

**NOTES FROM THE BUILDING ENVELOPE INFORMATION MEETING
THE OWNERS OF STRATA PLAN VR1428
555 WEST 14TH AVENUE, VANCOUVER, B.C.**

Held on Tuesday, April 2nd, 2002
In the Coquihalla Meeting Room,
2nd Floor, 1190 Hornby Street, Vancouver, BC

COMMENCEMENT

The meeting commenced at 7:20pm.

INTRODUCTION AND PURPOSE

Charleen Zaleski introduced the guests present at the meeting. She then noted that no decisions which required a formal resolution would be made at tonight's meeting, and that the purpose of the meeting was to:

- obtain information from the lawyer with respect to potential litigation
- receive information relating to the building envelope remediation project
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GUEST PRESENTATIONS

I. Lawyer's Presentation

David L. Miachika, of the law firm Borden Ladner Gervais, informed the owners that his firm was retained by the Strata Corporation to render a written opinion on possible recourses for the building envelope remediation project (BEP). Unfortunately, he was unable to provide the owners with the written report as of tonight's meeting, but he was prepared to provide the members with a verbal opinion for the time being.

In addition to being a lawyer, Mr. Miachika has also practised as a professional engineer, and he has acted as the plaintiff lawyer 90% of the times for strata corporations. He spoke on the following:

1. Building History

Strata Plan VR1428 was built in 1985, and was originally a rental building. The building was converted to a Strata development in 1995. Prior to the building being converted into a Strata development, there was some work done on the building. (i.e. caulking, painting, etc.) The original owner was a limited company, which has since been dissolved.

2. Building Envelope Problems

Two (2) engineering firms were hired by the Strata Corporation (B.E.E. in April 1999, and Aqua Thermal Engineering in October 1999) to perform building envelope assessments on the building, and both firms concluded that the building envelope had failed pre-maturely, and recommended that the building envelope be restored.

3. Litigation Processes

There are two (2) sections which allow the Strata Corporation to sue. The individual owners may sue individually, or the Strata may sue as a corporation. A $\frac{3}{4}$ vote resolution is required if the Strata Corporation wishes to sue collectively as a group. Generally, those parties that the Strata Corporation can sue are:

- The original owners of the building, before the building's conversion to a strata
- The original architects for the building
- All sub-trades, and suppliers
- The directors who were listed in the original disclosure statements
- The municipality. (Unfortunately, the municipality of Vancouver has a charter containing provisions which are very difficult to get around.)
- The marketing people (Real estate agents who were involved in marketing the suites on behalf of the original owners of the building.)

4. Establishing Possible Claims

The Strata Corporation must establish possible claims. Because the development at 555 West 14th Avenue was sold as used suites, the only warranties are those contained in the original purchase-sale agreement. Thus, those original purchasers who bought their suites directly from the developers may sue for breach of contract. *Original owners are advised to provide copies of any marketing material, amended disclosure statement or other information received during the sale.

Subsequent purchasers, as well as the original purchasers can sue for negligence. One of the main elements in claiming negligence is that there must be proof of “rot” in the building. The two engineering reports have indicated that there was sufficient water damage. However, the current engineer will need to gather more evidence to establish further deficiencies in the building. Another possible claim is that of negligent misrepresentation. Note that there is a limitation period which restricts the filing of those claims. The limitation period is normally six (6) years, effective from the date when the problems were first discovered. (The B.E.E. inspection took place in 1999.)

5. Possible Recourses

Generally speaking, the Strata Corporation is entitled to recover the following costs:

- Inspection fees, including the consultant's fees
- Engineering fees
- Damage; out of pocket expenses to repair the problems
- Interest on damage expenses
- Loss of rental income
- Loss of market value (5-7% depreciation)
- Legal costs (Unfortunately, the legal costs recovered are usually about 30-35% of the actual out of pocket legal costs.)

6. In Closing

If the Strata Corporation initiates an action today, the matter will probably not go to trial for at least two (2) years. Then, there would be an appeal process, which could further delay the overall process. It is therefore the lawyer's recommendation at this time that the Strata Corporation consider filing a Writ of Summons to ensure that the Strata Corporation is within the limitation period regarding the filing of a claim.

The Strata Corporation would then have up to one (1) year to serve the writ on all parties involved in the original development. The cost to file the Writ of Summons is about \$2,000. The Strata Corporation would then need to take the following steps:

- Prove liabilities with expert opinions
- Identify all those parties involved in the original development
- Send notices out to all those identified parties
- Assess the assets and insurance coverage for those identified parties

- It is most likely that the matter would proceed to mediation period since one of the requirements that has been imposed by the Homeowner Protection Office legislation is that all parties involved must attempt to resolve the disputes through mediation in an effort to save legal costs before the matter goes to trial. It is also a requirement that the insurance companies for those identified parties attend the mediation. 90% of cases are resolved through mediation, which can yield 30-60% of real costs. The cost of a lawsuit could be \$75,000-100,000 and a trial could cost an additional \$100,000-200,000 more, though most cases are resolved before trial.

Given the fact that the building is an older development, it is probably an up-hill battle. No warranties were given at time of sale. However, exterior cladding seems a recoverable expense. We also have an expert engineering firm, thus defendants will take their report seriously.

Recommendations

- File a Writ of Summons due to the legislated time limit. This means spending \$2000-5000 to protect our potential claim, to have time to identify additional defendants and to be in good position to sue.
- The repairs should proceed. No mediation can take place until renovations are complete.
- Photograph the building during demolition.
- Current owners should produce a copy of inspection reports done.

The floor was then opened to questions from the members, as follows:

1. What is your opinion on the fact that the plans for the building filed at City Hall are substantially different from the actual building drawings?

This may open the door for the City in terms of liability. Owners should consult the engineering firm for their opinion.

2. The sidewalks repaired by Wall Financial Corporation were sub-standard. Is this a liability?

The lawyer has received some information which indicates that Wall Financial Corporation was involved in the re-sale of the development because Wall Financial Corporation was getting advice from a roofing contractor during the re-sale period. Therefore, this will need further investigation.

3. What liability do the independent inspectors hired by the individual strata lot owners have?

Independent inspectors hired by the individual strata lot owners would also be liable, since many purchasers relied on their opinions before purchasing the suites. Generally, lawyers and accountants are bound by statute to carry liability insurance. However, architects and engineers are not required to do so.

4. What expectations does Mr. Miachika have of the owners at tonight's meeting in terms of resolution, to enable him to proceed?

The general membership was advised that a Special General Meeting should be called in order to approve a $\frac{3}{4}$ vote resolution to allow the Council to retain a lawyer to commence the filing of a writ against those individuals identified responsible for the Strata development.

5. An owner asked if the $\frac{3}{4}$ vote resolution passed at the November 2001 Special General Meeting is sufficient for the Strata Corporation to file petition with the court to seek conduct for sale against those owners who have not paid the special levies for the building envelope remediation project.

This owner was advised that the lawyer has reviewed the $\frac{3}{4}$ vote resolution passed at the November 2001 Special General Meeting and is of the belief that Council has obtained sufficient support to proceed with the petition. (Note: only one owner has failed to produce a letter of approval regarding a loan for the special levy for building renovations. Notifications/ procedures are in place to take action.)

6. Given that the building was painted with an elastomeric coating, is there any way that the Strata Corporation can show that such action resulted in additional problems in the building?

Certainly, the application of an elastomeric coating has probably resulted in the trapping of water inside the building. It is most likely that the elastomeric coating is one of the contributing factors, but the main deficiency is the design, which resulted in water penetrating the building.

7. If the Strata Corporation were successful in getting a judgement, how long would it take before the Strata Corporation saw any money?

Once the settlement is agreed upon by all parties at mediation, it will probably take three to four months before the Strata Corporation receives the money.

II. RDH ENGINEERS LTD.'S REPORT

Marcus Dell advised the owners that since his last meeting with the owners in November 2001, his firm has completed the construction documents and has obtained competitive bids for the required works. The bids were subsequently opened at RDH's office, witnessed by the acting Strata Council President, Gary Wall. The lowest bid was submitted by Tri-Power Construction Ltd. The contract documents have been reviewed by the Strata Corporation's lawyer, and will be signed at tonight's meeting.

Tri-Power has put together a very aggressive schedule of 25 weeks for doing the remedial work, which is a good thing. The owners should be aware that there is no penalty should Tri-Power take longer to finish the work. As of tonight's meeting, Tri-Power has removed the stucco from the ground floor suites. Early indication is that there is not a great amount of wood rot on the ground floor suites. This is a good sign, because the contingency money will not be used up.

The owners were then advised that RDH has prepared a safety construction pamphlet which will be circulated to all the residents in the building so that the residents are aware of construction safety recommendations. For security reasons, residents are reminded that all windows and doors should be locked when the scaffoldings are erected.

Work Schedule

The owners were informed that Tri-Power will work until 4:00pm on most weekdays and that the Property Manager will be notified in the event that work on the weekend is required. During the remediation period, Tri-Power will have a project manager on-site. There will also be an on-site telephone and fax number (604-872-1654). In addition, Tri-Power will have a 24-hour *emergency telephone number*: 604-590-5888 or 604-418-9840. However, *owners/residents are reminded that it is best to direct their concerns and questions to the Strata Council, rather than to the contractor.*

NEW BUSINESS

1. Window Type

Some owners are concerned about the use of casement windows on the balconies, as casement windows would limit the usable space. Those balconies which would be affected are:

01's, 02's, 03's, 06's, 07's, 08's, 09's, 13's, 15's, 17's, 18's, and 19's
(2nd and 3rd level balconies only)

It has been suggested that slider type windows be used instead.

A discussion ensued, after which an owner made a motion as follows:

"Be it resolved that the owners authorize the Strata Council to change the casement windows which swing over balconies to slider type windows if, in the opinion of the Strata Council, it would be more desirable. "

The motion was **SECONDED** and **CARRIED** with a majority vote.

2. Budget for the Building Envelope Remediation Project

An owner requested that the Strata Council provide the owners with a revised budget for the building envelope remediation project based on the bid received from Tri-Power Construction Ltd., and other expected costs such as the lawyer's and engineer's fees. This will be provided in approximately one month's time.

3. Landscaping

An owner asked if Council had discussed the possibility of saving some of the shrubs. This owner was advised that Council has been informed by the existing landscaper that it would be cheaper to buy the same size shrubs at a later date when the building envelope remediation project is completed, than to try to save the existing shrubs.

4. Petition to Local MLA

The owners present at the meeting were asked to sign a letter addressed to the local MLA to see if anything can be done to assist those owners affected by the leaky condo crisis.

5. New Council Members

The general membership was advised that the following owners have volunteered to serve on the current Strata Council:

Carol Wright	Unit 112
Lise Alice Moulds	Unit 113
Brenda Brown	Unit 204

ADJOURNMENT

There being no further business, it was **MOVED, SECONDED** and **CARRIED** to adjourn the meeting at 9:20 p.m.

Respectfully Submitted,

Joseph Tsang, Senior Property Manager
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