

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Buchanan v. S.P. VR 1411,***  
2008 BCSC 977

Date: 20080723  
Docket: S074006  
Registry: Vancouver

Between:

**Mary Isobel Buchanan**

Petitioner

And:

**Strata Plan VR 1411, Randal Craig Fraser, Maurice Bradley Duteau,  
Vancouver City Savings Credit Union, Royal Bank of Canada and the  
Toronto Dominion Bank**

Respondents

Docket: S062820  
Registry: Vancouver

Between:

**R. Craig Fraser**

Petitioner

And:

**The Owners, Strata Plan VR 1411, Maurice Duteau  
and Mary Buchanan**

Respondents

Before: The Honourable Mr. Justice Curtis

**Reasons for Judgment**

08-210-058

Counsel for Mary Buchanan

Frank. R. Eadie

Counsel for Ranald Craig Fraser

Andrew Davis

Maurice Bradley Duteau

Appeared on his own behalf

Counsel for Court Appointed Administrator

G. Stephen Hamilton

Date and Place of Hearing:

June 9 and 10, 2008  
Vancouver, B.C.

[1] These applications concern a three-unit strata title property at 1029 West 7<sup>th</sup> Avenue, Vancouver. There are two buildings, one in which Ms. Buchanan's unit is located and one in which Mr. Fraser and Mr. Duteau's units are located. Both buildings require costly repairs for water damage. The three owners are unable to agree upon how to proceed. Ms. Buchanan and Mr. Duteau allege that they cannot afford the cost of repairs which they allege could be uneconomic and want the Strata Corporation wound up. The Court Appointed Administrator has applied for the power to repair the building which coincides with the position of Mr. Fraser, who lives in his unit and wants his building repaired. Ms. Buchanan lives in California and Mr. Duteau lives in Shanghai, neither of them occupies their units which are rented. If repairs are ordered and either or both Ms. Buchanan or Mr. Duteau do not pay the portion of the repairs levied against their units, their units would be subject to being sold to realize the amount assessed.

[2] The two buildings that comprise the strata title property share a foundation and stairway. The buildings are constructed of steel studs and floors of metal decking topped with concrete. Strata Lot 1, now owned by Ms. Buchanan was previously owned by Vinaya Vasent Kulkarni and Manoj Gupta. In 2002, they did repair work to their roof and presented Mr. Fraser with a set of bylaws for the corporation that divided the obligation to repair between the buildings. Mr. Fraser agreed to the bylaws and in November of 2004, he received a report dated April 29, 2002 from Spratt Emanuel Engineering Ltd. outlining deficiencies of Strata Lot 1. In June of 2004, Mr. Fraser hired an architectural firm to help him with proposed changes to his balcony. He hired Spratt Emanuel Engineering Ltd. to assess the

condition of his building and received from that firm a report dated June 1, 2005 which outlined problems with the building in the following terms:

**BACKGROUND:**

The existing top storey of this 3-unit strata complex was altered at the time of construction to comply with the City of Vancouver height restrictions. We understand that the roof had originally been constructed at a higher elevation and was cut down to comply with the City of Vancouver zoning By-Laws which require a maximum elevation of 25 ft 0 inches. The original over-height structure was badly reconstructed at a new lower elevation to meet the City of Vancouver zoning and development By-Laws. The resulting existing structure does not comply with the Building By-Law at the time of construction Vancouver Building By-Law 6134, nor does it comply with the current Vancouver Building By-Law 8057, 1999. The following deficiencies were noted:

**DEFICIENCIES:**

1. A mix of combustible and non-combustible construction materials were used. The requirement was for non-combustible structure.
2. The reconstructed structure contains window and door headers which are not supported by load bearing members.
3. Load bearing members, where present, do not allow adequate transfer of load to subsequent lower floors.
4. The roof structure appears to be under capacity due to the use of 2x4 wood roof rafters placed continually.
5. Lack of adequate Environmental Separation, Part 5 of Vancouver Building By-Law 8057, 1999 requires adequate thermal and moisture protection. The existing structure offers no dedicated roof insulation. Heat transfer from the exterior to the interior has resulted in condensation within the roof structure and subsequent mould, fungus and deterioration. The existing insulation value does not comply with Vancouver Building By-Law 8057, 1999 as well as the older By-Law in place at the time of construction.
6. Unsafe wiring is present with inadequate clearance between the framing members, wiring and wall surfaces.

7. Deficiencies of the exterior building envelope, due to improper roofing, flashing, wall cladding assemblies, insulation and vapour barrier assemblies, window detailing, door detailing, and deck detailing have all contributed to premature building envelop failure, resulting in rainwater infiltration and condensation on building surfaces. The resultant damage consists of heavy rust to steel structural components, wood rot, fungus and mould on wood components, and subsequent damage to interior finishes.

**RECOMMENDATIONS:**

We recommend that extensive building envelope remediations are required at this building. The remediations should include new roofing, new roof structure, new wall cladding, new wall structure, new windows, new doors, additional insulation, and better measures to deal with the thermal bridging evident at the walls and ceilings of the living space. This can best be accomplished by placing insulation out-board of the walls and roof of the existing living space. In our opinion this additional exterior wall insulation will qualify for the City of Vancouver FSR exemption. The addition of insulation to the roof will cause encroachment beyond the current building height, which we understand is at the allowable limit.

[3] Mr. Fraser's architect submitted an application to the City of Vancouver to repair the roof. After the building was inspected, the City of Vancouver issued the following Legal Notice to the three unit owners:

**RE: 1023, 1027 and 1029 West 7<sup>th</sup> Avenue (1029 West 7<sup>th</sup> Avenue)**

A recent inspection of the unit (1029 West 7<sup>th</sup>) on the top floor of the above noted building revealed that there are multiple indications of faulty construction as follows:

1. the roof structure is overspanned and sagging;
2. vertical supports for the roof are not tied in to provide a continuous load path for the roof structure;
3. beams and lintels and top wall plates are not supported to carry the superimposed loads;
4. the bedroom wall is buckling near the top from lack of support;

5. there is evidence of corrosion of wall members and fasteners of exterior gypsum sheathing board;
6. the top wall plate is comprised of non structural material (flashing and partition guage metal);

The above structural deficiencies constitute **AN UNSAFE CONDITION.**

Accordingly, pursuant to Article 1A.6.1.2. of the Vancouver Building By-Law, you are ordered to:

1. **make application for a building permit to re-construct the roof structure and supporting members to meet the minimum requirements of the by-law BY JUNE 27, 2005**  
  
**and**
2. **commence repairs immediately upon issuance of the building permit**

[4] Mr. Richard Balfour, the architect hired by Mr. Fraser wrote a report dated June 8, 2005 to Mr. Fraser particularizing his findings followed by an estimate in December 2005 in which he suggested the repair costs for Messrs. Fraser and Duteau's building would be \$517,920 and \$34,920 for the shared foundation and walkway structures. No estimate was given to repair the deficiencies to Ms. Buchanan's building.

[5] Mr. Fraser retained legal counsel in November 2005. His lawyer wrote a letter in December 2005 suggesting a sharing of repair costs as follows: Ms. Buchanan, \$152,180.18, Mr. Duteau, \$132,311.91, Mr. Fraser \$167,000.83. This expenditure would not have repaired any of the deficiencies in Ms. Buchanan's property.

[6] On the 15<sup>th</sup> of February 2006, Mary Buchanan commenced an action seeking a declaration that she was not required to contribute to the remedial costs of the Fraser/Duteau building. She did so on the basis that she was led to believe that was the case when she purchased her unit.

[7] Mr. Fraser applied to the Court by petition in Action No. S062820 for an order for repair of the buildings financed through an assessment upon the three owners.

[8] The matter came on for hearing before Mr. Justice Cullen August 29, 2006 and resulted in the following order:

THIS COURT ORDERS THAT:

1. The owners of strata lots 2 and 3 will contribute to the costs of remedial work to Building B, pro rata in accordance with their respective unit entitlements.
2. The owners of strata lots 2 and 3 are responsible to contribute to the costs of repair and maintenance of Building B, pro rata in accordance with their respective unit entitlements.
3. The Bylaws of the Owners, Strata Plan VRI411 (herein referred to as the "Strata Corporation") registered in the Land Title Office at New Westminster, in the Province of British Columbia under number BV313905 (herein referred to as the "Existing Bylaws") are hereby revoked and registration of same on the common property record of the Strata Corporation shall be cancelled upon delivery of a certified copy of this Order to the Registrar of the said Land Title Office.
4. The Bylaws attached as Schedule "A" to this Order (herein referred to as the "New Bylaws") shall be deemed to have been passed and adopted by all members of the Strata Corporation as of the 11th day of August, 2003,
5. The New Bylaws shall be registered on the common property record of the Strata Corporation upon delivery of a certified copy of this Order to the Registrar of the said Land Title Office.
6. As of August 11, 2003 the rights and obligations of the owners of strata lots 1, 2 and 3 of the Strata Corporation shall be determined in accordance with the provisions of the New Bylaws and not the Existing Bylaws to the extent those bylaws affect the rights and obligations of the said owners.

7. Pursuant to s. 174 of the *Strata Property Act*, S.B.C. 1998, c. 43 as amended (the "Act"), Garth Cambrey of Stratawest Management Ltd. is hereby appointed as the Administrator for the Strata Corporation to exercise the powers and perform duties of the Strata Corporation and the Strata Council, subject always to the Act, the New Bylaws and the Rules of the Strata Corporation in connection with repairs, maintenance and remediation of Building B and the stairs and foundations, part of the common property as defined under the New Bylaws.

8. The Administrator has the following specific responsibilities:

- (a) to determine what is necessary for the proper repair and maintenance of Building "B" (strata lots 2 and 3) of the Strata Corporation and to oversee that work;
- (b) to review the expenses incurred by the Petitioner to the date of this Order and determine which of them, or which portions of them, are expenses properly attributable to the Strata Corporation as a whole, to Building B, or to either of the individual owners of strata lots 2 and 3, as the case may be, in accordance with the New Bylaws;
- (c) to determine what is necessary for the proper repair and maintenance of the stairs and foundations of the Strata Corporation covered in section 3 of the New Bylaw and to oversee that work;
- (d) to issue any demand letters or liens that may be necessary against any strata lot owner who does not pay their share of a special levy or levies approved or imposed under this Order; and to take such steps, including action under section 116 of the *Strata Property Act*, as may be necessary to pay for the repairs.

9. The Administrator's determination of the allocation of previous expenses under paragraph 8(b) of this Order is subject to further review by this Court on application by any strata lot owner;

10. The Administrator take such steps as may be reasonable and necessary to ensure that the Strata Corporation determines the appropriate recommendation and course of action for the repair of Building "B" including, without limitation:

- (a) appoint an independent engineering firm to undertake further investigations, if the Administrator deems that necessary;
- (b) consider the recommendations made in all building envelope investigation studies and other engineering or architect reports



including any existing studies (collectively the "Existing Studies");

- (c) ensure that all owners have access to the reports of the independent engineering firm and the Existing Studies at least 20 days prior to any meeting called for the purpose of presenting recommendations and voting to raise funds to repair the building envelope;
- (d) ensure that the preferred repair program satisfies the requirements of the City of Vancouver so that the various Work Orders and Stop Work Orders issued by the City can be and are removed;
- (e) recommend what work if any, should be done to repair the building envelope of Building "B" and the estimated cost of any such work;
- (f) present the owners of Strata Lots 2 and 3 with the findings of the building envelope inspection, the evaluation of the Existing Studies and the suggested repair program for Building "B"; and
- (g) draft a resolution incorporating the preferred repair plan, the estimated cost, the name of the engineering firm to be hired to supervise the work and put that resolution to a  $\frac{3}{4}$  vote of the Owners for their approval and acceptance, at a meeting called for such purpose by no later than January 30, 2007
- (h) if the owners fail to approve the  $\frac{3}{4}$  vote resolution, to apply to Court on five clear days notice for an order determining that the recommended work is necessary and imposing a special levy on the owners in accordance with the New Bylaw.

11. The Administrator take such steps as may be reasonable and necessary to ensure that the Strata Corporation determines the appropriate recommendation and course of action for the repair of the stairs and foundation, (which are areas that remain the responsibility of the Strata Corporation under the New Bylaw) including, without limitation:

(as in paragraph 10).

12. The Petitioner, Mary Buchanan and Maurice Duteau and their successors in title to Strata Lots 1, 2 and 3 provide access to all information, records and documents requested by the Administrator, and provide such authorizations as are requested by the Administrator to obtain information, records and documents held by third parties which relate to the Strata Corporation.

13. The Administrator may retain professionals, including legal counsel, for opinion, advice and services in respect of his duties pursuant to this appointment.

14. The Administrator's fees of \$150.00 per hour plus disbursements shall be rendered monthly, and shall be payable by the Strata Corporation, provided that at the request of any party, the Administrator shall pass his accounts before the Registrar of the Supreme Court of British Columbia.

15. The Administrator shall allocate his time and disbursements, insofar as it is possible, between Building B and the stair and foundation issues referred to in paragraph 11 of this Order, which are the responsibility of the Strata Corporation in accordance with the New Bylaw, and the owners are responsible for their pro rata share of the Administrator's fees in accordance with the breakdown set out in the New Bylaw.

16. The Petitioner shall take reasonable steps to add the Administrator as a named insured on its errors and omissions insurance policy, at the expense of the Petitioner.

17. In the alternative, the Administrator may purchase liability insurance coverage for the work performed as the Administrator under this Order and all expenses associated in obtaining the insurance coverage shall be charged to the Petitioner as an expense of the Administrator.

18. The Administrator shall report to the Court as soon as possible after February 1, 2007, or such other date as determined by this Honourable Court, with respect to the steps taken under this Order, the costs incurred as a consequence of his appointment as Administrator, and whether his appointment as Administrator should continue.

19. The Administrator may apply to the Court for directions to assist and permit him to discharge his duties as Administrator hereunder.

20. The Administrator and/or any party may apply to the Court to substitute another Administrator for the one appointed, extend the term of an Administrator for any subsequent term or terms, or to expand or reduce the scope of an Administrator's powers, as the Court deems appropriate.

21. If any  $\frac{3}{4}$  vote resolution(s) or majority vote resolution(s) of the owners are required to give effect to any of the Orders set out herein, and if such resolution(s) do not pass at a general meeting of the owners, the Administrator and/or any party shall have leave to apply to the Court for an Order approving the resolution(s).

22. No person shall issue any legal process against Mr. Cambrey, Stratawest Management Ltd. or any employee or representative of Stratawest Management Ltd. related to this appointment without leave of the British Columbia Supreme Court.

23. The issue of costs is adjourned generally and may be dealt with by way of a separate order.

24. The Respondent, Maurice Duteau, has liberty to apply to this Court to make submissions with respect to this Order on five clear days notice to counsel for the Petitioner and the Respondent, Mary Buchanan.

The order made by Cullen J. makes no provisions for repairs to Strata Lot 1 owned by Ms. Buchanan.

[9] The order of Cullen J. was not settled by the parties until November 8, 2006. As a result of this delay, the Administrator was unable to meet the deadlines set out in the order which were extended by the order of Groberman J. January 30, 2007. A further order of Satanove J. extended the time to July 23, 2007.

[10] In October 2006, on the instructions of Mr. Fraser, an action was started against parties responsible for the construction of the buildings, but there is no suggestion significant recovery is likely. The Administrator deposes in his affidavit of February 27, 2008, "As far as I am aware, Mr. Fraser commenced the Leaky Condo Action unilaterally without the approval of the Strata Corporation."

[11] On June 12, 2007, Mary Buchanan filed Petition No. S074006 seeking an order to wind up the Strata Corporation.

[12] Mr. J. Garth Cambrey, the Administrator appointed by the order of Cullen J., submitted a report dated July 12, 2007. The Administrator called a meeting for April 16, 2007 at which resolutions were proposed to raise \$20,000 by Special Levy to retain an engineering firm to prepare design and specification documents for building envelope repair for the Fraser/Duteau building, to raise \$20,000 by Special Levy to

prepare design specification documents for stair and foundation repair and to pay the Administrator's fees, and to raise \$5,000 by Special Levy for Administrator expenses to review Mr. Fraser's claims for monies spent on the property. None of the proposed resolutions was considered or discussed. Mr. Duteau and Ms. Buchanan took the position that the repair costs were uneconomic and that the Strata Corporation should be wound up and the property sold. The Administrator stated in his report, "It is my opinion that the Strata Corporation should proceed with obtaining cost estimates on the building envelope repairs of building "B"...."

[13] The Administrator's report also gave his assessment of the proper allocation of expenses incurred by Mr. Fraser. The Administrator assigned the already incurred costs as follows: Strata Lot 1 Ms. Buchanan \$4,352, Strata Lot 2 Mr Duteau \$38,633.07, Strata Lot 3 Mr. Fraser \$69,555.01.

[14] The Administrator also reported as follows:

Governance of the Strata Corporation is also of concern to me as I have not seen any evidence to support that the Strata Corporation is operated within the guidelines of the Strata Property Act. For example, the Strata Corporation does not collect Strata Fees for common expenses, does not hold strata council or Annual General Meetings to approve budgets or elect a Strata Council and, as mentioned earlier, does not have an insurance appraisal completed in order to ensure the property carries property insurance to the full replacement value as required by the Section 149(4) of the *Strata Property Act*. The Strata Corporation does have a bank account that was set up for the purposes of raising funds to investigate the walkway/foundation issues.

The Strata Corporation is currently in the position of not being able to pass a  $\frac{3}{4}$  Vote Resolution required to raise funds to complete the repairs to Building "B" nor the foundation/walkway repairs. As a result, the governance of the Strata Corporation has failed in that the Strata Corporation is unable to meet its statutory obligation to repair and

maintain the common property pursuant to Section 72 of the Strata Property Act.

It is my opinion that proper governance of the Strata Corporation could assist in alleviating some of the issues at hand as it would force the Strata Corporation and owners to meet at least annually to discuss the property. To date, the Owners have been embroiled in legal battles over the condition of the property and have been unable to focus on resolving the matters at hand. If the Owners are not willing to operate the Strata Corporation consistent with the *Strata Property Act*, consideration should be given to retaining a licensed strata manager who would be capable of ensuring the Strata Corporation operates within the requirements of the *Strata Property Act*.

[15] In the result, the Administrator recommended "... that my appointment continue and that I be required to report to the Court on or before September 30, 2007 with respect to the results of the preparation of the design and specification and cost estimates based on such design and specification documents in order that the Strata Corporation may decide if repairs are warranted or, alternatively, consider winding up of the Strata Corporation...."

[16] The Administrator's Report was brought before Rice J. July 23, 2007 as a result of which the following order was made:

THE APPLICATION of Mr. J. Garth Cambrey, the Court-appointed Administrator coming on for hearing at Vancouver, British Columbia on July 23, 2007, and on hearing G. Stephen Hamilton, counsel for the Administrator, Frank R. Eadie, counsel for Mary Buchanan and Messrs. Maurice Duteau and R. Craig Fraser appearing on their own behalf, and on reading the materials filed:

THIS COURT ORDERS that:

1. a special levy in the sum of \$20,000.00 be assessed against the owners of strata lots 2 and 3 in Strata Plan VR 1411 for the purpose of preparing a design and specifications for building envelope repairs to the strata corporation's building (the "Design and Specifications Work"), to be paid immediately in accordance with unit entitlement;

2. before Mr. Cambrey authorizes the commencement of the Design and Specifications Work, he shall:
  - (i) provide to the parties the fee quotes he receives from engineers respecting the Design and Specifications Work;
  - (ii) allow the parties 15 days from the receipt of the fee quotes to ask questions or provide comments in relation to the fee quotes;
  - (iii) by no later than 7 days following the 15 day period referred to in paragraph 2 (ii) of this Order, confirm in writing the fee quote he intends to accept for the Design and Specifications Work;
  
3. the parties will have no more than 7 days following receipt of Mr. Cambrey's written confirmation that he intends to accept a fee quote for the Design and Specifications Work, to apply to Court to seek relief in relation to Mr. Cambrey's intention to accept a fee quote, and if no application to the Court is made by any party, Mr. Cambrey may accept the fee quote without further notice to the parties;
  
4. a special levy in the sum of \$10,000.00 be assessed against the owners of strata lots 1, 2 and 3 in Strata Plan VR 1411 for the purpose of funding the consulting fees related to the investigation and design work for the repair of the Strata Corporation's walkways and foundation (the "Walkways and Foundation Work"), to be paid immediately in accordance with unit entitlement;
  
5. before Mr. Cambrey authorizes the commencement of the Walkways and Foundation Work, he shall
  - (i) provide to the parties the fee quotes he receives from engineers respecting the Work, he shall:
  - (ii) allow the parties 15 days from the receipt of the fee quotes to ask questions or provide comments in relation to the fee quotes;
  - (iii) by no later than 7 days following the 15 day period referred to in paragraph 5 (ii) of this Order, confirm in writing the fee quote he intends to accept for the Walkways and Foundation Work;
  
6. the parties will have no more than 7 days following receipt of Mr. Cambrey's written confirmation that he intends to accept a fee quote for the Walkways and Foundation Work, to apply to Court to seek relief in relation to Mr. Cambrey's intention to accept a fee quote, and if no application to the Court is

made by any party, Mr. Cambrey may accept the fee quote without further notice to the parties;

7. a special levy in the sum of \$3,648.81 be assessed against the owner of strata lot 1 for the purpose of funding the Administrator's expenses, but such assessment is subject to review by the Registrar both as to the quantum of the Administrator's fees and expenses and distribution of same between the three members of the Strata Corporation;
8. a special levy in the sum of \$13,308.67 be assessed against the owners of strata lots 2 and 3 for the purpose of funding the Administrator's expenses, to be paid immediately in accordance with unit entitlement;
9. the parties may make reasonable inquiries of the Administrator respecting his expenses within 14 days of the date of this Order, and the Administrator shall respond to the inquiries within 14 days;
10. the parties may review the Administrator's expenses before a Registrar of the Supreme Court provided that an appointment for a review is brought within 14 days of Mr. Cambrey responding to any reasonable inquiries received from the parties;
11. Mr. J. Garth Cambrey may cause the Strata Corporation to obtain an insurance valuation report on the Strata Corporation's property to establish replacement value for insurance purposes and to amend the Strata Corporation insurance policy to reflect the value established by the insurance appraisal and that the cost of the insurance appraisal and any increase in premium required as a result of the appraisal be paid from the funds contained in the Strata Corporation account located at VanCity Credit Union;
12. Mr. J. Garth Cambrey may sign a Form "I" on behalf of the Strata Corporation with respect to the new Bylaws established by the Cullen J. Order and attend to the proper registration of the bylaws at the Land Title Office;
13. Mr. J. Garth Cambrey will report to the Court by no later than October 1, 2007; and
14. the signatures of the Petitioner, R. Craig Fraser, and the Respondent, Maurice Duteau, are not required to approve the form of this Order.

[17] The Administrator's second report is dated September 21, 2007. He reported that his total fees and disbursements from November 1, 2006 to August 31, 2007 amounted to \$36,524.10. He felt that he had not obtained sufficient information to

determine whether it would be beneficial to the Strata Corporation to repair the building or alternatively wind it up and sought an extension of his appointment and recommended he report to the Court as soon as possible after February 29, 2008. This report came before Master Tokarek October 1, 2007 who ordered the Administrator to report to the court by February 29, 2008.

[18] A further Administrator's Report was filed February 20, 2008. He noted his fees and disbursements to January 31, 2008 totalled \$46,454.09 being \$18,329.59 for Administrator's Fees and \$21,055.90 for legal fees. The Administrator's recommendations in that report were as follows:

Although in the report of February 5, 2008 McArthur Vantell sets out budget repair figures, these figures still remain estimates. A more accurate repair cost of building "B" will not be known until the design is completed and the specifications are tendered. I expect the bids pursuant to the tender to be received before May 31, 2008. McArthur Vantell is proceeding with this work as authorized in the Rice J. Order

At the time the bids are received for the building repair of building "B" a decision will be required to either proceed with the repairs or wind up the Strata Corporation under the terms of the Strata Property Act. It is highly unlikely that the Owners would be able to follow through with the necessary building envelope repair and roof repair of building "B" or the walkway and foundation repairs as recommended by McArthur Vantell without the assistance of an Administrator. It is equally unlikely that the Owners would be able to make a decision on the winding-up of the Strata Corporation without the assistance of the Court or an Administrator.

The attitude of the individuals that make up the Strata Corporation are so diverse and polarized that I do not believe the Strata Corporation could govern itself through a building envelope repair or a winding up the Strata Corporation. Ms. Buchanan and Mr. Duteau remain of a similar mind and philosophy which is contrary to that of Mr. Fraser. As a result, I recommend that my appointment continue until the building repair work of building "B" has been rendered.



I have not been requested by the court to comment on the possibility of winding up the Strata Corporation and seek judicial direction in this regard.

I noted in my July 12, 2007 report my concerns with respect to the governance of the Strata Corporation and the fact that it does not comply with the requirements of the Strata Property Act as it does not hold Annual General Meetings, approve budgets, elect strata council members, collect strata fees or adhere to many of the procedures and requirements of the Strata Property Act.

Although the legal operation of the Strata Corporation is not the most pressing issue of the Owners, the Strata Corporation does have a statutory obligation to operate its affairs consistent with the Strata Property Act.

There has not been cooperation of Owners, even in the simplest of matters, such as payment of the insurance premium. It is my opinion that with the current ownership, the Strata Corporation is not able to govern its own affairs and I recommend that my appointment as administrator be expanded to include the powers and duties of the strata council and strata corporation as required under the Strata Property Act and bylaws of the Strata Corporation. In addition, I recommend that the current bank account held by the Strata Corporation at Vancity Credit Union be closed and all remaining funds transferred to me in trust.

Ms. Buchanan has not paid her portion of the special levies imposed by Mr. Justice Rice July 23, 2007 which is required to pay court-approved expenses of the Administrator and consulting engineering. Additionally, Administrator expenses continue and have not been paid since the original appointment in August 2006. The Strata Corporation is not currently in a position to meet its financial obligations and I believe a special levy of the Strata Corporation is required.

Therefore, I recommend as follows:

- 1) The powers and duties of the Administrator be expanded to include all aspects of the strata council and strata corporation as required by the Strata Property Act.
- 2) That Mr. Fraser and Ms. Buchanan be directed to close the Vancity Credit Union account held in the name of the Strata Corporation to which they are signing authorities and transfer all funds to be held by the Administrator in trust;
- 3) That Ms. Buchanan be directed to immediately pay the special levies imposed by the Rice J. Order;

- 4) That the Court provide direction on payment of the previous expenses incurred by Mr. Fraser up to August 29, 2006 as set out in my July 12, 2006 report to Court;
- 5) That an additional special levy in the aggregate amount of \$29,469.61 be assessed against the Owners of Strata Lots 1, 2 and 3 in accordance with unit entitlement for the purpose of paying Administrator fees and disbursements incurred for the period July 1, 2007 to January 31, 2008; and
- 6) That my appointment as Administrator continue with a further reporting to the Court as soon as possible after May 31, 2008 or as soon as possible after the bids are received and reviewed pursuant to McArthur Vantell's specifications tender, whichever is later.

[19] The Administrator applied by Notice of Motion dated February 20, 2008 for an order that he continue to act with a further report as soon as possible after May 31, 2008, that his powers be expanded to include the powers and duties of the Strata Corporation and Strata Council and for orders securing funds from the owners.

[20] The Administrator's third report was brought before Loo J. March 29, 2008. Some of the orders sought by the Administrator were granted but the bulk of the application was adjourned to be heard at the same time as Ms. Buchanan's application for winding up.

[21] In an affidavit dated May 23, 2008, the Administrator sets out the result of all the tenders which he states:

I estimate the total cost to complete building and walkway repairs at approximately \$650,325.00, including the base contract price, engineering fees and Administrator's expenses, as follows:

- base contract price                      \$500,325.00
- engineering fees                              \$ 50,000.00

- additional contingency \$ 50,000.00
- Administrator's expenses \$ 50,000.00

Total: \$650,325.00

In my view, the allocation of construction costs between strata lots 1, 2 and 3 should be as follows:

	Unit Entitlement	Building B	Walkway & foundation	Total
Strata lot 1- Buchanan	1,417	-	\$13,482.40	\$13,482.40
Strata lot 2 Duteau	1,232	\$269,795.62	\$11,722.17	\$281,517.79
Strata lot 3- Fraser	1,555	\$340,529.38	\$14,795.43	\$355,324.81
Total	4,204	\$610,325.00	\$40,000.00	\$650,325.00

[22] The bids received were:

Tern Construction Ltd.	\$ 500,325
TNC Restoration Ltd.	\$ 653,100
Peak Construction Group	\$1,037,400

[23] Following his investigations into the cost of repair, the Administrator filed a Notice of Motion seeking a Special Levy to be ordered against the owners in the sum of \$650,325 assessed as follows: Ms. Buchanan, \$13,482, Mr. Duteau, \$281,517.79, and Mr. Fraser, \$355,324.81.

[24] The *Strata Property Act* S.B.C. 1998 c. 43 provides:

**284** (1) An owner, a mortgagee of a strata lot or any other person the Supreme Court considers appropriate may apply to the Supreme Court for an order winding up the strata corporation.

(2) On application by a person referred to in subsection (1), the court may order that a liquidator be appointed if the court is of the opinion that the winding up would be in the best interests of the owners, registered charge holders and other creditors.

(3) In determining whether the winding up would be in the best interests of the owners, registered charge holders and other creditors, the court must consider

(a) the scheme and intent of this Act,

(b) the probability of unfairness to one or more owners, registered charge holders or other creditors, if winding up is not ordered, and

(c) the probability of confusion and uncertainty in the affairs of the strata corporation or the owners if winding up is not ordered.

**285** Division 2 applies to a winding up under this Division except that the Supreme Court

(a) may vary or dispense with any of the provisions in Division 2,

(b) may impose any conditions and give any directions that it thinks fit for the purpose of the winding up,

(c) has for the purposes of this Division the powers referred to in section 160, and

(d) may vary its order.

[25] Section 72 of the **Act** provides:

**72** (1) Subject to subsection (2), the strata corporation must repair and maintain common property and common assets.

(2) The strata corporation may, by bylaw, make an owner responsible for the repair and maintenance of

(a) limited common property that the owner has a right to use, or

(b) common property other than limited common property only if identified in the regulations and subject to prescribed restrictions.

(3) The strata corporation may, by bylaw, take responsibility for the repair and maintenance of specified portions of a strata lot.

[26] The fact that the **Act** imposes an obligation to repair on the strata corporation does not provide assistance in deciding whether or not a strata corporation should be wound up.

[27] I am advised by counsel that s. 284 of the **Strata Property Act** has not been judicially considered.

[28] Section 272 of the **Act** requires a unanimous vote to cancel a strata plan and become tenants in common. Section 277 requires a unanimous vote to appoint a liquidator and wind up a strata corporation. I infer that the **Strata Property Act** is intended to create a scheme of land holding that makes home ownership more widely available to the public. The **Act** itself however recognizes the reality that some projects may fail in this purpose and specific provision is made for court ordered winding up.

[29] There is a marked disagreement between the parties as to whether repair of the property would be economic. Ms. Buchanan has obtained an estimate dated April 2, 2008 from Levelton Consultants Ltd., a respected engineering firm employed remediating leaky condos estimating that repairs to her unit would cost \$375,000.

[30] Various appraisals have been done on the property in the hope of clarifying whether the repair option or the winding up option would be financially advisable.

[31] Mr. Bruce Caple, AACI, gives the following opinions on the three units "as if sound, watertight and in saleable condition" after remediation:

Strata Lot 1 May 10, 2007	Mary Buchanan	\$600,000
Strata Lot 2 May 5, 2007	Mr. Duteau	\$320,000
Strata Lot 3 May 10, 2007	Mr. Fraser	\$650,000

[32] Brian Smith, CRA, gives the following opinions, based upon complete repair and "as is":

Strata Lot 1, Mary Buchanan, April 25, 2008 repaired	\$720,000
as is	\$385,000
Strata Lot 2, Mr. Duteau, April 25, 2008 repaired	\$580,000
as is	\$294,000
Strata Lot 3, Mr. Fraser, April 25, 2008 repaired	\$790,000
as is	\$426,000

[33] Mr. Caple has also given an opinion dated May 22, 2007 that the land on which the buildings are situate, if sold, "as unimproved" would sell for \$895,000 as of May 15, 2007. If Mr. Smith's figures are used, the "as is" value of the three units at April 25, 2008 would be the sum of his "as is" values being \$1,105,000.

[34] Using the Smith figures, which are the most recent, the repaired value of the three properties is \$2,090,000. If the Administrator's repair cost estimate of \$650,325 is added to the Levelton estimate of \$375,000 for Strata Lot 1, a repair cost of \$1,025,000 results in an overall increase in value of \$985,000.

Unfortunately, experience has repeatedly demonstrated that construction costs, as

well as Administrator's fees and Administrator's legal expenses are likely to be significantly more than is estimated. It is my conclusion that viewed overall, the cost of repairs in this case will likely significantly exceed the associated increase in value.

[35] The application to repair the Fraser/Duteau building and the common foundation and walkway does not directly involve the cost of repair to Ms. Buchanan's building, which under the order of Cullen J. is treated separately, however the winding up application brings into consideration the property as a whole.

[36] This scenario is seriously compounded by two other factors. Both Ms. Buchanan and Mr. Duteau have advised the court they do not have the financial resources to fund the repair cost. I have no reason to disbelieve them on that issue. The result is that if repairs are ordered, they will default on their levies and the Administrator will have to proceed to try and sell their units to raise their share. This will likely be time consuming and expensive. In the meantime, there is evidence that Mr. Fraser's financial position is not strong. In my opinion, it is probable that if repairs are ordered, the funds necessary to pay for them are not available to the parties.

[37] Additionally, these parties are in fundamental disagreement. They have not been able to cooperate in the past. It is unlikely they will in the future if repairs are ordered. The good intention of the *Strata Property Act* notwithstanding this strata property, is dysfunctional both on a structural and organization level.

[38] I am persuaded that not ordering a winding up of this corporation would be unfair to Ms. Buchanan and Mr. Duteau, and quite probably in the result Mr. Fraser himself. Furthermore, I am convinced that the probability of confusion and uncertainty if winding up is not ordered very significantly exceeds the probable extent of those factors if it is.

[39] Mr. Duteau has stated in court that he would sell his interest in the unit, net of all liabilities for \$237,849 less 10%, and Ms. Buchanan, hers on the same terms for \$310,000. What is sorely needed is for this property to come under the control of one party, where the additional costs of the Administrator and the Administrator's legal advisors, would not be added to the bill, and conflict and litigation about its management would be avoided. I am prepared to order the winding up of this strata property but before doing so, I wish to allow counsel and the parties to contemplate the possibilities as there may be better ways to realize their respective interests.

[40] I have considered the submission made by Mr. Davis in his letter of June 24, 2008 that Mr. Duteau and Ms. Buchanan can sell their units any time they wish. The reality is that it is highly unlikely a purchaser would want to buy into the existing situation. In my opinion, the only way to realize a reasonable value for the interests of the parties is to place the property for sale free of existing disputes and governance problems.

[41] There are disputes about the Administrator's allocation of Mr. Fraser's expenditures to date and the Administrator's fees and the allocation of them. At my suggestion, counsel have agreed that the most pressing matter, being the



disposition of the property should first be dealt with. Accordingly, I have not heard submissions on these issues and do not decide them.

[42] The application for an order that the Fraser/Duteau building and the foundation and walkway be repaired, along with the application for a levy to fund those repairs is dismissed.

[43] The parties are at liberty to apply for the appropriate order in this case once they have had an opportunity to consider their positions in light of this result.

"V.R. Curtis J."

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