the Strata Council.
(Emphasis added).

There is no acceptable evidence that anyone on Council even suggested that Dr. Yeung's signage should be grandfathered. The evidence which I accept is, that Dr. Yeung was the one who suggested grandfathering as part of her continuing assertion of the signage rights she claimed; and she was told that it would not be grandfathered. In any event, there is no evidence before me that it was "agreed" that her sign would be grandfathered. If that had been the case, I have no doubt that the grandfathering, which would have ended years of confrontation, would have been recorded and a proper Resolution in that regard passed by Council. As I said earlier, in my opinion it did not happen, and I reject the Yeungs' evidence that it did, if that is their evidence.

¶ 431 I turn briefly to Mr. Ellis' submission of 16 points which he describes as "the indicia of this oppressive and unfairly prejudicial conduct in this case". I do not find it necessary to deal with each item in turn at this point. Most of these assertions are contrary to the evidence, or to my findings of fact, or are really to do with the signage issue and Dr. Yeung's conduct in persisting that she had the right to put up the signage claimed (on more than one basis) and which was clearly not the case.

¶ 432 I repeat again that in my opinion, Dr. Yeung has not proved, on the balance of probabilities, that which she must prove under the Act, that is, mis-conduct amounting to oppression and undue prejudice; that her evidence and the evidence of her husband alone, and also together with the evidence of the defence witnesses, whose evidence I accept, clearly shows that she was not entitled to the signage she claimed all along, and when she must have known that that was the case, and that she was the author of her own misfortune, whatever that was in fact. In this case, in my opinion, if there was any injury done, it was done by Dr. Yeung and her husband to the Strata Corporation and to her fellow unit owners.

¶ 433 I do not find it necessary to refer to the cases referred to by counsel. Assuming, but not deciding, that the provisions of s. 42 of the Act support or give rise to a cause of action by the plaintiff for damages, it is my view that the plaintiff cannot succeed in law. Generally speaking when the Court considers whether in the management of the Corporation, the conduct of the Council has been

oppressive to a unit owner, consideration is given to equitable standards of conduct in the circumstances of the case; did the Council act fairly or in good faith? Was their conduct just and equitable and so on, in the circumstances of the case?

¶ 434 Where the Court has to determine whether an act or acts are unfairly prejudicial to a unit owner, an investigation into whether the act or acts are unjust and inequitable in the circumstances is also conducted. However, the emphasis appears to be placed on the effect or the results of the act or acts on the unit owner, with the emphasis being on the word "unfairly".

¶ 435 Whether the conduct has been oppressive, or the act unfairly prejudicial, is a question of fact in the circumstances of each case. And it must be remembered that in the strata world, the majority, as defined in the Act, rules. In the final analysis, unless the conduct or the results of the act is unjust, the majority will have their way.

¶ 436 In the case at Bar, the evidence falls far short of establishing that in the management of the Corporation, its affairs were conducted in a manner oppressive to Dr. Yeung as a unit owner, or that its act or acts were unfairly prejudicial to her. There is no evidence before me that the defendant Corporation has conducted itself other than in good faith. What the Council has been doing when dealing with Dr. Yeung is simply protecting the common property rights of all of the unit owners from Dr. Yeung's asserted individual rights (which she is not entitled to) pursuant to its statutory duty. The effect on Dr. Yeung, should she fail, would be that she would not attain interests and rights in the common property which she does not have, and which belong to her fellow unit owners. However, were she to succeed, they would lose their interests and rights to her, the Act would be breached and the strata concept of community interests destroyed.

2. The Submissions Of Ms. Murray

¶ 437 In the circumstances, I do not find it necessary to consider Ms. Murray's submissions in detail, given my findings of fact on the evidence on both issues of signage entitlement and credibility, and my view of the submissions made by counsel for the plaintiff; although I will deal with counsels' issues. I do not necessarily agree with everything Ms. Murray has said, but I am basically in agreement with her submissions.

A. Credibility Of The Witnesses

¶ 438 I agree with Ms. Murray's submissions on the question of credibility in so far as they go. I need not repeat my views already expressed on this issue.

¶ 439 I turn now to counsels' issues as stated in Ms. Murray's submission.

B. Liability

¶ 440 Issue 1: At the time the plaintiff purchased her Unit in the commercial building located at 7340 Westminster Highway, Richmond, B.C. (the "building") was signage on the north and east fascias included in the plaintiff's Contract of Purchase and Sale?

The answer is in the negative. The evidence in this regard is overwhelming, as is the evidence that Dr. Yeung was never told by the developer that she was entitled to the signage she claimed, or that her signage rights were unrestricted.

¶ 441 In his reply, Mr. Ellis appears to resile from his client's evidence that they were told by the developer that she had unrestricted rights to the signage claimed, his position now being that the building signage was discussed (contrary to the evidence of Ms. Robson) and that no specific limitations of that signage were included; that it was because of this that Dr. Yeung "understood" that the ability to install signage on her wall would be included with her Unit as "a given", "similar to the purchase of a car including integral components such as doors". I reject this submission, as well as the evidence on which it is based.

¶ 442 Issue 2: Is the signage area on the north (Westminster Highway side) and the east fascia of the building common property"?

The answer is in the affirmative. I agree basically with Ms. Murray's position in this regard. The signage area in or on the outside of the building is in fact, and in law, common property. I do not accept Mr. Ellis' submission in his reply, which ignores the wide definition of the word "common property" in the Act, and is based solely on the fact that access to the signage spaces is through the interior, rather than the exterior wall.

¶ 443 Issue 3: Did the City of Richmond grant to the plaintiff a valid sign Permit for the installation of signage on the north fascia, or Westminster Highway side of the building?

I do not agree with Ms. Murray's submission that the City's sign permits are invalid because they mistakenly refer to the south elevation as opposed to the north elevation. Further, I do not believe that it is necessary for me to decide whether or not the permits are valid.

¶ 444 I do not wish to attempt to resolve the differences between the City of Richmond and the Strata Corporation, if there are real issues between them. However, I do have some doubts that Mr. Clark, who appeared to be somewhat reluctant in the witness box, would have granted the permit had he known the whole story. In any event, in my opinion, Dr. Yeung, as a member of the Strata Corporation, was not entitled to put up the sign she claimed on the signage area, which is common property, without a duly passed Resolution of Council approving the sign; and without such approval, the obtaining of a permit from the City of Richmond does not assist her.

¶ 445 It is seen that I do not believe it is necessary for me to decide whether or not the City's permits were valid, particularly in the absence of the City of Richmond. However, if it was necessary for me to do so, I would find the permits to be invalid in the sense that the City cannot grant rights to Dr. Yeung over property owned by others, or in which others have a definable interest. However, at the same time, it seems to me that the City can prevent other persons from putting up signs on their own property above Dr. Yeung's unit.

¶ 446 In my view, the question is not whether the permits are invalid. Rather, it is whether, as between Dr. Yeung and her fellow unit owners, and the Strata Corporation, she can insist on a right to put up the sign because she has a permit from the City of Richmond to do so. The answer is in the negative.

¶ 447 Issue 4: If the City of Richmond has granted the plaintiff a valid Sign Permit to install signage on the north and east fascias of the building, can the City of Richmond determine that only the plaintiff is entitled to that signage space when the building is a commercial strata building? In determining this issue, is the Richmond City By-law subordinate to the Condominium Act, R.S.B.C. 1996, c. 64 (the Condominium Act)?

The issue could be better stated. I do not find it necessary to determine whether the City's By-law is subordinate to the Act. I have already expressed the opinion that the City of Richmond can determine that only the plaintiff is entitled to the signage space, even though the building is a commercial strata building.

¶ 448 Issues 3, 4 and 5 should be considered together, and as I have stated, I am not satisfied that the question is whether or not the City of Richmond has granted a valid sign permit. I assume, for my purposes, that the City has done so because I do not think that it really matters. As between Dr. Yeung and her fellow unit owners, and the Strata Corporation, the Corporation can restrict the allotment of signage to Dr. Yeung as it proposes to do, i.e., by the application of the Unit Entitlement Schedule, or as it finally did, on the equitable principal that each unit owner should be entitled to one-seventh of the available signage on the north side, which amounts to six feet; and I note that Mr. Ellis appears to concede this under this topic, although he argues that in failing to let Dr. Yeung put up the sign she claims, when the City of Richmond will not allow anyone else to put signage there, constitutes oppressive conduct, which I am satisfied is not the case.

¶ 449 Dr. Yeung chose, voluntarily, to become a member of the Strata Corporation. The die was cast then. She cannot go to the City of Richmond and obtain permits to put up her signage and then put it up in violation of her obligations as a member of the Strata Corporation, and in violation of the interests and rights of her fellow unit owners; and in my view, it matters not whether the City of Richmond's permits are valid.

¶ 450 Issue 5: If the City of Richmond has granted the plaintiff valid Sign Permits to install signage on the north and east fascia of the building, can the defendant restrict the amount of signage the plaintiff installs on the building?

The answer, which has already been given, is in the positive. However, once again, I must say that I do not find it necessary to consider counsel's submission under this issue. It is clear that the Council can restrict the allotment of signage to the unit owners in an equitable manner for the common good of the owners. That is what the Act is all about and is what Council has always proposed.

¶ 451 Issue 6: Whether the Owners' By-law 1333 (the "Sign By-law") is unfair or oppressive, given that the amount of signage for each unit owner is determined in accordance with unit entitlement?

It is noted that Mr. Ellis did not refer to this Issue in his reply. I suspect this was because the Act clearly gives the Council the right to allot signage to the owners, based on unit entitlement. It is not unfair or oppressive for the Council to apply the schedule to the question of the allotment of signage. Nor is the actual equitable method used by the Council unfair or oppressive. I refer, of course, to the available footage simply being divided into seven six-foot panels, one for each unit owner. This is agreeable to the other unit owners and it should be agreeable to Dr. Yeung. It is difficult to see how a Strata Council, doing what it is supposed to do under the Act, looking after the common interests of all the unit owners, can be said to be unfair or oppressive to a dissenting unit owner who wants the bulk of the signage to herself, and to the exclusion of the other unit owners.

¶ 452 I observe that the issue now stated is different from that stated as Issue 6 in counsel's Statement. I do not recall the reason for this. In any event I will note that the answer to all questions contained in Issue 6, 6(a), 6(b) and 6(c) in counsel's Statement are in the positive.

¶ 453 Issue 7: (a) Whether the defendant's restrictions on the plaintiff's signage is oppressive or unfairly prejudicial pursuant to s. 42 Condominium Act?

I have already expressed my opinion that the Corporation's proposed restrictions on Dr. Yeung's signage is neither oppressive or unfairly prejudicial pursuant to s. 42 of the Act or otherwise.

¶ 454 I repeat what I said under Issue Six. I agree basically with Ms. Murray's submission. What the Council was doing was discharging its duty under s. 116(a) of the Act to control, manage and administer the common property for the benefit of all owners.

¶ 455 Issue 8: Whether the ordering of and subsequent removal of the plaintiff's signage by the defendant is oppressive and unfairly prejudicial pursuant to s. 42 of the Condominium Act?

For reasons which I have already articulated, the answer is in the negative. Dr. Yeung never had the right to put up her sign, even if the Resolution of December 15, 1997, and the Signage By-law were invalid, which I am satisfied is not the case. Dr. Yeung put up her sign, perhaps somewhat hurriedly, knowing that an experienced property manager would soon be on the scene and in flagrant disregard for the rights and interests of her fellow unit owners, and of the obligations and directions of the defendant Corporation.

¶ 456 I do not find it necessary to consider Ms. Murray's further submissions with which I am in basic agreement.

¶ 457 While I had some concerns with the question of damages, particularly the question of causation, I do not find it necessary to deal with the question of damages in the circumstances of this case.

XVIII. DISPOSITION

¶ 458 The actions are dismissed with costs.

HOOD J.

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