COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *The Owners, Strata Plan BCS 3699 v. 299 Burrard Development Inc.,* 2013 BCCA 356

Date: 20130729
Docket: CA040082

Between:

The Owners, Strata Plan BCS 3699

Respondents
(Petitioner)

And

299 Burrard Development Inc.,
299 Burrard Residential Limited Partnership,
299 Burrard Hotel Limited Partnership, and
299 Burrard Management Ltd.

Appellants
(Respondents)

Before: The Honourable Mr. Justice Low
The Honourable Madam Justice D. Smith
The Honourable Madam Justice Neilson

On appeal from: A decision from the Supreme Court of British Columbia, dated June 7 and 20, 2012, (*The Owners, Strata Plan BCS 3699 v. 299 Burrard Development Inc.*, Vancouver Docket No. S-122478)

Counsel for the Appellants: S. Coblin

Counsel for the Respondents: M. Tatchell

Place and Date of Hearing: Vancouver, British Columbia
March 21, 2013

Further Submissions Received: April 4 and 11, 2013

Place and Date of Judgment: Vancouver, British Columbia
July 29, 2013

Written Reasons by:
The Honourable Madam Justice Neilson

Concurred in by:
The Honourable Mr. Justice Low
The Honourable Madam Justice D. Smith

Summary:

The respondent strata corporation, which represents the owners of residential strata units in a mixed residential and commercial complex, brought a petition seeking the disclosure of documents related to a dispute between the parties over the manner in which shared expenses were allocated. The chambers judge ordered the appellants to produce some of the documents sought. The issues on appeal were whether the chambers judge erred in concluding as follows: (1) a ¾ vote of owners was not required to authorize the respondent to bring its petition; and (2) ss. 20 and 35 of the Strata Property Act, S.B.C. 1998, c. 43 (the "SPA") created a continuing disclosure obligation on "owner developers". Held: appeal allowed. The chambers judge erred in concluding no ¾ vote was required to file the petition, but this error is immaterial since s. 173.1 of the SPA precludes the appellants from using the failure to obtain a ¾ vote as a defence. The chambers judge also erred in concluding that an order for the production of documents was justified under ss. 20 and 35 of the SPA. The documents sought are not relevant to the parties' rights and obligations under that legislation.

Reasons for Judgment of the Honourable Madam Justice Neilson:

[1] The appellants are affiliated companies who developed, built and marketed the Fairmont Pacific Rim Hotel and Residences, a mixed commercial, hotel and residential condominium complex in Vancouver. The appellant 299 Burrard Management Ltd. is the legal owner of the development property.

[2] The respondent is a strata corporation constituted under the *Strata Property Act*, S.B.C. 1998, c. 43 (the "*SPA*") and represents the owners of the residential strata units in the complex.

[3] Shortly after completion of the development, a dispute arose between the parties over the manner in which the appellants had allocated financial responsibility for shared expenses between the residential owners and the hotel. When this could not be resolved the respondent refused to pay the owners' share of some of these expenses, and ultimately brought a petition seeking disclosure of documents relevant to the dispute from the appellants. The chambers judge ordered that the appellants produce some of the documents sought. The appellants now appeal that order.

Background

[4] Because the development included both a residential portion and a hotel portion, some operating expenses common to both had to be shared between the hotel and the residential owners. The Disclosure Statement provided to each residential purchaser under the *Real Estate Development Marketing Act*, S.B.C. 2004, c. 41, addressed this by advising that one or more easements may be registered against title to the strata lots with respect to integration of the hotel and residential components, and the sharing of costs of common areas and services. It also stated the developer may enter, or cause the strata corporation to enter into or assume, agreements for that purpose.

[5] Completion of residential sales began in January, 2010. On January 20, 2010, the development was subdivided into three Airspace Parcels, making the residential units Airspace Parcel 1. A Reciprocal Easement Agreement (the "REA") was then registered against the title to each Airspace Parcel, and Strata Plan BCS 3699 was registered on title to Airspace Parcel 1. Ultimately, the REA became a registered charge on the title to each residential strata lot.

[6] The REA defined the shared costs and apportioned them among the owners of the parcels. Article 1.1 of the REA included these definitions:

> (zzz) "**Shared Costs**" means, without duplication:
>
> (i) the costs and expenses identified in Schedule D;
>
> (ii) to the extent not specifically included within Schedule D, the costs and expenses specifically stated as being a Shared Cost pursuant to this Agreement;
>
> (iii) to the extent not specifically included within Schedule D, the costs and expenses incurred in accordance with this Agreement by the Owners of the Parcels with respect to the Repair of the Common Services and Facilities;
>
> (iv) to the extent not specifically included in Schedule D, all payments required to be made by 299 Burrard Hotel Limited Partnership and 299 Burrard Residential Limited Partnership pursuant to the Canada Place Water Plant Service Agreement;
>
> (v) to the extent not specifically included in Schedule D, the cost of the initial acquisition and subsequent replacement of the

Equipment, any equipment and machinery located in the Recreational Facilities and any window washing equipment and machinery, and if any such equipment is at any time leased or otherwise financed, all payments required to be made pursuant to any leases or financing of any such equipment;

(vi) the Property Taxes attributable to the Common Services and Facilities;

(vii) the Utility Costs;

(viii) Management Costs; and

(ix) Remainder Management and Operation Costs;

(aaaa) "**Shared Costs Payments**" means the payments to be made by the Owners of the Parcels on account of their respective share of Shared Costs pursuant to the budget as contemplated herein and, with respect to any Owner of a Parcel, any amounts added to the Shared Costs payable only by such Owner as herein provided;

[7] Article 9 of the REA dealt with how cost sharing among the parcels would be determined. The relevant provisions for present purposes are:

9.1 COST SHARING

The Owners of the Parcels covenant and agree to share the Shared Costs on the basis of the percentage allocation of Shared Costs set forth in Schedule D and pursuant to the procedures set forth in this Article 9. If no percentage allocation for a particular item of Shared Costs appears in Schedule D, then in such case the Owner of the Remainder shall determine in an equitable manner each Owner's percentage allocation of any such Shared Costs.

9.2 SHARED COSTS BUDGET

The budget of Shared Costs for the initial calendar year of the Project shall be delivered by the Owner of the Remainder to the Other Owners within a reasonable period following creation of the Parcels. For each calendar year, the Owner of the Remainder shall cause to be prepared a reasonable budget of the Shared Costs that the Owner of the Remainder reasonably anticipates will be incurred for each calendar year including a reserve contingency of 5%, and which budget shall include adequate capital reserves for capital repairs and replacements to items compromising or included within the Shared Costs. For each calendar year after the initial year, the Owner of the Remainder shall deliver a consolidated budget for the Shared Costs to each Owner as soon as reasonably practicable and in any event will endeavour to deliver such budget no later than sixty (60) days before the beginning of the calendar year for which such budget has been prepared. Each budget of the Shared Costs prepared hereunder shall identify:

(a) each item of the Shared Costs in reasonable detail, including at a minimum, the Shared Costs identified in Schedule D, and

> to the extent not included in Schedule D, any items specifically stated as being a Shared Cost pursuant to this Agreement;
>
> (b) the percentage increase in Shared Costs for each item of Shared Costs for the next calendar year from the budget for Shared Costs for the current calendar year; and
>
> (c) the monthly amounts payable by each Owner of a Parcel on account of Shared Costs for the next calendar year, based on the percentage allocation of Shared Costs set forth in Schedule D, or if no percentage allocation for a particular item of Shared Costs appears in Schedule D, then the percentage allocation payable by each Owner as determined by the Owner of the Remainder as provided for in Section 9.1.
>
> …
>
> 9.13 BASIS OF ALLOCATION OF SHARED COSTS
>
> The Owners acknowledge and agree that except for each Owner's portion of an item of Shared Costs which is not specified in Schedule D, if any, their respective percentage share of Shared Costs set forth in Schedule D has been settled and agreed to by all of the Owners and may not be changed or altered, pursuant to arbitration hereunder, any other legal proceedings or otherwise, for any reason whatsoever, save and except by written agreement of all of the Owners.

[8] Schedule D of the REA set out the allocation of most of the shared costs and included this note:

> In determining the allocation of costs, a number of factors were taken into account. The relative areas of the Developments was utilized where it was determined that the fairest way to apportion a particular cost item is on the basis of area; while in other cases, the apportionment is based on expected usage or advice received from consultants in the applicable field; and in some cases based on functionality. The "Remarks" column of the matrix gives some indication of the method of allocation of [*sic*]

[9] On April 27, 2010, the respondent held its first annual general meeting as required by the *SPA*. The appellant, Burrard Management, as the owner developer under the Act transferred control of the strata corporation to the newly-elected strata council.

[10] Within a short time a dispute between the parties arose over the allocation of shared expenses. The respondent, on behalf of the residential owners, took the position they were being asked to bear a disproportionate share of these, and refused to pay almost $600,000 of the shared expenses claimed by the appellants

pursuant to the REA. As well, the respondent sought disclosure from the appellants of the documents that formed the basis for the allocation of the shared expenses, and the appellants declined to produce these.

[11] As a result, on April 3, 2012 the respondent launched the petition that forms the basis of this appeal, seeking an order for production of the documents it believed were relevant to the development and allocation of the shared expenses. The petition was heard before a Supreme Court judge in chambers on June 7, 2012, who ordered the appellants to produce some but not all of the documents.

Issues on Appeal

[12] The appellants alleged the chambers judge erred:

1) in concluding that a ¾ vote of owners was not required to authorize the respondent to bring the petition;

2) in concluding that ss. 20 and 35 of the *SPA* created a continuing disclosure obligation on "owner developers" after the first annual general meeting of a strata corporation; and

3) in concluding that the disclosure obligations in s. 20 of the *SPA* extended to entities that were not owner developers under the *SPA*.

Discussion

[13] As the appellants' grounds of appeal each deal with the proper construction of the *SPA*, the standard of review is correctness: *Tisdale (Township) v. Hollinger Consolidated Gold Mines Ltd.*, [1933] S.C.R. 321 at 323, [1933] 3 D.L.R. 15.

1) Did the chambers judge err in concluding that a ¾ vote of owners was not required to authorize the respondent to bring the petition?

[14] At the hearing before the chambers judge the appellants brought a preliminary objection, asserting that the petition was invalid because the respondent

had failed to obtain a resolution passed by ¾ of the owners authorizing the suit as required by s. 171(2) of the *SPA*. This issue required consideration of the following provisions of that Act:

> **Definitions and interpretation**
>
> …
>
> "sue" means the act of bringing any kind of court proceeding;
>
> "suit" means any kind of court proceeding;
>
> …
>
> **Strata corporation may sue as representative of all owners**
>
> 171 (1) The strata corporation may sue as representative of all owners, except any who are being sued, about any matter affecting the strata corporation, including any of the following matters:
>
> (a) the interpretation or application of this Act, the regulations, the bylaws or the rules;
>
> (b) the common property or common assets;
>
> (c) the use or enjoyment of a strata lot;
>
> (d) money owing, including money owing as a fine, under this Act, the bylaws or the rules.
>
> (2) Before the strata corporation sues under this section, the suit must be authorized by a resolution passed by a 3/4 vote at an annual or special general meeting.
>
> …
>
> **Other court remedies**
>
> 173 On application by the strata corporation, the Supreme Court may do one or more of the following:
>
> (a) order an owner, tenant or other person to perform a duty he or she is required to perform under this Act, the bylaws or the rules;
>
> (b) order an owner, tenant or other person to stop contravening this Act, the regulations, the bylaws or the rules;
>
> (c) make any other orders it considers necessary to give effect to an order under paragraph (a) or (b).

[15] The chambers judge rejected the appellants' argument, relying on what she viewed as the "purposive approach" taken to the interpretation of the *SPA* in *The Owners, Strata Plan LMS2643 v. Kwan et al.*, 2003 BCSC 293, *The Owners, Strata Plan VR1008 v. Oldaker et al.*, 2004 BCSC 63, and *Coupal v. Strata Plan LMS 2503*,

2004 BCCA 552. She rejected the view that s. 171(2) governed all legal proceedings taken by a strata corporation, and effectively found that s. 173 provided an additional procedure, distinct from s. 171, by which a strata corporation could commence a petition:

> [12] As I view the language of the *SPA*, particularly s. 173, it does not refer to a 3/4 vote. Section 171 is equally clear. An action under this section requires a 3/4 vote. In my view, if the legislature intended a 3/4 vote to apply to petitions against certain enumerated respondents in s. 173, it would have so stated.
>
> [13] Similarly, it is only s. 171 that refers to a suit. Section 173 does not. Although the definition of suit is broad enough to include a petition, in my view, to include that definition in a reading of s. 173 would be to include a requirement that does not exist.

[16] The parties did not bring s. 173.1(1) of the *SPA* to the attention of the chambers judge, nor did they refer to it in their factums. It was raised for the first time at the hearing of this appeal, and provides:

> **Validity of suits and arbitrations undertaken by strata corporation**
>
> **173.1** (1) The failure of a strata corporation to obtain an authorization required under section 171 (2) or 172 (1) (b) or the written consent of an owner under section 172 (1) (a) in relation to a suit or an arbitration
>
> (a) does not affect the strata corporation's capacity to commence a suit or arbitration that is otherwise undertaken in accordance with this Act,
>
> (b) does not invalidate a suit or arbitration that is otherwise undertaken in accordance with this Act, and
>
> (c) does not, in respect of a suit or arbitration commenced or continued by the strata corporation that is otherwise undertaken in accordance with this Act, constitute
>
> (i) a defence to that suit or arbitration, or
>
> (ii) an objection to the capacity of the strata corporation to commence or continue that suit or arbitration.

[17] At the conclusion of the hearing of the appeal we asked the parties to provide further written submissions as to the import of s. 173.1(1) on this ground of appeal. In those submissions, the appellants conceded that this provision precludes them from using the respondent's failure to obtain a ¾ vote as a defence, and their preliminary objection must therefore fail.

[18] In my view, this is a proper concession. In *The Owners, Strata Plan LMS 2940 v. Squamish Whistler Express and Freight,* 2010 BCCA 74 at paras. 32-40, this Court affirmed that the intent of s. 173.1(1) is to preserve a representative action that would otherwise be a nullity because of a failure to comply with s. 171(2). The Court also held, however, that s. 173.1(1) did not remove the statutory impediment created by s. 171(2). It observed the latter is directed to corporate governance of a strata council, and creates an internal procedural rule for the benefit of the owners to ensure a strata council acts in good faith and in their best interests, and in compliance with the *SPA*.

[19] In the result, the parties now agree the chambers judge was not required to rule on the appellants' preliminary objection. They differ, however, as to whether we should nevertheless consider the first ground of appeal and the chambers judge's interpretation of s. 173. The appellants say this is necessary to clarify the relationship between ss. 171 and 173. The respondent maintains the necessity of a ¾ vote is now academic since the only parties with standing to object to its absence are the strata owners or the strata council members, and there are no special circumstances to suggest this Court should relax the general rule that a court should not decide hypothetical or academic questions.

[20] I am satisfied the correct interpretation of s. 173 is an issue that we should address. The chambers judge effectively found that a ¾ majority was not required because s. 173 provides an alternative means of commencing a "suit" under the *SPA*. That view is at odds with other decisions of the trial court, and I am persuaded this dissonance may have repercussions not only for the owners and strata corporation in this case, but more broadly as well.

[21] The appellants argue the chambers judge erred by failing to follow the cardinal principle of statutory interpretation set out in *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 at para. 26, and, in particular, failed to read the relevant provisions of the *SPA* in their context and in their grammatical and ordinary sense. They say, properly interpreted, s. 171 clearly governs the commencement of

any legal proceedings and s. 173 cannot be read as enacting an alternative means of launching a petition without the required majority.

[22] I agree. I am persuaded the "purposive approach" adopted by the chambers judge led her astray from the plain wording of the relevant statutory provisions. "Suit" and "sue" are broadly and clearly defined in the *SPA* to include "any kind of court proceeding". There is nothing in those definitions, or in ss. 171 and 173, that could support the view a petition is not a "suit". Thus, whenever a strata corporation brings any kind of court proceeding, it must be authorized by the ¾ vote of the owners required by s. 171(2).

[23] Section 173, by contrast, is purely remedial. It is titled "Other court remedies", and addresses not the power of the strata corporation to sue, but the power of the Supreme Court to make orders requiring compliance with the *SPA*.

[24] The chambers judge found it significant that the legislature did not include the requirement of a ¾ vote in s. 173. On a proper interpretation of these provisions, however, it would be duplicitous to require it in s. 173 since it has been provided for under s. 171(2).

[25] Further, the cases on which the trial judge relied to support her interpretation are distinguishable. While *Coupal* decided a ¾ vote was not required to bring an appeal, it is notable that it suggested this would only be the case where the initial proceeding had been brought in accord with the *SPA*. *Kwan* held a ¾ vote was not required for an application to appoint an administrator under s. 174 of the *SPA*. *Oldaker* reached the same conclusion with respect to an application for an order for sale of a defaulting owner's strata lot under s. 117. Both decisions observed that s. 171 is a distinct provision of the *SPA*, separate from proceedings under s. 117 or 174. This is understandable. Both ss. 117 and 174 deal with summary procedures, whose intent is inconsistent with requiring the authorization of a sizable majority of the owners. Section 117 provides one means of collecting money owed to the strata corporation by a defaulting owner, a process of benefit to all other owners. Section 174 deals with effectively taking over the strata corporation, a matter which

may preclude the arrangement of a general or special meeting required to hold a vote.

[26] By contrast, s. 171 falls under Part 10, Division 2 of the *SPA*, which covers Legal Proceedings and Arbitration, and Suits by the Strata Corporation. It envisages more extensive litigation and, since the strata lot owners are required to finance this under s. 171(6), understandably requires a substantial majority of the owners to authorize the suit. The interpretation of s. 173 favoured by the chambers judge would deny the owners' role in corporate governance recognized in *Strata Plan LMS 2940*, and would require them to fund litigation commenced by their strata corporation without their authorization.

[27] I conclude the chambers judge erred in finding a ¾ vote was not required to commence a petition under s. 173. As earlier described, however, this error is immaterial to the result of this appeal as it is saved by s. 173.1.

2) Did the chambers judge err in concluding that ss. 20 and 35 of the SPA created a continuing disclosure obligation on "owner developers" after the first annual general meeting of the strata corporation?

[28] Briefly, the respondent's petition sought an order that within 14 days each appellant provide to it all documents that had been or were in their possession related to the development and allocation of Schedule D and Non-Schedule D cost sharing items, as follows:

> **Part 1: ORDERS SOUGHT**
>
> 1. An order that within fourteen (14) days, each of the Respondents provide to the Petitioner all documents which are now or have been in or may come into the possession of the Respondents for all Schedule D and Non-Schedule D cost sharing items as follows:
>
> (a) any expert opinions or recommendations, whether from Sterling Cooper or other consultants, which were considered or utilized in any fashion by any of the Respondents to arrive at Schedule D and/or non-Schedule D allocations;
>
> (b) any correspondence (including e-mails), communications, work sheets or field notes which pertain to the assessment of cost sharing by any of the Respondents;

(c) plans and specifications for the steam and seawater cooling systems; and

(d) any plans, correspondence and documents re: metering plans for all operating systems.

2. An order that within fourteen (14) days, each of the Respondents account for and provide to the Petitioner:

(a) shared costs budgets for each calendar year from the initial year of the Project;

(b) reconciliation of the Water & Sewer expenses as billed to the Fairmont Pacific Rim by the City of Vancouver for 2010;

(c) full particulars as to how in the absence of metering and cost-sharing based on usage and consumption by each Parcel, the Owner of the Remainder has determined, in an equitable manner, the percentage allocation between Parcels for all non-Schedule D cost sharing items;

(d) an explanation why, in the discharge of its obligations under Article 9.1 of the Reciprocal Easement between the parties, the Owner of the Remainder did not install metering in the original construction or at least before the first conveyance;

(e) an explanation why the Strata Corporation is being charged for utility services even during those months when utilities have not been commissioned or have otherwise been shut down, as in the case of the supply of steam;

…

[29] The petition referred to the appellants' representations and obligations under the Disclosure Statement and the REA, and cited ss. 20 and 35 of the *SPA* as the legal basis for producing the documents. The relevant parts of s. 20 provide:

(2) At the first annual general meeting, the owner developer must

(a) place before the meeting and give the strata corporation copies of all of the following:

...

(iii) all contracts entered into by or on behalf of the strata corporation;

(iv) any disclosure statement required by the *Real Estate Development Marketing Act* or section 139 of this Act;

...

(vii) all warranties, manuals, schematic drawings, operating instructions, service guides, manufacturers' documentation and other similar information respecting the construction, installation, operation, maintenance, repair and servicing of

> any common property or common assets, including any warranty information provided to the owner developer by a person referred to in paragraph (vi);
>
> (viii) all records required to be prepared or retained by the strata corporation under section 35;
>
> …
>
> (b) place an annual budget, prepared in accordance with section 21, before the meeting for approval.

[30] Section 35 sets out lists of the records the strata corporation must prepare and the documents it must retain. The latter include written contracts to which the strata corporation is a party, and its budget and financial statement for each year.

[31] The chambers judge disagreed with the appellants' contention that the petition was inappropriate because it was directed to discovery as a prelude to a future legal action. She found the REA was opaque and lacked clarity as to the basis for allocating the shared expenses. She ordered that the appellants produce a number of the documents sought by the respondent pursuant to ss. 20 and 35 of the *SPA*, stating:

> [29] I agree with the petitioner that I ought to take a purposive approach to ss. 20 and 35 of the *SPA*. Such an approach supports a conclusion that the petitioner is entitled to know the basis of the allocation of cost sharing expenses, both in respect of Schedule D and non-Schedule D items.
>
> [30] On that basis, I will order that the respondents provide the items sought in the first section of the petition. That is, documents relating to Schedule D and non-Schedule D cost sharing, including expert opinions and recommendations, correspondence, plans for the steam and sea water cooling systems, and any plans, correspondence, and documents regarding metering plans for operating systems.
>
> [31] The petitioner seeks an order that the respondents provide documents which are now, have been, or may have come into the possession of the respondents. I order that the documents which are or have been in the possession of the respondents are to be disclosed. Any documents that come into their possession must also be provided. In my view, the petitioner is entitled to a full understanding of the method by which the cost sharing expenses are made.

[32] The appellants maintain the chambers judge misapprehended both the statutory intent of ss. 20 and 35 of the *SPA* and the objective of the respondent's petition. They say the petition has nothing to do with the *SPA*, and renew their

argument that it represents an attempt by the respondent to obtain discovery of documents with a view to ultimately commencing an action in contract against them, based on the REA and the Disclosure Statement. They say a review of the documents sought in the petition clearly demonstrates they are directed to the ongoing contractual dispute between the parties over shared expenses, not to the management of the strata property, or the parties' obligations under the *SPA*. Moreover, the appellants say that even if the order of the chambers judge stands, it is too broad. The opening words of s. 20(2) are clear that it governs delivery of the listed documents to the strata corporation at its first annual general meeting when control of the building is transferred from the owner developer to the newly-elected council. These are documents needed to manage the building and, by necessary implication, existed on April 27, 2010, the date of the first meeting. The order of the chambers judge goes well beyond production of these documents.

[33] The respondent defends the order of the chambers judge as a pragmatic solution in the circumstances. It says the appellants have failed to deliver a number of contracts related to cost sharing under the REA, and the petition provides a summary method of obtaining disclosure of those documents to permit it to assess whether future litigation would be successful. It says the owners should not have to finance extended litigation simply to obtain documentary disclosure.

[34] I am persuaded the chambers judge erred in ordering documentary disclosure pursuant to ss. 20 and 35 of the *SPA*. The terms of s. 20(2) are clear that, once the listed documents have been produced by the owner developer, that entity has no continuing disclosure obligation under the *SPA*. While it is unfortunate that Burrard Management, the owner developer here, was apparently dilatory in complying with its obligations under s. 20, this does not extend the ambit of the documents it must produce.

[35] An examination of the respondent's documentary requests made before this litigation, the petition and, indeed, the respondent's factum, leaves no doubt the documents it seeks are not directed to the parties' rights and obligations under the

SPA. There is little concurrence between the documents listed in the petition, and those set out in ss. 20 and 35. The real dispute, as the appellants maintain, is contractual and arises under the terms of the REA, which governs the ongoing rights and obligations of the parties in sharing costs. To use one example, the annual budgets of shared costs sought by the respondent arise under Article 9.2 of the REA, not the *SPA*. Moreover, although the respondent maintains the appellants have failed to produce contracts related to shared costs, the petition does not seek production of these documents.

[36] I am satisfied the petition was misguided, and the chambers judge erred in finding it justified an order for production of documents by the appellants under the *SPA*. The issues of shared costs are clearly contractual, and ss. 20 and 35 have no relevance here. If the respondent seeks to pursue its dispute with the appellants, the proper course is an action in contract, with the attendant discovery procedures.

3) Did the chambers judge err in concluding that the disclosure obligations in s. 20 of the SPA extended to entities that were not "owner developers" under the SPA?

[37] My determination on the second ground of appeal makes it unnecessary to consider this ground of appeal.

Conclusion

[38] I would allow the appeal, set aside the order for production of documents, and dismiss the petition.

"The Honourable Madam Justice Neilson"

I AGREE:

"The Honourable Mr. Justice Low"

I AGREE:

"The Honourable Madam Justice D. Smith"