

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Owners, Strata Plan LMS 1383*,
2015 BCSC 1816

Date: 20150814
Docket: S141922
Registry: Vancouver

Re: The Owners, Strata Plan LMS 1383
In the Matter of Section 173 of the *Strata Property Act*

Before: The Honourable Mr. Justice Pearlman

Oral Reasons for Judgment

In Chambers

Counsel for The Owners, Strata Plan LMS
1383:

V.P. Franco

Appearing on their own behalf:

Nick W. Peters
Bin Hua He
David Yiu Sing Tsang
Shri Naido
Ti Qill
Kwan Hing Lo

Place and Date of Hearing:

Vancouver, B.C.
August 12 & 13, 2015

Place and Date of Judgment:

Vancouver, B.C.
August 14, 2015

[1] **THE COURT:** The petitioner strata corporation applies pursuant to s. 173(2) of the *Strata Property Act* for the following relief:

- (a) A declaration that the three-quarter vote resolution proposed at the Annual General Meeting held December 12, 2013 to raise the sum of \$177,601 by special levy calculated in accordance with section 108(2) of the *Act* for the purpose of funding the costs to install a waterproofing membrane over portions of the underground parking suspended slab of the Strata Corporation and certain other ancillary work (the "Resolution") is necessary to ensure safety or to prevent significant loss or damage, whether physical or otherwise.
- (b) An order deeming the Resolution approved.
- (c) An order that the Strata Corporation may proceed as if the Resolution had been passed under section 108(2) of the *Act*.
- (d) An order for costs.

[2] The amount for which approval was sought in the resolution is incorrectly stated in the petition as \$177,604 rather than \$177,601. In my view, that is an inconsequential error.

[3] The respondents are all owners of strata lots in Strata Plan LMS 1383. They oppose the petition on both procedural and substantive grounds.

[4] The respondents argue that:

- (a) The Strata Corporation has contravened section 171(2) of the *Act* by bringing this petition without first seeking and obtaining authorization by a resolution passed by a three-quarter vote of the owners.
- (b) The Resolution for which court approval is sought must be a resolution under section 108(2)(a) to raise money for the maintenance or repair of common property by special levy. The respondents contend that because the Resolution provided for the raising of \$177,601 to be funded initially through the contingency reserve fund, and for the Owners to reimburse the contingency reserve fund through a special levy, the Resolution does not meet the requirements of sections 108(2)(a) and 173(2).
- (c) Some of the respondents argue that the Strata Corporation is only responsible for repairs to the original structure and say that because waterproof membrane was not part of the original construction of the

suspended slabs at the P1 and P2 levels of the parkade, the Strata Corporation has no obligation to install membrane at those locations.

- (d) The installation of waterproof membrane is costly and unnecessary. The respondents contend that the necessary repairs to prevent ingress to the parkade were identified by Levelton Engineering Ltd. in their report of June 9, 1999. Levelton found no evidence of structural damage. The engineering firm recommended measures to prevent water ingress to the parkade including repairs to a leaky skylight, the sealing of cracks in the slabs at the P1 and P2 levels, and epoxy injection to repair plaza level and wall cracks at an estimated cost of \$15,000. The respondents contend there has been no substantial change in the condition of the parkade in the last 15 years and say these repairs can and should be made at a cost substantially less than the amount that the Strata Council proposes to raise from the Owners.
- (e) The Resolution for which court approval is sought is neither adequately nor accurately identified in the petition.
- (f) Relief under section 173(4) is discretionary. The respondents submit the Strata Council ought to have consulted with the Owners before bringing the petition and acted high-handedly and in bad faith by initiating these proceedings without first making further attempts to find a solution satisfactory to those who opposed the Resolution. The respondents say this is a factor that should weigh heavily in the court's exercise of its discretion in this case.

[5] I will deal briefly with the background to this matter. The strata corporation was established under s. 2 of the *Act*. By s. 2(1)(b) the owners of the strata lots and the strata plan are members of the strata corporation under the name The Owners Strata Plan LMS 1383. I should say that in bringing this proceeding the strata corporation properly and in accordance with the requirements of the *Strata Property Act* did so in the name of The Owners, Strata Plan LMS 1383.

[6] Under s. 4 of the *Act*, the strata council exercises the powers and performs the duties of the strata corporation unless the *Act*, the regulations or the bylaws provide otherwise. Section 72 of the *Act* requires the strata corporation to repair and maintain common property and common assets.

[7] Section 108 authorizes the strata corporation to raise money from the owners by means of a special levy. Under s. 108(2)(a) the special levy must be approved by a resolution passed by a three-quarter vote, meaning at least three-quarters of the

votes cast by eligible voters present in person or by proxy at the time the vote is taken and who have not abstained from voting.

[8] Section 173 of the *Act* provides:

- (1) 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).
- (2) If, under section 108 (2) (a),
 - (a) a resolution is proposed to approve a special levy to raise money for the maintenance or repair of common property or common assets that is necessary to ensure safety or to prevent significant loss or damage, whether physical or otherwise, and
 - (b) the number of votes cast in favour of the resolution is more than 1/2 of the votes cast on the resolution but less than the 3/4 vote required under section 108 (2) (a),

the strata corporation may apply to the Supreme Court, on such notice as the court may require, for an order under subsection (4) of this section.

(3) An application under subsection (2) must be made within 90 days after the vote referred to in that subsection.

(4) On an application under subsection (2), the court may make an order approving the resolution and, in that event, the strata corporation may proceed as if the resolution had been passed under section 108(2)(a).

[9] Strata Plan LMS 1383 includes two towers containing a total of 278 residential strata lots located in Surrey, British Columbia. The two towers, which were constructed in 1994, are located above a three-level underground parking garage.

[10] The floors of level P3 and part of level P2 are concrete slab on grade and were constructed by pouring concrete directly onto the ground. There is no waterproof membrane on these slabs.

[11] The floors of level P1 and the rest of level P2 are suspended concrete slabs. Part of the roof of the parking garage is the ground floor of the two towers. While the remainder of the roof consists of exterior landscaping and hardscaping consisting of interlocking pavers, fountains, a swimming pool and planters, the parking garage roof is also a suspended concrete slab.

[12] In 1999, the strata corporation retained Levelton Engineering Ltd. to conduct a condition survey of the parkade as a result of concerns raised by owners about water ingress. In their report of June 9, 1999, Levelton identified a number of locations of water ingress and advised that if these areas were addressed much of the water leaking through cracks in the floor slabs and dripping onto cars below would be eliminated.

[13] Levelton noted that the building code had been amended shortly after the building permit was issued for construction of these structures comprising Strata Plan LMS 1383. Had the building permit been issued three months later, a waterproof membrane would have been required for the level P1 and P2 suspended slabs.

[14] The engineering firm also reported that installation of elastomeric membrane on the slab surfaces of P1 and P2 would probably provide the best means of enabling the concrete slab surface to shed water and bridge small cracks in the concrete. However, bearing in mind the cost of installation of the membrane Levelton recommended that the strata corporation initially undertake less expensive repairs, including routing and sealing of cracks in the slabs and epoxy injection at plaza level and in wall cracks, as I have noted at an estimated cost of \$15,000.

[15] For reasons that are not disclosed in the evidence on this hearing, the strata corporation did not act on Levelton's recommendations. However, in 2009 the strata council authorized some minor repairs to leaks in the parkade.

[16] In 2011, the strata council decided to address the problem of water ingress to the parking garage. It sought and obtained quotes for the installation of waterproof membrane or coating on the suspended slab at the P1 level.

[17] In May 2012, council received a quote from Aqua City Restorations Ltd. proposing the application of waterproof membrane on the P1 level at a cost of \$235,000. The strata council thought this proposal provided the best solution for the water ingress problem because it, unlike any of the other bids, provided solutions for water tracked into the parking garage by vehicles.

[18] At a special general meeting on June 21, 2012, the strata council put forward a three-quarter vote resolution to raise \$270,000 by special levy to install a waterproof membrane on the P1 suspended slab. The resolution was defeated. 79 owners voted in favour of the resolution while 29 opposed.

[19] After the defeat of this resolution council reported at its June 25, 2012 meeting that it would be gathering more information to present to the owners at the December 2012 annual general meeting. At the AGM of December 13, 2012, the strata council put forward a three-quarter vote resolution to raise \$270,000 by special levy to fund the installation of waterproofing membrane at the P1 level and to pay for the costs of engaging the engineering firm of Halsall Associates to oversee the work and provide design specifications.

[20] The owners passed the resolution with 72 voting in favour and 20 voting against. The strata council then retained Halsall to undertake further investigation and to prepare the project specifications at a cost of \$8,000 plus GST.

[21] In July 2013 after inspecting the garage, Halsall recommended that membrane be applied to both the P1 and P2 level suspended slab and that cracks and any concrete delamination in the slabs be repaired at an estimated cost of \$365,000.

[22] When the project was put out to tender, Polycrete Restorations Ltd. provided the lowest bid of \$380,000. Based on Polycrete's bid, Halsall put forward three

options for the scope of the work. The first option, which Halsall recommended, was installation of elastomeric waterproofing membrane to the suspended slabs at the P1 and P2 levels; repairing the cracks on the P1 and P2 suspended slabs, injection waterproofing of actively leaking cracks in the roof slab and foundation walls; and localized patching to any delaminated or spalled concrete; the removal of leakage stains and repainting of traffic markings. The estimated cost of this option, including engineering and taxes, was \$447,601.

[23] Halsall also suggested two options to reduce costs. The first was to confine the scope of the work to the P1 and P2 suspended slabs at an estimated cost of \$387,713. Halsall regarded this as the minimum work required to deal with water ingress to the parkade. The third option was to confine the work to the P1 suspended slab at an estimated cost of \$293,055. Halsall recommended against this option because the P2 slab would, in its opinion, require the installation of waterproof membrane and repairs within the next two to three years in any event.

[24] On October 8, 2013, the strata council determined that the owners should decide the scope of the work. Halsall's options were presented to the owners at a special general meeting held on November 14, 2013. Halsall attended to summarize their recommendations and answer questions from the owners.

[25] At the November 14, 2013 special general meeting, the strata council put forward four resolutions. Resolution 1 would fund the repairs recommended by Halsall by a special levy in the amount of \$177,601. That amount was required to make up the difference between the \$270,000 approved by the owners at the December 2012 annual general meeting for the installation of waterproof membrane at the P1 level and the total of \$447,601 required to fund all of Halsall's recommended option.

[26] Resolution 2 would fund Halsall's minimum recommended repairs by a special levy of \$117,713. Resolution 3 would fund the repair of the P1 suspended slab only by a special levy of \$23,055, while resolution 4 would fund the same repairs as resolution 3, but from the contingency reserve fund in the amount of

\$23,055. All four resolutions were defeated. Resolution 1 attracted the most support. 48 owners voted in favour, 30 voted against and one abstained.

[27] At the special general meeting of November 14, 2013, some of the owners advocated for an extension of time for payment of the special levy beyond the three months then proposed by the strata council. Based on their assessment that option number 1 had the most support from the owners and that the owners wanted a longer time for payment of any special levy, the strata council determined to put forward option 1 at the 2013 AGM with payments to be spread over a longer period.

[28] At the December 12, 2013 AGM, the strata council put forward a three-quarter vote resolution to raise the additional \$177,601 required to fund the repairs recommended by Halsall. The resolution, after reciting of the owners' previous approval at the December 13, 2012 AGM of the special levy in the amount of \$270,000 and the requirement for additional funds to pay for the expanded scope of the work recommended by Halsall, provided:

AND THEREFORE, the owners of Strata Plan LMS 1383, Cornerstone, situated at 13353/13383 108th Avenue, Surrey, BC, by means of a $\frac{3}{4}$ vote of the owners of the Strata Corporation, authorize the Strata Council to expend a sum of money not exceeding \$447,601 (four hundred forty seven thousand six hundred and one dollars) for the purpose of installing a waterproofing coating for the parkade suspended decks of Parking Level 1 and Parking Level 2 suspended slab and concrete repairs as outlined in the Halsall Bid Summary report dated October 3, 2013. (**see Halsall document attached**)

AND THEREFORE BE IT RESOLVED by a $\frac{3}{4}$ vote resolution that the Strata Corporation LMS1383, Cornerstone, to raise an additional \$177,601.00 (one hundred seventy seven thousand six hundred and one dollars) to be funded through the Contingency Reserve Fund.

AND BE IT RESOLVED that the owners will reimburse the Contingency Reserve Fund in the amount of \$177,601.00 (one hundred seventy seven thousand six hundred and one dollars) in accordance with the unit entitlement of their strata lot as per the registered Strata Plan LMS 1383. As a matter of financial convenience, payments can be made in six equal instalments beginning January 15, 2014, February 15, 2014, March 15, 2014, April 15, 2014, May 15, 2014, June 15, 2014. (**see attached special levy fee schedule "A"**)

AND BE IT RESOLVED that the owners understand that should the amount required to complete the installation of the waterproofing coating be less than the amount of \$447,601 (four hundred forty seven thousand six hundred and one dollars), the remaining amount will be transferred to the Strata Corporation's Contingency Reserve Fund.

[29] Although a majority of the owners who participated in the vote either in person or by proxy supported the resolution, it failed to obtain the requisite three-quarter vote. 54 owners approved, 34 opposed and two abstained.

[30] In order to accommodate the requests of some owners for more time for payment, the resolution provided for the owners to make their payments in accordance with the respective unit entitlements in six equal monthly installments between January 15 and June 15, 2014. However, in order to have funds in hand to pay for repair work, the resolution provided that the additional \$177,601 would be funded through the contingency reserve fund, and that the owners would later reimburse the contingency reserve fund, in that amount with the funds levied from them over the six-month payment period.

[31] Section 173(2) to (4) came into force on December 12, 2013, the same day the resolution failed. The strata council at its meeting of January 28, 2014 determined to seek legal advice regarding s. 173. After obtaining that advice the council voted on March 3, 2014, to proceed with an application for court approval of the resolution of December 12, 2013, in order to undertake the repairs recommended by Halsall.

[32] The principal question for determination on this application is whether the petitioner has established on a balance of probabilities that the resolution of December 12, 2013, meets the test for approval by the Court under s. 173(2).

[33] The petitioner has identified the following issues:

- (a) Is this a Resolution to approve a special levy?
- (b) Is the money being raised for the maintenance or repair of common property or common assets that is necessary to ensure

safety or to prevent a significant loss or damage, whether physical or otherwise?

- (c) Were the number of votes cast in favour of the Resolution more than one-half of the votes cast on the Resolution but less than the three-quarter vote required under s. 108(2)(a)?

[34] The parties have also raised the issue of whether the strata corporation required approval by a three-quarter resolution to authorize the commencement of this litigation.

[35] I will also address whether the petition adequately identifies the resolution for which the strata corporation seeks court approval and whether on the evidence adduced on this application there has been any conduct on the part of the strata council that would lead the Court to exercise its discretion against granting the relief sought even if the statutory conditions of s. 173 were met.

[36] Sections 173(2) through (4) of the *Act* were first considered by this Court in the *The Owners, Strata Plan VIS114 v. John Doe*, 2015 BCSC 13. There, Madam Justice Fitzpatrick analyzed the conditions for court approval of a resolution at para. 41. Her Ladyship said this:

[41] Accordingly, the Act now allows the court to approve a resolution in certain circumstances where there was a failure to obtain the special majority vote. The preconditions to the court considering such an application are:

- a) at least 51% of the owners vote in favour of the resolution;
- b) the levy is for maintenance or repair of common property or common assets; and
- c) the maintenance or repair is necessary to:
 - i. ensure safety, or
 - ii. prevent significant loss or damage, whether physical or otherwise.

[37] The strata corporation must act reasonably in carrying out its statutory duty to repair and maintain common property: *Taychuk v. Owners, Strata Plan LMS 744*, 2002 BCSC 1638 at para. 30.

[38] In determining the reasonableness of the actions of the strata corporation, the court will typically consider the professional advice that a strata council receives from its engineers regarding the timing, extent and method of repairs: *The Owners, Strata Plan VIS114* at para. 49.

[39] Under s. 173(2), the court is not confined to only exercising its discretion to approve a resolution where the engineering evidence clearly establishes that the repairs are immediately necessary to ensure safety or prevent significant loss or damage: *The Owners, Strata Plan VIS114* at para. 53.

[40] At para. 135, Madam Justice Fitzpatrick made the following observations, with which I concur, concerning the Court's exercise of its discretion under s. 173(2):

Section 173(2) is a new tool available to strata corporations to seek court intervention in appropriate circumstances. I would not, however, expect that court intervention would be appropriate simply because there is a dispute. Clearly, the test under s. 173(2) must be met before the court's discretion can be exercised. Importantly, there must be issues of safety or in the event of loss or damage, that loss or damage must be "significant." Further, the court's discretion is only to be exercised in appropriate circumstances and in accordance with the overall objectives in the *Act*.

[41] I will begin by considering the question of whether the petition adequately and accurately identifies the resolution for which court approval is sought. The petition identifies that resolution as one for raising the sum of \$177,604 by special levy for the purpose of funding the cost to install a waterproofing membrane over the underground parking suspended slab of the Strata Plan put forward at the annual general meeting dated December 12, 2013.

[42] In my view, any owner upon reading the relief sought in the petition would have no difficulty identifying the resolution for which court approval was sought. The reference to the amount which the council sought to raise, although out by \$3, clearly indicates that this was option number 1, and related to the resolution of December 12, 2013.

[43] Reference to the resolution of December 12, 2013, would then draw the owners' attention to the scope of the work contemplated by that resolution and

specifically that the work related to, among other things, the installation of membrane at the P1 and P2 suspended slab levels.

[44] While the pleading is not a perfect description of the resolution, in my view it adequately and sufficiently identifies the resolution for which court approval is sought.

[45] I turn next to the question of whether the resolution was indeed a resolution to approve the raising of money by special levy. Here, as I have noted, the resolution proposed that the additional \$177,601 required to fund the work recommended by Halsall would be drawn from the contingency reserve fund, which would later be reimbursed by the funds raised from the owners.

[46] In determining whether or not the resolution was a resolution to secure the owners' approval for raising money by special levy, it is necessary to read the resolution in its entirety. Council was faced with the necessity of having funds in hand in time to pay for the work when it was completed, which was anticipated to be within three months of its commencement, while at the same time endeavouring to accommodate the desire of the owners that the payments of the levy be spread over a six-month period.

[47] Ultimately the source of the funds to pay for the work was a special levy. The resolution attaches a schedule of special levy fees. I am satisfied that the resolution is a resolution for the raising of money by special levy.

[48] I turn next to the question of whether the statutory preconditions for the Court's exercise of its jurisdiction under ss. 173(2) through (4) have been met. A majority of the owners who participated in the vote voted in favour of the resolution. There is no question that the requirement that at least 51 percent of the owners vote in favour of the resolution was met. The special levy was for the maintenance and repair of the parkade and as such was a special levy for the maintenance and repair of common property.

[49] The next question is whether the maintenance or repairs are necessary to ensure safety or to prevent significant loss or damage, whether physical or otherwise. In my view, the real question here is whether the maintenance and repair is necessary to prevent significant loss or damage.

[50] In order to answer that question, it is necessary to consider all of the engineering evidence adduced on this application. I have already referred to Levelton's report. While Levelton found no evidence of any structural damage, they did comment on the problems presented by the cracks in the floor slabs.

[51] At section 3.1 of their report, they described the process of efflorescence, by which moisture penetrates the concrete and ultimately dissolved lime is carried to the exterior of the crack where the water evaporates. Levelton explained that efflorescence is problematic for two reasons. First, the lime solution with water is highly alkaline and will damage paint on vehicles. Secondly, if enough lime is removed from the concrete, the reinforcing steel in the concrete becomes more prone to corrosion. They noted widespread efflorescence was visible in the parkade, although few of the cracks exhibited corrosion.

[52] Levelton also noted that the cracks in the concrete allow the alkaline water to drip on vehicles and damage paint, and allow water and oxygen to contact and corrode steel reinforcements. They made the point that corrosion of reinforcing steel is structurally significant, and that once corrosion starts it escalates and can proceed rapidly.

[53] Halsall made a number of key findings in their report to the council, one of which was that there was no waterproofing membrane protecting the suspended slabs at the P1 and P2 levels from water leakage. They observed approximately 100 metres of cracks in the suspended slabs and observed that most cracks appeared to be actively leaking.

[54] They also identified the need for localized repairs to the garage slab roof. Halsall recommended that although the concrete parking garage appeared to be in

generally good condition, in order to maintain the slab structure and implement slab protection, repair of the slab cracks and the installation of waterproofing membrane was necessary. They too identified the problem of the risk of corrosion and structural failure.

[55] Mr. Colizza, the engineer in training for Halsall who provided to the report to the strata council, deposed in his affidavit at paragraph 15:

It is my view that the sealing of the cracks at the P1 and P2 suspended levels will be insufficient. This is a temporary solution only. The seal wears out quickly given the traffic. The elastometric membrane provides full scale protection that typically lasts seven to ten years.

[56] And at paragraph 18:

It is my view that the application of the waterproofing membrane on the suspended slab and repairs to the concrete cracks will assist in preventing further leaking, which will mitigate both the damage to vehicles parking in the garage and to prevent deterioration of the concrete and corrosion of the reinforced steel. In addition if the strata corporation waits longer to do this recommended work it will cost more due to increased costs of material and labour.

[57] The work must be necessary to prevent significant loss or damage. The Concise Oxford English Dictionary defines "significant" to mean:

Extensive or important enough to merit attention.

[58] In my view, giving s. 173(2) its plain meaning and taking into account the purpose of s. 173, which is to provide the means for strata corporations in appropriate cases to be able to proceed with necessary repairs and maintenance to common property in circumstances where they obtain majority support but not a three-quarter vote, I find that the appropriate test of what constitutes "significant" damage or loss is whether the damage or loss is extensive or important enough to merit attention.

[59] The strata corporation has relied on the advice it has received from the engineers. It is entitled to do so. Bearing in mind all of the engineering evidence, including the evidence of Levelton, I find that the repairs and maintenance proposed

by the strata corporation through the resolution are repairs and maintenance necessary to prevent significant loss or damage to the common property.

[60] Finally, it is also a requirement that the application be brought within 90 days after the vote. That requirement was met in this case. I am satisfied that the strata corporation has met all of the requirements of s. 173(2).

[61] I turn next to the question of whether there has been any conduct on the part of the strata council that would militate against the Court making the order sought on this application. I appreciate that the issue of repairs to the parkade has been controversial and has obviously created divisions among the owners. I have no doubt that this has been a source of acrimony among both those who support the resolution and those who opposed it. There is obviously a long history to this matter and one that has not been entirely happy.

[62] Having said that, since 2011 the strata corporation through the strata council has made extensive efforts to find a solution to the parkade repairs that would attract the support of the owners through a three-quarter vote. Once it determined that a program of extensive repairs was necessary, it sought quotes for the work from a number of contractors. It evaluated those quotes. It engaged an engineering firm for further advice and to determine the project specifications for the work. The strata council shared the results of the engineer's investigation and the engineer's recommendations with all of the owners. The council determined that the owners should determine the scope of the work that would be carried out, and to that end put all of the options identified by Halsall before the owners.

[63] Ultimately, a majority of the owners did support the resolution for which court approval is now sought, although not at the requisite three-quarter vote level.

[64] The respondents urge the Court to find that the strata council should have made further efforts to find common ground with them before initiating the petition. The council through its minutes, at its January 28, 2014 meeting, did provide the owners with notice of the fact that it was seeking legal advice with respect to

pursuing a remedy under s. 173(2) and what the nature of that remedy would be. The council was required to bring the proceedings within 90 days of the December 12, 2013 resolution, and did so by filing the petition on March 12, 2014.

[65] While there was undoubtedly time for further communication between the strata council and the owners between January 28 and March 12, 2014, it is in my view most unlikely that a solution acceptable to a three-quarter majority or more would have been determined in that time. I say that having regard to the numbers of resolutions brought forward by the strata council and the efforts that had been made prior to the initiation of court proceedings to find a solution that would be acceptable to a large majority of the owners.

[66] In any event, the strata council was not obliged to make further efforts. It was entitled, in my view, to take the action that it did. I am not persuaded that there was any conduct on the part of the strata council that was in bad faith or so unreasonable as to warrant the Court exercising its discretion against granting the relief sought on this application.

[67] The final matter I will deal with is the question of whether the strata corporation required approval to bring these proceedings by a three-quarter vote. Previous decisions of this Court have held that the three-quarter vote approval is not required where a strata corporation either brings proceedings for the sale of a strata lot under s. 117 of the *Act* or, for the appointment of an administrator under s. 174. In each of those cases courts found that the processes contemplated by ss. 177 and 174 were distinct from the general provision of s. 171. See *The Owners, Strata Plan LMS 2043 v. Kwan*, 2003 BCSC 293 at para. 26; *The Owners, Strata Plan VR 1008 v. Oldaker*, 2004 BCSC 63 at paras. 23 and 27.

[68] Section 171 provides that the strata corporation may sue as a representative of all owners, except any who are being sued about any matter affecting the strata corporation. It then goes on to specify a number of matters. Subsection (2) provides that:

Before the strata corporation sues under this section the suit must be authorized by a resolution passed by a three-quarter vote at an annual or special general meeting.

[69] The Court of Appeal held in *The Owners, Strata Plan BCS 3699 v. 299 Burrard Development Inc.*, 2013 BCCA 356, that a three-quarter vote authorization was required before any strata corporation could bring an application for the remedies sought in s. 173(1) of the *Act*. The Court of Appeal rendered that decision prior to ss. 173(2) through (4) coming into force.

[70] In determining whether or not a three-quarter vote approval is required before the initiation of proceedings under s. 173(2), it is necessary to consider the purpose or object of that provision. In doing so I have regard to the Hansard Debates at the time that s. 173(2) was considered by the Legislature.

[71] During the Hansard Debate of March 31, 2009, the Honourable Colin Hansen, who was then Minister of Finance and Deputy Premier, said this:

Finally, this bill enhances consumer protection by giving owners, former owners and potential purchasers greater rights to access additional information by ensuring that special levies are managed with the same diligence as a strata corporation's contingency fund and by providing a new court remedy to approve a special levy to raise money for the maintenance and repair of common property or assets where a majority of owners vote in favour of the special levy even though it did not receive the support of three-quarters of the owners as currently required by the act.

[72] On September 24, 2009, the Honourable Rich Coleman, the Minister of Housing, referring to the amendments including s. 173, said this:

It allows the Courts to break a deadlock when the strata council cannot quite get a three-quarter vote needed to make a crucial repair via special levy.

[73] The purpose of s. 173 is to permit the strata council to proceed in appropriate circumstances with necessary repair and maintenance work to common property where it has not been able to achieve the three-quarter vote. It would be contrary to the purpose of the section to require that a strata council, having failed to achieve the three-quarter vote by resolution, to obtain another three-quarter vote resolution

from the owners before having recourse to the court. The purpose of ss. 173(2) to (4) would be defeated.

[74] Accordingly I find that there is no requirement for the authorization of the initiation of proceedings under s. 173(2) by a three-quarter vote.

[75] Having reached that conclusion I grant the relief sought in the petition.

[76] Now, Ms. Franco, are there any particular terms you seek with respect to the declaration or any of the other orders sought?

[77] MS. FRANCO: No, other than changing the amount from \$177,604 to \$177,601. Otherwise it can remain in the same wording as set out in the petition.

[78] THE COURT: The amount is \$177,601.

[79] MS. FRANCO: Yes.

[80] THE COURT: And with respect to the matter of costs, the petitioner is the successful party on this application and is entitled to its costs as ordinary costs as Scale B. Thank you.

[81] THE CLERK: Sorry, My Lord. Is there a particular amount that I need to make a change in the petition that you --

[82] THE COURT: It is to paragraph 1 of the relief sought.

[83] THE CLERK: Paragraph 1, yes. The amount is?

[84] THE COURT: The amount is in the third line.

[85] THE CLERK: Yep.

[86] THE COURT: It is \$177,601 rather than \$-604.

[87] THE CLERK: -601. Okay. Thank you. And costs to petitioner?

[88] THE COURT: Yes.

[89] THE CLERK: Scale B.

[90] THE COURT: At Scale B.

[91] THE CLERK: Thank you.

[92] THE COURT: Thank you.

“PEARLMAN J.”