

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Sidhu v. The Owners Strata Plan
VR1886,***
2008 BCSC 92

Date: 20080124
Docket: S061104
Registry: Vancouver

Between:

**Manjit Sidhu, carrying on business as
Pressed 4 Time Dry Cleaning**

Plaintiff

And

The Owners Strata Plan VR1886

Defendant

Before: The Honourable Mr. Justice Cullen

Reasons for Judgment

The plaintiff, Manjit Sidhu

On his own behalf

Counsel for the defendant

R.A. Fayerman

Date and Place of Trial/Hearing:

October 9 – 12, 15, 2007
Vancouver, B.C.

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INTRODUCTION

[1] This action is for an injunction to prevent, and for damages said to arise from, the defendant wrongfully withdrawing approval for the expansion of the plaintiff's dry cleaning business in units 102, 103 and 104 of the strata property in which the plaintiff has a leasehold interest.

[2] It is the plaintiff's contention that at a meeting held on January 20, 2004 he was given authorization by the strata council to proceed with renovations to his "drop off" dry cleaning facility in unit 104 in order to accommodate a full dry cleaning plant in units 102, 103 and 104. The plaintiff further contends that his authorization to proceed with the expansion was expressly and implicitly confirmed by ongoing conduct and communication of the strata property management company and members of the strata property council between January and the end of August of 2004.

[3] The plaintiff contends he incurred damages due to the capital cost expenditures he made to renovate the space and purchase and install the equipment. He also contends he has lost significant revenues from the unjustified decision to rescind the approval for the expansion of his business.

[4] The defendants, on the other hand, contend that the strata corporation never gave more than an agreement in principle to proceed with the expansion of the plaintiff's business in January 2004 and that that agreement was subject to counsel being able to review all drawings and permits which the plaintiff obtained for his expansion. The defendants say the plaintiff was required to attend a future strata meeting with the appropriate permits and to inform the strata council on the next step to be taken in the

expansion. The defendants say the plaintiff proceeded with his expansion before receiving the necessary permits and without providing counsel with the necessary drawings or consulting with council on the "next step".

[5] The defendants further say that the plaintiff's expansion and renovations were unauthorized and to the extent that they involved alteration of common areas of the property by drilling holes through the exterior wall, it required approval by a special resolution (two-thirds of the ownership of the strata property), which was not given. The defendants contend that the plaintiff's ongoing failure to respond to counsel's requests for copies of the drawings for the expansion/renovation and alterations to the common property without the requisite authorization necessitated withdrawal of the agreement in principle and resulted in actionable damage to the defendants for which they seek redress by counterclaim. The defendants also seek an order compelling the plaintiff to pay fines levied upon him by the strata council for breaches of its by-laws.

THE PLAINTIFF'S CASE

[6] The plaintiff testified on his own behalf and called his wife Kamal Sidhu and brother-in-law, Gurdev Singh and David Tessler who sold him the dry-cleaning equipment for his expansion.

[7] The evidence established that in June 2002 the plaintiff, Manjit Sidhu, entered into prepaid lease agreements in respect of Strata Lots 102, 103 and 104 of Strata Plan 1886. The lots are on the main floor of an 18 storey commercial residential strata premises at 1625 Hornby Street, known as Seawalk North. Unit 104 was located at the rear of the ground floor behind units 102 and 103. From that unit the plaintiff operated a

drop-off dry cleaning facility where customers would take their dry cleaning which would then be sent to another location to be cleaned and then returned to the drop-off for pick-up by the customers. At the time Mr. Sidhu operated two other dry cleaning establishments, one in the Dunbar area, and another in Coquitlam.

[8] At some point, Mr. Sidhu decided to expand his operation in Seawalk North to include a plant to do the dry cleaning on site.

[9] In 2003, before approaching the strata council, he queried of City Hall, whether the zoning permitted him to build such a plant in that area. He was informed that the area was zoned to permit dry cleaning. Following that determination he contacted David Tessler, a sales agent for laundry and dry cleaning equipment at Prairie Distributors to discuss what equipment would be appropriate. Mr. Tessler suggested a hydro-carbon machine which was very efficient and which, it is alleged, would not disperse any pollutants into the air.

[10] Mr. Singh testified that after describing the equipment that Mr. Sidhu would need, Mr. Tessler made a computer drawing of the equipment to present to the property manager. According to Mr. Singh, after the New Year, he had a meeting with Rick Dean, who was at that time the property manager for Seawalk North. He gave Mr. Dean a copy of the drawing and Mr. Dean told him to bring full detailed drawings to a meeting of the strata council and to bring a technician with experience in the field to explain the workings of the equipment.

[11] Mr. Sidhu attended a regular meeting of the strata council on January 20, 2004. According to the agenda for that meeting, which was circulated two to three days before the meeting, he was there "to address strata council on laundromat expansion".

[12] Mr. Sidhu testified that at the meeting, Mr. Tessler described the dry cleaning machine, explained its technology and its environmental impact. He described it as new technology which only required one vent to be outside. Mr. Sidhu testified that Mr. Tessler was asked many questions, all of which were answered.

[13] Mr. Sidhu testified that he asked council if he could put the boiler for the dry cleaning equipment in the parking lot area of the strata property rather than on the first floor. He testified that one of the council members, Alex Boome, objected to that course of action saying that the boiler could not be left unattended in the parking lot area of the building, and there would need to be a firewall put in in the unit that housed the boiler.

[14] Mr. Sidhu testified that apart from that, council seemed happy with the presentation and told him he should deal with the property manager, Rick Dean, in the future.

[15] Mr. Sidhu testified that in the ensuing months he went "a couple more times" to council meetings to ask if he could put a sign in front of his business. The strata objected to the signage that he originally proposed.

[16] At the end of February, Mr. Sidhu contracted with a company to run pipes through walls in his unit and to get estimates. In April, his contractor started to build a platform to install the boiler. Some time around May 19th or 20th, Rick Dean inspected

the site and looked at the platform for the boiler. He told the plaintiff when the lines for the steam are run through the other units, they would have to be covered with a box. Mr. Sidhu testified that Mr. Dean told him that he would provide Mr. Sidhu with matching paint to paint the conduit boxes as he had it left over from painting that was done the previous year. At that time, the proposed holes for the venting for the equipment, according to Mr. Sidhu were marked, showing two inch to three inch proposed holes through the back rear wall. According to Mr. Sidhu, he and Mr. Dean went outside and Mr. Dean told him once the vents were cut, that a canopy should be put on the top and painted.

[17] After that, Mr. Dean took Mr. Sidhu to the parkade in a storage area where he gave him a structural design for the building and pointed out where the paint was. Mr. Sidhu explained the design plans were given to him to ensure that when the holes were drilled, no pillars would be involved.

[18] According to Mr. Sidhu, Mr. Dean also took him to the electrical room because there would necessarily be changes to the electrical system to accommodate the plant. He then gave Mr. Sidhu a key to the storage area and the electrical room and told him that he would give him a letter that would permit him to seek the necessary permits from the City of Vancouver.

[19] Mr. Sidhu said the next day, Mr. Dean showed up and gave him a letter and at the same time, he gave Mr. Dean two drawings for the proposed expansion. Mr. Dean gave him four keys: for the main entrance to the building, the electrical room, the (bicycle) storage room, and the gas meter, which was outside. He told Mr. Sidhu that

the strata had "made approval" and he could go ahead and get the permits, but he did not yet have approval for the signage. According to Mr. Sidhu, Mr. Dean said he would be away for several weeks and that if he did have any problems, he should contact the general manager of the property management company, Bob Adams. Mr. Sidhu testified that Mr. Dean told him to take the permits to the office when he got them from the City of Vancouver.

[20] The letter provided by Mr. Dean is dated May 20, 2004 and it reads as follows:

Thank you for attending the Strata Council meeting held May 19, 2004.

Please be advised that you may continue with your proposed renovations as outlined in the drawings. When your application for a building permit has been accepted by the City of Vancouver please forward a copy to the Strata Corporation along with the necessary insurance.

At this time the Strata Council has not approved the proposed awning/canopy and would request that you look at other options.

Thank you, and if you require further assistance please contact me at your earliest convenience at 604-623-6831.

[21] Mr. Sidhu testified that once he got the drawings for the proposed expansion, he went to City Hall with his contractor, Lillie Family Heating and Plumbing, and together they explained what was being done. Mr. Sidhu testified that the appropriate inspector, Scott Easby, was not available at that time and he was told not to do any drilling of vents until the inspector had seen what was proposed. He said that eventually the inspector came and reviewed the site and directed some changes, after which the contractor carried on with the work that he was doing. At or around the same time, Mr. Sidhu's electrical contractor applied for and received his permit for the electrical wiring as well.

[22] From the applications, it appears that the permit for the platform was applied for on June 17, 2004 and the permit for the electrical work was applied for on July 12, 2004. The building permit for the June 17, 2004 application was issued on July 21st, 2004 and it reads in part as follows:

This building permit which includes the plans marked as forming part of this permit is for the following only:

Interior alterations to provide tenant improvements for this new dry cleaning tenant (#103 & #104) and laundry drop-off (#102) in this existing mixed use building. Scope of work to include construction of a new mechanical platform.

[23] The permit also provided that "permits required in addition to this permit include: electrical, gas fitting." It also provided that "approvals required before permit is completed include R. 102 building inspection Scott Easby."

[24] According to Mr. Sidhu, on August 3, 2004 he was working alone in his shop when Ofelia Sfetcu, the president of the strata council who had chaired the January 20th, 2004 meeting, came into his premises. She asked him how the work was going and enquired whether the woman whom she had seen working in the store previously was his wife. Mr. Sidhu testified he told her that she was and that her name was Kamal. After that, Ms. Sfetcu took the ferry to Granville Island and then returned several hours later with a bouquet of flowers and a card. By then, according to Mr. Sidhu, Ms. Sidhu was at the front desk and Mr. Sidhu and his brother-in-law, Gurdav Singh, were working in the back area of the store. They were getting ready to have the boiler installed. The plaintiff testified that Ms. Sfetcu saw everything there and saw the markings on the wall for the holes to be drilled. He testified that Ms. Sfetcu asked if the two inch line was for water. He said it wasn't for water, it was to vacuum lint when the laundry was being

pressed. He told her the dry cleaning machine was being shipped from Italy and she asked when they would be opening, and he told her it would be at the end of September.

[25] Mr. Sidhu testified that he had a conversation with Ms. Sfetcu about Rick Dean who was no longer the property manager because of some issues that had arisen in relation to his management of the building. According to Mr. Sidhu he asked Ms. Sfetcu if there was any concern about Mr. Dean's actions involving Mr. Sidhu's business and she responded "no, if there was a problem, I would not bring flowers to you".

[26] The card that Ms. Sfetcu gave to the Sidhus reads as follows:

August 3/2004

Dear Kamal & Manjit

On the occasion of the expansion of your business, my husband Roy and I wish you much success and prosperity!

Kind regards,

Ofelia Sfetcu

[27] Mr. Sidhu testified that about 50% of the work for the expansion had taken place as of the first week of August, and that on August 15th, his electrical contractor gave notice that the power would be turned off on August 17th for two to three hours, to allow the necessary electrical changes to be made in order to accommodate the new plant. Mr. Sidhu testified that the property manager who had replaced Rick Dean, Luc Bouliane, told him that he would have to give notice to the other tenants and so he did. Mr. Sidhu testified that when the power was off, Mr. Bouliane was at the premises and watched as the coring to the outer walls was started. He then left the premises and

returned at 3:30 p.m. with no adverse reaction to the coring except to ask that it be cleaned up. Mr. Sidhu testified that next the machinery for the plant arrived and was installed and he testified that at some point, Alex Boome, who was the vice-president of the council came and visited the premises around the end of August. He said Mr. Boome looked at units 103 and 104 and said words to the effect that everything looks fine.

[28] Mr. Sidhu then testified that at the end of that week, they ran the machines to test them, but as they did not have the wiring completed, it was done "directly".

[29] He testified that in the first week of September 2004, the gas line was inspected, as was the boiler. He was advised the equipment was safe to operate but that an annual inspection was necessary.

[30] Mr. Sidhu testified that at the end of August he received a letter from Mr. Bouliane of Atlific Property Management Inc. He said the letter asked where the parking would be, what the working hours would be and how many other locations would be served by the plant. Mr. Sidhu testified that he told Mr. Bouliane that he would run from morning to evening and would service local customers and "from the hotels".

[31] He testified that after that on September 9th, Mr. Bouliane returned to his shop and asked him to return all the keys that he had been given. He returned the keys the following day. He said he then received a letter from the strata corporation's lawyer, who warned him to take no further steps or be fined and he received notice that he was being fined for being in breach of the by-laws.

[32] At that time he was asked for the complete drawings for the renovations and he testified that he hired another electrical engineer and got drawings from his mechanical engineer completed by the end of October. He testified that on November 18th he went to a council meeting with his wife, his contractor (Mr. Lillie) and told the strata council he had the drawings they had asked for and asked them to let him start again because he was suffering loss from the one month delay.

[33] He said he was unable to pay the fines that were being levied against him because his income was stopped and he couldn't afford the fines. He testified that on November 22nd, 2004, he bought the dry cleaning business at 41st Avenue and Dunbar Street and started operating that business.

[34] In January 2005, Mr. Sidhu was given another notice from the strata council to close up the vents because of a complaint from the residents of unit 203 located above the dry cleaning premises, whose balcony was just over the vents.

[35] Prior to that, in November 2004, Mr. Sidhu agreed that the strata could have engineers who they had hired to inspect the premises and to prepare a report. Those engineers came to the premises with Ms. Sfetcu, Mr. Boome and the property manager. They discussed the matter among themselves. He testified there was a discussion about changing the location of the vents and there was also a discussion about a draft testing protocol. He testified that a draft protocol was drawn up and according to him, it was given to him and he was told to sign it. He did not sign it after obtaining legal advice.

[36] Mr. Sidhu denied that he was sent the protocol in order to provide his comments, testifying that it was his understanding that he was required to sign it as it was.

[37] He testified on cross-examination that he first came to know of the Strata Council in January 2004, when he went to the meeting to raise the issue of putting in the dry cleaning plant. He understood at that time that he needed permission to make the alterations he wanted to make. He said that the lawyers he had hired to handle the purchase of the leases of the strata units kept the by-laws of the strata corporation and he did not see them until 2006. He was contradicted on that point by his evidence given at his examination for discovery in August of 2006 when he testified that he received and read the by-laws at the time he purchased the leases for the strata lots. He claimed, however, not to have fully understood what was asked when he gave that answer on his examination for discovery.

[38] Mr. Sidhu denied reading the minutes that he received from the strata council meetings, although he acknowledged he received them at his Coquitlam dry cleaning outlet and he acknowledged that they were sent out on a regular basis.

[39] In relation to the sketch of the equipment presented to the strata council at the meeting in January 2004, Mr. Sidhu testified that Mr. Tessler produced it on his computer, but he acknowledged that he had earlier said on his examination for discovery that it was in fact a hand drawn sketch. He also acknowledged that he undertook to produce the hand drawn sketch for the defendants but did not do so until trial when Mr. Tessler produced the computer generated sketch which he testified was the one given to strata council.

[40] Mr. Sidhu testified that he understood prior to the January meeting that it would not be necessary to have a number of exterior vents because he was contemplating an electrical boiler. He acknowledged, however, that in his examination for discovery, he had agreed that Mr. Tessler told him there would be several exterior vents required. Mr. Sidhu explained that as relating to the difference between a gas and an electric boiler.

[41] He agreed that whatever sketch was shown to the strata council on January 20, 2004, only showed the placement of equipment in the unit, it did not show any exterior vents. He testified that he did not discuss the need for exterior vents with the property manager, Rick Dean, before the council meeting. He initially testified that he did not find out about the need to upgrade the electrical system until April or June of 2004, but agreed that his evidence at examination for discovery that he knew of the need for an electrical system change before the January meeting, was accurate.

[42] Similarly, although he denied knowing before January that there would have to be changes in the gas line, he acknowledged that on his examination for discovery, when he was asked that question, he said "yes", but explained that he "did not fully understand" the question, so he said yes.

[43] He testified that at the council meeting he said nothing about requiring only one hole to be drilled through the building. He said that there was a discussion about venting, but it involved Mr. Tessler explaining what was needed. He said he did not know if there was any discussion about changes needed to the electrical system at that

meeting, but he agreed that previously at his examination for discovery he testified that there was no such discussion and he agreed that that was true.

[44] He testified the January 2004 meeting was 25 minutes long but he conceded that he may have said on discovery that it was about 15 minutes long. He maintained that based on that meeting he was told to "go ahead" with his renovations and to deal with Rick Dean who was the property manager at that point.

[45] It was suggested to Mr. Sidhu that he was given a conditional approval only, based on the provision of proper drawings and permits. He responded that it was his understanding that he was told to give all the information to Rick Dean. He testified that at the time he was given approval, he did not know how many holes would be required but that six holes were in fact drilled in August 2004 but only after he showed the areas to be drilled to Luc Bouliane.

[46] Mr. Sidhu also testified that when Ms. Sfetcu brought her card and the flowers to him and his wife on August 3, 2006 "it was written how big the holes were and she saw the platform for the boiler and saw the vents".

[47] Mr. Sidhu was asked whether he reviewed the minutes from the strata corporation meeting which he attended after they were distributed, but denied he did because his mother had passed away and he was in India for about four to five days following the meeting until the first or second week of February 2004. He agreed however that he would have received the minutes but did not save them. He agreed that he did not ask to see the minutes from Rick Dean or anyone else. He agreed that

he began the renovations in March or April well before he got his building permit in July 2004.

[48] He had a meeting with Rick Dean on May 19th or 20th and gave him two drawings, one by Mr. Tessler and the second by his contractor. The drawings did not show changes to the electrical system or gas line changes or exterior vents, but Mr. Sidhu testified he showed Mr. Dean where the vents would be at that time.

[49] Mr. Sidhu agreed that he went to a second council meeting on June 16, 2004. He said the subject under discussion at that time was the signs for his business. He did not remember being asked for all the permits and "as built" drawings as was reflected in the strata council meeting minutes for June 16, 2004. He testified he was never asked for detailed drawings at that meeting; there was only discussion about his signage. He testified that he thought the drawings he gave to Rick Dean in May were all that was required of him and he did not "really remember" if the drawings he gave to Rick Dean were the same ones he provided to the City of Vancouver for a building permit.

[50] Mr. Sidhu was asked whether he received an email dated July 16, 2004 from Luc Bouliane of the Atlific Property Management Company. The email in question read as follows:

As of the strata meeting of June 16/2004, you were to provide us with the necessary building permits for your construction project and was to be approved by the strata council.

We have not seen the permits and you have continued construction. It is imperative that you supply these permits or we will have to notify the City of Vancouver.

Also, as a reminder, please remove your materials from the electrical room on P1 this weekend.

Please contact my office regarding the permits at 604-790-1957.

[51] Mr. Sidhu denied seeing the email, saying that the email address of KamalSidhu@hotmail.com was "different". He acknowledged being asked at his examination for discovery to provide his email address as of July 2004 and later being ordered to do so by the judge presiding at the pre-trial conference. Mr. Sidhu testified that he gave that email address to his former counsel.

[52] Mr. Sidhu agreed that he received the building permits dated July 21, 2004 some time on or after that date.

[53] He said that before the six holes were drilled for venting, he informed Luc Bouliane and Mr. Bouliane said to him "whatever instructions Rick Dean gave you you can follow". He agreed that the building permit did not refer to coring holes for exterior vents. He recalled that after the holes were drilled, Ms. Sfetcu came by and had a conversation with him about the venting. According to him, she said that other owners had been concerned about the effect of his operation on their property values and he said that she was being pressured by them. Mr. Sidhu did not remember if Ms. Sfetcu took his hand and said words to the effect of "what have you done?"

[54] Mr. Sidhu was asked whether he received a letter dated August 19, 2004 from the property manager. He said he only received one letter and that was in the first week of September. It was dated August 31, 2004. He did not recall receiving the letter dated August 19 or another letter dated September 2nd or two other letters dated September 12, 2004.

[55] The August 19th letter repeated the request for "drawings and information pertaining to [Mr. Sidhu's] laundry and dry cleaning business" and listed the information being sought. The letter informed Mr. Sidhu that if he did not provide the strata council with the requested information by August 25th they would contact the City of Vancouver and confirm that the strata council "has not consented to [his] proposed operations and advise the City to deny the permit to operate the business".

[56] The August 31st letter referred to the August 19th letter and confirmed that as the strata council had not received the necessary information, it had notified the City that it would be withdrawing its consent to Mr. Sidhu's proposed operations.

[57] The letter also asserted that because the corporation "has not received drawings or other pertinent information [it] reserve[s] the right to hire consultants to inspect the premises" and would charge the cost to Mr. Sidhu's strata lot.

[58] Mr. Sidhu testified that after he received the August 31, 2004 letter he was surprised, he didn't recall receiving the letter of September 2nd or three more letters sent on September 12, 2004. He recalled receiving a letter from the strata corporation lawyer on September 13, 2004 and by mid-September he was aware that the strata council was taking issue with his having drilled the holes. He said "that's why I was shocked because Rick Dean had seen it", [referring to the holes].

[59] Mr. Sidhu agreed that he did a test of his equipment on August 26th but he did not notify the strata council. He denied having received the August 19th letter by the time he did the test run.

[60] Mr. Sidhu was referred to questions 499 and 500 of his examination for discovery, which read as follows:

Q Have a look at paragraph 29 of your affidavit. You say in your affidavit on August 19th 2004 (as read):

I received a letter from a Luke Bouliane ... - B-o-u-l-i-a-n-e-“
...alleging that the strata council had not officially approved
the expansion of my laundry business. I was shocked by
this allegation because I was certain that they had approved
my expansion.”

You see that, correct?

A You know, I said I don't really recall these. Some I so remember.
Some I don't remember.

Q Is that a true statement in paragraph 29?

A That, yeah. That because we response back to him, you know.
That I give the letter to show him that because why they making
this ...

[61] His explanation for the inconsistent answer at the examination for discovery was that he didn't understand everything without an interpreter. He said the answers he gave at the examination for discovery were true, but he “didn't remember it now” whether the strata council was taking issue with the holes before the test run on August 16, 2004.

[62] He said he did not do another test run to demonstrate there would be nothing harmful coming through the vents because he was confused and shocked when the property manager took away the keys he had been given and he got a letter from the lawyer for the strata corporation.

[63] Mr. Sidhu agreed that in 2005 there was a meeting of the owners who gave council permission to negotiate to try and resolve the matters between the corporation

and Mr. Sidhu. There was some discussion about moving the vents and in April 2005 Mr. Sidhu made a proposal to council and council responded by letter in May 2005 suggesting a testing protocol. He understood that council was concerned about the emissions from the vents. He agreed that counsel drafted a testing protocol and that he received a copy of the testing protocol. He was asked whether it was for his review and he responded "my understanding was I should sign it and give it back. He said he was the one begging for a solution. He agreed that the solution offered was a testing protocol but he did not sign the protocol because he was concerned that it would take away his rights to not go to court. He said he talked to the president of the strata council requesting that he be allowed to do the testing without signing the protocol. He suggested that the testing be carried out by a City inspector, but he did not want to sign the protocol because he was concerned it would take away his right to go to court.

[64] He testified that after he was aware that council would not accept his proposed resolution, he started to look around for another location to relocate to.

[65] In re-examination, he said he understood that the approval he received was total not "in principle".

[66] Mr. Sidhu called his wife, Kamal Sidhu, and his brother-in-law Gurdav Singh in support of his evidence that they were present on August 3rd 2003 when Ms. Sfetcu, the president of the strata council visited the premises with the card and flowers congratulating them on their new business.

[66] Ms. Sidhu also testified that she was present when Rick Dean was in the premises and told her husband that he had some paint left over from earlier renovations

which could be used in the course of the reservations undertaken with respect to the expansion of the business.

[67] Ms. Sidhu did not testify to showing Ms. Sfetcu the renovations being done or where the pipes would be put through the wall. She testified that Ms. Sfetcu after coming in to the premises with the card and flowers then went up to her apartment to get a vase. At that time, Ms. Sidhu testified that she showed the flowers and card to her husband and her brother, who were in the rear of the premises in suite 104.

[68] Mr. Singh testified that he was in the rear of the shop when Ms. Sfetcu came in and that his sister took her around and "started showing her the new equipment they put in" and "where the pipes were going in the wall". Mr. Singh testified that he thought she was there from between 15 to 20 minutes. He said he was working in the back, cleaning up and just kept working throughout Ms. Sfetcu's visit.

[69] The plaintiff also called David Tessler as a witness. He was a commissioned agent for Prairie Distributors, which sells supplies and equipment to dry cleaning businesses. Mr. Tessler met with the plaintiff who told him he wanted to put a dry cleaning plant in his Hornby Street outlet. Mr. Tessler said he made a plan for Mr. Sidhu showing the layout of the required equipment. Later he was asked to attend the meeting of the strata council in January 2004.

[70] Mr. Tessler testified he showed council a plan of the proposed plant that he had created using his computer drafting program. In response to questions from the council members, Ms. Tessler explained that the plant being proposed was a new expensive plant using an "enviro friendly" fluid, either a hydro-carbon solvent or silicone based

solvent and that there would be no environmental restrictions or odours throughout the process. Mr. Tessler testified that most of the technical questions came from Mr. Alex Boome, who he understood to have an engineering background. Mr. Boome appeared to Mr. Tessler to understand the difference between the "old fashioned plant" and the new plant.

[71] Mr. Tessler testified he was given the impression that Mr. Sidhu was given the "go ahead" for his expansion and he was to coordinate with the building manager.

[72] In chief, Mr. Tessler testified he thought the meeting lasted about one and a half hours and he got "a pretty thorough grilling". He said he was required to modify his drawing to meet the requirement for a conduit for the vacuum, steam return, and air lines between the back room and the centre room. He testified Mr. Boome wanted a conduit with a cap on both ends. That was put in a drawing and subsequently done.

[73] Mr. Tessler testified there was no substantial discussion about vents coming out of the plant at the meeting, only of a one-half inch vacuum hole because they planned to put the boiler in the basement. He testified there was no discussion at the meeting of the need for vents for the boiler because of that fact. It was only later that they learned that the boiler had to go in the back room of Mr. Sidhu's premises.

[74] Mr. Tessler testified that he supplied Mr. Sidhu with a hydro-carbon machine. Those machines have been tested by the underwriter's lab of Canada and since then, the machines have been put into dry cleaning premises without the need of a separate permit. The emissions from the machines consist of CO₂ from the boiler and hot water from a vacuum vent 1 ¼ to 1 ½ inches in diameter, emitting hot moist air, a breather

vent to allow the tanks to achieve a water level to omit the hot moist air, and a boiler safety valve, 1 ¼ inches which would only discharge when tested by a boiler inspector on an annual basis.

[75] At the end of the meeting, according to Mr. Tessler, he didn't recall exactly what was said, but he left the meeting "knowing Mr. Sidhu had to coordinate with the building manager" and believing that "basically" approval had been given. There was no disagreement about venting because it was thought that the boiler would go in the basement at that stage.

[76] Mr. Tessler was asked whether, given there 5 or 6 vents coming through the wall, could the number of vents be reduced. He said the combustion vents cannot be reduced, but with the other vents, with approvals from the Boiler Inspection Branch, they could be condensed and "dumped in the sewer" although it would be difficult to do that.

[77] He testified that there would be virtually no noise level to the operation. The only noises associated with the vacuum vent, when the press is activated it discharges hot air and there might be a "whooshing" noise. Mr. Tessler testified that as far as emissions were concerned, there might be a "whisper of vapour" from the breather vents, depending on the amount of moisture in the air.

[78] He testified that his impression was that by the end of the meeting, counsel were satisfied with the explanation given to them concerning the plant and the equipment. He said the cost of the whole plant was \$140,000 with installation.

[79] Mr. Tessler was asked if he had another meeting with council but responded that if he did, he did not recall the specifics of it. He said there was some discussion about the emissions coming out of the back wall and he thought there was a proposal to let Mr. Sidhu operate the plant so that the council could observe it, but that that never took place.

[80] In cross-examination, Mr. Tessler agreed he made no notes of the January 2004 meeting and he could only recall generally what happened, but could not say what words were used. He agreed that his drafting would not include any draft of electrical systems as that would have to be done by someone else.

[81] He did not recall whether there was any discussion in the January 20th meeting about the location of the boiler in the basement.

[82] He was aware that Mr. Sidhu wanted to service other locations with his plant on Hornby Street and that was the basis of his assessment of what equipment was necessary. He denied that the diagram he showed the council was hand drawn, saying that he had not done a hand drawn sketch in 15 years.

[83] Mr. Tessler did not specifically recall if council was told that Mr. Sidhu wanted to put in a dry cleaning plant, but that was what they were discussing. He said the only exterior venting discussed at the meeting was one vent, because all the others would be downstairs if the boiler was in the basement.

[84] Mr. Tessler agreed there was no discussion of where the vent would be located as of the council meeting as "they had not got that far".

[85] Mr. Tessler said that before the council meeting, he and Mr. Sidhu and Mr. Boome all went to the basement to show him where the boiler could be installed. He said Mr. Boome did not specifically say the boiler could be installed in the basement, but at some point, after January 20, 2004, they realized they could not get the services down there.

THE CASE FOR THE DEFENDANT

[86] The defendant called three witnesses: Ofelia Sfetcu, an owner at 1625 Hornby Street and at all material times the president of the strata council; Rick Dean, the original property manager for 1625 Hornby Street; and Alex Boome, the vice-president of the council at all material times.

[87] Ms. Sfetcu testified that she was a customer at the plaintiff's dry cleaning premises until the end of August of 2004. She was familiar with the premises and testified that suite 104 was located below the patio associated to suite 204. The patio was "limited common property for the exclusive use of the occupiers of suite 204."

[88] Ms. Sfetcu explained that the strata council had monthly meetings after which minutes detailing the issues dealt with would be issued within 7 days. The property was managed by Atlific Management Company, primarily through Rick Dean, who was the property manager for the building. Ms. Sfetcu testified that Mr. Sidhu came to the meeting of the strata council held on January 20, 2004 to seek approval of his proposed renovations. She testified it was not uncommon for owners to seek authorization to make changes in the strata property. The usual course of events would see the owner getting approval in principle from the council for the proposed renovation and then

following up by providing plans or designs and permits for the contemplated renovations. If the alteration involved a significant change to common property, the approval would involve a special resolution requiring a three quarters majority vote in favour of the alteration. If the change to common property was not significant, then council had authority on its own to approve it. It was her evidence that putting holes through the exterior walls would require a special resolution.

[89] Ms. Sfetcu testified that at the January 20th meeting, Mr. Tessler was not identified as a commissioned salesman, but rather as a friend of Mr. Sidhu and it was her recollection that he produced a hand drawn diagram of the equipment that Mr. Sidhu's proposed expansion would entail and there was what she described as a "very preliminary discussion" about the renovations being proposed. She testified that in the result, Mr. Sidhu was told to proceed to get drawings and permits and to come back "and tell us the next step".

[90] She did not agree that the computer sketch produced by Mr. Tessler and made an exhibit in the proceedings was the one shown to council. She said council was told that there would be no emissions from the dry cleaning operation and there was no mention of the word "plant". She said Mr. Tessler said that there would only be one small vent, about 1 ½ inches in diameter and that Mr. Sidhu confirmed that by indicating the size with his finger and thumb.

[91] Ms. Sfetcu described the discussion at the meeting as being very preliminary and said Mr. Sidhu was given only approval in principle. She pointed to a copy of the agenda upon which she had made notes, which said "in principle only in minutes: (1)

professional drawings; and (2) City permits". She indicated that that reflected the fact that council had only given approval in principle and that she wanted that fact reflected in the minutes plus the fact that Mr. Sidhu was asked to produce professional drawings and any permits required.

[92] She testified the minutes of the meeting, which reflected that the approval was "in principle ... as long as all permits and drawings can be reviewed" and that Mr. Sidhu would "attend a further strata meeting with the appropriate permits and inform strata council on the next step" were distributed to all strata owners by at the latest, 7 days following the strata meeting which the minutes relate to.

[93] She testified her expectation from the meeting was that the drop off would be moved from the back to the front of the premises and that professional drawings would be completed and the necessary permits obtained so that council could proceed to consider the proposal.

[94] Ms. Sfetcu testified there was no indication that Mr. Sidhu was contemplating an "indirect" cleaning operation whereby he would bring cleaning from other drop-off locations. She testified there was no discussion about the placement of the boiler or whether there was a requirement to change the plumbing or the electrical system.

[95] She testified the timing of the next step was up to Mr. Sidhu and no future date was agreed upon for him to come back before council at that meeting.

[96] Mr. Sidhu, as it turned out, next came before council on March 17, 2004 in order to get approval for his signage. Ms. Sfetcu testified that that approval was denied and Mr. Sidhu was asked to review his proposal.

[97] There was no further discussion of his proposed expansion on that occasion, nor on May 19th when he then appeared before council to present a proposal "to expand signage and to add a canopy". He was again asked to reconsider his proposal.

[98] On June 16, 2004 Mr. Sidhu presented a new sign which the council approved, and according to Ms. Sfetcu "took the opportunity to remind (Mr. Sidhu) of the need for drawings and permits". The reference in the minutes was for "all permits" and "as built drawings for the next strata council meeting".

[99] Ms. Sfetcu testified that on July 16, 2004, Mr. Bouliane, who had by this time replaced Mr. Dean as property manager, sent Mr. Sidhu an email seeking his permits because the next meeting was coming up and they had not seen any material from Mr. Sidhu in response to the previous request from the June 16, 2004 meeting.

[100] As it turned out, Mr. Sidhu did not attend the next meeting on July 21st, 2004 and accordingly, the minutes of that meeting reflected the following observation:

To date, copies of the necessary permits have not been received. The property manager was asked to contact the City and ensure that all permits are in place and to obtain copies.

[101] Ms. Sfetcu explained that council was starting to get concerned because there had been no communication from Mr. Sidhu for 6 months and they were aware that work was going on in his premises.

[102] Ms. Sfetcu testified that the property manager, Mr. Bouliane, followed up by speaking with and sending an email to a City of Vancouver building inspector on July 22, 2004. The email in question reads as follows:

This email is to confirm our conversation yesterday regarding Hornby Laundry at 1625 Hornby Street, owner Manjeet (sic) Sidhu.

As you know, Mr. Sidhu has not provided the strata council with the building permits, drawings of his proposed construction, electrical inspection etc with regards to his commercial units. He has continued construction despite these requests dating back to June 16, 2004.

Please advise me of the results once you have seen Mr. Sidhu. We certainly would like copies of the above to ensure all is in order. Mr. Sidhu was to supply his own electrical and water installations and ensure seismic upgrade where required.

[103] Ms. Sfetcu testified that eventually, late in August, the strata council did receive a copy of Mr. Sidhu's building permit which was dated July 21, 2004. She testified that before council received that building permit, on August 3rd, 2004, she stopped off at the dry cleaning premises while on her way to Granville Market to do some shopping, to offer congratulations on the development. At the time, Mr. Sidhu and his wife Kamal Sidhu were present when she returned from the market, and she dropped off the congratulatory card and the flowers. On this occasion, Ms. Sidhu was no longer present.

[104] Ms. Sfetcu denied that she was given a tour of the premises or shown where the vents were going to be cut through the exterior wall on that occasion.

[105] At the next strata council meeting on August 18, 2004 the strata council had received only a copy of the building permit issued on July 21, 2004. Accordingly, Mr. Bouliane was asked to send a letter to Mr. Sidhu requesting architectural,

mechanical and electrical drawings and to make a deadline for compliance. It was that letter sent on August 19, 2004 that Mr. Sidhu testified he did not receive.

[106] From Ms. Sfetcu's prospective, the next thing that happened was on August 22, 2004 when she was returning to the building and noticed the vents in the exterior wall leading from the premises in suite 104. She went inside to speak to Mr. Sidhu where he was present with his contractor Mr. Lillie. Ms. Sfetcu testified she took Mr. Sidhu by the hand, led him to the back of the premises and said "what have you done?" According to her, Mr. Sidhu did not respond, except to smile. She then asked the contractor on what authority he had made the vents as the building permit did not contemplate them.

[107] Ms. Sfetcu testified she had no knowledge of any visits by the then property manager to the premises to approve the drilling of holes through the exterior wall.

[108] Accordingly, on August 30, 2004, a letter was sent to Scott Easby of the City of Vancouver to inform him that the strata council would withdraw its approval of the expansion unless they received the information requested of Mr. Sidhu.

[109] The letter read in part:

The building permit, BU429180 issued by the city on July 21, 2004 clearly indicates that the alterations would be for the interior only. In spite of this, Mr. Sidhu has cut holes in the back of the building for exhaust vents for his laundry equipment. This was done without the knowledge or consent of the Strata Council. We also understand that this may contravene the city of Vancouver by-laws.

Attached is a copy of a letter sent to Mr. Sidhu on August 19, 2004, which indicates eleven infractions of the bylaws of the Strata Corporation relevant to his strata units.

It is our understanding Hornby Cleaners ... will operate equipment to supply other premises and will become the drop off point for his other laundry operations. Council will not approve any change to the original approval which was for them to operate a dry cleaning retail business. Nor are they in favour of this being used as a constant drop off area. We would like to know if this contravenes the zoning bylaws for Seawalk North.

[110] Ms. Sfetcu testified that council then sent the August 31, 2004 letter to Mr. Sidhu in follow-up to the August 19th letter. She said council's position on the alterations was that the vents constituted significant changes to common property in breach of the by-laws, particularly by-laws 5 (1) and 6 (1) which read as follows:

5(1) An owner shall obtain the written approval of the Strata Corporation before making an alteration to a strata lot that involves any of the following:

- (a) the structure of a building;
- (b) the exterior of a building;

...

6(1) An owner shall obtain the written approval of the Strata Corporation before making an alteration to common property, including limited common property, or common assets.

[111] Mr. Sidhu did not respond to the letters sent to him on the 19th or 31st of August. Ms. Sfetcu said further letters were sent to him on September 2nd, September 12th, (2 letters) and finally, on September 15th, when the strata corporation's lawyer sent a letter setting forth the strata corporation's position that Mr. Sidhu made alterations to the common property and the electrical wiring without approval and in breach of the by-laws. That letter informed Mr. Sidhu that if he failed to respond within 7 days to the complaint made against him, he could be fined up to \$200 for each breach of the by-law and he could be fined every 7 days for a continuing contravention of a by-law.

[112] According to Ms. Sfetcu, in October 2004, council eventually received two professional drawings showing the venting and electrical changes made as a result of the expansion. Council was expecting another drawing to show the elevation of the venting, but that was not provided in that time frame.

[113] Ms. Sfetcu said that eventually, by the time of the strata council meeting held on October 19, 2004 they "put the puzzle together and informed the rest of the owners what had happened". The October 19, 2004 minutes included the following comments under the heading "Current Business":

- a) Hornby Cleaners – In an effort to resolve issues related to Hornby Cleaners expansion, in September 2004, the Strata Council enlisted the services of McCormack Law Corporation.

The Council was advised that copies of the necessary architectural drawings in graphic color, mechanical and electrical drawings, as well as hours of operation, daily times for drop off and pick up, chemicals to be used and vented, insurance and other pertinent information requested through the Strata Council's lawyer had not been received to date.

The Strata Council noted that Hornby Cleaners have altered the common property without Council approval by coring several vents in the back wall of the building.

As well, the Strata Council noted that Hornby Cleaners continues to be in breach of bylaws 3(4)e, 5(1) and 6(1) and resolved to uphold the assessment of fines as of September 22, 2004.

The Strata Council re-affirmed that until all information requested from Hornby Cleaners has been received and approved, it will withhold approval for Hornby Cleaners to operate its proposed expanded business.

[114] At a special council meeting held on October 26, 2004, the council discussed how to resolve the issue and what course of action to follow and decided to seek further

information from Hornby Cleaners and from the contractor who drilled the holes, to find out on what authority the holes were drilled.

[115] On November 9th, a letter was sent to Scott Easby, the building inspector, to, according to Ms. Sfetcu, "make it clear (the strata council) had not approved these things" referring to the creation of the dry cleaning plant and the venting.

[116] On November 23rd the strata council met again to review some further information and to hire "a group of professionals" to review the information and inspect the site and report to council. The report, prepared by Boni Maddison Architects and CSA Building Sciences (Western) Ltd. was concluded on December 14, 2004 and confirmed that Mr. Sidhu intended to install a "plant" in the building.

[117] Ms. Sfetcu testified that as of December of 2004 the strata council was "in a nightmare situation" because, although there was a plumbing permit for suite 104 only, they had no drawings for plumbing work; there was an electrical permit with no drawings; there was a boiler installed with no gas permit; there was a building permit for interior alterations only, not to include venting; and no occupancy permit would be issued until the outstanding issues between Mr. Sidhu and the strata council were resolved. Additionally, council learned that Mr. Sidhu had approached the City for a parking zoning amendment without consultation with the strata council or the adjacent building.

[118] On January 4, 2005, council had a meeting at which the Gees, the owners of unit 203 located above the venting created for the dry cleaning plant, were present to

express their concerns at the effect of the dry cleaning plant's venting beneath their balcony and the value of their property.

[119] On February 1, 2005 the issue was discussed at a council meeting whether the venting needed to be sealed in order to prevent rain from getting in. Mr. Sidhu was asked to restore the walls. Another issue related to the Hornby Cleaners' signs, for which no City permit had been obtained.

[120] On February 24, 2005 council met again in response to a letter informing it that Mr. Sidhu intended to commence legal proceedings against the corporation.

[121] A subsequent meeting was held on March 24, 2005 involving Mr. Sidhu, his contractor Mr. Lillie, Mr. Blackman, and an engineer by the name of Rob Overland, as well as Ms. Sfetcu and Mr. Boome on behalf of the strata corporation and two representatives of Boni Maddison. There was discussion about the venting and whether the vents could be lowered to pavement level and Mr. Sidhu agreed to rectify the gas and electrical issues. There was also a discussion about establishing a protocol to test the emissions which would issue from the vents.

[122] At the AGM held on March 31, 2005, the owners were informed of the progress towards resolving the issues and were told that if necessary, an AGM would be called to approve any renovations by resolution.

[123] Ms. Sfetcu testified that on May 10th, 2005, the text of a testing protocol was developed at a meeting and later sent to Mr. Sidhu for his comments. Mr. Sidhu refused to comment on the protocol or to discuss it further and he informed the strata

council that he had changed counsel and would sue if he were not given permission to proceed immediately.

[124] Ms. Sfetcu said that she had a call from Mr. Sidhu saying he would not sign the protocol and she responded that it was only a draft and if there was a problem, they could discuss or negotiate it but, she testified, Mr. Sidhu was not willing to discuss it further.

[125] As matters progressed over the summer of 2005, counsel informed the owners of the situation which had developed and on September 20, 2005 a special general meeting was held. Mr. Sidhu did not attend to present his case. Three resolutions were put before the meeting. The first was to accept what Mr. Sidhu had done to the common property and give approval, the second was to start legal action against Mr. Sidhu immediately, and the third was to continue negotiating.

[126] The first two resolutions were not approved; the third was approved with a condition limiting negotiation to 60 days unless progress were achieved, in which case a second special general meeting was to be held.

[127] Ms. Sfetcu testified that as no resolution was achieved through the negotiations, another special general meeting was scheduled for February 1, 2006 and several resolutions were put to the owners. The resolution to initiate legal action was endorsed by more than a three-quarters majority of the owners, but in the meantime, Mr. Sidhu commenced this action and accordingly the defendants responded by way of counter-claim. The defendants in the meantime had notified the plaintiff of fines being imposed on him following from the September 12, 2004 letters.

[128] On March 30, 2005, Mr. Bouliane, on behalf of the strata corporation, sent the following letter to Mr. Sidhu:

Dear Owner:

As managing agents for Strata Corporation VR1886, we write to advise you that the Strata Council finds that you are continuing to breach the following bylaws of the Building:

3. Use of Property
 - (4) External Appearance
 - (e) No laundry, washing, clothing, towels, bedding or other articles shall be hung or displayed from windows, balconies or other parts of the building such that they are visible from outside the building.
5. Obtain approval before altering a strata lot
 - (1) An owner shall obtain the written approval of the Strata Corporation before making an alteration to a strata lot that involves any of the following:
 - (a) a structure of a building.
6. Obtain approval before altering common property
 - (1) An owner shall obtain the written approval of the Strata Corporation before making an alteration to common property, including limited common property, or common assets.

The bylaws also state under Division 4 – Enforcement of Bylaws and Rules that if an activity that constitutes a contravention of a bylaw or rule continues, without interruption, for longer than 7 days, a fine may be imposed every 7 days.

Since seven days have elapsed since your last fine and the contravention of the above captioned bylaws continues, without interruption, you are being fined \$200.00 for each contravention, totalling \$600.00.

The Strata Corporation will continue to fine you every seven days until such time as the property altered is returned to its original state.

Please govern yourself accordingly.

[129] Previous letters similarly constituted were sent to Mr. Sidhu at 7 day intervals from September 22, 2004 when the imposition of the fines commenced.

[130] By August 1st, 2006, the outstanding balance of the fines was \$17,838.67. No further statements were issued. Ms. Sfetcu explained that council was "exhausted with the fining" and "embarrassed to continue". Council "figured once the legal process started, they could "let that take care of it".

[131] In cross-examination, Ms. Sfetcu was referred to the Boni Maddison report in which the following appears:

A short meeting was held with Mr. Bob Adair, Development Planner with the City of Vancouver, to review the file related to this building permit application. R. Adair confirmed that the dry cleaning operation, as described to him by the applicant, is a permitted use in the zoning at 1625 Hornby St. In addition, Mr. Adair noted that the applicant had provided the City with written permission from the property manager representing the Strata Council to conduct the changes proposed. However, Mr. Adair noted that the City has requested an elevation drawing from the Applicant showing the changes to the exterior of the building related to the venting of the equipment on the west side of Unit 104. Final occupancy of the premises will not be granted until this drawing is provided and satisfies the Planning Department.

[132] Ms. Sfetcu testified that what was contemplated at the time referred to in the report was a direct laundry operation in which laundry would be dropped off up front and cleaned in the back. There was no understanding that it would be a plant servicing other locations.

[133] Ms. Sfetcu was asked about the fine imposed on Mr. Sidhu's operation for breach of the by-law prohibiting clothing from being hung in windows or otherwise

displayed. She said that council asked Mr. Sidhu to use discretion "so he has installed blinds so we have reached agreement".

[134] Ms. Sfetcu was asked about the letter of May 20, 2004. She agreed a copy was sent to the strata council and it was never revoked. She testified the letter was written in order to facilitate Mr. Sidhu getting the approval of the City so there was no reason to revoke the letter. She disagreed that by that letter he was given full approval to go ahead, rather she testified he was given approval to get the permits.

[135] Ms. Sfetcu denied that there was bias in fining Mr. Sidhu for hanging clothing following his renovation and not before, explaining that before the renovation the cleaning was hung in the rear of the premises, whereas following the renovation it was hung in the front and was exposed to public view.

[136] She testified the property manager was only instructed to "withdraw the keys" which had earlier been given to Mr. Sidhu, when council became aware that major changes would be made to his operation which had not been anticipated.

[137] In relation to the congratulatory card she gave to the Sidhus, Ms. Sfetcu explained that she gave it as a customer, not as a member of council, and it was before she realized there was going to be significant venting as a result of the expanded operation. She denied going to the rear of the premises or seeing any proposed venting when she delivered the card.

[138] Alexander Boome was an owner of a unit at 1625 Hornby and at all material times a member of the strata council. He is a professional mechanical engineer and

was present at the meeting of January 20, 2004 when the plaintiff's proposal was discussed. He testified that he had no prior knowledge of the proposed expansion until the meeting and had had no meeting concerning the expansion with anyone prior to the meeting date. His description of the January 20th meeting was that Mr. Sidhu was there with a supplier and they presented a preliminary sketch of what they wanted to do with the expansion using "a new non-polluting process". According to Mr. Boome, Mr. Sidhu said there would be only one small hole required as a result of the expansion.

Mr. Boome testified that counsel told Mr. Sidhu it would need proper drawings and equipment specifications. The preliminary sketch was passed around and then taken away by Mr. Tessler. Mr. Boome described it as a rough conceptual sketch of equipment, not a detailed drawing.

[139] Mr. Boome testified he thought it would be "nice" for Mr. Sidhu to expand his business and council asked him for additional drawings and equipment description. He himself drew no conclusions about the equipment because he was not familiar with it.

[140] Mr. Boome denied there was any discussion about a boiler or where it was to be placed. He said there was no discussion about a boiler being located in the garage/basement area. He testified if there were such a discussion he "would have said it was unsafe". There was no boiler in the sketch handed out to council and the only discussion about venting was that there would be a small "completely benign hole". He denied there was any discussion as to where the hole would be located.

[141] He testified the presentation was "quick" and it was left that it was a good idea, it was approved in principle, but Mr. Sidhu was to submit mechanical, plumbing and electrical drawings, etc. so that council could look at it.

[142] Council did not tell Mr. Sidhu to "go ahead" and do the renovations, nor did it use words to that effect. According to Mr. Boome, Mr. Sidhu was told to provide plans and permits before taking further steps.

[143] He testified that previous applications to renovate involved only private, not commercial, applications and council did not even know if the City of Vancouver by-laws would permit the expansion that Mr. Sidhu was proposing.

[144] Mr. Boome testified there was no discussion about changes to common property although the "little hole could be perceived that way". There was no discussion about drilling holes through the back wall.

[145] Mr. Boome testified the expectation was that council would be presented with proper drawings, equipment catalogue cuts or submittals, and that Mr. Sidhu would get proper building permits.

[146] He testified nothing happened thereafter and council did not receive any further information until months later when they got information regarding the boiler installation. He testified the matter was continually discussed at council meetings on an ongoing basis.

[147] On cross-examination, Mr. Boome said he had never designed a dry cleaning plant. The only components he was aware of were an iron and washing machine and

"that kind of thing". He testified the sketch showed some pieces of equipment for the plant, but he had no idea what pieces of equipment were involved. He denied that he assumed the role of a "technical rep" for council, he said he probed about what was being proposed because he did not understand what the equipment is or was.

Mr. Boome said he was not aware of what power or other services the equipment would require and what an owner would do in such circumstances is submit proper electrical drawings to show the requirements, but council was not provided with that information.

[148] Mr. Boome stated that there never was any discussion about the boiler until much later when an engineer named Bob Overland provided information on behalf of Mr. Sidhu.

[149] Mr. Boome denied emphatically that he went with Mr. Tessler or Mr. Sidhu to the garage to discuss the installation or location of a boiler there.

[150] Rick Dean was the property manager for the property management company responsible for the building at that time, Atlific Property Management Company. He attended the strata council meetings on an ongoing basis and was present at the meeting of January 20, 2004 when Mr. Sidhu made his presentation regarding the expansion of his business. Mr. Dean testified that a rough sketch was put before council, but he did not recognize the computer drawing that Mr. Tessler produced from his file and submitted to the court as the sketch in question. He testified that Mr. Sidhu and Mr. Tessler presented the equipment as "environmentally friendly" and he understood the equipment was "self-contained" and there would be no need for ventilation. He testified there were no specifications on the equipment and council

wanted more. He did not recall any discussion about gas lines and thought there may have been only minor discussion about the electrical system. He confirmed that council wanted to see "all drawings, permits, licenses" so as to comply with the **Strata Property Act**, S.B.C. 1998, c. 43 ("**SPA**"). He thought the presentation was a little over an hour, and Mr. Sidhu was asked to come up with formal drawings, and council told him to go through him (Rick Dean) when he provided all the material back to council.

[151] Mr. Dean testified he was at the building quite frequently and Mr. Sidhu told him he needed a letter to go to the City to get his permits, so he sent him the letter dated May 20, 2004. Mr. Dean said that around that time he went to Mr. Sidhu's premises and Mr. Sidhu pointed out where the equipment was going to be located. They talked about how the equipment would be connected between units, but they did not talk about any effect the installation of the equipment would have on common property. Mr. Dean did not ever recall being shown markings on the wall for external vents and he denied talking to Mr. Sidhu about putting a canopy over the vents. He only spoke to Mr. Sidhu about a canopy at the front of the building.

[152] Mr. Dean testified that he would have given Mr. Sidhu paint if they had it, to help keep everything consistent. He gave Mr. Sidhu structural drawings to help him and his engineer to draw up plans for the equipment so they "wouldn't drill into a pillar". He did not remember discussing about drilling through the back of the building.

[153] Mr. Dean agreed that he took Mr. Sidhu into the electrical room and gave him the keys to it. According to Mr. Dean that was to assist with the engineer's plans and to

complete the drawings of the changes needed. He denied receiving any drawings from Mr. Sidhu following the January 20th meeting.

[154] Mr. Dean said he had no authority to tell Mr. Sidhu to “just go ahead”. He needed to get what plans Mr. Sidhu gave him to the council and the only thing that Mr. Dean could give him was the letter that allowed him to go to the City to get the permits. Mr. Sidhu asked for the letter around the beginning of May. Mr. Dean testified that the City would not allow a permit without a letter from strata council saying that he had approval, but he still had to come back to council after he had the permits and show his plans to get final approval.

[155] Mr. Dean said the phrase “as outlined in the plans” in the May 20th letter referred to the little handwritten sketch given to council. He testified there were no other drawings.

[156] He said he had no authority to give an owner permission to drill through exterior walls because it affected common property and that needed at 75% vote to change the exterior walls. He said if that was needed, there would have to be a special general meeting and there would have to be plans produced. The structural plans which he gave to Mr. Sidhu were to help get his professional drawings done. Mr. Sidhu still had to come back to council for its consent.

[157] On cross-examination, Mr. Dean said that the reference in the May 20th letter to drawings (in the plural) was a typographical error. He said it referred to the one rough sketch. He denied giving keys to Mr. Sidhu in order to allow the contractor to proceed – it was “just for the drawings”. Mr. Dean did not remember whether Mr. Tessler and/or

Mr. Boome were present when he took Mr. Sidhu to the electrical room, he testified "it's possible, I just don't remember". He denied recalling any discussion about vents or a boiler, although he believed a boiler would need a safety vent.

[158] He testified that, to his knowledge, the equipment being discussed by Mr. Sidhu did not require a boiler. It was self-contained so it "did not need any of that stuff". He assumed that if there was a boiler being installed, it would have been discussed at some point.

DISCUSSION AND CONCLUSION

[159] What divides the parties in this action is whether the strata council gave more than conditional approval, or approval in principle, to Mr. Sidhu to proceed with the expansion of his dry cleaning operation such that it caused him actionable harm when, in late August of 2004, they informed him and the City of Vancouver that no consent was granted for his expansion and advised the City to deny him a permit to operate his business.

[160] Mr. Sidhu claims that he received approval to proceed at the strata council meeting of January 20, 2004, which was confirmed by Rick Dean's letter to him dated May 20, 2004, and in reliance on that approval, he spent significant sums of money renovating his premises and financing and purchasing equipment. He further asserts he has lost profit or the opportunity for profit because he has been unable to operate his expanded business.

[161] For its part, the defendant strata corporation contends that the evidence establishes no more than that Mr. Sidhu was given approval in principle to proceed with his expansion, subject to providing council with professional plans and drawings and permits from the City of Vancouver. The defendant contends that what was approved in principle on January 20, 2004 and in relation to which the May 20, 2004 letter was written, was significantly different from what Mr. Sidhu was actually undertaking with his expansion. The defendant says Mr. Dean's letter was simply to accommodate Mr. Sidhu's application for permits and it was never understood, because it was never communicated to council, that Mr. Sidhu's intention was to install a plant to serve other outlets requiring 6 holes to be drilled through an exterior wall with unknown associated emissions or noise.

[162] The defendant says, in contrast to the position of the plaintiff, that his alterations, including those to the gas system, the electrical system, the plumbing system, and the exterior wall, constituting common property, were done without authorization and, with respect to the latter, in breach of the by-laws of the corporation. The defendant seeks orders remediating the unauthorized changes wrought by the plaintiff's expansion and judgment for the fines imposed upon him for breach of by-laws 5 and 6 of the strata corporation by-laws.

[163] I am not satisfied on a balance of probabilities that the plaintiff has made out his case that there was an agreement in place between the strata corporation and himself authorizing the nature and extent of the expansion which he ultimately pursued. In the first place, there is no evidence that at the January 20, 2004 strata council meeting council was told that the proposed expansion would serve other outlets or involve a

modification of the city's parking by-laws. In the second place, the evidence supports the conclusion that it was anticipated that only one vent or hole would be needed to be drilled to accommodate the operation Mr. Sidhu was proposing, instead of the 6 holes that were ultimately cored through the exterior wall. In the third place, the contemporary records, including Ms. Sfetcu's handwritten notes on the agenda, and the subsequently distributed January 20, 2004 meeting minutes corroborate the evidence called on behalf of the defendant that the approval given to Mr. Sidhu was in principle only and required him to return to council with professional drawings and permits so that council knew what it was dealing with and could respond accordingly.

[164] Moreover, although on its face, the May 20, 2004 letter appears to authorize the renovations without more, when that letter is considered in the context of the ongoing discussions about and attempts to obtain Mr. Sidhu's permits and drawings reflected in the minutes and otherwise, the explanation given by Mr. Dean and Ms. Sfetcu is reasonable. In other words, I accept that the letter was written to facilitate Mr. Sidhu's application to the City for permits, not to give him absolute authorization to proceed without providing the required information to council and consulting with it further.

[165] Mr. Sidhu's evidence that he gave Rick Dean two drawings in May 2004 before receiving the letter must be assessed in light of the fact that the minutes of the June 16, 2004 strata council meeting reflect that he was asked for "all permits" and "as built drawings for the next meeting" and that was followed by an email to him requesting that he supply the permits at risk of council withdrawing its consent for his expansion.

[166] No drawings said to have been provided to Rick Dean in May 2004 were produced at trial by the plaintiff. Mr. Sidhu testified that the drawings which he did provide to Mr. Dean did not show changes to the gas lines or the electrical system, and did not show any exterior venting. He testified one of the drawings was produced by Mr. Tessler and it was different from what was shown to the strata council on January 20, 2004.

[167] The computer generated drawing produced at trial was dated January 27, 2004. Ms. Tessler explained that he believed the date may have related to when he updated the drawing or when he transferred it from his desktop computer to his laptop computer. There is thus no clear indication of what was shown to council on January 20, 2004 or what, if anything, was shown to Rick Dean in May, 2004. It appears clear, however, that what was shown did not show the full nature and extent of the renovation being undertaken as Mr. Tessler agreed that all that his diagram showed was the placement of equipment.

[168] So far as the evidence that Ms. Sfetcu visited the plaintiff's premises on August 3, 2004 and gave him and his wife a congratulatory card and flowers is concerned, I do not accept that that constitutes confirmation that Mr. Sidhu had received unconditional approval for his expansion. It is clear from the minutes of the June 16, 2004 strata council meeting that council was still looking for drawings and permits and on July 21, the minutes reflected they had not received copies of the necessary permits to that date. On July 22, Mr. Bouliane wrote to the City of Vancouver with a copy to Ms. Sfetcu expressing concern that Mr. Sidhu "had not provided the strata council with the building permits, drawings of his proposed construction, electrical inspection, etc." Moreover, it

is clear that on August 18, 2004, before the vent holes were discovered, council determined that it was necessary to demand "architectural plans in graphic colour, mechanical and electrical drawings as well as hours of operation and daily times for drop-off and pick-up." Thus, in that context, in my view, Ms. Sfetcu's offer of congratulations on the expansion cannot be regarded as an indication that she or council had given an unqualified approval to the nature and extent of the expansion being pursued by Mr. Sidhu. Given Ms. Sfetcu's reaction to seeing the cored holes on August 22, 2004, I accept that she was not made aware on August 3, 2004 that such holes were to be drilled.

[169] So far as Mr. Sidhu is concerned, it is difficult to accept that he was oblivious to council's attempts to have him provide them with information concerning his expansion, as the minutes of the council meetings reflect. Further, his explanation that the email sent to him at the email address associated to him did not reach him as it was the wrong email address is compromised by the fact that, although requested at his discovery in August 2006 to provide his actual email address, he failed to do so. Similarly, his evidence that he did not read the minutes from the January 20, 2004 meeting, misunderstood what he was being asked about in the May 19, 2004 meeting and did not receive the August 19, 2004 letter (in contrast to his examination of discovery evidence that he did), further compromises the reliability of Mr. Sidhu's testimony and, where it conflicts with that of Mr. Dean or Ms. Sfetcu, I accept their evidence over his. In the result, therefore, I am not satisfied that the plaintiff has proved that he had the consent or authorization of council to undertake and complete the renovations which he did. Accordingly, I dismiss his action against the strata

corporation for breach of the agreement, to permit him to expand his business in the way that he has, or to drill the vent holes through the rear of the premises.

[170] I am satisfied on the balance of probabilities that the coring of the 6 holes through the exterior wall of the plaintiff's unit were unauthorized and in violation of the by-laws of The Owners, Strata Plan VR1886 and the standard by-laws of the **SPA**. I am further satisfied on a balance of probabilities that the alterations represent a significant change in the use and appearance of the common property as set forth in s. 71 of the **SPA** which reads as follows:

71 Subject to the regulations, the strata corporation must not make a significant change in the use or appearance of common property or land that is a common asset unless

- (a) the change is approved by a resolution passed by a 3/4 vote at an annual or special general meeting, or
- (b) there are reasonable grounds to believe that immediate change is necessary to ensure safety or prevent significant loss or damage.

[171] Although, because the plaintiff did not agree to the testing protocol, I have no objective evidence of the effect of the venting on the use of the common property, I conclude that the appearance of the events and the nature of their function - to expel emissions from a dry cleaning plant - are sufficient to constitute a significant change in the appearance and use of the common property, giving rise to the right to a remedy. I make that declaration and a declaration that the alterations to the exterior wall were unauthorized and in breach of the by-laws of The Owners Strata Property VR1886 and the standard by-laws of the **SPA**.

[172] In its counter-claim, the defendant seeks judgment on the fines levied by the strata council for breaches of by-laws 5 and 6.

[173] I will not order judgment for the total fines levied by the strata council. In the first place, it would not be appropriate to order payment of the fines levied for displaying laundry in contravention of by-law 4(e) as that was not pleaded, and, in any event, on the evidence it appears the issue of Mr. Sidhu displaying the laundry was remedied by his agreement to put blinds on the windows of his premises. I further would not order fines for breaches of both by-laws 5 and 6, as both by-laws refer to the same act as a contravention - that is the drilling of holes through an exterior wall. In my view, to order recovery of judgment for breach of both by-laws would in effect allow the strata corporation double recovery. I therefore would reduce the amount of the judgment for fines owing by two-thirds and order that the plaintiff pay to the defendant two-thirds of the sum of \$17,838.67 representing the fines imposed between September 28, 2004 and August 1, 2006. The amount owing is therefore \$5,946.22.

[174] I would not order judgment for any liability for fines beyond that date as no fines were in fact imposed after August 1, 2006.

[175] In submissions, Mr. Sidhu raised the issue of whether the by-laws were/are applicable to commercial premises such as his, or were only applicable to the residential premises. However, that defence was not pleaded in defence to the counter-claim and accordingly, I would not give effect to it.

[176] In relation to the unauthorized authorizations made by the plaintiff, the defendants sought the following orders:

1. Within 30 days, the plaintiff provide to the defendant, through defence counsel, detailed drawings from accredited professionals, showing the state of the electrical system, gas lines and plumbing systems in the plaintiff's three strata lots and in the common property, to be provided at plaintiff's expense.
2. After receipt of drawings, the defendant be at liberty to have a person or persons, as considered necessary, to inspect the three units and common property to determine whether the changes to the electrical system, gas lines and plumbing system are consistent with the drawings. The defendant also seeks an order permitting access to the person or persons conducting the inspection to the premises in question. The defendant also seeks that the inspection be conducted at the plaintiff's expense.
3. If the drawings are not consistent with the alterations as revealed by the inspection, the defendant would be at liberty to obtain a new set of drawings by accredited professionals at the sole cost of the plaintiff, in order to show the current state of the electrical, gas and plumbing systems in the 3 strata lots and in the common property.
4. If the plaintiff does not provide drawings as ordered, then the defendant is at liberty to retain accredited professionals, as necessary, to inspect the premises and the common area and prepare drawings at the sole cost of the plaintiff to detail the electrical, gas and plumbing systems of the three units and the common area. The defendant also seeks an order

- permitting access to the accredited professionals to conduct the necessary inspection and make the necessary drawings.
5. The strata council be at liberty to restore the exterior venting in the west wall of unit 104 to its original condition and that access be provided for that purpose all at the sole cost of the plaintiff.
 6. An order that any changes to the common property, other than the vents, may be restored to its original condition by the defendant at the sole cost of the plaintiff and an accompanying access order to effect that restoration be granted as well.
 7. An order for the reimbursement of the defendant for the cost of the Boni Maddison report.
 8. An order that the plaintiff pay the reasonable costs of Adrienne Murray incurred in September 2004 to deal with the unauthorized alterations made by the plaintiff and that there be a reference to the Registrar to determine her reasonable legal fees.
 9. A permanent injunction preventing the plaintiff from altering common property at 1625 Hornby Street, without the consent of the strata council or the owners, depending on the nature of the alterations.
 10. An order that the plaintiff be enjoined from dealing with, by disposing of or encumbering, his leasehold interest in strata lots 1, 3 and 4 of Strata Plan VR1886 until the common property, including exterior vents, in the

common wall of 104 are restored to the defendant's satisfaction and paid for by the plaintiff, or until further order of the court.

[177] The defendant also seeks costs of this action, arguing that s. 133(2) of the *SPA* justifies awarding actual costs "either a full indemnity or something more than Scale B tariff costs". The defendant argued that special costs were appropriate in any event, citing the lack of disclosure of plans and permits, leading to the unauthorized drilling of holes in the exterior wall, as deserving of rebuke in keeping with the principles in *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 9 B.C.L.R. (3d) 242, 45 BCAC 222.

[178] The defendant also sought costs thrown away on two 18A applications set down and adjourned by the plaintiff: the first set for November 23 and 24 and adjourned November 9; and the second, set for February 15 and 16, 2007 and adjourned January 24, 2007 by the plaintiff. As well, the defendant brought an application for costs in respect of an application before Rice J. on April 17, 2007 where it sought a peremptory date for the hearing of the 18A's and sought the costs thrown away in relation to the two earlier 18A applications. In the result, Mr. Justice Rice declined to order a peremptory date and ordered that the application for costs thrown away, be adjourned to the trial of this matter and that costs of the motion before him similarly be adjourned to the trial of this matter.

[179] I have concluded it would be appropriate to make the orders sought by the defendant in subparagraphs 1, 2, 3, 4, 5 and 6 above, in the terms set out in those subparagraphs. I base my conclusion that those orders are appropriate on my finding that there has been a breach of the defendant's by-laws and that the defendant is

obliged under s. 133 of the **SPA** to remedy that contravention. Section 133 reads as follows:

133 (1) The strata corporation may do what is reasonably necessary to remedy a contravention of its bylaws or rules, including

- (a) doing work on or to a strata lot, the common property or common assets, and,
- (b) removing objects from the common property or common assets.

(2) The strata corporation may require that the reasonable costs of remedying the contravention be paid by the person who may be fined for the contravention under section 130.

[180] In my view, the orders above, sought by the defendant, comport with the requirements of s. 133(1) and should therefore be made.

[181] With respect to the orders sought in sub-paragraphs 7 and 8, relating to the reimbursement of the costs for the Boni Maddison report and the reasonable costs of Adrienne Murray, incurred in September 2004, the latter to be determined by reference to the Registrar, I would similarly grant the orders sought by the defendant, pursuant to the provisions of s. 133(2) as I conclude that those expenditures were incurred as part of the strata corporation's attempt to remedy the plaintiff's contravention of its by-laws.

[182] With respect to the relief sought in sub-paragraphs 9 and 10, I shall, as well, grant those orders in the terms set out in those sub-paragraphs as I am satisfied that they are justified to enforce the remedies granted in connection with the plaintiff's contravention of the defendant's by-laws.

[183] Insofar as costs of this action are concerned, I can see no justification for ordering special costs. In my view, the conduct of the plaintiff, while amounting to a

contravention of the by-laws identified, simply does not ascend to the level of reprehensible or egregious behaviour, justifying an award of special costs. I therefore decline to give effect to the defendant's application for special costs, and in my opinion, the costs awarded should be at Scale B.

[184] As far as the defendant's application for costs thrown away is concerned, I will grant that order in relation to the 18A application set for November 23 and 24, 2006, but not for the application set for February 15 and 16, 2007, as I conclude that in respect of the latter hearing, the adjournment was in sufficient time to avoid preparations not already expended in relation to the November 23 and 24 hearing. I would order each party to bear their own costs of the application before Mr. Justice Rice on April 17, 2007. The defendant is entitled to interest pursuant to the ***Court Order Interest Act***, R.S.B.C. 1996, c. 79.

"A.F. Cullen J."
The Honourable Mr. Justice A.F. Cullen

54P.