# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *1049442 B.C. Ltd. v. The Owners, Strata Plan LMS 1669,* 2019 BCSC 1462

Date: 20190712
Docket: S185501
Registry: Vancouver

Between:

**1049442 B.C. Ltd.**

Petitioner

And

**The Owners, Strata Plan LMS 1669**

Respondent

Before: The Honourable Mr. Justice Branch

## Oral Reasons for Judgment

In Chambers

| | |
|---|---|
| Counsel for the Petitioner: | M. Lithwick<br>K. MacEwan |
| Counsel for the Respondent: | J. Kinghorn |
| Place and Dates of Hearing: | Vancouver, B.C.<br>November 29, 2018, May 21, 2019,<br>July 3 and July 12, 2019 |
| Place and Date of Judgment: | Vancouver, B.C.<br>July 12, 2019 |

## I. INTRODUCTION

[1] This is a further hearing in a proceeding under the *Strata Property Act*, S.B.C. 1998, c. 43 [*SPA*]. The petitioner is the owner of two strata units within the respondent strata corporation. The petitioner seeks the appointment of an administrator under s. 174 of the *SPA* as well as certain remedies addressing the parking regime on the basis of alleged unfair acts pursuant to s. 164 of the *SPA*.

[2] In an oral judgment dated August 24, 2018 and reported at 2018 BCSC 1631 (the "Reasons), I found that the petitioner had not, at that time, met the standard for an appointment of an administrator. However, I found that there was sufficient evidence to support certain orders under s.164, some of which issued on consent. On November 29, 2018, the parties consented to an interim parking plan. Unfortunately, the parties have still not been able to resolve their ongoing difficulties, particularly as it relates to the parking regime. The parties are now back before the court for a fresh assessment as to whether an administrator should now be appointed, and whether other orders more specifically allocating parking spots should be made.

## II. THE LAW

[3] The applicable provisions of the *SPA* are as follows:

> **Appointment of administrator**
>
> **174** (1) The strata corporation, or an owner, tenant, mortgagee or other person having an interest in a strata lot, may apply to the Supreme Court for the appointment of an administrator to exercise the powers and perform the duties of the strata corporation.
>
> (2) The court may appoint an administrator if, in the court's opinion, the appointment of an administrator is in the best interests of the strata corporation.
>
> (3) The court may
>
> (a) appoint the administrator for an indefinite or set period,
>
> (b) set the administrator's remuneration,
>
> (c) order that the administrator exercise or perform some or all of the powers and duties of the strata corporation, and
>
> (d) relieve the strata corporation of some or all of its powers and duties.

> (4) The remuneration and expenses of the administrator must be paid by the strata corporation.
>
> (5) The administrator may delegate a power.
>
> (6) On application of the administrator or a person referred to in subsection (1), the court may remove or replace the administrator or vary an order under this section.
>
> (7) Unless the court otherwise orders, if, under this Act, a strata corporation must, before exercising a power or performing a duty, obtain approval by a resolution passed by a majority vote, 3/4 vote, 80% vote or unanimous vote, an administrator appointed under this section must not exercise that power or perform that duty unless that approval has been obtained.

[4] In *Lum v. Strata Plan VR519*, 2001 BCSC 493 at para. 11, the court provided the following factors informing the exercise of the court's discretion as to whether to appoint an administrator:

> (a) whether there has been established a demonstrated inability to manage the strata corporation,
>
> (b) whether there has been demonstrated substantial misconduct or mismanagement or both in relation to affairs of the strata corporation,
>
> (c) whether the appointment of an administrator is necessary to bring order to the affairs of the strata corporation,
>
> (d) where there is a struggle within the strata corporation among competing groups such as to impede or prevent proper governance of the strata corporation,
>
> (e) where only the appointment of an administrator has any reasonable prospect of bringing to order the affairs of the strata corporation.

[5] Generally, courts are reluctant to interfere with the democratic governance of a strata community except where absolutely necessary. The cost of involving an administrator is also a factor to be considered.

[6] As noted, the specific parking remedies are sought under s. 164 of the *SPA.* That section provides as follows:

> **Preventing or remedying unfair acts**
>
> **164** (1) On application of an owner or tenant, the Supreme Court may make any interim or final order it considers necessary to prevent or remedy a significantly unfair
>
> > (a) action or threatened action by, or decision of, the strata corporation, including the council, in relation to the owner or tenant, or

> (b) exercise of voting rights by a person who holds 50% or more of the votes, including proxies, at an annual or special general meeting.
>
> (2) For the purposes of subsection (1), the court may
>
> (a) direct or prohibit an act of the strata corporation, the council, or the person who holds 50% or more of the votes,
>
> (b) vary a transaction or resolution, and
>
> (c) regulate the conduct of the strata corporation's future affairs.

[7] The proposed parking orders also engage the provisions of the *SPA* relating to limited common property and exclusive use of common property. The strata submits that the court cannot make the proposed parking orders because it would require the conversion of common property to limited common property. Pursuant to ss. 73 and 74 of the *SPA,* common property can only be designated as limited common property through a vote of the strata members. The strata notes that it may grant an owner temporary exclusive use of common property for no more than one year under s. 76 of the *SPA.* The court's jurisdiction to issue orders in respect of the parking spaces is discussed further below.

## III. CONDUCT OF THE STRATA CORPORATION

[8] Several strata issues have been ongoing, or have arisen, since my previous judgment.

### A. 2018 and 2019 Budgets

[9] My previous judgment included an order that the strata pass a budget within 60 days. The strata did not comply with that order. The 2018 budget was only passed after the 2018 year ended, specifically at the February 28, 2019 AGM. This budget simply reflected what had in fact occurred in 2018. The strata was then unable to pass a 2019 budget at the AGM, in the face of dueling proposals. A 2019 budget was finally passed at a March 2019 SGM.

### B. Costs

[10] At the last contested hearing, I awarded costs to the petitioner at Scale B. The petitioner provided the strata with a certificate of costs in the amount of $5,692.94. The strata failed to pay the petitioner and thus, an appointment was set

down for February 21, 2019. Two hours prior to the hearing of the appointment, the strata consented to the costs. However, the strata still has not paid the amount. At a May 20, 2019 SGM, the strata did pass a special levy to raise funds to pay the costs award.

### C. Outstanding Strata Fees

[11] At the time of my earlier Reasons, there were roughly $34,000 in strata fees owing. This caused the strata financial strain, as it amounted to approximately one-third of their annual revenue. According to the strata financial statement for August 31, 2018, the aged receivables were in the range of $35,430.23. A significant portion of that amount ($27,860.26) were fees that had been owing for over 90 days.

[12] The strata consented to an order that it would take steps to collect all outstanding fees forthwith.

[13] The property manager sent letters out to owners with unpaid strata fees on September 13, 2018, but no other steps were taken for months thereafter.

[14] The council only initiated a more formal collection process in relation to the unpaid strata fees through the issuance of lien warning letters under s.112 of the *SPA* following a vote on January 29, 2019, resulting in the delivery of letters on February 12, 2019.

[15] According to the financial statement for March 31, 2019, the aged receivables had reached $39,537.83 (the “March Financial Statement”). According to the March financial statement, the owners in arrears included three members of council, specifically:

a) Michael Gao, Council President, in the amount of $7,690.35 (through his company, Legend Holding Gr Ltd.);

b) Joyce Chang, Council Vice President, in the amount of $5,457.35; and

c) Jun Chen in the amount of $563.36.

[16] No further steps have been taken to move forward with collection enforcement since the s. 112 letters were delivered. Certain amounts have been collected, including from the latter two council members noted above. However, the amount payable by Michael Gao had still not been paid as of the May 21, 2019 hearing.

### D. Overpayment of Strata Fees by the Petitioner

[17] Prior to the Reasons issuing, the respondent conceded that the petitioner had overpaid strata fees and consented to an order for the return of $28,153.09 over a period of 12 months. However, the strata did not follow the terms of the order to which it had consented. Payments were not made monthly. They were only paid on March 6, 2019. The payment made, along with the sum of $7,001.48 for reimbursement of the petitioner's proportionate contributions, came from the Contingency Reserve Fund ("CRF").

[18] By letter dated March 21, 2019, the petitioner advised the strata of its position that the compensation was incorrectly calculated as the petitioner had also made a proportional contribution to the CRF. This created a further $2,317.82 discrepancy.

[19] It was only two months later, as part of the May 20, 2019 SGM, that the strata approved a special levy to compensate the petitioner the sum of $2,317.82. Although passed, the evidence before me was that the amount had still not been paid.

### E. Common Area Repairs by the Petitioner

[20] At the last hearing, I granted the petitioner leave to deliver a claim to the strata for the expenses incurred to address a bird dropping issue, as well as any other common property repairs that it had conducted, and that the strata "shall reasonably consider these claims within 60 days of receiving them from the petitioner."

[21] The petitioner submitted its invoice on December 11, 2018. It was only by letter dated March 7, 2019, almost a month past the court-ordered time frame for

consideration, that the strata advised the petitioner that council was agreeable to paying the petitioner's invoice. However, as of the May 21, 2019 hearing, the petitioner had still not received payment for the common property repairs. At the May 20, 2019 AGM, a special levy was passed to raise the necessary funds.



### F. Leaks and Other Repairs

[22] As discussed in the earlier Reasons, there were cracks in the concrete pad on the second level parking area. These cracks were apparently causing leaks. At the time of the last hearing, the strata had obtained quotes to clean and reseal the drains which were thought to be the main cause of the problem at that time. Council had approved work at a council meeting held on August 10, 2018. To prevent any further delays, I made an order that the respondent make best efforts to complete the work to correct the drain leaks over the following 60 days.

[23] The petitioner alleges that the situation has worsened since the Reasons issued. Certain work was performed between August and December 2018. However, it would appear that it has not included the hydro jet work on the drains recommended by Northwest Mechanical on December 20, 2017. The same report indicated that this company had found a foundation leak seeping into the petitioner's Unit 100.

[24] In December 2018, the petitioner advised the strata of new leaks in Units 100 and 180.

[25] The appointed property manager, Citybase Management Ltd. ("Citybase"), and the strata council, have since received the following additional reports and quotes:

a) an Amerispec report on the petitioner's restaurant at Unit 100 dated January 11, 2019 suggesting that the leaks were likely caused by water channeled from the exterior wall surface and down the wall to the slab and from above and down the beam pillars to the ground level slab (the "Restaurant Report");

b) an Amerispec report on the petitioner's Unit 180 dated January 10, 2019, which noted that cracks in the parkade over interior spaces and around drains needed to be resealed (the "Unit 180 Report");

c) on February 19, 2019, a quote from Mains & Drains Services for drainage repair, plumbing installation and plumbing repair (the "Mains & Drains Quote");

d) an Amerispec follow-up report on the petitioner's Unit 180 dated February 20, 2019, which noted that the drains were not clear and still had to be flushed and cleaned;

e) a February 21, 2019 quote from Libra Envelope for the sealing and painting of the west wall of the strata, resealing of the second floor parking, and caulking around the glass block windows on the second floor parking (the "Libra Quote"); and

f) a February 27, 2019 invoice from the petitioner for repairs of the water damage to Unit 180 and a quote for the replacement of lights in the parkade. The petitioner has not received repayment for either of these invoices.

[26] In an email chain from February 27, 2019 to March 15, 2019, the petitioner advised the strata that Unit 180 continued to experience leaks.

[27] Citybase advised the council to proceed with partial repairs of sealing the glass block wall and leaky pipe on the second floor parking. A resolution put forward at the March SGM sought a special levy of $75,000 to fund the necessary repairs for the leaks. The combined estimated total for repairs based on the Mains & Drains Estimate and the Libra Estimate is $143,053.75.

[28] At the March SGM, the following occurred:

a) The petitioner asked Citybase why they had not included all of the suggested repairs in the Mains & Drains Quote and Libra Envelope Quote. The petitioner says it did not receive a satisfactory answer.

b) The strata was advised that the Contingency Reserve Fund had been depleted and that a special levy was required to cover these repairs.

c) The strata's lawyers informed the strata owners that pursuant to s. 72 of the *SPA*, repairs like this were necessary and it was imperative that they be done.

[29] Nonetheless, the March repair resolution did not pass.

[30] In an email chain from April 7, 2019 to May 5, 2019, the petitioner provided Citybase with a series of photos of new and continuing leaks.

[31] At the May SGM, the strata passed a special levy limited to $50,000 for repairs to address water ingress issues and $5,000 for the preparation of a building envelope report by RDH Engineering.

[32] The evidence does suggest that additional problems have developed since my earlier order, and that the efforts to address them have been delayed.

### G. Parking

[33] The petitioner says there is not enough parking available to it and its tenants. The petitioner complains that many of the owners, tenants and customers of the other commercial units park on the second and third floor rather than in their assigned spaces.

[34] In my earlier Reasons, I required the strata to formally consider and vote on a written proposal submitted by the petitioner within 60 days of receipt of that proposal. The petitioner did provide a proposal on December 11, 2018. As I understand the record, there has been no formal vote on this proposal.

[35] Pursuant to a November 29, 2018 order by this Court, the petitioner was ordered to have exclusive use of the second floor parking spaces and 15 third floor parking spaces (the "Interim Parking Plan"). The petitioner has raised concerns that the strata has taken insufficient steps to enforce the Interim Parking Plan. The petitioner has tried to schedule meetings with the strata council to discuss parking, but no meeting has been set.

[36] At the February 2019 AGM, the council put forward for the strata's consideration a motion in the form of the Interim Parking Plan as well as an alternative paid parking plan. Both proposals failed.

[37] Pursuant to the March SGM Notice, a parking resolution proposed, *inter alia*, the following:

a) permission to certain owners to exclusively use parking stalls 226 to 231, 301, 302, 306, 312, 315, 329 to 333, 405, 408, 411, 423 to 425, 431 to 434, 501 to 509 and 513 (the "Assigned Parking Stalls"); and

b) that the strata be given the power to grant owners or tenants permission to exclusively use the other unassigned parking stalls in accordance with s. 76 of the *SPA*, and to charge a user fee.

[38] This parking resolution also failed with 100% of residential owners and 96.13% of commercial owners voting against it.

[39] According to the minutes of an April strata council meeting, council voted to schedule a meeting with the petitioner to discuss ongoing matters including parking, but no such meeting occurred.

[40] Pursuant to the May SGM notice, council proposed a parking plan, which included the following declarations and elements:

a) that the strata corporation has a listing of how certain parking stalls have been used historically;

b) that in accordance with s. 76 of the *SPA*, based on historical use, the strata corporation has given permission to certain owners to exclusively use parking stalls 226 to 231, 301 to 303, 306 to 308, 312, 315, 323, 329 to 333, 401, 402, 405 to 413, 415, 416, 418 to 421, 423 to 425, 431 to 436, 501 to 509, 513, 517, and 518 (the "Historical Parking Stalls"). These include several stalls for which the owners do not hold Form Bs;

c) that certain parking stalls other than the Historical Parking Stalls have not been assigned by the strata corporation pursuant to s. 76 of the *SPA* (the "Unassigned Parking Stalls");

d) that the strata corporation proposes to grant owners or tenants permission to exclusively use Unassigned Parking Stalls in accordance with s. 76 of the *SPA*, and to charge a user fee in accordance with Regulation 6.9, and the strata corporation proposes to amend its bylaws to accommodate this; and

e) that an owner or tenant will pay to the strata corporation a user fee in the amount of $120 per Unassigned Parking Stall.

(the "May Parking Resolution")

[41] The petitioner calculates that the May Parking Resolution, if passed, would cost the petitioner $5,040 per month or $60,480 per year. The petitioner says it would be unable to rent out its units if this cost was passed onto its tenants.

[42] The May Parking Resolution did not pass either.

[43] At the hearing on May 21, 2019, I raised a concern that there was no evidence that proper approval was given for the purported exclusive use of the Historical Parking Stalls. In response, the strata council passed a resolution on June 3, 2019 granting exclusive use of parking stalls to owners who either (1) had a Form B allocating the stall to them, or (2) had alleged historic use of the stalls set out in Exhibit "L" to the Affidavit #3 of Eric Chung sworn May 16, 2019. The council also

passed a rule allowing council to assign Unassigned Parking Stalls to strata lot owners for a cost of $120 per month. Council passed a rule that permits the towing of vehicles that are parked in violation of the strata bylaws or rules, or in a manner inconsistent with any assignment under s. 76 of the *SPA*.

[44] The ability to charge a fee was only to take effect after ratification by a majority vote at the next general meeting, and therefore no user fee will be charged until the owners vote and approve it. The council also committed to applying for a towing permit once the parking issues are resolved.

[45] Collectively, I will refer to these changes as the “June Variation”. The June Variation is not presently in effect because the Interim Parking Order remains in place pending the decision of this Court.

[46] The petitioner is not content with the June Variation. It argues that a more comprehensive solution is required and, in particular, one that allocates more exclusive spots to it. Further, the petitioner notes that there is no mechanism in the June Variation to prevent or manage over-subscription for the parking spots.

[47] On the other hand, there is evidence that other strata members are also discontent with the parking proposal advanced by the petitioner.

## IV. WHAT IS THE APPROPRIATE ORDER?

[48] There is an element of “death by a thousand cuts” in relation to the mismanagement by the strata. Many issues have eventually been addressed but often very late in the day, and often on a schedule contrary to the terms of the governing court order. When combined with the inability to resolve the overriding parking issue, I find that there is now a sufficient basis for the appointment of an administrator.

[49] In particular, the parking issue has become intractable. A variety of motions to resolve this issue have been voted down. The council has purported to pass its new

set of rules without the benefit of a new strata vote. It appears unlikely that the June Variation will provide a permanent solution, given the divisions.

[50] The parties' wrangling over the parking issue has carried on far too long. The strata requires some closure on this point. I find that the most efficient way to achieve this will be by appointing an administrator to investigate and make proposals, as well as to ensure that the other ongoing issues raised above are properly managed.

[51] Coming back to the approach set out in *Lum*, I find that the following factors support appointment:

> 1. there has been a demonstrated inability to manage the strata corporation in a proper fashion;
>
> 2. the appointment of an administrator is necessary to bring order to the affairs of the strata corporation;
>
> 3. there is a struggle within the strata corporation among competing groups such as to impede or prevent proper governance of the strata corporation; and
>
> 4. only the appointment of an administrator has any reasonable prospect of bringing to order the affairs of the strata corporation.

[52] It is the cumulative effect of all of the issues discussed above that leads me to this conclusion, but particularly the "struggle among competing groups" in relation to the proper parking regime.

[53] I considered whether the court should or could make orders allocating parking spots itself or, alternatively, whether the court could give this power to the administrator. However, I find myself reluctantly in agreement with the strata that the court does not have the power to alienate common property or to give the administrator power to do so at this juncture. The strata relies on *Norenger Development (Canada) Inc. v. The Owners, Strata Plan NW 3271*, 2016 BCCA 118.

In that case, the court held that s.174 of the *SPA* does not give either the administrator or the court the power to avoid the voting approval requirements of the *SPA's* common property provisions. The court in *Norenger* stated:

> [58] Other sections which require the approval of voters before action can be taken by a strata corporation include: s. 21 (majority vote required to approve the first annual budget), s. 27 (majority vote required to direct or restrict the actions of the strata council), s. 80 (3/4 vote required to dispose of common property), s. 108 (3/4 vote required to approve a special levy), and s. 261 (unanimous vote required to amend the Schedule of Unit Entitlement). For a comprehensive list of sections which require the approval of voters before action can be taken, see: *British Columbia Strata Property Practice Manual*, loose-leaf (Vancouver: The Continuing Legal Education Society of British Columbia, 2008) at §6.101, 6-61 to 6-65.
>
> [59] In my opinion, s. 174(7) falls short of empowering the court to dispense with the need for voter approval under the Act. Clearer wording is needed to override such a fundamental right.
>
> [60] Support for this approach is grounded in the presumption that the legislature does not intend to abolish, limit or otherwise interfere with the rights of subjects: Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed. (Markham, Ont.: LexisNexis Canada, 2014) at 497. It is a general rule of statutory interpretation that legislation which curtails rights must be strictly construed.
>
> …
>
> [68] I appreciate that the dispute underlying this appeal has been protracted and that the solution proposed by the Administrator was a well-meant attempt to put an end to the perceived dysfunction of the Strata Corporation. However, in my opinion, the foundational democratic principles that pervade the Act cannot be sacrificed to expediency absent clear statutory direction.
>
> [69] This said, as in *Aviawest* and *Toth*, I do not preclude the possibility that the existing dysfunction might be resolved on an application by the Administrator under s. 165, or an application by an owner under ss. 164 or 165.
>
> [70] In any event, the problems posed by this appeal are not unique, and a legislated solution should, in my respectful opinion, be implemented.
>
> [Emphasis added.]

[54] I must confess to certain concerns about this decision. From a textual approach, it is difficult to understand what force is left in the words "unless the court otherwise orders…" in s. 174(7) on the interpretation adopted, since the decision suggests that the court's hands are tied under that section with respect to all issues that require a vote, which are precisely the types of issues most likely to be

intractable. Furthermore, from a purposive perspective, if one of the bases for appointing an administrator is to resolve competing conflicts, how can the administrator ensure resolution of that conflict if the administrator has to seek a vote between the competing camps whose existence and positions required the appointment of the administrator in the first place?

[55] That said, the Court of Appeal's decision is binding upon me, and I must follow it. It does not leave the administrator completely powerless. I find that as it relates to the parking issue, the administrator can consider the duties and obligations of the strata, review the historical treatment of the parking issue, consider the applicability of the municipal bylaw, seek input from all interested parties, and then present one or more parking solutions to the strata for the required vote. If none of the solutions pass then, even according to *Norenger*, it may be possible for the administrator to apply under s.165 for further direction from the court or, alternatively, an owner may apply under either ss. 164 or 165.

[56] Indeed, the *Norenger* parties ended up returning to court for a remedy under s. 165: see 2018 BCSC 1690. On that follow-up application, the court exercised its powers under that section. The court stated:

> [42] In my view, s. 165 is another such provision. Like the other sections I have mentioned, it is available when owners or other interested persons consider that the strata corporation is not able to function in compliance with the Act, bylaws, regulations, or rules. Where the court agrees that this has occurred, s. 165 empowers a judge to make only and all the orders necessary to allow the strata corporation to resume operating in compliance with the general democratic governance model in the Act and regulations, as tailored to the needs of the particular strata corporation by its bylaws and rules.
>
> [43] Construed in this way, s. 165 is not anti-democratic. While the ¾ majority requirement for changes to the bylaws and the unanimity requirements for the Unanimous Resolutions reflect the legislature's view that such matters are especially important, statutory voting rights are not absolute. Specifically, they cannot be exercised in a manner that causes the Strata Corporation to contravene the Act, regulations, bylaws and rules. This is because it is the Act (including s. 165), regulations, bylaws and rules which comprise the strata community's "democracy."
>
> [44] The need for judicial intervention by making appropriate orders under s. 165 is underscored by the facts in this case. The Landmark has never functioned as a democracy in compliance with the Act. For its first twenty

> years, it was akin to a 'benevolent dictatorship' run by Norenger seemingly without dispute. However, when the Residential Section owners asserted their democratic rights to disagree, the Strata Corporation became dysfunctional, and Norenger sought the appointment of an Administrator. As the Court of Appeal determined, the Administrator could only exercise the powers of the Strata Corporation, which do not include abrogating voting rights. The evidence satisfies me that the Administrator has used every power available to him to establish a framework for democratic governance for the Landmark. He has not succeeded. There is no prospect that any changes to the Bylaws and cost allocation formula will be approved by votes that satisfy the ¾ approval and unanimity requirements of the Act.
>
> [45] It would be ironic and, in my view, contrary to the purposes of the Act to interpret s. 165 to preclude recourse to the courts in these circumstances. That would mean that Norenger's failure to create bylaws consistent with the democratic governance model established by the Act could never be changed. If s. 165 authorizes the abrogation of voting rights at all, this case calls for such a remedy.
>
> [46] As I have explained, interpreting s. 165 as empowering the court to abrogate voting rights if appropriate in limited circumstances is not "anti-democratic" or contrary to the purposes of the Act. The Commercial Section's democratic rights are important but they are not absolute. If they are exercised in a manner that prevents the Strata Corporation from complying with the Act, by preventing the adoption of bylaws that would bring the Strata Corporation into compliance with the Act's democratic governance model, s. 165 is available as a remedy.

[57] The petitioner did not invoke s. 165 as a legal basis for its proposed orders on this particular application. However, this does not prevent the petitioner from doing so in the future if the administrator is unable to break the log jam.

[58] In terms of invoking s.164 to solve the parking impasse, while I find that the strata's conduct has been sloppy and dilatory, it has not yet reached the level necessary to support the court issuing its own permanent parking orders under this section. I find that this issue should be adjourned until the administrator concludes his work to resolve the dispute. This conclusion is based on the following:

i. The petitioner has at least received the benefit of the contractual parking allotment provided to it through its Form Bs.

ii. Unlike the decision in *B.P.Y.A. 1163 Holdings Ltd. v. The Owners Strata Plan VR 2192,* 2008 BCSC 695, the municipal bylaw was not

directly incorporated into the strata's bylaw, nor does the strata bylaw refer to a right to exclusive use.

iii. What evidence is available (which is admittedly not complete or direct) suggests that the City of Richmond may not actually require that additional spots be allocated to the exclusive use of the petitioner's restaurants.

iv. Any prejudice is mitigated through the fact that the petitioner presently has the benefit of the Interim Parking Order, which I will be leaving in place while the administrator does his work.

v. Whether there should be a proposal for a permanent limited property allocation system beyond the Form B entitlements is better considered by an administrator after investigating and receiving full submissions and input from all interested parties.

[59] Hence, I conclude that the best solution to the present state of the parking problem is to include this issue in the list of matters to be considered by the appointed administrator.

[60] As noted, the one s. 164-based order I am prepared to make is to extend the operation of the Interim Parking Order so that the *status quo* is maintained while the administrator does his work. It would be significantly unfair for the petitioner to have to operate under the June Variation before the administrator is able to propose his own solution or solutions. I note that the June Variation would reduce the number of spots allocated to the petitioner down from 48 to 6.

[61] In sum, while I agree that the parking issue has become intractable, I am not satisfied that the petitioner will suffer significant unfairness so long as the Interim Parking Order is maintained while an administrator can make best efforts to calm the waters in a way that is fair and reasonable to all parties.

[62] I caution the strata that immediate implementation of the June Variation may well have met the s.164 threshold. I would like to wait and see what the administrator proposes, and how the strata responds, before evaluating whether the proposed regime in place at the end of the administrator's effort is unfair or oppressive to the petitioner, or whether it merits an order under s. 165.

## V. CONCLUSION

[63] I make the following orders.

a) I appoint Sean Michaels as administrator for a period of 12 months, or such earlier time as the parties may agree, or the court subsequently orders.

b) At the end of the term, either party or the administrator may apply for an extension.

c) The appointment terms shall be as proposed by the petitioner in paragraph 3 of its Notice of Application dated November 20, 2018, subject to the addition of the following term to paragraph 3(a):

> (v) investigation, preparation and presentation of new parking proposals;

d) Without otherwise limiting the administrator's powers, I direct the administrator to advance a proposal or proposals in relation to the management of parking within the strata to a general meeting to take place within the next six months.

e) I also direct that the administrator make best efforts to seek a formal statement of the City of Richmond's position on whether its by-law requires that additional parking spots be allocated to the petitioner.

f) The Interim Parking Order shall remain in place until either:

i. 30 days following a strata vote to change the parking regime pursuant to the administrator's proposals,

ii. further order of this Court, or

iii. expiry of the administrator's term,

whichever occurs first.

[64] On the issue of costs, the parties have asked for the right to make further submissions, and I so order.

[65] MR. LITHWICK: My Lord, I have one question. The Interim Parking Order shall remain in place until either 30 days following a strata vote to change the parking regime.

[66] THE COURT: My thinking was that it may be that once the administrator prepares a proposal, if one of you might get outvoted by the other, that 30 days at least allows someone to run back to court and prevent that the proposal from going forward.

[67] MR. LITHWICK: Can I ask that that be after the strata considers the administrator's proposal [indiscernible] calling a meeting right now?

[68] THE COURT: That is fair. My intention is that it be following the administrator's proposal. So it will remain in place 30 days following a strata vote to change the parking regime pursuant to the administrator's proposal.

"Branch J."

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The Honourable Mr. Justice Branch